

WHEAT MARKETING AMENDMENT BILL 2007

Second Reading Tuesday 19th June 2007

[Mr KELVIN THOMSON](#) (Wills) (7.28 p.m.)—It is always interesting to listen to the member for O'Connor on wheat marketing and export issues. I hope that the minister is able to provide some appropriate response to some of the issues he has raised.

I rise to speak in support of the amendment moved by the member for Hotham to the [Wheat Marketing Amendment Bill 2007](#). Right from the outset, we should make no mistake about what a big deal the AWB scandal is. In an international inquiry into an international scandal, it was an Australian company which came out at the top—a world-beater in the kickback Olympics, far outstripping any other company in the race. The Volcker inquiry estimated the AWB kickbacks at \$US220 million. The next biggest supplier, Chayaporn Rice Co Ltd of Thailand, came in at \$US42 million, less than a quarter of the AWB sum.

Volcker's conclusions clearly called for an Australian inquiry into the behaviour of AWB, both to maintain Australia's international reputation as a country committed to clamping down on corruption and to safeguard the interests of wheat growers. International wheat trading is a hard-fought business. Had the Australian government not commissioned an inquiry, the damning findings of the Volcker inquiry would have been played and replayed in international forums by AWB's competitors, with AWB as the major villain. Not having an inquiry would have made the situation worse, signalling to the world that, as far as kickbacks are concerned, Australia has a relaxed and comfortable approach. The Cole inquiry unfortunately turned into a monumental nonevent. What has it achieved? Nothing. It has been a monumental whitewash. It has achieved nothing by way of ministerial accountability for this debacle; it has achieved nothing by way of departmental or Public Service accountability for this debacle; it has achieved nothing by way of reform or restructure of AWB; it has achieved nothing in terms of prosecutions for individual wrongdoing. And the crowning glory, the piece de resistance, is that, once the Cole report came down, AWB proceeded to claim the \$300 million in kickbacks as a tax deduction and the tax office and the Treasurer went along with it.

Let me substantiate each of those claims in turn. First, there has been no ministerial accountability for the AWB scandal. The Minister for Foreign Affairs approved 41 contracts over a five-year period—contracts which contained \$A290 million in bribes that have cost Australia's international trading reputation and Australian farmers dearly. Minister Downer made a virtue of his ignorance. He revelled in the fact that Commissioner Cole did not find that he was criminally culpable. But, as the second reading amendment points out, the government limited the terms of reference of the Cole inquiry to such an extent that it was unable to meaningfully evaluate the culpability of the government.

This is not a scandal that the government can disown. Under the relevant Security Council resolutions, national governments have a clear obligation to monitor compliance with the sanctions regime under resolution 661. Governments cannot escape responsibility merely by claiming that their national companies circumvented sanctions on their own initiative. Nor did the Cole commission have anything to say when evidence emerged contradicting government claims to the commission that it did not know about AWB's payments of kickbacks to the Iraqi government.

First there was Alia. The government claimed that it knew nothing about this Jordanian company, through which kickbacks were laundered, until the Volcker inquiry in 2004, but an email in September 2003 showed that Austrade officials met with the al-Khawam family, 51 per cent owners of Alia, and the former head of the Iraqi Grains Board in 2003. Then there was Tigris. The Minister for Foreign Affairs and other Howard government personnel claimed to the Cole commission that the first they knew about Tigris Petroleum's plan to defraud the oil for food program of \$US8.8 million was through the Cole inquiry itself and that they had not heard of Tigris at all until 2003. But an email from AWB's government relations manager, Matthew Foran, says that he spoke with Minister Vaile's office in September 2002, advising the government to not make any public comment about a statement by the Iraqi embassy which explicitly referred to the Tigris deal. The email states that Minister Vaile's office contacted the offices of the Minister for Foreign Affairs and the Prime Minister to warn them of the statement by the Iraqi embassy. The Howard government was caught out misleading the Cole inquiry, first over Alia and then over Tigris, but the Cole commission failed to follow up these matters or deal with them in its report.

Nor has the Cole Commission achieved anything at all by way of departmental accountability. Minister Downer simply ignored Commissioner Cole's findings of incompetence and negligence and announced that there would be no review of administrative practices within the Department of Foreign Affairs and Trade. This was incredible. It represented an all-time low in public accountability standards. It looks like society is to blame! There were \$300 million in kickbacks and society is to blame.

Nor has the Cole commission achieved anything in terms of the structure of AWB, and the bill before the House makes that abundantly clear. Michelle Grattan reported this bill in the following terms:

Ministers have signed off on a political compromise for the new bulk wheat export marketing system designed to get the Government through the election.

A "kitchen cabinet" of John Howard and senior ministers decided farm organisations should be given until March to either set up a new grower-owned and controlled company to run the single desk, or have AWB demerge and AWB International operate the desk.

The Cole inquiry has achieved nothing on this front either.

Another Cole inquiry shortcoming is that it did not focus on the role and responsibility of the AWB board. Ethical standards depend, not only in AWB but in any large company, on the culture fostered by the company's board. Culture was not within the Cole inquiry's terms of reference but it is at the heart of why the kickbacks occurred. The AWB board's role has received precious little attention. Indeed, their performance was rewarded by all six members standing for re-election being reappointed for another term at the following AGM. Sadly, the majority of the shareholders seemed more interested in blaming anyone and everyone rather than extracting accountability from AWB itself. The Deputy Chair of the Australian Shareholders Association, John Curry, said:

To restore its reputation all those directors who were on the board at the time of the dodgy, dubious deals with Iraq and Pakistan must resign and be replaced by new talent.

... ..

It is essential that the new directors come from a variety of business backgrounds and have experience in large public companies. Another board dominated by grain growers is not appropriate. New and independent directors are required urgently.

It seems to me that one of the fundamental problems with AWB is that there are opposing interests amongst its shareholders. There is a need for risk management and planning for and then dealing effectively with unexpected events such as this public scandal. The board seems to have had no effective strategy for dealing with such risks. Even prior to the Volcker inquiry, one wonders how the board could not have realised that there was always a possibility that this would come out—or did the board really not know what was going on? If that is so, just what sort of corporate governance was it exercising in terms of its responsibilities for guiding the company? The only risk management strategy pursued by AWB seems to have been to keep its fingers crossed and hope that the secret would never come out.

AWB did seek advice in December 2005 and January 2006 from international crisis management expert Peter Sandman. But, when he told AWB to apologise profusely for the kickbacks, it rejected that advice. The record also shows that, by this time, it was not just senior executives who were involved; the AWB chair was also party to this strategic blunder.

Then there is the issue of the prosecutions. In May this year, John Garnaut reported in the *Sydney Morning Herald* in an article entitled 'Wheat scandal charges are years away':

... now it emerges that it could be two years before charges are laid as a result of the Cole commission into the AWB oil-for-food scandal.

It was widely assumed the commission had broken most of the necessary ground for a criminal investigation when it examined witnesses for 10 months and then handed down its final report in November. But enforcement officials have told the Herald that a special AWB prosecution task force has made slow progress, partly because the Australian Federal Police are relatively inexperienced in handling complex, white collar investigations.

A team of corporate investigators from the Australian Securities and Investments Commission is yet to move into the federal police special task force headquarters because police data management systems are not yet in place.

He says that, in May:

... the task force was given \$21 million to fund investigations through to 2009, including money next financial year for 'IT and communications equipment and accommodation fit-out'.

An enforcement officer is reported as saying:

It will take at least a year and probably more than two years before charges are laid ...

Also:

... initial assessment of available material, possible offences and identities of likely offenders had yet to be completed.

Mr Garnaut says that the office of the Attorney-General, Mr Ruddock, has said:

... the inquiry could 'take years' because so many agencies were involved.

That is all very convenient for the government, let me say, but another blank for the Cole inquiry.

Then we come to the crowning glory—the final insult. After the Cole report was handed down, AWB went off to the tax office and proceeded to claim the \$300

million in kickbacks as a tax deduction. That is truly astonishing. AWB confirmed in late December, just before Christmas, that the Australian Taxation Office had ruled that the bogus trucking fees it paid to Iraq in breach of United Nations sanctions in order to secure wheat contracts were not bribes and qualified as legitimate business expenses. AWB's share price surged almost 10 per cent to \$2.88 on the news that it had dodged a tax bill expected to be more than \$100 million.

Commissioner Cole said that AWB was not guilty of the crime of bribery because the Iraqi officials who took the money from AWB were not breaking Iraqi law. This drew the not unreasonably incredulous response from Tracy Lee in the *Australian Financial Review* that:

Australian companies wanting to pay bribes overseas should make sure they do it in really corrupt regimes if they want to get a tax deduction.

She said:

That is the ridiculous outcome from yesterday's decision by the Australian Taxation Office that has let AWB keep up to \$180 million in deductions claimed on the payment of bogus trucking fees to the former regime of Saddam Hussein.

The *Australian Financial Review* obtained a letter to AWB from the tax office saying that it had relied on the Cole report in making its decision to allow AWB to keep over \$100 million in tax deductions. We had Treasurer Costello saying that he was relying on the Cole inquiry as well. He said that the probabilities are that the tax office is bound by the Cole inquiry. Commissioner Cole made no findings on tax matters, saying that it was 'beyond the technical and resource capacity of this inquiry to conduct a detailed investigation' into the tax treatment of the kickbacks. He drew 'to the attention of the Commissioner of Taxation the fact that this matter has not been the subject of any inquiry by me'. But, elsewhere in his report, Mr Cole said that the payments were 'not unlawful in Iraq'.

So we have an astonishing situation. Each of them—the Cole commission, the tax office, the Treasurer—is saying, 'Don't look at me; it's not my job to stop AWB from getting a tax break for these kickbacks.' Well, whose job is it? There has been simply no accountability for the scandal—none at all. I invite people who are interested in this issue to have a look at the book entitled *Against the Grain*, written by Stephen Bartos, who is professor of governance at the University of Canberra. I want to draw on some of his work for some of my remaining remarks:

There is no defensible rationale for bribery or kickbacks. ... Australia is one of many of the countries ... that has signed up to tough anti-corruption standards, in recognition of the ongoing harm this sort of activity does to all those involved.

Australia is a signatory to both the UN Convention Against Corruption and the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Criminal Code Amendment (Bribery of Foreign Public Officials) Act, known as the bribery act, is this parliament's legislative implementation of that latter convention.

Bartos also wrote:

... even if we were to accept for one moment that kickbacks are defensible, consider this particular set of kickbacks ... \$300 million is no minor "facilitation payment" to an underpaid border guard or customs official. These were payments that ultimately benefited a regime that was subject to

international sanctions. They were payments to a regime that Australia had condemned in the strongest terms in diplomatic forums and that we would eventually go to war against.

So even if you think that there may be circumstances—and I do not—in which kickbacks are legitimate, as Mr Bartos said:

... this is a strikingly inappropriate arena in which to pay them.

Nor did the scandal arise from the actions of foolish individuals who may have been unaware of the consequences. This was no intrepid, young dealmaker venturing boldly but misguidedly into Iraq. The evidence presented to the Cole inquiry suggests that this was a deliberate corporate attempt to work around a sanctions regime to which Australia was a signatory. It was a systemic problem. The people responsible for AWB's conduct were not rogue traders operating outside normal corporate standards, they were at the heart of the company, and they were operating according to established company practice.

The sources of a problem of this character lie in governance. They lie in corporate governance arrangements within AWB, national regulatory arrangements for the oversight of AWB and, underlying both of these, national governance standards as they apply to agricultural politics in Australia.

Three key areas of governance concern have emerged from the evidence that we heard at the Cole inquiry about AWB. There was the apparent failure of the board to detect and deal with the kickbacks at the time they were paid, the apparent failure of audit mechanisms to uncover payments after the event and the perverse incentives built into AWB's dual shareholder structure.

I want to spend a minute or two on the audit process at AWB. According to the best practice guide in relation to audit committees, it is vital that an audit committee include independent directors, especially as chair. It is important for audit committee members to be independent and seen to be independent. Of the six current AWB audit committee members, only one is not listed as either a farmer/grain grower or someone with a financial interest in wheat farming. There appears to be a pervasive belief within AWB that wheat growing experience is a prerequisite for any position of significance and very few board members have come from outside the industry.

It is virtually impossible for AWB to have an audit committee that is genuinely independent of the grain growing business. In this light, the failure of AWB's corporate governance processes to detect and control the kickbacks starts to make more sense. I do not have time to say much about AWB's dual shareholder structure but again this is at the heart of AWB's problems. The structure, which was created by this government when it privatised AWB, formed an arrangement in which the interests of different classes of shareholders can be at odds—and this is a matter of considerable concern which has been commented on elsewhere. I strongly support the amendment moved by the member for Hotham and I commend it to the House.