

## MEETING RECORD

### Meeting between Front Page Caterers (and ors) and the ACCC

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**Date:** 14 October 2005

**Time:** 10.00am – 12.00pm

**Venue:** ACCC office, Sydney

**Attendees:**

**Front Page and ors**

Stanley and Felicia Kahn	Proprietors of Front Page
Mark Friedgut	Front Page's solicitor (Freehills, Sydney)
Rabbi Milecki	Rabbi of the South Head Synagogue
Mr Geoffrey Levy AC	Executive Chairman of Investec Bank Australia Limited - an interested and concerned kosher consumer
Mr Esmond Kilov	A concerned kosher consumer and the brother of Mrs Kahn

**ACCC**

Scott Gregson	General Manager, Adjudication Branch
Bronwyn Davis	Assistant Director, Adjudication Branch
Sheridan de Kruiff	Graduate, Adjudication Branch
Fiona Grant	Project Officer, Adjudication Branch

**Introduction**

Mr Friedgut introduced the interested parties attending the meeting. He thanked the ACCC for providing them with the opportunity to have the meeting and, in particular, for the opportunity to answer any questions and address any concerns that the ACCC may have in relation to this matter. He expressed gratitude to the ACCC staff for travelling to Sydney.

Mr Gregson made some introductory comments. He outlined the ACCC's role in assessing third line forcing notifications, noting that the process is a public one. He also explained the process undertaken by the ACCC.

Rabbi Milecki stated that this issue is an important community issue and, despite the prospect of embarrassment for all concerned, it is vital that all parties are given the opportunity to voice their concerns.

**Issues discussed**

The fundamental contention of Front Page is that the third line forcing in the KA's proposed meat policy is highly detrimental to the public interest, and that it has no public benefit. Mr Friedgut emphasised that Front Page supports the contents of its written submissions of 21 July 2005. He submitted that those submissions were prepared with care and are accurate, and Front Page stands behind those submissions

in their totality. The factual matters raised in the written submissions are capable of empirical proof.

Front Page considers that the KA has a de facto monopoly over Kashrut certification services in NSW, as restaurants and caterers who wish to be recognised as kosher have no alternative as a matter of practical reality but to use its services. Also, people wishing to obtain a kosher butcher's license must also apply to the KA for approval.

Front Page considers that the KA's Meat Policy (the Policy) has a number of practical effects:

- It creates a monopoly in the single NSW kosher butcher – Eliat at Hadassa (Hadassa). This removes any power for restaurants and caterers to negotiate, and gives Hadassa the ability to determine the prices and terms on which it supplies.
- Hadassa could then conceivably discriminate against certain restaurants and caterers, and even potentially force them out of business by charging them uneconomic prices.
- Caterers and restaurants are unable to choose their respective suppliers based on normal commercial considerations such as quality, choice and price. They are forced to use one supplier nominated by the KA and have no meaningful ability to negotiate with it. This is of particular concern as the cost of kosher meat (which is significantly higher than non-kosher meat) has traditionally been higher in Sydney than in Melbourne. Evidence of that fact is provided in the written submissions of Front Page. The price differences between Sydney and Melbourne are substantial. For example, in January 2005, Hadassa charged approximately \$45 per kilo for certain meat that was available from Continental Butchery from Melbourne for \$18.68 per kilo. Moreover, by letter dated 19 August 2005, Hadassa gave notification that it was unilaterally raising its prices with effect from 22 August 2005.
- Because Hadassa believes that kosher caterers (and in future under the Policy, kosher restaurants) are compelled to purchase all of their meat from it, it can raise its prices unilaterally. It can do so with impunity because caterers (and in future restaurants) will have no choice. They will have to purchase their meat from Hadassa – or go out of business. Front Page submits that the KA's Policy will lead (indeed, it already has) to unfair price increases in a market in which prices are already inflated. Front Page asserts that the monopolistic powers provided by the KA to Hadassa are highly prejudicial to the public interest.
- Melbourne kosher meat suppliers are unable to supply meat to kosher caterers (and, under the Policy, to kosher restaurants) in NSW. This is prejudicial to the Melbourne suppliers, to kosher caterers, to kosher restaurants – and, ultimately, to kosher consumers who are denied the benefit of more competitive prices, greater choice and better quality when purchasing from restaurants and caterers.
- While it is aimed at meals prepared for functions, it also prevents caterers from using non-KA meat, even when producing products that will not be used at functions (eg pre-prepared meals sold to private individuals). It prevents caterers

from purchasing Melbourne kosher meat at more competitive prices, even when such meat is used for non-profit functions, such as school camps and charity functions, and for meals on wheels.

Mr Levy also noted that it was unlikely another butcher would open up in Sydney. On previous occasions, the KA had refused applications from other parties who had sought to obtain a butcher's licence.

*The policy is not based on religious grounds*

Front Page also raised concerns that the KA is portraying the meat policy as necessary for religious reasons when this is not the case. It made the following points to support this argument:

- In late 2004, the KA sought submissions from restaurants and caterers about whether they should be able to purchase Melbourne meat. Front Page considers that if Jewish religious law prevented the KA from certifying a caterer or restaurant that used non-KA meat, such a proposal would be out of the question and it would be unnecessary to ask for submissions on the matter.
- Beaches kosher restaurant – which is under the KA's certification – has over the past few years been permitted to source all of its meat from Melbourne. They understand that they have continued to do this even after the Policy was introduced.
- Front Page claims that Beaches is well patronised by the Jewish community, including members of the Rabbinate.
- The KA has given Front Page ad hoc permission in the past to purchase Kashrut Australia (MK) meat. Thus, in January 2005 the KA allowed Front Page to purchase meat from Continental butchery because that meat was priced at \$18.68 per kilo, whereas the meat was approximately \$40 per kilo at Hadassa. If the KA had any real concern about whether the MK meat was kosher, it could not and would not have given ad hoc permission to Front Page to purchase that meat.
- Similarly, they understand that over the past few years the KA has given ad hoc permission to Flavours to use Continental Meat. Such permission would not have been given if there was any genuine concern whether the meat was kosher.
- They are led to believe that from time to time in the past Continental butchery has supplied meat to Hadassa with the KA's knowledge and approval. This is despite the fact the slaughter of the meat was not supervised by the KA, but by MK. During the course of this year, Hadassa has requested that Continental supply certain meat, but Continental did not do so.

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- Similarly, from time to time Hadassa also sources meat (particularly – but not only - chicken) from Solomon’s butchery in Melbourne even though it is not under the KA’s supervision. Further, Hadassa charges a substantially higher price for this meat than Solomon’s charges, even though it is the same meat. For example, Solomon’s quoted Front Page \$14/kilogram for chicken breasts while Hadassa quoted \$24/kilogram, even though it was exactly the same meat.
- The KA has apparently stated that one reason for the Policy is that it does not know whether it can trust the slaughterers who slaughter under the supervision and certification of Kashrut Australia (MK). However, on occasion these slaughterers have been brought to Sydney to assist the KA slaughterers. Front Page considers that this indicates that the KA does trust these slaughterers.
- Further, the KA explicitly endorses Kosher Australia’s certification in its Guide and will allow restaurants and caterers to use any other products certified by it, just not meat. Even though Front Page acknowledges that meat certification needs to be stricter than other products, it still finds it hard to accept that the KA could issue a publication which endorses Kosher Australia generally, but then refuse to let restaurants and caterers use its meat. See annexures “V” and “W” of the Front Page submission.
- Front Page also noted that Solomon’s is under the supervision of the Yeshiva certifying body which is not endorsed by the KA at all. However, as mentioned above, Hadassa is able to source meat from Solomon’s.
- Front Page considers that if religious concerns are driving the Policy, the clause that provides for the KA to source meat from Melbourne in times where there is a shortfall in the supply of NSW meat is logically inconsistent. If the KA has genuine doubts as to whether the Melbourne meat was kosher, it would not allow establishments under its certification to use that meat even at times of shortages in Sydney.
- It also appears the Policy is not based on religious grounds for the following reason. If the KA genuinely considers that Melbourne meat may not be kosher, it would not be able to allow restaurants and caterers who have used it to continue to use the same vessels and utensils, as these are no longer considered kosher as soon as they have been in contact with non-kosher meat. Therefore, the KA would not be able to certify establishments that have previously used Melbourne meat until they had replaced all of their vessels and utensils.
- Front Page also noted that it is still able to purchase pre-prepared products that contain Melbourne meat even though it cannot buy the meat itself –for example it is able to buy meat products from Beaches and retain its licence even though Beaches is still using MK meat.

*Other issues*

Front Page considers that even if one were to assume that there are people in NSW who genuinely trust the KA but not MK, those people are a tiny minority (probably 4-5 families at the most). Thus, the KA's Policy would not be to the benefit of "the public". The vast majority of the public accept MK meat. In any event, even if there was a tiny minority that genuinely did not, these families would be provided for even without the Policy, as Front Page has given an undertaking to the KA that if it uses Melbourne meat at a function, it will provide an analogous meal using Hadassa meat to anyone who requests it. It considers that doing this will allow all members of the community to eat together and hence maintain community cohesion.

The retention of kosher facilities in NSW (the butchery and abattoir) is not dependent upon the third line forcing aspect of the KA's Policy. The local butcher (who uses meat slaughtered at the local abattoir) clearly has the competitive edge in NSW. He has the ability to market directly to customers in NSW. He has the ability to develop personal relationships with NSW customers. He does not have the transportation costs involved with bringing meat from Melbourne. Thus, the local butcher would survive if he is competitive as to price, quality, choice and service. If, on the other hand, he is not competitive as to price, quality, choice and service then it is contrary to the public interest for the third line forcing protection to keep him in business.

Rabbi Milecki noted that the KA is a self-appointed body. While it provides a very useful service, it is not the only body that could do this, although at the moment it is not practical to have more than one certifying body as there are such a limited number of slaughterers. However, should the KA no longer provide certification services, other authorities will step in. The Jewish community in NSW would not be left without a certifying body.

Front Page noted that Hadassa has to pay significant sums per annum to the KA. See paragraphs 71 to 74 of the Front Page submission. Substantial sums have been paid by Front Page to the KA for the years ending June 2003 until June 2005 respectively. See annexure "R" to Front Page's submission. It is clear that the KA is engaged in trade and commerce and is bound by the third line forcing provisions of the TPA. See paragraphs 38 to 53 of the Front Page submission, as well as the authorities cited and annexures referred to in those paragraphs.

More generally, Rabbi Milecki noted that there is a general concern among the Jewish community about the expense and lack of availability of kosher products.

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In response to a query from the ACCC, Rabbi Milecki stated that in his opinion there was no reason why the KA could not certify meat slaughtered under the supervision of another authority, if it believed that the meat was kosher. He noted that this was the system that he understands Beaches operates under.

In response to another query, Front Page explained that Carmel Bakery is currently operating under the supervision of another Rabbi. However, such an arrangement would not be practical for Front Page as it requires multiple supervisors: one at each function and also one at its main premises. Reference was also made to the matters in paragraphs 57 to 66 of the Front Page submission, especially paragraphs 59, 60 and 62.

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In conclusion, Front Page and the other parties present again thanked the ACCC for the opportunity to meet. They emphasised again that the issue was having a negative impact not just on the caterers' businesses but on the community as a whole.

Mr Gregson thanked the parties for attending the meeting. He stated that the ACCC would seek to make a decision on the matter as soon as possible.