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27 July 2015

Committee Secretariat
Senate Standing Committees on Economics
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Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Sir/Madam

Re: Inquiry into Third Party Certification of Food

The Executive Council of Australian Jewry (ECAJ), the elected representative organisation of the Jewish community in Australia, presents the following submission on behalf of the Australian Jewish community in response to the Committee's inquiry into Third Party Certification of Food. This submission addresses certification of food in Australia as kosher - that is, fit for consumption according to Jewish religious law. The first section of the submission provides a brief outline of the meaning of "kosher" and "kashrut", as necessary background. The remaining sections correspond to the Inquiry's terms of reference.

1. Meaning of "Kosher" and "Kashrut"

The word "kosher" means "proper" or "fit for use". It describes the acceptable status of food products in accordance with the Biblically-based dietary laws of the Jewish faith. These laws are extremely intricate, taking up many volumes of ancient and modern scholarly texts and teachings. Reliable and acceptable endorsement of items as kosher requires considerable scholarly and technical knowledge and expertise. The word "kashrut" means the body of rules and traditions that make up Jewish religious dietary laws.

By way of background only, the following is a highly simplified outline of those laws:

- Very specific rules govern the processing of meat and meat products for consumption. Permissible meat is confined to a limited range of animals defined as "having split hooves and chewing their cud". This includes beef, veal and lamb but excludes, for example, pig, horse, camel and all carnivorous animals.

- Further, the “kosher” animal must be killed for consumption by specially trained and religiously observant Jewish personnel in a procedure conforming to strict rules that ensure a swift, clean kill.
- Poultry is similarly categorised into acceptable and non-acceptable species, based on a Biblical listing. Chicken and turkey are acceptable species. Wild duck and all carnivorous birds of prey are not. The acceptable poultry must be prepared for consumption under similarly strict regulations governing killing and processing.
- Kosher meat certification rules are not just confined to the meat itself but also govern the acceptability, or otherwise, of the use of everything derived from the animal/meat or otherwise of animal/meat origin. This includes animal-based food products such as tallow-based fats and margarines, and also less obvious animal-derived products such as processing aids like gelatine, emulsifiers and rennet.
- The addition of any non-kosher animal or animal-derived products into other products also renders the final product as non-kosher.
- Kosher laws define the acceptability or otherwise of fish and seafood. Only fish and sea-food possessing defined scales and fins are permitted according to Biblical law. This excludes octopus, shark and whales and all shell-fish and crustaceans such as oysters and crabs and their derivatives.
- The mixing of meat and dairy products or their respective derivatives, is prohibited by Biblical law.
- There are also regulations regarding the acceptability of consumption of various fruit and vegetables, again based on specific Biblical regulations.
- Production of kosher items in equipment that was previously used for non-kosher products also renders the otherwise kosher product non-kosher – unless the equipment first undergoes a specific “cleansing” process to remove any trace of the previous non-kosher “contamination”.
- It should be noted that the declaration of food as kosher is merely an assessment of the ingredients and method of production. No blessing is made to make an item kosher. There is no religious ritual performed over a foodstuff nor is any religious change made to the foodstuff.

2. Extent of kosher certification in Australia

The NSW Kashrut Authority Inc, ABN 40 334 602 651, (‘NSWKA’) is the sole permanent kosher certifying authority in NSW. NSWKA is incorporated under the

Associations Incorporation Act 2009 (NSW). It also provides kosher supervision to companies in New Zealand and the Asia Pacific Region.

Kosher Australia Pty Ltd (formerly Melbourne Kashrut Pty Ltd) ABN 22 074 523 989, ('KAVIC') is the principal kosher certifying authority in Victoria. It also provides kosher supervision to companies throughout Australia and the Asia Pacific Region.

Because of the higher number of Jews living in Sydney and Melbourne, NSWKA and KAVIC account for well over 90% of kosher certification services in Australia.

Two significantly smaller kosher certification authorities, Adass Vaad HaKashrus ABN 74 027 628 053 ('AVH'), and Agudat Chabad also operate in Victoria, but serve mainly their own communities.

In Western Australia, where the number of Jews is about one-fifth the number in Victoria or NSW, the Kashrut Authority of Western Australia (KAWA) is the sole kosher certification authority. KAWA is a sub-committee of the Perth Hebrew Congregation, a not-for-profit incorporated association. KAWA operates with minimum formality through two boards, one rabbinic and one lay. Rabbi David Freilich is the chair, and a rabbi from each of the other Jewish Orthodox congregations in Perth is a member of the rabbinic committee. The lay board is administered as part of the Perth Hebrew Congregation. Most kosher products sold in Western Australia come from Victoria or NSW and are certified by the kosher certifiers in those states. A number of kosher products are manufactured locally, and KAWA provides certification after an investigation and report is provided to the rabbinic committee and appropriate arrangements are made with the lay committee.

Although there are organised Jewish communities in Queensland, South Australia, the ACT and Tasmania, they are much smaller in number than the Jewish communities in Victoria and NSW. No kosher certification authorities operate in these states. However, kosher supervision is often undertaken on a very small scale in these communities by the local rabbis.

Kosher consumers in these states source the majority of specialised kosher products from Victoria or NSW or from overseas if they have been approved by a recognised kosher certification authority. Many ordinary household items available in supermarkets are already certified by the larger agencies.

Because of the importance of kosher certification services to the Jewish community, the roof body of the Jewish Community in NSW, the NSW Jewish Board of Deputies, which is a constituent organisation of the Executive Council of Australian Jewry, has from time to time over the last 65 years undertaken reviews of, and inquiries into, the provision of those services. These inquiries make recommendations that are often the subject of healthy communal debate, all aimed at providing the best possible kashrut services with the best possible governance, for the community. In NSW, the most recent such inquiry was commissioned by the NSW Jewish Board of Deputies in 2014. We understand that

arising from that enquiry, there are plans to establish a second kosher supervisory body in NSW with plans to provide limited kosher certification.

Kosher certifiers investigate and certify a wide range of products, and also certify restaurants, bakeries, vendors, caterers and other suppliers of kosher products and services. Almost all of the kosher slaughter of animals and poultry in Australia occurs in Victoria and NSW, and is supervised by KAVIC, NSWKA, Adass Israel and Agudat Chabad. KAWA also supervises a small quantity of kosher slaughter periodically.

Traditionally, an observant Jew does not necessarily depend on a recognised kosher certification authority for verification that a food product is kosher, as any ordained rabbi has the qualifications to provide such verification, and this will be sufficient for any Jew who accepts that rabbi's authority in kashrut matters. However, given the complexity of modern food technology and food production, the prevailing contemporary view in Jewish communities around the world is that kosher certification requires a rabbi with a combination of education and experience in food science, technology and production methods as well as a depth of knowledge of kashrut to ensure that Jewish religious law is complied with. The larger and more professional kosher certification authorities around the world often employ food chemists and other specialised personnel to assist the rabbi or rabbinic board in assessing and granting kosher certification when it is applied to the numerous components which exist in the food production process.

Due to these complexities and the specific knowledge and experience required, the Rabbinical Councils of Victoria and NSW (which jointly account for almost all of the communal rabbis in Australia) only recognise and endorse the Australian-based certifiers referred to in this submission. Other private certifiers may operate, but these are not recognised by the Rabbinical Councils.

The overall kosher market in Australia is small. We would estimate the number of Jews in Australia who keep kosher in one form or another at about 30,000.¹ However, the number is much higher if one includes Jews who choose to consume kosher products from time to time, especially during Jewish festivals or other religious occasions or at family or community celebrations. There is also a growing number of people who are not Jewish who, for a range of reasons, choose to buy certain food products because they are kosher, as is the situation in many other countries.

We believe that the number of kosher consumers is slightly higher in Melbourne than in Sydney because the Melbourne Jewish community is slightly larger in numbers, and the level of observance of kashrut within the Jewish community in Melbourne is somewhat higher.

¹ The estimate is based on the assumption that some 25% of Australia's approximately 120,000 Jews identify as 'strictly Orthodox' or 'modern Orthodox', the two groups in the Jewish community who can be assumed to keep kosher. That percentage is extrapolated from figures produced by the Gen08 survey of the Australian Jewish community conducted under the auspices of the Australian Centre for Jewish Civilisation at Monash University: <http://artsonline.monash.edu.au/gen08/files/2012/12/gen08-report1-preliminary-findings.pdf> at p29.

It should be noted that the kosher food industry in Australia is separate to the organisations which provide kosher certification. The kosher food industry involves manufacturers and suppliers selling food products to kosher consumers for profit. The kosher certification authorities provide certification and/or approval of products, and operate on a not for profit basis.

3. Current labelling requirements for food certified as kosher

Kosher certification agencies in Australia operate on the assumption, and expectation, that the prohibitions against misleading and deceptive conduct in the *Competition and Consumer Act 2010* requires kosher products, and only kosher products, to be properly labelled as such. There may be similar requirements in other parts of the law, such as the general law of contracts and the Food Standards Code. We consider requirements for clear labelling to be essential to enable consumers to make an informed choice about whether a product is or is not authoritatively certified as kosher.

A consumer who observes kashrut will not accept labels such as “Kosher Style”, “Kosher Friendly” or “Kosher Compatible” that have been applied by some manufacturers on their products in an attempt to market their products to such consumers. This kind of labelling is grossly misleading as there is often no attempt to ensure, and certainly no guarantee, that kosher rules have been adhered to in any way. Similarly misleading are claims or labels applied solely by manufacturers or sales people representing that the product is kosher. It is extremely rare to find any manufacturer or sales person who has the expertise and knowledge of the intricacies of the rules of kashrut to be able to honestly and expertly guarantee such a claim.

KAVIC and NSWKA each have their own distinct mark or logo, as do kosher certifying authorities in many other countries, such as in the US, Israel, Europe, Britain and South Africa. The labels of products that are certified as kosher by KAWA state the name of KAWA (and of Rabbi David Freilich as Rabbinic chairman) and that the product is certified as kosher. A food product will only be considered to be certified as kosher in Australia, if it carries the distinct mark or logo of one of the Australian kosher certification authorities or an overseas mark of an international kosher authority which the Australian kosher certification authorities accept as reliable or is listed in the Kosher Food Guides produced and issued by KAVIC and NSWKA. These marks and logos are listed on the websites and in the publications of NSW KA (<http://www.ka.org.au/>) and KAVIC (<https://www.kosher.org.au/>).

Products such as all kosher meat, poultry, fish and baked or other specific products that are produced in special batch productions specifically for kosher certification will all bear the logo, or other formal endorsement information of the certifying agency on the label or packaging, and are readily identifiable accordingly.

Kosher certified butchers, restaurants, take-away food outlets and kosher catered events will all be clearly advertised as kosher. Specific details of kosher certification will be ad-

vertised on store windows, cards placed on tables at catered events, or in kosher certificates that will be displayed publicly in the store or premises.

Many regular food items found in supermarkets or other outlets, that have been certified as kosher after due investigation, will either bear a logo of the kosher certifying agency on the packaging or else be listed in the Kosher Food Guide published by the local certification agency.

Local Rabbinical associations or the local accepted communal kosher agencies will advise regarding the authenticity and reliability of any particular certification, logo or agency that may not be familiar to the consumer.

4. The need for labelling on products produced by companies that pay kosher certification fees

Labelling by a certifier assists kosher consumers to easily identify the products which they can consume without the need to continually refer to the Kosher Food Guides referred to in section 3 above.

For consumers wishing to purchase kosher products, there is clearly a need to ensure honest, reliable and acceptable certification. Usually this is ensured and self-maintained by the official communal religious organisations of the communities being serviced by their kosher certification agencies. In addition, substandard certification will eventually be subject to scrutiny and rejection by the consumers themselves.

In an increasingly diverse and cosmopolitan market there is a need to identify reliable and acceptable agencies in a more formal and universally recognisable way. In recent years a number of the universally recognised international kosher certification agencies formed an international organisation called the Association of Kashrut Organisations (AKO). Based in the USA, this organisation extends membership to international agencies that it monitors to ensure that they maintain acceptable prevailing standards of kosher certification. This allows kosher consumers world-wide to rely upon the standards and endorsements of member agencies, of which there are currently approximately one hundred. KAVIC and NSWKA are member agencies.

A major purpose of the certification process is to ensure the availability of special food items and services that are provided specifically for the use of consumers who wish to keep kosher. These include the provision of kosher processed meat and meat products by kosher certified butchers as well as the certification of certain specific kosher items, such as baked goods and various varieties of take-away food which, by their very nature, cannot be produced together with non-kosher items without also rendering them non-kosher. These products are generally provided via specialised appropriately signed outlets servicing the Jewish community and are readily identifiable as kosher accordingly. These products will often require specific ongoing supervision of special batches - again specially sealed and marked so as to be readily identifiable as produced specifically to meet kosher requirements.

In addition to kosher-specific productions, the investigation and assessment of various readily available food items is undertaken at the request of various companies interested in attracting kosher consumers, such as large international companies seeking endorsement for their products in order to attract overseas trade and also local manufacturers seeking to improve domestic sales in Australia by being able to sell into the kosher market. The investigation and kosher certification of readily and generally available food products (such as those generally available in local supermarkets) will entail:

- An application by the food company, which initiates a preliminary assessment by the kosher certifier to identify any obvious initial obstacle to kosher certification (such as a restaurant that uses non-kosher meat).
- Often this will involve a complete review of all ingredients and processing aids which are used. These are assessed to ensure conformity with kashrut. The assessment can result in discussions and suggestions as to possible replacement of non-kosher ingredients which are identified.
- In addition, the manufacturing plant is physically inspected to ensure, *inter alia*, that equipment being used is not shared with other non-kosher production. If this is found to be so, then a discussion will take place to determine the extent of any “contamination” from contact with the non-kosher product and whether steps can be implemented to rectify the problem and meet kashrut requirements.
- The final stage involves the company entering into a formal contract with the kosher certifier, usually with conditions such as guaranteeing there will be no changes to ingredients or processing methods of the kosher certified items without prior consultation, and also outlining required conditions for monitoring ongoing production – usually via annual or more regular audits.

5. **Whether kosher certifiers provide enough information for Australian consumers to make informed purchasing decisions**

The websites and publications of NSW KA and KAVIC provide extensive information about which products are certified as kosher (Kosher Food Guides), which products can be considered kosher without certification, and also about the certification process itself. Both organisations also answer telephone inquiries and via social media.

The NSWKA recently introduced its KA iKosher App for iPhone, iTouch and iPad. This App features an easy-to-navigate Dashboard and facilitates real-time access to a wide range of essential kashrut information and tips. KAVIC also has an App which lists all of the products investigated by KAVIC.

6. **Details regarding certification fees paid by food producers and/or manufacturers and the potential for these to impact on prices for consumers**

Certification fees are divided into two basic categories. The first, is for administration and supervision fees charged for exclusive batch supervision and certification of kosher certified butchers, bakeries, restaurants, take-away food outlets, and caterers. The second, covers the administration and associated costs involved in the investigation, assessing and certification of general food items available to the general public.

In the first category, all expenses are born exclusively by the consumers who specifically seek to purchase kosher products. All items and facilities are identifiable by public notice in the shop premises or on the items.

In the second category, we have only second-hand information from the companies themselves as to whether kosher certification expenses add any extra cost to the general consumer's final price. The annual fee paid to a kosher certifier by such a company is a cost that is often spread over a massive quantity of product - resulting in negligible extra cost per unit. Companies that obtain certification of their products from kosher certification authorities in Australia claim that the annual cost of kosher certification is no greater than an average newspaper advertisement, but provides far more value for money in that it helps attract an identifiable customer base.

- **Sources of revenue**

We are informed by NSWKA that about 90% of the revenue of NSWKA comes from kosher consumers within the Jewish community, through fees generated via kosher-catered functions, kosher butchers and other kosher shops. The revenue from certification fees paid by manufacturers supplying the general market is only about 10% of the overall revenue. Our understanding is that the amounts involved in the latter are too small to impact on prices. In each case the annual certification fee represents a fraction of a cent per unit produced over the year.

We are informed by KAVIC, that the same 90:10 ratio applies to the sources of revenue of KAVIC. That is, 90% comes from kosher consumers within the Jewish community, through fees generated via kosher-catered functions, kosher butchers and other kosher shops, and the remaining 10% comes from certification fees paid by manufacturers supplying the general market.

KAWA generates a small amount of revenue by way of license fees and supervision fees for kosher functions, virtually all of which comes from kosher consumers within the Jewish community in Perth.

- **Destination of revenue**

NSWKA makes no distribution of any income to any external organisation or person. All income is absorbed in financing operating costs and improving services to kosher consumers.

KAVIC was incorporated in 1996 and its shares are owned by Mizrachi Nominees Proprietary Limited. Mizrachi is a Hebrew acronym for *Merkaz Ruchani* meaning Religious Centre. The Mizrachi movement is one of the largest streams of orthodox Judaism in Melbourne. It operates several synagogues, a youth movement, an adult education centre and a co-educational school – all in Melbourne. Between 1957 and KAVIC becoming incorporated in 1996, kosher certification services in Victoria were provided by Mizrachi. At that time, such services were provided in an ad hoc way by Mizrachi rabbis and other personnel, usually at a loss, which was absorbed by Mizrachi, even though the certification services that it provided were for the benefit of the whole Jewish community. With the incorporation of KAVIC, steps were undertaken to engage full time staff such as a Rabbinic Administrator and a general manager to manage the day to day activities of the kosher certification services in Victoria.

Mizrachi continues to provide office facilities and other overheads to KAVIC, and in effect underwrites any losses it may make in any year. Any surplus which is generated by KAVIC, is partially used to financially improve and expand its own operations, to provide product and other information to consumers, including investing in new technology to answer consumer inquiries. Any remaining surplus is remitted to Mizrachi Nominees, partly in return for the provision of office facilities and other overheads, and partly to return to the Mizrachi Organisation the support it provided for kosher certification services for many years when KAVIC could not recover its costs and expenses from revenue derived.

The fees generated by KAWA are received by the Perth Hebrew Congregation and are used entirely to offset the cost of providing kashrut services (principally supervision and administrative costs). No board member receives any remuneration or benefit.

7. The importance of kosher food certification schemes in relation to export market access and returns to producers;

The kosher certification standards of NSWKA and KAVIC are recognised by most of the major kosher certification authorities in the US, Israel, Europe, the UK and South Africa. As a result of this international acceptance and recognition, both NSWKA and KAVIC are able to certify a range of ingredients utilised in the production of food products and fully manufactured food products on behalf of Australian food manufacturing companies which seek to broaden their customer base by exporting their products all over the world.

8. The extent and adequacy of information available to the public about kosher certifiers including, but not limited to, certification processes, fees and financial records

As regards certification processes, see section 4 above.

The financial details of the operations of KAWA are included in the annual accounts of the Perth Hebrew Congregation, which are made available to its members.

In addition to complying with the respective statutes under which they are incorporated, NSWKA and KAVIC are each registered with the Australian Charities and Not-for-profits Commission (ACNC). Both organisations lodge an annual information statement with the ACNC and these are publicly accessible. For the 2014 statement onwards, this will have to include audited accounts.

Audited Financial Statements of NSWKA are also available via the NSW Office of Fair Trading and the most recent audited accounts can be found via the NSWKA website.

NSWKA and KAVIC are each registered for GST and therefore include GST on their invoices when GST is payable and remit the GST collected.

It is clear that NSWKA and KAVIC meet their financial and other reporting obligations according to law.

9. Other related matters

We submit that it is entirely proper that kosher certifiers are listed on the ACNC register, as they are providing a legitimate, long-established religious service, on a not-for-profit basis, the cost of which is borne overwhelmingly by people who choose to be kosher consumers. In the vast majority of cases this choice is made in order to observe Jewish religious and cultural traditions. The kosher market is small in Australia, and people who choose to be kosher consumers already pay more for their meat and other products than other consumers. If kosher certifiers were no longer to be treated as not-for-profits, this would lead to even higher prices for kosher products, putting them out of the reach of many kosher consumers, and seriously compromising their capacity to exercise their religious freedom. Further should kosher certification in Australia be restricted in any manner, this would impact to the detriment of the Jewish communities of Australia as it would potentially reduce the selection of Australian produced kosher foods and would require the kosher consumers to rely upon more expensive imported products.

This submission has been approved by NSWKA, KAVIC and KAWA.

We consent to this submission being published by the Committee.

Yours sincerely

Robert Goot SC AM
President

Peter Wertheim AM
Executive Director