

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

NSD 2020/2007

**JOHN WATSON & KAYE WATSON**  
**in their own right and as representatives of the Group Members**  
Applicants

**AWB LIMITED (ACN 081 890 459)**  
Respondent

**THIRD FURTHER AMENDED STATEMENT OF CLAIM**  
(filed pursuant to leave given by Justice Foster on 9 November 2009)

**A The applicants and the Group Members**

1. This proceeding is commenced by the applicants on their own behalf and on behalf of persons who:
  - (a) between 11 March 2002 and 13 January 2006 inclusive (**Relevant Period**) obtained an interest in the respondent's "B Class" securities (**AWB securities**) being an interest that was the result of a purchase of AWB securities on the financial market (**ASX**) operated by the corporation then known as Australian Stock Exchange Limited and now known as ASX Limited (trading as Australian Securities Exchange);
  - (b) at the close of business on 13 January 2006 held an interest in AWB securities obtained during the Relevant Period; and
  - (c) suffered loss and damage by reason of the Contraventions, as defined below  
  
(**Group Members**).

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2. The applicants purchased AWB securities in 2005 and sold them after 13 January 2006.

### PARTICULARS

*The applicants' purchase details are detailed in Schedule A to this Third Further Amended Statement of Claim.*

3. By reason of or resulting from the Contraventions, as defined in paragraph 57 below, the applicants:
- (a) purchased AWB securities;
  - (b) retained their AWB securities from the date of purchase until the expiration of the Relevant Period; and
  - (c) did not purchase shares in the Commonwealth Bank of Australia for a comparable consideration as that paid for the AWB securities.
4. Deleted

### **B The respondent**

5. The respondent (**AWB**):
- (a) at all material times was and is:
    - (i) a company registered pursuant to either the *Corporations Law* (Vic) or the *Corporations Act 2001* (Cth) (**CA**) and is capable of being sued;
    - (ii) a trading corporation for the purposes of section 4 of the *Trade Practices Act 1974* (Cth) (**TPA**);
    - (iii) a person within the meaning of section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
    - (iv) a person within the meaning of section 9 of the *Fair Trading Act 1999* (Vic) (**FTA**)

- (b) on 1 July 1999 became an unlisted public company;
- (c) on and from 21 August 2001 and during all of the Relevant Period was:
  - (i) a listed disclosing entity within the meaning of section 111AL(1) of the CA;  
and
  - (ii) a participant in a financial market within the meaning of sections 9 and 767A of the CA and subject to and bound by the provisions of the Listing Rules (**ASX Listing Rules**) of the ASX as to its activities or conduct.

### **C AWB securities**

- 6. From about 1 July 1999 and at all times during the Relevant Period AWB had a dual class share structure by reason of the issue of:
  - (a) "A Class" shares to persons who met the definition of "growers" in the AWB Constitution; and
  - (b) "B Class" shares being the AWB securities.
- 7. On or about 21 August 2001 AWB securities were quoted on the ASX and have thereafter been quoted and traded on the ASX (excluding periods of trading halts).

### **D AWB, AWBI and its business**

- 8. From 1 July 1999 and at all material times during the Relevant Period:
  - (a) section 57 of the *Wheat Marketing Act 1989* (Cth) (**WM Act**):
    - (i) prohibited the export of wheat from Australia unless the Wheat Export Authority (**Authority**), established by the WM Act had given its written consent to the export of the wheat and the export of the wheat was in accordance with the terms of that consent;

- (ii) provided that that prohibition did not apply to AWB (International) Limited (**AWBI**);
  - (iii) provided that the Authority must not give consent to the bulk-export of wheat without the prior approval in writing of AWBI.
- (b) AWBI was at all material times a wholly owned subsidiary of AWB.
- (c) AWBI had common directors with AWB.
- (d) the WM Act had the effect that a “single desk” arrangement existed (**single desk**) by which:
- (i) growers and others sold any wheat intended for bulk export to AWBI, which would then, by itself or its agent, negotiate the sale of that wheat (**National Pool**) overseas;
  - (ii) AWBI would pay a purchase price calculated by reference to the net return for the pool in which the wheat was included;
- (e) by reason of the matters in (a) and (d) AWBI had a monopoly on the bulk-export of Australian wheat (**AWB Monopoly**).
- (f) AWB managed and marketed bulk wheat exports from Australia as agent for AWBI and entered into contracts for the supply of wheat (including with the Ministry of Trade, Iraqi Grain Board) as agent for AWBI;
- (g) By virtue of the matters in (f) AWB derived revenue and other commercial benefits, such that loss of the AWB Monopoly would have materially impacted the returns and earnings of AWB.
9. By reason of section 57(7) of the WM Act, the management of the National Pool by AWBI was to be the subject of a review by the Authority before the end of 2004.

10. As at December 2000, the single desk was not scheduled for review under National Competition policy guidelines until 2010.

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AWB Investor Fact Book – ASX Public Announcement 2003 – 42 (at page 16), states: *“The Single Desk system is established under the Wheat Marketing Act 1989 in which AWBI is appointed as the sole marketer of Australian export bulk wheat. Both the Single Desk system arrangements and AWBI’s operation of the system are enshrined in the legislation and require an Act of Parliament to be amended. The Single Desk system marketing arrangements for wheat enjoy largely bipartisan support in the Commonwealth Parliament. The operation of the Single Desk system was recently reviewed in the NCP review process, which reported in December 2000. The Government responded to this review in early 2001 by retaining the existing arrangements under which AWBI is responsible for the Single Desk system. The Single Desk system legislation is not scheduled to be reviewed under NCP guidelines until 2010.”*

*In 2000 an independent review committee under the National Competition Council completed its review of the Wheat Marketing Act: see National Competition Council Legislation Review Compendium (Fourth Edition), February 2002 at p 34, available from [www.ncc.gov.au](http://www.ncc.gov.au). The committee found that introducing competition was “more likely to deliver net benefits than continuing the export controls. However, it also found it would be premature to repeal the Act before a relatively short evaluation period of new commercial arrangements” (at p 34). It recommended that the single desk be retained until the WEA’s 2004 review of AWBI’s performance with exclusive export rights, and that the 2004 review should incorporate National Competition Policy principles.*

*The government announced its response on 4 April 2001: see Media Release AFFA01/75WT, Hon Warren Truss MP, Minister for Agriculture, Fisheries and Forestry. The Minister declined to incorporate NCP principles in the 2004 review. If NCP principles were not to be included in the 2004 review by the WEA, the single desk arrangement would be reviewed in the normal course of the National Competition Council’s legislative review process. Consequently as the WMA was reviewed in 2000, it would not have to be reviewed again until 2010: Competition Principles Agreement - 11 April 1995.*

*Subclause 5(6) of the Competition Principles Agreement - 11 April 1995 (see Compendium of National Competition Policy Agreements (Second Edition) June 1998) states:*

*“Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years”.*

*Subclause (3) obliged a Party to review existing legislation that restricted competition by 2000. Subclause (5) obliges parties to review new legislation that restricts competition.*

*The National Competition Council Legislation Review Compendium, February 2004 states (at p 2.35):*

*“Another review of the legislation governing the single desk arrangements is required to be conducted before 2010”.*

*The Wheat Export Marketing Consultation Committee Discussion Paper, January 2007 states (at 6):*

*“Under the National Competition Principles Agreement the single desk is to be reviewed by no later than 2010.”*

*Appendix E of the Wheat Export Marketing Consultation Committee Discussion Paper, January 2007, sets out the history of government review of wheat, referring to:*

*1986: Royal Commission into Grain Storage, Handling and Transport*

*1988: Industries Assistance Commission (IAC) wheat industry report*

*2000: National Competition Policy Review*

*2004: Wheat Marketing Review*

*2005: Productivity Commission Review of National Competition Policy Reforms*

*“A National Competition Policy review is required by 2010 for the Australian Government to meet its commitments to review legislation that restricts competition at least once every 10 years” (at 18).*

10A. In 2001 the Federal Government announced that the single desk would be retained.

## **PARTICULARS**

*Media Release from Warren Truss MP dated 4 April 2001*

11. From about 1 July 1999:

- (a) and from time to time during the Relevant Period, AWB, as part of its business as agent for AWBI exported wheat from Australia to the Republic of Iraq (**Iraq**) by supplying wheat pursuant to certain contracts entered into with the Iraqi Grains Board (**IGB**);

- (b) until on or about 28 May 2003, AWB could only export wheat from Australia to Iraq in accordance with regulations made under the provisions of the *Customs Act 1901* (Cth) including Regulation 13CA (**Regulation**) of the *Customs (Prohibited Exports) Regulations 1958* (Cth);
- (c) AWB was prohibited by the Regulation, until the Regulation's repeal on or about 28 May 2003, from exporting wheat from Australia to Iraq unless AWB first obtained permission (**Ministerial Permission**) from the Minister of State for Foreign Affairs and Trade (**Minister**) or his delegate.

11A. From about 1 July 1999 and at all times during the Relevant Period, AWB knew that:

- (a) pursuant to a series of resolutions of the United Nations Security Council (**UNSC**), sanctions had been imposed on Iraq which among other things had the effect of prohibiting an Australian company from making funds available to an Iraqi entity or entities; and/or
- (b) an escrow account had been established, the funds from which could only be used to meet the humanitarian needs of the Iraqi population and for other limited purposes; and/or
- (c) member states of the United Nations (**UN**), including Australia, were obliged to ensure that exports to Iraq were only undertaken in accordance with the UN sanctions regime; and/or
- (d) pursuant to the Regulation, Ministerial Permission would only be granted if the Minister or his delegate was satisfied that the export of goods to Iraq would not infringe the international obligations of Australia.

12. Further to, or in the alternative to, paragraph 11A above, from about 1 July 1999 and at all times during the Relevant Period, AWB knew and it was the fact that:

- (a) the public international law obligations of Australia as a member state of the UN under the *Charter of the United Nations 1945* (**Charter**) required Australia to accept and carry out the decisions and resolutions of the UNSC;

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#### *Sections 3 and 5 Charter of the United Nations Act 1945 (Cth)*

- (b) sanctions imposed on Iraq through UNSC Resolution 661 and subsequent resolutions (**UN Sanctions**) required Australia until on or about 22 May 2003 to, inter alia:
- (i) prevent its nationals from selling goods to Iraq, excluding, in humanitarian circumstances, foodstuffs; and
  - (ii) prevent its nationals from making funds or any other financial or economic resources available to an Iraqi entity or entities;
- (c) The Regulation provided that Ministerial Permission would only be granted in accordance with the Regulation if the Minister or his delegate was satisfied that permitting the exportation of wheat pursuant to the relevant contract would not infringe the international obligations of Australia, including those referred to in subparagraph (b) and subparagraphs (d) and (da) below;
- (d) the UN, through, inter alia, resolutions of the UNSC, had established a UN Oil-for-Food Programme (**UN OFF Programme**), administered by a Committee of the UNSC (**UN 661 Committee**), which programme provided for:
- (i) authorisation for member states to purchase petroleum and petroleum products originating in Iraq;
  - (ii) the establishment and conduct of an escrow account (**UN escrow account**);

- (iii) payment for the purchase of Iraqi petroleum or petroleum products to be made directly into the UN escrow account;
- (iv) the use of the funds deposited in the UN escrow account to finance only the export to Iraq of, inter alia, foodstuffs, subject to certain conditions;

### **PARTICULARS**

*UN Sanctions including UNSC Resolution 661 and 986*

and

- (v) the UN 661 Committee to review proposed transactions to ascertain whether the proposed transaction was consistent with the requirements of the UN OFF Programme and did not result in a payment to an Iraqi entity or entities contrary to UN Sanctions.
- (da) UNSC Resolution 986 and subsequent resolutions required Australia to ensure compliance by its nationals with the operation of the UN escrow account, including that, between 14 April 1995 and 30 May 2002, the funds in the UN escrow account should only be used to meet the humanitarian needs of the Iraqi population and for other purposes established under UNSC Resolution 986, and from 30 May 2002, for those purposes established under UNSC Resolution 1409 including infrastructure rehabilitation;

### **PARTICULARS**

- (i) *UNSC Resolution 986 and UNSC Resolution 1409;*
  - (ii) *Expert Report of Professor Donald Rothwell dated 2 November 2009 at [74], [82], [83] – [87], [88] – [93].*
- (e) Ministerial Permission and approval of, or consent to, a proposed transaction by the UN 661 Committee could be sought by AWB by application to the Department of Foreign Affairs and Trade (**DFAT**) in accordance with procedures

implemented by DFAT and the UN 661 Committee from time to time  
**(Procedures)**;

- (f) the Procedures relevantly provided for:
- (i) the lodgment of documentation by AWB which included the contract or contracts between AWB and the IGB pursuant to which wheat was to be exported from Australia to Iraq (**Export Contracts**) together with a completed UN *“Notification or Request to Ship Goods to Iraq form* (**Notification form**);
  - (ii) the review of the Export Contracts and Notification form by DFAT to ascertain whether the proposed transaction did not or did not appear to infringe the international obligations of Australia;
  - (iii) in the event the Export Contracts and Notification form revealed that the proposed transaction did not or did not appear to infringe the international obligations of Australia, the transmission of the Export Contracts and Notification form by DFAT to the Australian mission to the UN for supply to the UN 661 Committee;
  - (iv) review by the UN 661 Committee to ascertain whether the UN 661 Committee would approve (or not object) to the proposed transaction as being consistent with the requirements of the UN OFF Programme and not contrary to UN Sanctions;
  - (v) if the proposed transaction was approved (or not objected to) by the UN 661 Committee:
    - (A) the communication of this information by DFAT or the Australian mission to the UN to AWB;
    - (B) Ministerial Permission being granted to export following notification by AWB to DFAT that a shipment was to leave Australia.

**PARTICULARS**

*The Procedures were contained in a pamphlet entitled "Exporting to Iraq" published initially in December 1996 by DFAT which was updated, at least once, in January 2001 and was placed on the DFAT website and were supplemented by the administrative procedures followed within DFAT and the UN 661 Committee.*

**E The Contracts**

13. AWB lodged with DFAT part of the contract or contracts between AWB and the IGB pursuant to which wheat was to be exported from Australia to Iraq (**Contract Documentation**), during the period 1 July 1999 to 14 August 2000, which included Contract Documentation in relation to the following contracts (**Initial Contracts**):
  - (a) contracts A4653, A4654 and A4655 dated 14 July 1999 and lodged with DFAT on 3 August 1999;
  - (b) contract A4822 dated 14 October 1999 and lodged with DFAT on 29 October 1999;
  - (c) contracts A4970, A4971 and A4972 dated 20 January 2000 and lodged with DFAT on 2 February 2000;
  - (d) contracts A0265, A0266 and A0267 dated 16 July 2000 (and 7 August 2000) and lodged with DFAT on 14 August 2000.
  
14. AWB lodged with DFAT Contract Documentation during the period 2 November 2000 to 23 December 2002, which included the following contracts (**Handling Fee Contracts**):
  - (a) contract A0430 dated 2 November 2000 and lodged with DFAT on 2 November 2000;
  - (b) contracts A0552 and A0553 dated 2 February 2001 and lodged with DFAT on 27 February 2001;

- (c) contracts A0784 and A0785 dated 13 June 2001 and lodged with DFAT on 27 June 2001;
- (d) contracts A1111 and A1112 dated 20 December 2001 and lodged with DFAT on 22 January 2002;
- (e) contract A1441 dated 23 June 2002 and lodged with DFAT on 24 July 2002;
- (f) contracts A1670 and A1680 dated 11 December 2002 and lodged with DFAT on 23 December 2002.

15. Each of the Initial Contracts and the Handling Fee Contracts (**Contracts**) was:

- (a) subject to a collateral or parallel agreement or agreements; or
- (b) contained either express or implied terms;

the effect of which purported to require AWB to pay for the discharge and transportation of wheat within Iraq (**Purported Transportation Fee**) and thereby to make funds available to an Iraqi entity or entities.

16. Each of the Handling Fee Contracts was:

- (a) subject to a collateral or parallel agreement or agreements; or
- (b) contained either express or implied terms;

the effect of which was the imposition of a 10% surcharge, after-sales-fee or handling fee (**Purported Handling Fee**) payable by AWB and thereby to make funds available to an Iraqi entity or entities.

17. The amount of the Transportation Fee, and in respect of the Handling Fee Contracts, the Handling Fee (collectively, **Purported Inland Transportation Fee**) with respect to each contract was calculated as follows:

- (a) contracts A4653, A4654 and A4655 required a Purported Inland Transportation Fee calculated at a rate of USD12 per metric tonne (**pmt**);
- (b) contract A4822 required a Purported Inland Transportation Fee calculated at a rate of USD12 pmt (and in respect of one shipment under contract A4822, USD15 pmt);
- (c) contracts A4970, A4971 and A4972 required a Purported Inland Transportation Fee calculated at a rate of USD15 pmt;
- (d) contracts A0265, A0266 and A0267 required a Purported Inland Transportation Fee calculated at a rate of USD14 pmt;
- (e) contract A0430 required a Purported Inland Transportation Fee calculated at a rate of DM101.46 pmt;
- (f) contract A0552 required a Purported Inland Transportation Fee calculated at a rate of DM96.45 pmt and contract A0553 required a Purported Inland Transportation Fee calculated at a rate of DM96.88 pmt;
- (g) contract A0784 required a Purported Inland Transportation Fee calculated at a rate of EUR55.17 pmt and contract A0785 required a Purported Inland Transportation Fee calculated at a rate of EUR55.40 pmt;
- (h) contract A1111 required a Purported Inland Transportation Fee calculated at a rate of EUR55.17 pmt and contract A1112 required a Purported Inland Transportation Fee calculated at a rate of EUR55.40 pmt;
- (i) contract A1441 required a Purported Inland Transportation Fee calculated at a rate of EUR48.53 pmt;
- (j) contracts A1670 and A1680 required a Purported Inland Transportation Fee calculated at a rate of EUR51.33 pmt.

18. The contract price stated in each of the Contracts for the wheat supplied pursuant to each contract was inflated, with the agreement of IGB, so that it included both the agreed price for the supply of wheat together with an amount representing the Purported Inland Transportation Fee to be paid by AWB in respect of the contract (**Contract Inflation**).
19. In relation to contracts A1670 and A1680 lodged with DFAT on 23 December 2002, the contract price was inflated by the Contract Inflation and an amount of USD8.375 pmt, with the agreement of IGB, to facilitate the repayment of an alleged debt (**Alleged Tigris Debt**) supposedly owed by IGB or the Republic of Iraq to BHP Petroleum Pty Ltd or Tigris Petroleum Corporation Limited (**Tigris**) (the **Further Contract Inflation**), the effect of which was:
- (a) to enable AWB to withdraw funds from the UN escrow account, which funds were not used to meet the humanitarian needs of the Iraqi population or for any other purpose allowed pursuant to UNSC Resolution 986 and UNSC Resolution 1409.; and
  - (b) to make funds or other financial or economic resources available to an Iraqi entity or entities.

#### **F The Effect of the Contracts and Payment**

20. Following receipt of the Contract Documentation and Notification forms in relation to the Contracts by DFAT:
- (a) DFAT transmitted the Contract Documentation and Notification forms to the Australian mission to the UN for supply to the UN 661 Committee;
  - (b) the Contracts were approved for payment from the UN escrow account by the UN 661 Committee pursuant to the requirements of the UN OFF Programme; and

- (c) Ministerial Permission was given to AWB by delegates of the Minister to export the wheat the subject of the Contracts to Iraq.
21. Following shipment of wheat in accordance with the Contracts, AWB was paid a sum out of the UN escrow account representing the consideration for the supply of wheat as stated on the face of the Contract Documentation which sum included an amount representing the Purported Inland Transportation Fee.

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*Following UN approval of each of the Contracts, the Central Bank of Iraq requested the bank holding the UN escrow account, BNP Paribas SA, (BNP) to issue AWB with an irrevocable letter of credit in favour of AWB; AWB drew down on the letter of credit on a shipment-by-shipment basis, upon discharge of wheat from the vessel at Umm Qasr; upon discharge of each shipment of wheat, AWB presented documents as required by the letters of credit to BNP, which then paid AWB for the shipment of wheat and an amount representing the Purported Inland Transportation Fee out of funds held in the UN escrow account.*

22. At all material times AWB knew or believed and/or was aware that:
- (a) the Purported Inland Transportation Fees were not intended by AWB or IGB solely to be consideration for transportation or handling services provided to AWB with regard to the wheat supplied pursuant to the Contracts (other than contracts A1670 and A1680);
- (b) the Purported Inland Transportation Fees were intended by AWB or IGB to be a means of obtaining funds from the UN escrow account which funds in whole or in part (or their equivalent) would thereafter be paid to an Iraqi entity or entities;
- (c) amounts paid by AWB as representing the Purported Inland Transportation Fees had in fact resulted in funds being made available to an Iraqi entity or entities.

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*The Contracts resulted in payments of amounts from funds obtained by AWB from the UN escrow account to the benefit of an Iraqi entity or entities by payment of amounts representing the Purported Inland Transportation Fees (as pleaded in*

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paragraph 17) to, among others, a Jordanian joint venture entity, Alia For Transportation and General Trade (**Alia**), an entity which was a “front company” which served as a conduit for funds to be paid to an Iraqi entity or entities; the payments made to Alia by AWB were made either directly, or via ship owning entities, such as Tse Yu Hong Metal Limited, Hyundai Merchant Marine and Atlantic and Orient Shipping.

23. At all times during the Relevant Period AWB did not disclose publicly the matters pleaded in each of paragraphs 18, 19 and 22 (collectively, the **Contract Inflation Information**).
24. AWB paid amounts representing the Purported Inland Transportation Fee in respect of wheat supplied pursuant to the Contracts.

#### PARTICULARS

- a. contract A4653 (USD3,148,542.66), A4654 (USD3,143,272.97) and A4655 (USD2,483,532.82);
  - b. contract A4822 (USD2,657,922.65);
  - c. contracts A4970 (USD4,722,570.00), A4971 (USD4,718,653.95) and A4972 (USD4,513,269.60);
  - d. contracts A0265 (USD2,940,000.00), A0266 (USD5,730,827.90) and A0267 (USD5,895,000.00);
  - e. contract A0430 (DM31,596,567.05);
  - f. contracts A0552 (DM40,183,552.00 and EUR4,931,089.82) and A0553 (DM36,436,408.79 and EUR6,495,340.93);
  - g. contracts A0784 (EUR28,714,871.11) and A0785 (EUR29,010,790.04);
  - h. contracts A1111 (EUR29,444,567.08) and A1112 (EUR28,238,139.53);
  - i. contract A1441 (EUR18,229,441.09).
25. In relation to contracts A1670 and A1680, AWB:
- (a) paid Purported Inland Transportation Fees for the provision of the transportation of wheat in Iraq in October 2003 at a time when payment for such

transport was in fact an obligation of AWB pursuant to the terms of contracts A1670 and A1680;

- (b) obtained the sum of USD8,375,000 from the UN escrow account as a part of AWB's entitlement to payment under contracts A1670 and A1680 and, using such funds, paid to Tigris a sum to discharge the Alleged Tigris Debt.

**G AWB's Conduct in Procuring Ministerial Permission and UN Approval**

26. In providing the Contract Documentation for the purposes of the Procedures (pleaded in paragraph 12(e)) AWB:

- (a) with respect to the Contracts, concealed from DFAT and/or the UN 661 Committee and/or the UN:

- (i) the existence of the Contract Inflation;

- (ii) the Contract Inflation Information;

- (b) with respect of contracts A1670 and A1680, in addition to concealing the Contract Inflation, concealed from DFAT and/or the UN 661 Committee and/or the UN:

- (i) the existence of the Further Contract Inflation;

- (ii) the Contract Inflation Information

(collectively, the **Contract Concealment**).

27. Further the Contract Concealment was:

- (a) intended to induce the Minister or his delegate to grant Ministerial Permission which could not lawfully and/or would not otherwise have been given;

- (b) intended to induce the UN 661 Committee and/or the UN to approve (or not object to) the proposed transaction reflected in the contract or contracts as being

a transaction which was consistent with the requirements of the UN OFF Programme and not contrary to UN Sanctions.

## **H Contract Concealment, the counterfactual and non-disclosure**

28. At all material times AWB knew or believed and/or was aware that:

- (a) had the Contract Inflation, the Further Contract Inflation, or the Contract Inflation Information been disclosed to DFAT (to the extent it applied to the relevant contract or contracts) then Ministerial Permission:
  - (i) could not lawfully have been given for the export of wheat pursuant to the relevant contract or contracts; and/or
  - (ii) would not have been given for the export of wheat pursuant to the relevant contract or contracts.

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*Ministerial Permission in such circumstances would have been contrary to the Regulation and could not lawfully have been given.*

- (b) had the Contract Inflation, the Further Contract Inflation, or the Contract Inflation Information been disclosed to the UN 661 Committee and/or the UN (to the extent it applied to the relevant contract or contracts) then UN approval could not have been given to the relevant contract or contracts or for payments of sums in relation to the contract or contracts out of the UN escrow account in accordance with the terms of the UN Sanctions and the UN OFF Programme;
- (c) in order for AWB to obtain:
  - (i) Ministerial Permission for the export of wheat pursuant to the Contracts; and
  - (ii) UN approval to the Contracts and payment of sums in relation to the Contracts out of the UN escrow account

it was or had been necessary for AWB to engage in the Contract Concealment;

- (d) AWB would only obtain or had only obtained the benefit of each of the Contracts by agreeing to make funds available to an Iraqi entity or entities.

29. At all times during the Relevant Period AWB did not disclose publicly the Contract Concealment or the matters pleaded in paragraph 28 (collectively, the **Concealment Information**).

### **I Payment Information and Regulatory Risk**

30. Further, or in the alternative to paragraphs 15 to 29, the Contracts were generally entered into in response to tenders issued by Iraq through the IGB for the supply of wheat to Iraq under the UN OFF Programme.

31. The IGB specified to AWB:

- (a) that the price was to include delivery costs from the port to silos in each of the Governates of Iraq; and
- (b) the transport company to be used to deliver wheat from the port to the silos.

32. Each of the Contracts included express terms to the effect that wheat was supplied CIF Free into Truck to all silos within all Governates of Iraq and, as a consequence, the price specified in each of the Contracts included a component purportedly for inland transport (**Purported Inland Transport Charge**).

33. In the second half of 2000 Iraq imposed an additional surcharge or impost on all suppliers conducting transactions under the UN OFF Programme with such fee to be calculated on the contract value (**Surcharge**).

34. The price specified in the Contracts included the Purported Inland Transport Charge and/or the Surcharge.

35. The payment by AWB of the Purported Inland Transport Charge and/or the Surcharge resulted in funds in whole or in part (or their equivalent) being made available to an Iraqi entity or entities (**Iraqi Entity Payments**).

### PARTICULARS

*The applicants repeat the particulars subjoined to paragraph 22.*

- 35A. By AWB obtaining the sum of USD8,375,000 from the UN escrow account referred to in 25(b) above, such funds were withdrawn from the UN escrow account but not used to meet the humanitarian needs of the Iraqi population or for any other purpose permissible under UNSC Resolution 986 or UNSC Resolution 1409 (**Tigris Debt Withdrawal**).
36. For the reasons pleaded in:
- (a) paragraph 12(b), the Iraqi Entity Payments were made in circumstances where Australia was required to prevent AWB from making funds available to an Iraqi entity or entities;
  - (b) Paragraph 12(c), the Iraqi Entity Payments and the Tigris Debt Withdrawal were made in circumstances where Ministerial Permission could not lawfully have been given for the export of wheat pursuant to the relevant Contracts;
  - (c) paragraph 12(da), the Tigris Debt Withdrawal was made in circumstances where Australia was required to ensure compliance by its nationals with the operation of the UN escrow account.
37. At all times during the Relevant Period AWB did not disclose publicly the matters pleaded in each part of paragraphs 30 to 36 (collectively, the **Iraqi Entity Payment Information**).
38. The matters alleged in paragraphs 22 to 27, further, or in the alternative, the matters alleged in paragraphs 30 to 36 created a material additional risk that single desk

and/or the AWB Monopoly would be terminated or reviewed at a time earlier than 2010 (**Regulatory Risk Information**).

**J AWB's failure to keep the ASX informed of material information**

39. The information being:

- (a) the Contract Inflation Information; and/or
- (b) the Concealment Information; and/or
- (c) the Iraqi Entity Payment Information; and/or
- (d) the Regulatory Risk Information,

(together, individually or in any combination the **Relevant Information**) was, as at 11 March 2002 and at all times during the Relevant Period (to the extent the Relevant Information existed at any time during the Relevant Period) information concerning AWB:

- (i) of which AWB was aware;
- (ii) that a reasonable person would expect to have a material effect on the price or value of AWB securities;
- (iii) was not generally available;
- (iv) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of AWB securities in that it would, if disclosed, cause a material decline in the market price of AWB securities; and
- (v) a reasonable person would expect to have a material effect on the price or value of AWB securities as being information that would, or would be

likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of AWB securities.

### PARTICULARS

*The Relevant Information was information which would be expected to have a material effect on the price of AWB securities if it were generally available in that it was information which:*

- a. *if disclosed would seriously damage the corporate and commercial reputation of AWB, its business and its management;*
- b. *was relevant to a significant part of the business of AWB in that:*
  - i. *AWB sold wheat to Iraq continuously since 1948 and had a long standing relationship with the IGB;*
  - ii. *Iraq was one of AWB's most strategically important buyers due to its consistently large buying patterns;*
  - iii. *problems with AWB's business in Iraq could seriously affect AWB's position, even its viability;*
  - iv. *from 1 October 1999 to 30 December 2005, bulk wheat exports from Australia to Iraq were as follows:*

<b>Period</b>	<b>Bulk wheat exports to Iraq</b>	<b>Total bulk wheat exports</b>
1 Oct 1999 to 30 Sep 2000	2.52 Mt	17.38 Mt
1 Oct 2000 to 30 Sep 2001	2.5 Mt	15.37 Mt
1 Oct 2001 to 30 Sep 2002	2.02 Mt	15.79 Mt
1 Oct 2002 to 30 Sep 2003	0.75 Mt	8.8 Mt
1 Oct 2003 to 30 Sep 2004	1.6 Mt	17.05 Mt
1 Oct 2004 to 30 Sep 2005	1.19 Mt	13.61 Mt
1 Oct 2005 to 30 Dec 2005	0.5 Mt	3.26 Mt

- v. *in the 1999-2000 marketing year, Iraq bought over 2.5 million tonnes of wheat from AWB, which was approximately 15% of AWB's wheat export programme. In that period Iraq was AWB's single largest export market;*
  - vi. *in the 2001-2002 marketing year, Iraq was AWB's third largest export market, accounting for approximately 11% of AWB's wheat exports; and*
  - vii. *as at June 2002, reliance on Iraq to purchase significant quantities of wheat was paramount to the success of AWB's marketing campaign;*
  - viii. *between about 1982 and 2002, sales to Iraq averaged about one million tonnes per annum, generating on average about \$250 million in sales revenue per annum;*
  - ix. *between 1997 and 2003 AWB (and its statutory predecessor the Australian Wheat Board), sold a total of 6.8 million tonnes of wheat to Iraq and received over USD2.3 billion in payments from the United Nations escrow account from its sale of wheat to Iraq;*
  - x. *during the UN OFF Programme AWB sold almost 12 million tonnes of wheat to the IGB, generating gross sales revenue of approximately \$4 billion for AWB;*
- c. *if disclosed would result in the cessation or disruption of the business of AWB with Iraq;*
- d. *if disclosed would have resulted in a perception by participants in the market for AWB securities that the single desk and/or the AWB Monopoly was at risk and/or likely to be reviewed or could possibly be reviewed at a time earlier than 2010; various AWB market analysts' reports referred to the regulatory risk inherent in the market price of AWB securities and apportioned that risk as a percentage of the value of AWB securities from time to time further particulars of which are identified in Schedule C;*
40. On 11 March 2002, AWB was obliged pursuant to ASX Listing Rule 3.1 to inform the ASX immediately of that part of the Relevant Information of which it was aware (within the meaning of Chapter 19 of the ASX Listing Rules).
41. At all times during the Relevant Period AWB was obliged pursuant to ASX Listing Rule 3.1 to inform the ASX immediately of the Relevant Information of which it was aware (within the meaning of Chapter 19 of the ASX Listing Rules).

42. AWB did not inform the ASX of any of the Relevant Information at any time during the Relevant Period.
43. By reason of the failure of AWB to inform the ASX of the Relevant Information:
- (a) on 11 March 2002, AWB contravened section 674(2) of the CA;
  - (b) during all of the Relevant Period, AWB was in contravention of section 674(2) of the CA

**(Continuous Disclosure Contravention).**

## **K Misleading and Deceptive Conduct**

### *Express representations*

44. AWB made the following express representations during the Relevant Period:
- (a) AWB and AWBI would, at all times be committed to clearly promoting and demonstrating that their business affairs were, at all times, being conducted legally, ethically and in accordance with the highest standards of integrity and propriety.

## **PARTICULARS**

- (i) *'The Boards of [AWB] and [AWBI] are committed to clearly promoting and demonstrating that their business affairs and operations are at all times being conducted legally, ethically and in accordance with the highest standards of integrity and propriety. This is a fundamental principle of their operations and business affairs. The AWB Code of Conduct policy is based on this principle and its observance provides the foundation on which the Company's reputation with growers, customers, suppliers and stakeholders is based. The Code of Conduct sets out the values, responsibilities and obligations of Board members and all people employed, contracted by, and associated with or acting on behalf of the AWB Group'.*

*[ASX Release: 24 Jan 2003 (2002 Annual Report)]*

- (ii) *'The Boards of [AWB] and [AWBI] are committed to clearly promoting and demonstrating that their business affairs and operations are at all times being conducted legally, ethically and in accordance with the highest standards of*

*integrity and propriety. This is a fundamental principle of their operations and business affairs. The AWB Code of Conduct policy is based on this principle and its observance provides the foundation on which the Company's reputation with growers, customers, suppliers and stakeholders is based. The Code of Conduct sets out the values, responsibilities and obligations of Board members and all people employed, contracted by, and associated with or acting on behalf of the AWB Group'.*

*[ASX Release: 22 Jan 2004 (2003 Annual Report)]*

- (iii) *'AWB's board and management are committed to conducting the business of AWB in accordance with a strong corporate governance framework and rigorous standards of ethical conduct... The board is responsible for the overall governance of AWB and its strategic direction. This includes setting goals, monitoring performance, and ensuring AWB's internal control and reporting procedures are effective and ethical and that AWB's strategic direction provides value for shareholders.'*

*[ASX Release: 20 Jan 2005 (2004 Annual Report)]*

- (iv) *'The boards of [AWB] and [AWBI] are committed to clearly promoting and demonstrating that their business affairs and operations are at all times being conducted legally, ethically and in accordance with the highest standards of integrity and propriety. This is a fundamental principle of AWB's operations and business affairs. The AWB Corporate Ethics and Code of Conduct policy is based on this principle and its observance provides the foundation on which the company's reputation with growers, customers, suppliers and stakeholders is based. The Corporate Ethics and Code of Conduct policy (available in the Corporate Governance section of AWB's website) sets out the values, responsibilities and obligations of board members and all employees of AWB. (ASX Recommendations 3.1, 3.3 and 10.1)'*

*[ASX Release: 20 Jan 2005 (2004 Annual Report)]*

- (b) AWB had been totally transparent and acted above board in relation to its contracts with Iraq executed through the UN OFF Programme.

## **PARTICULARS**

*"All our contracts have been approved and executed through the United Nations' Oil-For-Food program, and have been totally transparent and above board," Mr Lindberg said.'*

*[AWB Media Release: 6 June 2003 (AWB hits out a baseless US allegations)].*

- (c) AWB had implemented and would abide by continuous disclosure guidelines and AWB would ensure that it met its continuous disclosure obligations under the ASX Listing Rules and the CA.

### PARTICULARS

- (i) *'AWB Limited has implemented Continuous Disclosure Guidelines to ensure that AWB Limited meets its continuous disclosure obligations under the ASX Listing Rules and the Corporations Act. Under these guidelines, information which may have a material effect on the price or value of AWB Limited's securities is monitored and referred to a Continuous Disclosure Coordinator. The Continuous Disclosure Coordinator is responsible for examining the material to determine whether the matter must be disclosed and may refer the matter to AWB's General Counsel or external advisers to determine whether consideration is required by the managing director, chief financial officer or the board. A more detailed summary of the Continuous Disclosure Guidelines is available in the Corporate Governance section of AWB's website. (ASX Recommendations 5.1 and 5.2)'*

*[ASX Release: 20 Jan 2005 (2004 Annual Report)]*

- (ii) *'The board aims to ensure that AWB Limited's shareholders are informed of all major developments affecting the company. Information is regularly communicated to shareholders via regular announcements to the ASX in accordance with AWB's continuous disclosure obligations, media releases, periodic mail-outs and grower briefing meetings. Information is also freely available from AWB's Investor Centre on its website [www.awb.com.au](http://www.awb.com.au). In addition, a copy of the Annual Report is distributed to all shareholders and is available from the company's website. The board ensures that the Annual Report accurately includes all relevant information about the company including details of its operations, future development and any disclosures required by the Corporations Act and the ASX Listing Rules.'*

*[ASX Release: 20 Jan 2005 (2004 Annual Report)]*

- (d) throughout the time when the UN OFF Programme existed AWB believed that Alia was a genuine transport company providing trucking services on commercial terms.

### PARTICULARS

*'Throughout the OFF Program AWB operated in the belief that Alia was a genuine transport company providing an effective service. We paid for a trucking service and clearly the wheat was delivered the hundreds of kilometres from port to inland Iraq. We were surprised to learn of the fact that Alia did not provide a trucking service. Alia gave all the appearances of an established transportation company performing actual*

*services. ... AWB has always maintained that it paid fees for inland transport in Iraq in good faith and did not know that the fees were being channelled to the former regime. AWB did not knowingly pay or enter into any arrangements to benefit the former regime.'*

*[AWB Media Release: 28 Oct 2005 (Further Statement by AWB Limited – UN Oil For Food Program)]*

- (e) AWB did not know and should not have known that Alia was a “front company” used to channel funds to the former Iraqi regime and did not knowingly pay or enter into any arrangements to pay monies to the former Iraqi regime.

### **PARTICULARS**

- (i) *'As AWB submitted to the Committee the question of whether some of its staff “should have known” that Alia was a front company and channelling funds to the regime is of course debatable.'*

*[AWB Media Release: 28 Oct 2005 (Further Statement by AWB Limited – UN Oil For Food Program)]*

- (ii) *'As AWB submitted to the Committee, the fairest interpretation of all of the circumstances is that AWB was an unwitting participant in an elaborate scheme of deception devised by the regime.'*

*[AWB Media Release: 28 Oct 2005 (Further Statement by AWB Limited – UN Oil For Food Program)]*

- (iii) *'It is of serious concern to now learn that fees the company had paid for the inland transportation of its wheat in Iraq were channelled to the former regime.'*

*[AWB Media Release: 28 Oct 2005 (Further Statement by AWB Limited – UN Oil For Food Program)]*

- (iv) *'AWB Limited did not knowingly pay or enter into any arrangements to pay monies to the former [Iraqi] regime.'*

*[AWB Media Release: 27 Oct 2005 (Statement by AWB Limited – UN Oil For Food Program)]*

- (v) *'The Board and management of AWB welcomes the finding of the IIC that AWB was not knowingly involved in schemes implemented by the former Iraqi regime to circumvent the UN Oil for Food Program. Notwithstanding, the thorough and rigorous investigation conducted by the IIC, it has not found that AWB knew of the matters now alleged. This has confirmed AWB's position. AWB has consistently*

*maintained its position that it did not know, and could not know, what Alia did with the money AWB paid to it by way of transport fees.'*

*[AWB Media Release: 28 Oct 2005 (Further Statement by AWB Limited – UN Oil For Food Program)]*

- (vi) *'AWB has always maintained that it paid fees for inland transport in Iraq in good faith and did not know that the fees were being channelled to the former regime. AWB did not knowingly pay or enter into any arrangements to benefit the former regime.'*

*[AWB Media Release: 28 Oct 2005 (Further Statement by AWB Limited – UN Oil For Food Program)]*

45. Each of the representations referred to in paragraph 44 (together and severally the **Express Representations**) was made by AWB:

- (a) in relation to a financial product or a financial service within the meaning of section 1041H(1) of the CA;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the *ASIC Act* and section 52 of the TPA and/or section 9 of the FTA.

46. Each of the Express Representations were misleading and deceptive or likely to mislead or deceive in that at the time of making the Express Representations during the Relevant Period, AWB:

- (a) did not have reasonable grounds to represent that its and AWBI's business affairs were, at all times, being conducted legally, ethically and in accordance with the highest standards of integrity and propriety, and in fact they were not so conducted;

## **PARTICULARS**

*The applicants refer to the pleadings and particulars in this Third Further Amended Statement of Claim relating to the Contract Inflation Information, Concealment Information and Iraqi Entity Payment Information.*

- (b) did not have reasonable grounds to represent AWB was totally transparent and “above board” in relation to its contracts with Iraq executed through the UN OFF Programme, and in fact had not been “transparent”;

**PARTICULARS**

*The applicants refer to the pleadings and particulars in this Third Further Amended Statement of Claim relating to the Contract Inflation Information, Concealment Information and Iraqi Entity Payment Information.*

- (c) did not have reasonable grounds to represent that AWB would abide by continuous disclosure guidelines in all respects and ensure it met its continuous disclosure obligations under the ASX Listing Rules and CA in all respects, and in fact AWB had not abided by its continuous disclosure obligations;

**PARTICULARS**

*The applicants refer to the respondent’s failure to disclose the Relevant Information as set out in paragraph 39 and the particulars thereof set out in Schedule C.*

- (d) had not believed and did not believe that Alia was a genuine transport company providing trucking services to AWB on commercial terms;

**PARTICULARS**

- (i) *AWB did not enter into a formal contract with Alia for inland transport services, and did not negotiate the fees for its supposed services;*
- (ii) *AWB knew or believed that the Iraqi Ministry for Transport set the level of the Purported Inland Transportation Fee;*
- (iii) *Email from Dominic Hogan of AWB to Mark Emons of AWB and others dated 24 June 1999;*
- (iv) *Email from Michael Watson of AWB to Mark Emons of AWB dated 20 October 1999;*

- (v) *Facsimile from Alia to 'Australian Wheat Board' dated 27 October 1999;*
- (vi) *Email from Mark Emons to Nigel Officer on at about 6.15pm 4 November 1999;*
- (vii) *Facsimile from Alia to 'Australian Wheat Board' dated 10 November 1999;*
- (viii) *Facsimile from Alia to 'Australian Wheat Board' dated 11 November 1999;*
- (ix) *Document dated 13 November 1999 headed 'Meeting Minutes' (English language translation of minutes of meeting);*
- (x) *Email from Mark Emons of AWB to Michael Watson of AWB dated 19 November 1999 and headed 'Iraq trucking fee';*
- (xi) *Facsimile from Alia to AWB dated 24 November 1999 headed 'Top Urgent';*
- (xii) *Arthur Andersen draft report titled 'Integrity Risk Review of the International Marketing Group' dated 15 November 2000;*
- (xiii) *Arthur Andersen report titled 'Integrity Risk Review of the International Marketing Group' dated December 2000;*
- (xiv) *Trip report of Dominic Hogan and Darryl Borlase dated February 2001 stating that the increase in trucking fee and addition of the service was a mechanism for extracting more dollars from the UN escrow account;*
- (xv) *Facsimile from Dominic Hogan of AWB to Yousif Rahman of IGB dated 2 February 2001 headed 'Confirmation for 500,000 tonnes – Australian Wheat;'*
- (xvi) *E-mail from Mark Emons to Mr Bali at Ronly Holdings Limited dated 7 March 2000;*
- (xvii) *Facsimile from Mark Emons of AWB to Yousif Rahman of the IGB dated 7 April 2000;*
- (xviii) *Email chain dated 27 October 2000 concluding with email from Charles Stott of AWB to Andrew Tuohy of Arthur Andersen;*
- (xix) *Document dated 10 May 2001 on Iraqi Ministry of Transport and Communication letterhead, headed 'Inland Transportatin [sic] cost for private sector';*

- (xx) *Telex dated 27 May 2001 from IGB to AWB headed 'MV Haydar and MV Olympic Miracle...';*
  - (xxi) *Facsimile dated 28 May 2001, from Nigel Edmonds-Wilson of AWB to Dominic Hogan of AWB headed 'Bobcats/Alia' referred to in letter dated 22 April 2005 from Jim Cooper of AWB to Susan Ringler, Counsel to the Independent Inquiry Committee;*
  - (xxii) *Facsimile from Alia to AWB dated 23 October 2001;*
  - (xxiii) *Facsimile from Alia to AWB dated 19 September 2002 with the subject 'Pearl of Fujairah';*
  - (xxiv) *Foreign language document dated 12 October 2004 on Iraq Ministry of Transport letterhead;*
  - (xxv) *Draft slide show prepared by James Cooper and reviewed by Andrew Lindberg in preparation for a joint information session of the Boards of AWB and AWBI to be held on 28 July 2004;*
  - (xxvi) *Notes of meeting of Joint Board Committee of AWB and AWBI relating to Project Rose dated 27 April 2005 made by Dr Fuller.*
- (e) knew or should have known that Alia was a “front company” used to channel funds to the former Iraqi regime; and had been prepared to knowingly pay or enter into an arrangement to pay monies to the former Iraqi regime and in fact had done so.

#### **PARTICULARS**

- (i) *The applicants repeat the particulars to (d) above;*
- (ii) *Letter signed by Andrew Lindberg and Brendan Stewart to Paul Volcker dated 12 October 2005;*
- (iii) *Letter signed by Andrew Lindberg and Brendan Stewart to Paul Volcker dated 25 October 2005;*
- (iv) *ASX Release: 28 October 2005 (Further Statement by AWB Limited – UN Oil For Food Program);*
- (v) *Admissions of the respondent made through its counsel in the Federal Court of Australia on 10 September 2009.*

47. Insofar as the Express Representations were representations as to future matters within the meaning of:

- (a) section 769C(1) of the CA;
- (b) section 12BB of the *ASIC Act*; or
- (c) section 51A of the TPA and/or section 4 of the FTA;

AWB had no reasonable basis for making the Express Representations at the time they were made.

48. By making the Express Representations AWB engaged in conduct in contravention of:

- (a) section 1041H(1) of the CA;
- (b) section 12DA(1) of the *ASIC Act*; and
- (c) section 52 of the TPA and/or section 9 of the FTA.

(collectively, the **Express Representation Contraventions**)

### *Implied representations*

49. At all times during the Relevant Period AWB was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the CA and ASX Listing Rule 3.1 and by reason of this to the extent that AWB did not make disclosures of material information a representation was made by AWB that there was no material information to disclose (**AWB Silence**).

50. By reason of the AWB Silence, AWB impliedly represented to the public that:

- (a) AWB had undertaken all necessary and reasonable investigations before making public statements as to the state of its business and had satisfied itself on reasonable grounds following those investigations that its public

statements were substantially accurate and not misleading or deceptive in any respect;

- (b) AWB had disclosed to the public, as it became aware of them within the meaning of the ASX Listing Rules, all material matters which members of the public ought take into account in deciding whether to acquire or retain an interest in AWB securities; and
- (c) there was no significant risk that AWB's public statements as to the state of its business were substantially inaccurate;

(collectively the **Implied Representations**).

51. Each of the Implied Representations was misleading or deceptive or likely to mislead or deceive throughout the Relevant Period in that:

- (a) AWB had not satisfied itself on reasonable grounds that its public statements were substantially accurate and not misleading or deceptive in any respect;

#### **PARTICULARS**

*The applicants repeat the allegations pleaded in paragraph 46.*

- (b) AWB did not disclose to the public, as it became aware of them within the meaning of the ASX Listing Rules, all material matters regarding its profitability which members of the public ought to have taken into account in deciding whether to acquire or retain an interest in AWB securities;

#### **PARTICULARS**

*The applicants repeat the matters alleged in paragraphs 39 to 43.*

- (c) By virtue of the matters in (a) there were risks that AWB's public statements would prove substantially inaccurate during the period and such risks were not so insignificant that members of the public could safely ignore them and

not take them into account in deciding whether to acquire or retain an interest in AWB securities.

52. Insofar as the Implied Representations were representations as to future matters within the meaning of:

- (d) section 769C(1) of the CA;
- (e) section 12BB of the *ASIC Act*; or
- (f) section 51A of the TPA and/or section 4 of the FTA;

AWB had no reasonable basis for making the Implied Representations at the time they were made.

53. Each of the Implied Representations was conduct engaged in by AWB in the period:

- (a) in relation to a financial product or a financial service within the meaning of section 1041H(1) of the CA;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the *ASIC Act*; or
- (c) in trade or commerce within the meaning of section 52 of the TPA and/or section 9 of the FTA.

54. In making the Implied Representations and each of them AWB engaged in conduct in the period that was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the CA; or
- (b) section 12DA(1) of the *ASIC Act*; or
- (c) section 52 of the TPA and/or section 9 of the FTA.

(collectively, the **Implied Representation Contraventions**)

**K Contraventions caused loss**

55. During the Relevant Period, the applicants and Group Members purchased AWB securities or obtained an interest in AWB securities.

56. The applicants and Group Members acquired their AWB securities or their interests in AWB securities in a financial market:

(a) regulated by, inter alia, the ASX Listing Rules and section 674(2) of the CA; and

(b) where the price or value of AWB securities was informed or affected, or would reasonably be expected to have been informed or affected, by information required to be disclosed in accordance with the ASX Listing Rules and section 674(2) of the CA.

57. During the Relevant Period by reason of the:

(a) the Continuous Disclosure Contravention; and/or

(b) the Express Representation Contraventions; and/or

(c) the Implied Representation Contraventions,

(collectively, the **Contraventions**), the market price of AWB securities was materially greater than their true value.

58. Further or alternatively to paragraph 57, the applicants and Group Members:

(a) believed that the price of AWB securities on the ASX as at the date of acquisition of the AWB securities reflected all information that a reasonable person would expect to have a material effect on the price or value of the AWB securities; and

(b) relying on that belief purchased or obtained an interest in the AWB securities.

59. By reason of the matters in paragraphs 55 to 58, the applicants and the Group Members have suffered loss and damage resulting from the Contraventions.

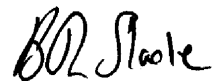
### PARTICULARS

*A calculation of the loss suffered by the applicants is \$20,369.43 particularised in the Schedule B to this Further Amended Statement of Claim and will be supplemented at the time of service of the applicants' evidence in chief.*

*The basis upon which the loss of other Group Members can be calculated will also be provided at the time of service of expert evidence on behalf of the applicant and the Group Members but will be calculated by reference to:*

- a. the difference between the price at which they acquired their interest in the AWB securities and for the applicants and Group Members who sold their interest in the AWB securities before the date of judgment, the price at which they sold that interest; or for those Group Members who have not sold their interest in the securities by the date of judgment, the market value of that interest at that date; or*
- b. the difference between the price at which they acquired their interest in the AWB securities and the true value of that interest as at the date of purchase;*
- c. plus the loss of the opportunity to achieve income or capital gain by use of the funds that were used to purchase the interest in the AWB securities.*

Date: 10 November 2009



.....  
**BEN SLADE**

Solicitor  
Maurice Blackburn Pty Ltd  
Solicitor for the applicants

The applicant's address for service is c/- Maurice Blackburn Pty Ltd (ABN 21 105 657 949), Lawyers, Level 20, 201 Elizabeth Street, Sydney NSW 2000.

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This amended pleading was prepared by Ben Slade, solicitor, Jason Geisker, solicitor and Julian Schimmel, solicitor and Dale Bampton of counsel and settled by M. B. J. Lee of counsel and John Sheahan SC.

## Schedule A

### Applicants' AWB securities purchase and sale details:

The applicants purchased AWB securities in June 2005 and sold them after 13 January 2006.

#### PARTICULARS

##### *Applicants' purchase details:*

<i>Date of Purchase</i>	<i>Number of AWB securities</i>	<i>Amount paid including brokerage</i>
7 June 2005	2,000	\$8,706.53
10 June 2005	5,000	\$21,336.12
21 June 2005	3,000	\$13,271.41
<b>Total</b>	<b>10,000</b>	<b>\$43,314.06</b>

##### *Applicants' sale details:*

<i>Date of Sale</i>	<i>Number of AWB securities</i>	<i>Amount received after brokerage</i>
7 February 2006	5,000	\$22,624.87
15 September 2006	2,000	\$6,641.04
21 September 2006	3,000	\$10,348.13
<b>Total</b>	<b>10,000</b>	<b>\$39,614.04</b>

### Schedule B

#### Applicants' loss details:

- The applicants received dividends from AWB during the period in which the applicants held AWB securities:

#### PARTICULARS

*Fully franked dividends received by the applicants from their AWB securities:*

<i>Date</i>	<i>Dividend Amount</i>
7 July 2005	\$320.00
19 December 2005	\$1,300.00
6 July 2006	\$800.00
<b>Total</b>	<b>\$2,420.00</b>

- The initial loss suffered by the applicants after buying and selling AWB securities, including credit for dividends received from AWB, is **\$1,280.02** ("the initial loss").

#### PARTICULARS

*Summary of initial losses sustained by the applicants:*

<i>Description</i>	<i>Dividend Amount</i>
Total purchase costs (see Schedule "A")	\$43,314.06
Total sale costs (see Schedule "A")	\$39,614.04
Total AWB dividends received	\$2,420.00
<b>Total initial loss</b>	<b>\$1,280.02</b>

- But for the Contraventions, as defined in the Further Amended Statement of Claim, the applicants would not have bought AWB securities at all.

4. In addition to the initial loss, the applicants suffered further loss and damage being the loss of the opportunity to achieve income or capital gain by use of the funds that were used to purchase the interest in the AWB securities.
5. If the applicants had not invested funds in AWB securities in 2005 the applicants would have invested the equivalent sum in Commonwealth Bank of Australia shares listed on the ASX ("**CBA securities**") on the equivalent proportions and dates in June 2005.

#### PARTICULARS

*Applicants' equivalent CBA securities purchase details:*

<i>Date of equivalent Purchase</i>	<i>Number of CBA securities</i>	<i>Average price per CBA security</i>	<i>Brokerage rate</i>	<i>Cost including projected brokerage</i>
<i>7 June 2005</i>	<i>227</i>	<i>\$37.95</i>	<i>0.7% + GST</i>	<i>\$8,680.98</i>
<i>10 June 2005</i>	<i>554</i>	<i>\$38.29</i>	<i>0.5% + GST</i>	<i>\$21,329.33</i>
<i>21 June 2005</i>	<i>351</i>	<i>\$37.73</i>	<i>0.5% + GST</i>	<i>\$13,316.07</i>
<b><i>Total</i></b>	<b><i>1,132</i></b>			<b><i>\$43,326.38</i></b>

6. Further to paragraph 5 above the applicants would have received dividends from CBA during the period in which the applicants would have held CBA securities:

#### PARTICULARS

*Equivalent dividends that would have been received by the applicants from their CBA securities:*

<i>Dividend Pay Date</i>	<i>Dividend Rate per share</i>	<i>Number of CBA shares</i>	<i>Dividend Amount</i>
23 September 2005	\$1.12	1,132	\$1,267.84
5 April 2006	\$0.94	1,132	\$1,064.08
5 October 2006	\$1.30	1,132	\$1,471.60
5 April 2007	\$1.07	1,132	\$1,211.24
5 October 2007 (ex dividend on 20 August 2007)	\$1.49	1,132	\$1,686.68
<b>Total Dividends</b>			<b>\$6,701.44</b>

7. The applicants would have sold 732 CBA shares on 4 September 2007 and retained the remaining 400 CBA shares. The net capital gain on the sale of 732 CBA shares is \$12,387.97.

#### PARTICULARS

*CBA share price for sale of CBA shares on 4 September 2007*

<i>Date of equivalent Sale</i>	<i>Number of equivalent CBA securities sold</i>	<i>Average price per CBA security on equivalent sale day</i>	<i>Net Amount received after brokerage</i>
4 September 2007	732	\$55.65 (with brokerage at .5% + GST)	\$40,511.75
<b>Total proceeds of sale of 732 CBA shares</b>			<b>\$40,511.75</b>
<b>Less cost of purchase of first 732 shares sold (using first in first out first in first out (fifo) method for cost of CBA shares purchased)</b>	227 shares @ \$37.95 <b>\$8,680.98</b>	@ \$37.95 (with brokerage at .7% + GST)	<b>(\$8,680.98)</b>
	505 shares @ \$38.29 <b>\$19,442.80</b>	@ \$38.29 (with brokerage at .5% + GST)	<b>(\$19,442.80)</b>
			<b>(\$28,123.78)</b>
<b>Capital Gain on 732 CBA shares</b>			<b>\$12,387.97</b>

8. The total loss suffered by the applicants after buying AWB securities, being the initial capital loss of \$1,280.02 (including credit for AWB dividends received) plus the opportunity losses referred to in paragraphs 5, 6 and 7 above, is **\$20,369.43**.

### PARTICULARS

*Summary of losses sustained by the applicants:*

<i>Description</i>	<i>Dividend Amount</i>
<i>The initial loss</i>	<i>\$1,280.02</i>
<i>CBA securities capital increase loss on 732 CBA shares sold on 4 September 2007</i>	<i>\$12,387.97</i>
<i>CBA securities dividend losses (as at 20 August 2007 – ex-dividend date)</i>	<i>\$6,701.44</i>
<b><i>Sub-Total</i></b>	<b><i>\$20,369.43</i></b>
<i>Plus present day value of 400 CBA shares</i>	<i>Further particulars to be provided at the time of trial</i>

**Schedule C****Particulars of paragraph 39:**

- i. 15 November 2001: UBS Warburg analyst report (at page 1), "We regard AWB as controlling one of the most valuable assets in the industry, namely the management of pools for all wheat exported from Australia"
- ii. 10 December 2001: UBS Warburg analyst report (at page 1), "We continue to believe that AWB is uniquely positioned in the domestic wheat market, and has opportunities to leverage this position."
- iii. 14 March 2002: UBS Warburg analyst report (at page 1), "We continue to believe that AWB controls the most unique and valuable asset in the Australian grain industry, being the right to manage the single desk for wheat exports. Given the sound near term outlook for the crop we believe that present multiples are undemanding and retain a Buy rating."
- iv. 7 May 2002: UBS analyst report (at page 1), "Some thoughts on valuation - In our view AWB is a unique business, being effectively an investment bank servicing rural markets, with the market position supported by the monopoly right to export wheat from Australia (the single desk)."
- v. 7 June 2002: UBS analyst report (see generally in relation to High Court challenge to the Single Desk for bulk wheat exports by NEAT Domestic Trading.)
- vi. 18 July 2002: Deutsche Bank analyst report (at page 13), "...Political risk is also a factor for AWB given the sometimes, unstable political nature of countries that are active importers of Australian wheat (eg Iran, Iraq, Indonesia). There is also some political risk in the domestic market as Ministers are beginning to comment on AWB strategies and the impact this may have on the monopoly export licence.";
- vii. 15 October 2002: UBS Warburg analyst report (at page 1), "We are also quite comfortable with the group's long term position as the monopoly wheat exporter from the low cost wheat producing country.";
- viii. 30 October 2002: UBS Warburg analyst report (at page 1), "We see AWB as controlling the privileged asset in the domestic grain industry."
- ix. 20 November 2002: Deutsche Bank analyst report (at page 1), "...AWB has again been in the political spotlight as rival grain handlers have released reports on the efficiency of the grain handling market, particularly in NSW. In our view the export monopoly over bulk wheat shipments is unlikely to be a casualty of this recent attention.";

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- x. 9 January 2003: ABN AMRO Morgans analyst report (at page 1), "...Management of the monopoly on bulk wheat exports is a core asset of the Group...Management of the wheat Single Desk places AWB is [sic] a strong competitive position. This management role will be reviewed in 2004 with the Single Desk structure up for review in 2010." (see also at page 2),"one of the companies' key assets is its management of the Australian National Pool, a legislated monopoly on the export of bulk wheat. Removal of this role in the short-term would have a detrimental impact on the group's earnings and valuation. AWB's management role is not up for review until 2004 and the Single Desk policy is not scheduled for review until 2010."
  - xi. 16 May 2003: Deutsche Bank analyst report (at page 1), "...we believe that sentiment issues continue to have a greater impact on the current price. These issues include the current Senate inquiry relating to the Wheat Export Authority and the consistent speculation that the single desk concept could be at risk. Until these abate we do not believe that the stock will move significantly.";
  - xii. 21 May 2003: Deutsche Bank analyst report (at page 1), "...Rather the stock is being driven by the market's sentiment towards 1) Further investment in Futuris, 2) the expected wheat crop harvest and 3) press speculation surrounding the future of the single desk.";
  - xiii. 21 May 2003: ABN AMRO Morgans analyst report (at page 3), "...The bull investment points for AWB include: Strong industry position centred around management of Australia's wheat single desk giving the stock monopoly characteristics...The major bear points are: ...Threat of removal of the Single Desk structure at some point, which has gained some currency with the bilateral free trade discussions with the US.";
  - xiv. 18 July 2003: Deutsche Bank analyst report (generally), entitled, "What if the Single Desk is removed – Futuris?", which states (at page 1) "We estimate the loss of the single desk would impact AWB's PBT by between \$23-69m (15-46%)", (see also page 3-13 and Appendix 1);

(and at page 4), "Will the single desk be removed? Prior to the comments and recommendations of the Senate Inquiry (for greater detail, refer to Appendix 1) we did not place a high likelihood on a change in the medium term. However, post the changes to the 2004 review process, continued publicity and the possibility of a difference of opinion on the issue between the Coalition partners we believe that there is a greater possibility that the single desk is removed before the current scheduled review of the legislation in 2010. Reasons for our change in view – Initial thoughts: we had been under the impression that the 2004 review, to be conducted by the Wheat Export Authority (WEA), was only able [to] comment on the management ability of AWB(I) in managing the single desk. Therefore, the concept of the single desk was safe from any possible adverse comments. Current thinking: it was revealed in the Senate Inquiry that the scope of this review was not that

narrow. In fact, the WEA received legal advice that it would be within its scope to comment on the single desk itself and the benefits or otherwise it was providing to the Australia wheat growers. Under this advice the single desk would no longer be "above the law" in terms of Governmental review.";

- xv. 21 July 2003: Deutsche Bank analyst report (generally), entitled, "What if the Single Desk is removed – Futuris?", which states (at page 1) "We estimate the loss of the single desk would impact AWB's PBT by between \$23-69m (15-46%) ";
- xvi. 30 July 2003: ABN AMRO Morgans analyst report (at page 1), "Uncertainty surrounding Futuris (and other capital opportunities) and industry deregulation cause us to rate it...";
- xvii. 29 August 2003: Deutsche Bank analyst report (at page 1), "Our view: The Landmark acquisition is the alternative for AWB's failed attempt at Futuris. It is buying a very similar business, primarily rural merchanting. It should provide the company with the diversification it has been seeking and protection from a possible removal of the single desk.";
- xviii. 2 September 2003: ABN AMRO Morgans analyst report (at page 2), "Does this [Landmark] acquisition put the Single Desk at risk? Some commentators have suggested that the more diversified AWB becomes, the more politically palatable wheat industry deregulation becomes. We have always believed that AWB's Board and management are in a difficult position with conflicting goals of protecting the Single Desk and ensuring a viable future should deregulation occur...";
- xix. 19 September 2003: Deutsche Bank analyst report (at page 1), "Our view: While AWB has made a strategically sensible move in the acquisition of Landmark, we continue to believe it has paid a high price for the business. However, longer term, AWB has mitigated some of the damage that may arise from the potential removal of the single desk, as it now has a non-wheat business to drive growth.";
- xx. 26 November 2003: UBS analyst report (at page 1), "Over the medium term the focus will likely be on discussions over the single export desk next year. We believe that the strong outperformance of the last two pools provide very strong arguments for AWB to maintain its export monopoly."

(and at page 3), "...There will be discussions about the merits of a single desk for Australian wheat exports to be conducted in 2004. The outcome of these discussions will be pivotal for AWB Ltd. As a result of this consistent outperformance achieved by AWB Ltd., the Wheat Export Authority will have plenty of evidence that AWB operating the single desk has a positive impact on Australian wheat farmers and hence there is a very high probability that the single desk will be maintained."

- xxi. 9 February 2004: ABN AMRO Morgans analyst report (at page 1), "...potential removal of the Single Desk remains a risk";
- xxii. 9 February 2004: UBS analyst report (at page 4), "Statement of Risk - The key risk to AWB Ltd. is the volatility of production of wheat in Australia which is the key driver to earnings. As well as this, any change in the current single desk for export wheat would have a negative impact on AWB Ltd.";
- xxiii. 12 March 2004: J P Morgan analyst report (at page 4), "  
Table 2: AWB Probability Weighted DDM Valuation A\$
- |                                | Probability | Valuation |
|--------------------------------|-------------|-----------|
| Base Case                      | 35%         | \$4.69    |
| Dismantled Single Desk         | 10%         | \$3.20    |
| Contestable Services           | 20%         | \$3.87    |
| Low End Synergies              | 20%         | \$4.89    |
| High Synergies                 | 15%         | \$5.08    |
| Probability Weighted Valuation |             | \$4.48    |
- J P Morgan View - AWB has been one of our preferred stocks in the Food & Beverage sector. However, with the current strength of in global wheat prices not being factored in to the share price, and the likelihood of negative press in the lead up to the June release of the WEA.s report on the operation of the single desk, we would look to take profits above A\$5 per share.";
- xxiv. 3 May 2004: J P Morgan analyst report (generally), entitled, "The political pot is simmering", which states (at page 1) "Irrespective, the debate is set to become heated and very public over the next six months with the Wheat Marketing Review expected to be released on September 1, 2004. This will focus the market on regulatory risk for AWB and along with slower normalised EPS growth in FY05, will act as a drag on the share price." (see also pages 5-9);
- xxv. 26 May 2004: Deutsche Bank analyst report, which states (at page 3) "AWB's single desk monopoly remains under pressure again ...";
- xxvi. 26 May 2004: ABN AMRO Morgans analyst report (at page 5), "Single Desk Review - The public release of the Wheat Marketing Review on AWB's management of the Single Desk is expected by the end of August. This is not a review of the Single Desk structure, which is up for legislative review in 2010. Removal of AWB.s management role in the short-term would have a detrimental impact on the Group's earnings and valuation."  
  
(and at page 6) "Our price target has increased from A\$4.55 to A\$4.80. AWB's price sensitive to seasonal outlook for agricultural. It is also sensitive to perceptions of any change in the regulatory environment including the ongoing role of the Single Desk in the wheat export market...";
- xxvii. 9 June 2004: J P Morgan analyst report (at page 1), "While we view the stock as being fair value if the current wheat export system remains in place, the

upcoming Wheat Export Review is likely to see the market factor in a risk premium for potential change in the next few months.”;

(and at page 2), “we highlight the potential for the perception of increased regulatory risk in the near term, as a result of the current Wheat Marketing Review. This external factor re-introduces the risk that the structure of the current wheat export system is changed...”;

(and at page 3), “The stock is currently valued using our forecasts and assuming no change in the current wheat export system. On this basis we value the stock at A\$4.95 per share. We also present a probability weighted scenario valuation of A\$4.70 per share which looks at the risks and the impact on valuation of potential changes in the current system ...”;

(and at page 17), “AWB benefits from its position as effective manager of the Single Desk export monopoly in Australia. A constant theme for this stock is the risk that either: 1) the Australian government deregulates the market for the export of bulk wheat from Australia; or 2) the Single Desk monopoly is maintained, but its structure is altered, or AWB is forced to open up its provision of services to AWBI to competition. These risks we see and the potential impact on AWB are discussed below...”; [see pages 17-24 generally]

(and at page 27), “There are a number of scenarios we run on the valuation

- First, as noted in share price driver 3, we look at the impact on valuation of the dismantling of the Single Desk. We view this as being very unlikely prior to the NCP review in 2010. If this occurs following this review, our valuation drops to around A\$2.87 per share.
- Next we look at our valuation if services to the Single Desk are made contestable from FY06. This would reduce our valuation by 14% to A\$4.27 per share.
- On the upside, we analyse the implication for valuation if AWB achieves the bottom end of its forecast synergies instead of our more conservative forecasts. This would raise our valuation to A\$5.13 per share
- If AWB achieves the high end of its synergy targets, our valuation increases to A\$5.35 per share.”;

(and at page 27-28), “Lastly, we have attached some probabilities to these various scenarios to determine a probability-weighted valuation. Note that this valuation is cum the 1H04 final dividend.

Table 7: AWB: Probability Weighted Valuation

	Probability (%)	Valuation (\$)
Base Case	35	4.96
Dismantled Single Desk	10	2.87
Contestable Services	20	4.27
Low End Synergies	20	5.13
High Synergies	15	5.35
Probability Weighted Valuation		4.70";

xxviii. 10 June 2004: J P Morgan analyst report (at page 1), "While we view the stock as being fair value if the current wheat export system remains in place, the upcoming Wheat Export Review is likely to see the market factor in a risk premium for potential change in the next few months.";

(and at page 2) We have downgraded our recommendation from Neutral to Underweight because of our view of increasing risks in the near term. While we believe the company remains well managed, with an appropriate strategy, we highlight the potential for the perception of increased regulatory risk in the near term, as a result of the current Wheat Marketing Review. This external factor reintroduces the risk that the structure of the current wheat export system is changed. While we believe a change is highly unlikely in the medium term, and highlight that the continuation of the single desk itself is not being examined, there is likely to be significant public and private lobbying of the Wheat Marketing Panel Review by vested interests. These vested interests are hoping to have the issue of contestability of services to the single desk examined as an option. This would significantly impact the profitability and competitive position of AWB if implemented. Again we highlight our view that change is very unlikely. The worst case scenario would be a recommendation by the panel that the Government establish a committee to examine and evaluate proposed structures for contestable services. This would place the risk squarely in the mind of the market, potentially resulting in a risk premium being factored into the share price of AWB. In the lead up to the release of the non-public report for the panel on 1 August 2004 and the public report on 1 September 2004, we expect a range of public statements from vested interests to question the performance of the AWB and the current system. This could act as a drag on near-term share price performance and we recommend a more cautious approach to the stock in the near term until this issue is resolved. With the stock trading at levels around our fundamental valuation assuming no change to the current system, we believe the near-term risk/return is asymmetrically skewed to the downside. However, once the panel report becomes public in September, we expect to review our view given the resolution of the potential near term risks.";

xxix. 19 July 2004: J P Morgan analyst report (at page 1), "We remain cautious on AWB given the regulatory risk surrounding the upcoming release of the Wheat Marketing Panel Review report.";

(and at page 5), "On a probability weighted basis, our valuation has fallen to A\$4.44 per share. We remain cautious on AWB given the regulatory risk surrounding the upcoming release of the Wheat Marketing Panel Review report, the release date for which has been pushed back 6 weeks to September 15 for the Government (non-public) report and 15 October for the public report.";

- xxx. 13 September 2004 ABN AMRO Morgans analyst report (at page 1), "Review of AWB's management role of the Single Desk - due 15 October We believe that AWB is now well positioned to deal with any deregulation as it has diversified its earnings through Landmark. AWB's role in managing the Single Desk is currently under review with a report due on 15 October. AWB does not expect that any significant changes will be announced.";

(and at page 2), "Single Desk management review: The public release of the Wheat Marketing Review on AWB (International's) management of the Single Desk is expected to be released to the market on 15 October. AWB management does not expect that any significant changes will be announced. There may be some changes in the container area. (more detail below)";

(and at page 3), "AWB's price is sensitive to the seasonal outlook for agricultural. It is also sensitive to perceptions of any change in the regulatory environment including the ongoing role of the Single Desk in the wheat export market... AWB's share price has been volatile due to uncertainty and delays with the review of the management of the single desk, concerns over seasonal conditions and a weak wheat futures market.";

(and at page 4-5), Management of the Single Desk review - The public release of the Wheat Marketing Review on [AWB's] management of the Single Desk (AWB's export monopoly) is expected on 15 October (originally August, delayed due to election issues). It must be stressed, that this is not a review of the Single Desk structure, which is up for legislative review in 2010. The review is all about the performance of AWB as the commercial manager of the monopoly. It's also about the role of government regulator, the Wheat Export Authority, in monitoring AWB's performance. AWB management does not expect that any significant changes will be announced. There may be some changes in the container area. The review is also expected to announce suggestions to enhance the operation of the single desk and WEA. In terms of the 2010 review of the Single Desk and whether there should be one, the vast majority of growers, nearly all of whom are AWB shareholders, want it maintained. The government support the export monopoly while it provides a net benefit to growers and Australia's export performance. As long as AWB achieves good returns for growers we see no problem with their role as growers are faced with unfair trade distortions in Australia compared to their overseas counterparts that are assisted by subsidies. If the single desk was removed, the competition would reduce the margin growers receive. The Boston Consulting Group report concluded that AWB has earned local growers more money than their international competitors. The report found

that when government subsidies were taken out of the equation, Australian wheat farmers received farm-gate prices stronger than those received by their counterparts in the United States, Canada and Argentina. This report was commissioned by AWBI (a wholly owned subsidiary of AWB). Removal of AWB's management role in the short term would have a detrimental impact on the Group's earnings and valuation.";

- xxxii. 18 October 2004: J P Morgan analyst report (see generally and specifically at page 5), "...While the final outcome was not the worst case scenario, this is still negative for AWB. The exact consequences for earnings are difficult to determine but they would be limited to less than 10% The offsetting positive is that the Review recommended that these measures should be implemented and no further reviews will be undertaken until the NCP review of the single desk in 2010 given the cost and the uncertainty caused by reviews.";
- xxxiii. 25 October 2004: J P Morgan analyst report (at page 7), "Our base case valuation, which assumes no material change in the wheat export system, has fallen 0.2% to A\$4.83 per share. Our probability weighted scenario valuation has fallen to A\$4.61 per share.";
- xxxiiii. 24 November 2004: Deutsche Bank analyst report (at page 1), "Hold rating retained. 12 month target price \$4.80/share. We have increased our 12 month price target from \$4.65 to \$4.80 due to an overall higher market. Our target is derived from our forward valuation using a market PE multiple. This is at the higher end of rural companies but we believe it is justified by AWB's monopoly position.";
- xxxv. 24 November 2004: ABN AMRO Morgans analyst report (at page 6), In our view, the recommendations from the 2004 Wheat Marketing Review have no material impact on AWB or [AWBI's] management of the single desk. This review should reduce industry uncertainty, particularly regarding AWB's managing of the Single Desk and the Single Desk structure, which now won't be reviewed until 2010.";
- xxxvi. 24 November 2004: J P Morgan analyst report (generally at pages 4-5);
- xxxvii. 29 December 2004: J P Morgan analyst report (at page 1), "The recommendations from the Wheat Marketing Review were not as onerous as they could have been. This has seen regulatory risk recede for the time being.";

(and at page 3), "The regulatory risks associated with the Wheat Marketing Review have now largely been resolved with the final impact likely to be a minor negative. This risk will be fully resolved once the Minister tables his response to the Review in the next few months.";

(and at page 4), "3. Regulatory Risk – following the release of the Wheat Marketing Review in October, the risk of significant changes to the structure of the wheat export system has become low in the medium term. The main

risk relates to the apparent desire of the Panel to allow other players access to export licenses in niche markets. The other hurdle will be the minister's response to the report, which is expected to be released in early March 2005.”;

(and at page 24), “Regulatory Risk: Maintaining the Single Desk Monopoly AWB benefits from its position as manager of the Single Desk export monopoly in Australia. A constant theme for this stock is the risk that either: 1) The Australian government deregulates the market for the export of bulk wheat from Australia; 2) The Single Desk monopoly is maintained, but its structure is altered or AWB is forced to open up its provision of services to AWBI, to competition. These risks and the potential impact on AWB are discussed below:”; [see pages 24-30 generally]

(and at page 29), “Our core valuation assumes the monopoly is retained until 2018 and then returns fade to the cost of capital.”;

(and at page 34), “Scenarios - There are a number of scenarios we run on the valuation.

- First, as noted in share price driver 3, we look at the impact on valuation of the dismantling of the Single Desk. We view this as being extremely unlikely prior to the NCP review in 2010. If this occurs following this review, the valuation drops to around A\$3.38 per share.

- Next we look at the valuation if services to the Single Desk are made contestable from FY10. This would reduce our valuation by 5% to A\$4.60 per share.

- On the upside, we analyse the implication for valuation if AWB achieves the top end of its forecast synergies instead of our more conservative forecasts. This would raise the valuation to A\$5.25 per share

Lastly we have attached some probabilities to these various scenarios to determine a probability-weighted valuation. Note that this valuation is ex the FY04 final dividend.

Table 7: AWB: Probability Weighted Valuation

	Probability	Valuation
Base Case	60%	\$4.98
Dismantled Single Desk	10%	\$3.38
Contestable Services	10%	\$4.60
High Synergies	20%	\$5.25
Probability Weighted Valuation		\$4.83”;

xxxvii. 1 February 2005: J P Morgan analyst report (at page 4), “... we would look to accumulate AWB following the announcement given: ... reduced regulatory risk until 2010 following the release of the Wheat Marketing Review last October...”;

xxxviii. 1 March 2005: J P Morgan analyst report (at page 1), “We are becoming more positive on the stock due to: 1) improved valuation support, 2) the potential for positive mean reversion in consensus earnings forecasts in the medium to long term, 3) reduced regulatory risk until 2010 following the release of the

Wheat Marketing Review last October, and 4) the overstated risk to earnings from a reversal of the profitability of chartering.”;

- xxxix. 14 March 2005: J P Morgan analyst report (at page 1), “The main risks to our view are: 1. Capital allocation, 2. Earnings exposure to wheat crop size and price volatility, 3. Regulatory risks in the long term and 4. Increased exposure to lending markets. We also acknowledge that wheat prices are more likely to fall than rise in the near term.”;

(and at page 4), “6. Reduced Regulatory Risk in the Medium Term The competitive advantage held by AWB is largely derived from its regulatory control of the monopoly single desk for wheat exports. The recent Wheat Marketing Review recommended that no new reviews of the wheat export system be undertaken until 2010 when the NCP looks at the single desk. Additionally, 2010 will probably be an election year. Given that the single desk is seen by the farmers as being a positive in general, it would take a brave politician to dismantle it ahead of an election. The only issue on the horizon is the Minister’s response to the Wheat Marketing Review. This is unlikely to recommend any changes above and beyond those that are already known by the market post the release of the Review’s report in October last year. Consequently, any significant regulatory change is unlikely for at least 5 years.”;

(and at page 5), “Key risks...3. Regulatory Risk in the Long Term - There is always a risk that the single desk will be dismantled in the future, or (more likely) that AWB’s control of the single desk is watered down. Nothing significant will happen in the next 5 years as noted above. The only issue on the near term horizon is the expected response from the Minister’s department to the Wheat Marketing Review (March quarter 2005). Any issues are likely to be minor.”;

- xl. 25 May 2005: ABN AMRO Morgans (at page 2), “Monopoly status on bulk wheat exports: The management of the wheat Single Desk places AWB in a strong competitive position and also assists many of the other services it provides. Assuming reasonable management of the National Pool, it should continue to deliver a steady, annuity style income stream subject to season and price variations.”;

(and at page 3), “Risks to performance...Removal of manager of the single desk in the short term would have a detrimental impact on the group’s earnings and valuation. There is unlikely to be another review of the Single Desk structure until the legislative review scheduled for 2010.”;

- xli. 8 June 2005: J P Morgan (see pages 32-33 generally)

(and at page 37), “Scenarios - There are a number of scenarios we run on the valuation.

- First, we look at the impact on valuation of the dismantling of the Single Desk. We view this as being extremely unlikely prior to the NCP review in 2010. If this occurs following this review, the valuation drops to around A\$2.93 per share.
- Next we look at the valuation if services to the Single Desk are made contestable from FY10. This would reduce our valuation by 9% to A\$4.31 per share.
- On the upside, we analyse the implication for valuation if AWB achieves the top end of its forecast synergies instead of our more conservative forecasts. This would raise the valuation to A\$4.95 per share. Lastly we have attached some probabilities to these various scenarios to determine a probability-weighted valuation.

Table 12: AWB: Probability Weighted Valuation

	Probability	Valuation
Base Case	60%	\$4.73
Dismantled Single Desk	10%	\$2.93
Contestable Services	10%	\$4.31
High Synergies	20%	\$4.95
Probability Weighted Valuation		\$4.55";

- xlii. 12 October 2005: J P Morgan (at page 8), "Valuation - Our base case valuation on the stock has increased 5.9% to A\$4.95 per share primarily due to time value since our last publication. On a probability weighted basis, our valuation has increased to A\$4.76 per share.

Table 2: AWB- Probability Weighted Scenario Valuation

A\$ per share	Probability	Valuation
Base Case	60%	\$4.95
Dismantled Single Desk	10%	\$3.01
Increased Competition in Service Provision	10%	\$4.50
High End Landmark Synergies	20%	\$5.18
Probability Weighted Valuation		\$4.76";

(and at page 9), "However, given that we view the regulatory risk as having been largely removed until 2010, the stock is likely to gravitate toward the base case valuation in our opinion.";

- xlili. 1 November 2005: J P Morgan analyst report (at page 1), "Political Heat On The Rise Again - • The release of the IIC report into the operation of the 'Food For Oil' programme in Iraq late last week has raised the regulatory risk on AWB again. While AWB's release stated that the report showed that AWB did not know about the illicit payments being channelled to the former Iraqi regime, the report itself has a more negative tone. The report itself criticises AWB and its inability to see that there were irregularities in its dealings with [IGB] and in-land transport company Alia. • The Australian Government will launch its own investigation into the incidents reported but is unlikely to uncover new evidence. • While we do not expect there to be any significant financial repercussions from the report, it raises risks on two fronts. First, that

AWB could be fined by the UN. We see this as being unlikely given the findings and lack of any evidence. The worst case scenario would see AWB repay the US\$221.7m of alleged illicit payments from wheat sales. Second, it will provide fuel to vested interests in their campaign to see the current wheat export system altered or even scrapped. We believe a change is extremely unlikely before 2010 but the worst case scenario, dismantling the single desk, would reduce our valuation by around A\$2 to A\$3 per share.”;

(see generally pages 2-4 and especially at page 4), “2) Increased Risk to AWB’s Position of Monopoly Exporter of Australian Wheat Regulatory risk remains the main long term risk for AWB. The company derives significant benefits from its monopoly export powers through the vertical integration of its services under the pool management division (eg supply chain, crop financing, trading, chartering etc). A loss or dilution of AWB’s control of the single desk would materially impact the returns and earnings it generates from most of its divisions. As we noted previously, the investigation by the Australian Government is unlikely to come up with different conclusions to the UN’s Independent Inquiry Committee. However, this news will provide additional ammunition to vested interests such as other domestic grain traders (FCL, ABB, GNC), logistic providers (CBH, GNC, ABB), disgruntled wheat farmers and international lobby groups (especially the US) to pressure the Australian Government into changing the current system. At this stage we would be very surprised if AWB received more than a slap on the wrist given the UN’s findings. However, a fine is possible. Our worst case scenario valuations that assume the loss or diminution of AWB’s control over the single desk are as follows: Dismantling of the single desk from 2010 A\$3.01 per share Full Contestability of Services from 2007 A\$4.50 per share.”;

- xliv. 22 November 2005: J P Morgan analyst report (at page 1), “Other issues to look for...comments on the implications of the current investigations into kickbacks to the former Iraqi regime between 1999 and 2001.”;
- xlv. 23 November 2005: J P Morgan analyst report (at page 2), “However, the current investigation of AWB ’s dealing in the Oil For Food programme raise a risk, albeit with a very low probably of occurring, that political pressure will mount for a change in the level of control AWB holds over the wheat export system. This risk is not reflected in the share price at present in our opinion.”;
- xlvi. 6 January 2006: J P Morgan analyst report (at page 1), “We have downgraded our recommendation on AWB as we believe that the three key earnings drivers for the company: 1) Australian crop size, 2) global wheat prices, and 3) domestic wheat prices, have now largely mean reverted to above long term sustainable levels, thus removing the favourable risk/return skew. The current investigations into AWB’s dealings as part of the Oil for Food programme have also increased the inherent political risk of the stock.”;

(and at page 4,) “Increased Political Risk – The current investigation of AWB’s dealing in the Oil For Food programme raise a risk, albeit with a very low probably of occurring, that political pressure will mount for a change in the level of control AWB holds over the wheat export system. This risk is not reflected in the share price at present in our opinion. We believe a change is extremely unlikely before 2010 but the worst case scenario, dismantling the single desk, would reduce our valuation by around A\$2 to A\$3 per share.”;

(and at page 6), “Valuation – Our base case valuation on the stock has increased 5.1% to A\$5.23 per share due to time value since our last publication and our earnings revisions. On a probability weighed basis, our valuation has increased to A\$5.02 per share.

Table 2: AWB- Probability Weighted Scenario Valuation

A\$ per share	Probability	Valuation
Base Case	60%	\$5.23
Dismantled Single Desk	10%	\$3.30
Increased Competition in Service Provision	10%	\$4.70
High End Landmark Synergies	20%	\$5.40
Probability Weighted Valuation		\$5.02”;

(and at page 7), “With the regulatory risk back on the agenda, we believe that ignoring the potential valuation issues is a dangerous strategy.”;

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

NSD 2020/2007

**JOHN WATSON & KAYE WATSON**  
in their own right and as representatives of the Group Members  
Applicants

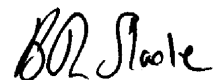
**AWB LIMITED (ACN 081 890 459)**  
Respondent

**CERTIFICATE OF LEGAL PRACTITIONER**

I, Ben Slade, legal practitioner, certify to the Court that, in relation to the pleading dated 10 November 2009 filed on behalf of the applicants the factual and legal material available to me at present provides a proper basis for:

1. each allegation in the pleading; and
2. each denial in the pleading; and
3. each non-admission in the pleading.

Date: 10 November 2009



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**BEN SLADE**  
Maurice Blackburn Pty Ltd  
Legal practitioner representing the applicants

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