

**IN THE MATTER OF JOHN WATSON &
KAYE WATSON IN THEIR OWN RIGHT
AND AS REPRESENTATIVES OF THE
GROUP MEMBERS**

Applicants

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

Respondent

**DEFENCE
(Order 11 rule 20)**

By way of Defence to the Further Amended Statement of Claim filed on 27 August 2007 (and using terms as defined in the Further Amended Statement of Claim except where otherwise indicated) the Respondent (**AWB**) says as follows.

Non justiciability and Jurisdiction

- 1A (a) AWB says that the following matters that are alleged in the Further Amended Statement of Claim are not justiciable in this Honourable Court:
- (i) the international obligations of Australia in relation to the exportation of wheat from Australia to the Republic of Iraq;
 - (ii) the conduct of the Republic of Iraq outside Australia in relation to the exportation of wheat from Australia to the Republic of Iraq;
 - (iii) the conduct of the United Nations and the United Nations Security Council (**UNSC**) 661 Committee outside Australia in relation to the exportation of wheat from Australia to the Republic of Iraq;
 - (iv) the conduct outside Australia of each sovereign State that was from time to time a member of the UNSC 661 Committee in relation to the exportation of wheat from Australia to the Republic of Iraq;

Particulars

The relevant matters are alleged in paragraphs 9, 12, 13, 16, 22, 23, 24, 25 of the Further Amended Statement of Claim.

Filed on behalf of: the Respondent

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Ref Craig Phillips

- (b) By reason of the matters set out in sub-paragraph (a), this Honourable Court does not have jurisdiction in the purported controversy as pleaded, alternatively is required, or ought, to decline to exercise any jurisdiction it has in respect of that controversy.

The Applicants and Group Members

1. AWB denies the matters alleged in paragraph 1(c) and does not admit the remaining matters alleged in paragraph 1.
2. AWB does not admit the matters alleged in paragraph 2.
3. AWB:
 - (a) denies the Contravention alleged; and
 - (b) denies that any of the matters alleged in paragraphs 3(a), (b) and (c) occurred by reason of the alleged Contravention; and
 - (c) otherwise does not admit the matters alleged in paragraph 3.
4. AWB does not admit the matters alleged in paragraph 4.

The Respondent

5. AWB admits the matters alleged in paragraph 5.

AWB Securities

6. AWB admits the matters alleged in paragraph 6.
7. AWB admits the matters alleged in paragraph 7.

AWB and its business

8. AWB:
 - (a) admits that it managed and marketed bulk wheat exports from Australia pursuant to the *Wheat Marketing Act 1989* (Cth);
 - (b) denies the matters alleged in paragraph 8(b) and says further that AWB entered into certain contracts with the Ministry of Trade, Iraqi Grain Board (*IGB*) for the supply of wheat as agent for AWB (International) Limited (*AWBI*);
 - (c) says that Regulation 13CA of the *Customs (Prohibited Exports) Regulations 1958* (Cth) (the *Regulation*) was repealed on 28 May 2003

pursuant to the *Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003* (Cth); and

(d) otherwise does not admit the matters alleged in paragraph 8.

9. AWB:

(a) refers to and repeats paragraph 1A hereof;

(b) refers to and repeats the matters set out in paragraph 8(c) hereof; and

(c) otherwise denies the matters alleged in paragraph 9.

The Contracts

10. AWB:

(a) says that it lodged with DFAT Contract Documentation in relation to each of the Initial Contracts on or about the dates alleged; and

(b) otherwise does not admit the matters alleged in paragraph 10.

11. AWB:

(a) says that it lodged with DFAT Contract Documentation in relation to each of the Handling Fee Contracts on or about the dates alleged; and

(b) otherwise does not admit the matters alleged in paragraph 11.

12. AWB:

(a) says that:

(i) the Contracts were generally entered into in response to tenders issued by the Republic of Iraq through the IGB for the supply of wheat to the Republic of Iraq under the UN OFF Programme;

(ii) the IGB specified that the price was to include delivery costs from the port to silos in each of the Governates of the Republic of Iraq;

(iii) the IGB also specified the transport company to be used to deliver wheat from the port to the silos;

(iv) AWB, as agent for AWBI, entered into the Contracts with the IGB to supply wheat under the UN OFF Programme;

(v) 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 the Republic of Iraq and, as a consequence, the price

specified in each of the Contracts included a component for inland transport;

(vi) inland transport of wheat the subject of the Contracts was undertaken in order to meet the contract requirements that wheat be delivered from the port to inland silos;

(vii) each of the Contracts was approved by the UN 661 Committee and/or the UN under the UN OFF Programme in accordance with UNSC Resolutions 986 and 1284;

(b) refers to and repeats paragraph 1A hereof; and

(c) otherwise does not admit the matters alleged in paragraph 12.

13. AWB:

(a) refers to and repeats the matters set out in paragraphs 1A and 12 hereof;

(b) says that in the second half of 2000 the Republic of 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 (the *surcharge*);

(c) says that, consequently, the surcharge was required to be included, and was in fact included, as part of the price specified in each of the Contracts; and

(d) otherwise does not admit the matters alleged in paragraph 13.

14. AWB:

(a) says that the price specified in each of the Contracts referred to in paragraph 14 included a component for inland transport and/or the surcharge; and

(b) otherwise does not admit the matters alleged in paragraph 14.

15. AWB:

(a) refers to and repeats the matters referred to in paragraphs 14(a) hereof; and

(b) otherwise denies the matters alleged in paragraph 15.

16. AWB:

- (a) says that any alleged debt (the existence of which is not admitted by AWB), the payment of which was to be facilitated by contracts A1670 and A1680, was between the Republic of Iraq and BHP Petroleum Pty Ltd;
- (b) refers to and repeats paragraph 1A hereof;
- (c) refers to and repeats paragraph 12(a)(vii) hereof; and
- (d) otherwise does not admit the remaining matters alleged in paragraph 16.

The Effect of the Contracts and Payment

- 17. AWB admits the matters alleged in paragraph 17.
- 18. AWB:
 - (a) says that, in respect of each Contract, following the shipment of wheat under the Contract, AWB was paid out of the UN escrow account for the wheat so shipped in accordance with the terms of the Contract; and
 - (b) otherwise does not admit the matters alleged in paragraph 18.
- 19. AWB denies the matters alleged in paragraph 19.
- 20. AWB does not admit the matters alleged in paragraph 20.
- 21. AWB:
 - (a) refers to and repeats paragraph 16 hereof; and
 - (b) otherwise does not admit the matters alleged in paragraph 21.

AWB Conduct in Procuring Ministerial Permission and UN Approval

- 22. AWB:
 - (a) refers to and repeats paragraph 1A hereof; and
 - (b) otherwise denies the matters alleged in paragraph 22.
- 23. AWB:
 - (a) refers to and repeats paragraph 1A hereof; and
 - (b) otherwise denies the matters alleged in paragraph 23.
- 24. AWB:
 - (a) refers to and repeats paragraph 1A hereof; and
 - (b) otherwise denies the matters alleged in paragraph 24.

25. AWB:
- (a) says that during the Relevant Period it did not disclose publicly the Relevant Information;
 - (b) denies that it was under any obligation to do so;
 - (c) repeats and relies on paragraphs 22 to 24 of this defence; and
 - (d) otherwise denies the matters alleged in paragraph 25.

AWB's failure to keep the ASX informed of Material Information

26. AWB denies the matters alleged in paragraph 26.
27. AWB denies the matters alleged in paragraph 27.
28. AWB denies the matters alleged in paragraph 28.
29. AWB:
- (a) says that during the Relevant Period it did not inform the ASX of the Relevant Information;
 - (b) denies that it was under any obligation to do so;
 - (c) repeats and relies on paragraphs 25, 26, 27 and 28 hereof; and
 - (d) otherwise denies the matters alleged in paragraph 29.
30. AWB denies the matters alleged in paragraph 30.

Contravention of continuous disclosure caused loss

31. AWB does not admit the matters alleged in paragraph 31.
32. AWB:
- (a) does not admit that the Applicants acquired AWB securities or interests in AWB securities;
 - (b) says that from 21 August 2001 to the end of the Relevant Period AWB securities were available for trade and were traded on the ASX, which was a financial market regulated by the ASX Listing Rules and section 674(2) of the CA; and
 - (c) otherwise does not admit the matters alleged in paragraph 32.
33. AWB denies the matters alleged in paragraph 33.
34. AWB does not admit the matters alleged in paragraph 34.

35. AWB denies the matters alleged in paragraph 35.

Waiver

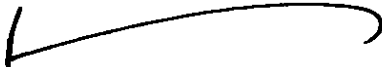
36. Further or alternatively, by reason of Article 3.5 of the Constitution of AWB, each of the Applicants and the Group Members has waived in favour of AWB all and any rights, powers and remedies which, but for Article 3.5, any of them may at any time have whether by statute, at law or in equity, against AWB, by reason solely of a director of AWB acting or endeavouring in good faith to act in accordance with Article 3.1 of the Constitution of AWB. Therefore each of the Applicants and the Group Members is precluded from making any of the claims alleged in the Further Amended Statement of Claim, or seeking any of the relief that is sought in the Further Amended Application.

Commencement of Proceeding

37. Further or alternatively, this proceeding was not validly commenced under Part IVA of the *Federal Court of Australia Act 1976 (Cth) (Act)* and, accordingly:

- (i) any judgment in the proceeding will not take effect as a judgment in a representative proceeding commenced under Part IVA of the Act;
- (ii) any judgment in the proceeding will not have any effect on the rights or liabilities as between any persons other than the applicants and AWB; and
- (iii) so far as the proceeding purports to make any claim on behalf of the Group Members, the proceeding ought to be dismissed.

Dated 10 September 2007



Craig Phillips
Allens Arthur Robinson
Solicitors for the Respondent

The pleading was prepared by Craig Phillips and Duncan Travis of Allens Arthur Robinson and settled by Matthew Darke of Counsel and Charles Scerri of Queen's Counsel.

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No NSD659 of 2007

**IN THE MATTER OF JOHN WATSON &
KAYE WATSON IN THEIR OWN RIGHT
AND AS REPRESENTATIVES OF THE
GROUP MEMBERS**

Applicants

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

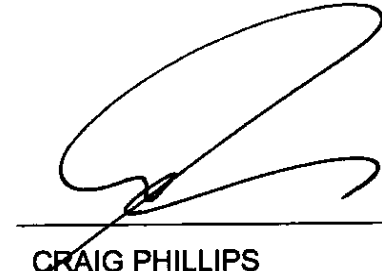
Respondent

**CERTIFICATE OF LEGAL REPRESENTATIVE
(Order 11 rule 1B)**

I, CRAIG PHILLIPS, legal practitioner, certify to the Court that, in relation to the pleading dated 10 September 2007 filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Dated 10 September 2007



CRAIG PHILLIPS
Legal practitioner for the Respondent