

Chapter Five

Conclusions and recommendations

5.1 The committee recognises that wheat growers contributing to the national pools between 1987 and 1990 have suffered financial loss as a consequence of the imposition of United Nations (UN) sanctions against Iraq. For some, the extent of the loss would have been considerable. However, the trade in wheat with Iraq during that period was underwritten by insurance cover through the government-funded Export Finance and Insurance Corporation (EFIC), which paid out US\$381.2 million (approximately 80 per cent of the debt owing) in 1991 and 1992. In October 1991, the federal government also made an ex-gratia payment of \$31 million to growers for losses directly attributed to the imposition of UN sanctions on Iraq. As noted in this report, these payments were accepted as full and final by the growers' peak representative body, the Grains Council of Australia (GCA).

5.2 During this inquiry, both WAFarmers and the Wheat Growers' Association (WGA) argued that the government owed a moral obligation to compensate growers for their loss. This was on the basis that growers had disproportionately borne the financial impact of governmental decisions, being:

- (i) The imposition of UN sanctions on Iraq; and
- (ii) Participation in the Paris Club's debt rescheduling agreement.

5.3 The committee rejects these arguments. Firstly, Australia's compliance with UN sanctions reflected a legal obligation under international law; there was in fact no federal government 'decision' that caused Iraq's default.

5.4 Secondly, the Paris Club represents the best, and possibly only, hope of recovering any debt repayments from Iraq. During the inquiry, WAFarmers and WGA informed the committee that Iraq had 'promised' to repay their debt to Australian growers, implying that the Paris Club agreement reflected an abandonment of a possible full recovery of the debt. Aside from the fact that Iraq's parlous financial predicament precludes this, the committee notes that any debt repayments Iraq is claimed to have promised AWB or AWB Ltd are not relevant to this issue, given that the Iraq wheat debt is legally owned by EFIC.

5.5 Woven into the justifications for federal government compensation is the inference that EFIC could afford to forgo some of its debt repayment entitlement because it is a taxpayer-funded entity. The committee does not believe that this is a reasonable inference. Simply because the funding for government compensation payments can be spread across a large taxpayer base, it does not follow that taxpayers, through the government, should automatically compensate the growers who have suffered a financial loss, albeit through no fault of their own.

5.6 Accordingly, it is the committee's view that a government compensation payment is not justified by the arguments presented by WAFarmers and the WGA. Furthermore, such a measure would potentially create uncertainty over EFIC's future viability.

5.7 In evidence, the Department of Foreign Affairs and Trade (DFAT) argued that any scenario in which EFIC was to forgo its entitlement to allow growers to be fully compensated would create a dangerous precedent:

If the Government or EFIC were to pay out the proportion of loss required to be borne by individual exporters, this could undermine the integrity and future operations of the NIA. It could, for example, encourage individual policy holders to consider that 100 per cent of any loss could be recovered by lobbying the Government; diminish the authority and standing of contracts entered into with EFIC; and reduce incentives for insured parties to make financially prudent decisions about high risk markets. Once a precedent was established it would be difficult to prevent broadening and consequential undermining of EFIC/NIA insurance arrangements.¹

5.8 The committee agrees that growers should not receive an amount greater than 20 per cent of the total sum paid by Iraq. To do so would indeed undermine the future viability of NIA insurance arrangements and reflect a short-sighted approach to export insurance arrangements. Although EFIC is a government entity, the insurance policies they provide to exporters represent commercial agreements that ought to be free from governmental intervention; potential or retrospective.

5.9 However, the committee considers it reasonable for growers to request that the payments they are scheduled to receive under the Paris Club agreement be made as early as possible. In their submission, GCA attached a letter to the Prime Minister in which they outlined a resolution supported by all GCA members (except WAFarmers). This resolution included the request that:

Any monies recovered ... be disbursed back to industry first.²

5.10 In evidence to the committee, the government ruled out the prospect of AWB Ltd receiving their repayments before EFIC. DFAT officers told the committee that:

The standing government policy is that any and all recoveries will be divided on that 80-20 split from the first dollar received until the last dollar recovered.

5.11 As to the timing of the distribution of Iraq's debt repayments, the committee believes the government (through EFIC) should allow some flexibility in this instance. In a farming context, the length of time Iraq has owed this debt renders the timing of the repayments a particularly salient issue. The time span between Iraq's default and

1 Department of Foreign Affairs and Trade and Department of Agriculture, Fisheries and Forestry, *Submission 5*, p. 12

2 Letter from GCA to Prime Minister dated 9 December 2004, *GCA Submission 3*, p. 7

their repayment schedule dictates that only payments in the early stages of the repayment schedule will directly benefit affected growers, if at all. Payments received in 2028 will arrive 38 years after UN sanctions were imposed on Iraq, a period over which few, if any, affected wheat growers will still be growing wheat. It is likely a majority will be deceased. These considerations are not as important to a government insurer, and ought to be taken into account if all parties are to benefit meaningfully from the Paris Club agreement.

5.12 An arrangement between AWB Ltd and EFIC to alter the timing of the distribution of these payments would not, in real terms, affect the equitable 20-80 division of recovered money between growers and taxpayers. Therefore, due to the long period of time involved in the recovery of these repayments, the committee considers it appropriate that affected growers receive the first 20 per cent of payments made and makes the following recommendation.

Recommendation 1

5.13 The committee recommends that the Export Finance and Insurance Corporation and AWB Ltd agree to a distribution of Paris Club scheduled repayments that enables growers, through AWB Ltd, to receive the first 20 per cent of repayments from Iraq, beginning in 2011.

5.14 Whether or not growers recover their debt repayments in advance of EFIC's own entitlements, the committee recognises that identifying every grower affected by Iraq's default will be potentially time consuming and expensive. Although the majority of growers will volunteer their entitlement to payments, many others will need to be individually located and contacted. It is the committee's view that this process should begin immediately, as the more time passes the more difficult the task will become.

5.15 Moreover, the distribution of costs associated with this process should also be resolved. The committee recognises that while AWB Ltd will incur these administrative costs before a proportion of affected growers are identified and located, these expenses should not ultimately be borne by growers unaffected by Iraq's debt, and consequently not entitled to any repayments.

Recommendation 2

5.16 AWB Ltd immediately commences the process of identifying and locating every grower entitled to receive payments made by Iraq under the Paris Club agreement. Further, prior to the commencement of Iraq's scheduled debt repayments in 2011, AWB Ltd undertakes to establish a payment mechanism whereby those receiving Iraqi payments are responsible for meeting the costs of their distribution.

5.17 Finally, the committee is of the view that AWB Ltd and GCA need to improve the clarity of their communication with wheat growers. Further, AWB's Pool Realisation Statements should clearly identify, and preferably elaborate on by way of

narrative comment, extraordinary payments made to growers through AWB's pool payments.

Senator Aden Ridgeway
Chair