

The Kashrut Authority

Serving Australia, New Zealand & the Asia Pacific region

FURTHER SUBMISSION TO ACCC IN RESPONSE TO NSW JBD SUBMISSION OF 7 FEBRUARY 2006.

We refer to the second submission to the ACCC by the NSW Jewish Board of Deputies (JBD), and respond as set out below. We remind the ACCC and the JBD that the New South Wales Kashrut Authority (KA) is a not for profit incorporated association acting in the community interest. It is not out to be a business for profit.

Preliminary observation

There is very little new in this 'second submission'. Much of the material is repeated from the first submission without reference to the KA's response to the JBD first Submission. We refer the ACCC to pages 4-7 of the KA Submission dated 21 September 2005, in response to the first Submissions which dealt, with the JBD propositions. The JBD have still not dealt with those points.

The JBD fails to take into account the critical concern under the relevant provision of the Act being whether there is a public benefit and whether the conduct should be allowed in order to meet that public benefit. The KA has demonstrated in its previous Submissions the causal links between the public benefit and its conduct. It has demonstrated the community objectives can be efficiently met in ways other than through the normal operation of competition in the markets. The JBD in contrast introduces matters which are entirely outside the scope of the *wholesale meat policy* and therefore irrelevant to the considerations before the ACCC.

References below, unless otherwise specified are to paragraph numbers in the JBD Submission.

JBD Introduction

The imputations in the JBD introduction, that the KA is neither transparent nor accountable, are strenuously denied and rejected. This is simply a repeated baseless mantra without substance. As stated in previous submissions, the KA's accounts are fully available and open to the public. The KA meets openly with the public and the caterers. The KA runs an open website and open Web log for exchange of information. Its decisions are microscopically scrutinised, observed and commented on by the local press almost every week, particularly in the Australian Jewish News.

The JBD claims there is "No Submission from the single Kosher butcher operating in NSW, Eilat at Hadassa.". This is blatantly false. The Submission from Eilat at Hadassa was made publicly available from the ACCC website on or about 14 July 2005. The KA specifically referred to that Eilat at Hadassa submission when writing the K.A's response to the initial submissions. That response was also published on the ACCC website.

Paragraph 6:

The JBD fails to mention that the two other kosher certification authorities in Melbourne do not accept the authority of 'Kosher Australia Pty Limited' for their respective constituency. Some people will simply not eat meat certified by Kosher Australia Pty Limited. Similarly, there are people who will not eat meat supervised by either of the other two certifying authorities in Melbourne, whilst almost without exception everyone eats meat supervised by the KA.

Paragraph 7

As stated in numerous responses, it is not in the public interest nor to the public benefit to opine on the quality of other certification bodies outside the jurisdiction of NSW. This is only divisive and damaging. The JBD have failed to take on an informed response to the Submission of the NSW KA on this point. The JBD fail to acknowledge that certain communities will not accept Kosher Australia Pty Ltd certification.

Paragraph 11

This suggestion is another example of certain participants in this review having a casual and possibly reckless disregard to the facts. To even suggest that the closure of a restaurant was due to meat pricing has repeatedly been dealt with by the KA. Business failure or closure is NOT due to the meat price. The lack of custom and support from the community could possibly be closer to the cause of closure. Furthermore, the suggestion is that Beaches was fine for all those years then came unstuck in only in the last few months.

Paragraph 12

Should the KA have told the caterers and their customers to cancel their functions due to a shortage of meat? No. It is consistent with Jewish Law to allow certain flexibility. See KA submission dated 24 October. The JBD has not dealt with this submission

Paragraph 13.1

That could happen and it did happen recently, example Carmel bakery. Without KA supervision that business was dramatically affected as there was lack of public confidence in the replacement certification procedure.

Paragraph 15

The JBD ignores one of the most important causal links between the public benefit, and the KA's conduct for the public interest. Prior to the establishment of the KA there were numerous certification bodies, the result of which was chaotic for the consumers of NSW. The unifying factor of the KA was one of its central public policy achievements. The public benefit is in the maintenance of a universally accepted standard which all consumers will accept. (See previous KA submissions)

Paragraph 16

The JBD conflates all other kosher product together with the *wholesale meat product* in order to make its point. The wholesale meat market caterers are a completely different economic proposition to the retail market

Proposition 2:

Essentially what the JBD is requesting is the equivalent of requiring the RTA (Roads and Traffic Authority of NSW) to allow me to register my car in Queensland and pay my registration fees to Queensland because it is cheaper in Queensland even though I will drive my car mainly in NSW. There are cultural and geographic differences and community differences. The KA in NSW works within those cultural and community differences. Open competition among different certification agencies in America is not analogous given the size of the market and the nature of the diverse communities.

Proposition 3

The JBD has not made out any evidence to support its proposition. It simply restates its desire that there should be numerous certification bodies and numerous outlets with varying degrees of acceptability. If the JBD's suggestions were taken, the community would be dragged back to the pre 1980s where they were

divided at public and private functions and in certain homes. See earlier KA submission. The current proposition as submitted and published by ACCC on its website is that there will be intrastate competition among meat wholesaling and retailing within NSW. Competition will be both at the consumer and wholesale level. It is likely that prices will fall due to the cost of ritual slaughter reducing and being spread among numerous players.

The public benefit in NSW is not as the JBD suggests 'to accommodate different standards of Kashrut' but to ensure that there is a generally acceptable standard which everybody will accept. This is the major public benefit and aim. Conversely, numerous standards lead to a divided community which in turn would lead to higher unit prices and higher servicing costs.

Proposition 4

The new entrant into the wholesale and retail meat market in NSW asserts that it will be able to match Melbourne wholesale prices. There is no reliable dispassionate independent evidence of the JBD claim of monopolistic pricing policies by the local butcher. As mentioned before there is substantial competition at the retail level and there will be substantial competition at the wholesale level with the introduction of the new meat suppliers.

Paragraph 36

The curious submission is refuted by the fact that kosher consumers are not forced to go to Eilat at Hadassa, but plenty do. If Eilat at Hadassa is not competitive then those consumers will go the supermarkets provided that they accept MK certification.

The entire series of propositions under this fourth proposition presumes the continued existence of ritual slaughtering in NSW. If the JBD is wrong and ritual slaughter ceases in NSW the community will not be thanking the JBD for such intervention. The KA certainly does not want to take the risk, as it has the communities' interests as its principal concern.

In Summary there is not a great deal added by this Submission except theoretical arguments about open market in competition without the JBD understanding the intimate peculiarities of such competition between the State.

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