



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON RURAL AND REGIONAL AFFAIRS
AND TRANSPORT

Reference: Meat marketing

WEDNESDAY, 9 JULY 2008

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfoweb.aph.gov.au>

**SENATE STANDING COMMITTEE ON
RURAL AND REGIONAL AFFAIRS AND TRANSPORT**

Wednesday, 9 July 2008

Members: Senator Sterle (*Chair*), Senator Siewert (*Deputy Chair*), Senators Heffernan, Hutchins, Hurley, McGauran, Nash and O'Brien

Participating members: Senators Abetz, Adams, Allison, Barnett, Bernardi, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, George Campbell, Chapman, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hogg, Humphries, Johnston, Joyce, Kemp, Kirk, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McEwen, McLucas, Marshall, Mason, Milne, Minchin, Moore, Murray, Nettle, Parry, Patterson, Payne, Polley, Ronaldson, Scullion, Stephens, Troeth, Trood, Watson, Webber and Wortley

Senators in attendance: (Heffernan, Fisher, O'Brien, Siewert, Sterle)

Terms of reference for the inquiry:

To inquire into and report on:

Meat marketing, with particular reference to the need for effective supervision of national standards and controls and the national harmonisation of regulations applying to the branding and marketing of meat.

WITNESSES

Donaldson, Mr John, Compliance Officer, Western Australian Meat Industry Authority	16
Gorrie, Mr Geoff, Chair, Safe Food Production Queensland.....	24
Paliskis-Bessell, Ms Renata, Chief Executive Officer and Managing Director, Western Australian Meat Industry Authority.....	16
Ridgway, Mr Nigel Cameron, General Manager, Compliance Strategies Branch, Australian Competition and Consumer Commission.....	2
Saunders, Mr David Michael, Projects and Operations Manager, Western Australian Meat Industry Authority.....	16

Committee met at 10.12 am

CHAIR (Senator Sterle)—I declare open this public hearing of the Senate Standing Committee on Rural and Regional Affairs and Transport. The committee is hearing evidence on the committee's inquiry into meat marketing. This is a public hearing and a *Hansard* transcript of the proceedings is being made.

Before the committee starts taking evidence, I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is being taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

On behalf of the committee, I would like to thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

[10.15 am]

Ridgway, Mr Nigel Cameron, General Manager, Compliance Strategies Branch, Australian Competition and Consumer Commission

CHAIR—Welcome. Would you like to make a brief opening statement before we go to questions?

Mr Ridgway—If it would be helpful. I understand that the committee may have some questions about the ACCC's role and function in relation to industry codes of conduct, both voluntary and mandatory. I can, if it would be helpful, provide a short opener to provide a bit of an explanation of that role.

CHAIR—That would be helpful.

Mr Ridgway—I am happy to do so. The ACCC administers the Trade Practices Act. Part IVB of the act deals with both mandatory and prescribed voluntary industry codes of conduct,. That part was added to the Trade Practices Act in 1988. At the moment the ACCC administers three mandatory codes of conduct—the franchising code, the horticulture code and the oil code of conduct. There are no prescribed voluntary codes of conduct in place at the moment.

The engagement of the Trade Practices Act with these mandatory codes of conduct results in the fact that the ACCC both administers and enforces those industry codes—as it does the Trade Practices Act. The sanctions, the remedies, available for contraventions of those codes under the Trade Practices Act apply to the extent of compensation orders, injunctions and other orders that are appropriate. There are currently no pecuniary penalties that apply to that part of the act.

It is my understanding that a prescribed voluntary industry code would not apply to the whole of a sector, as a mandatory industry code does, but to certain signatories to an industry code that may well be prescribed by the government. It would ensure that those organisations, companies, that subscribe to that prescribed voluntary code would themselves be subject to that code as law and the remedies available under the Trade Practices Act for contraventions of mandatory codes or codes specified under that part would also be available for contraventions of the prescribed voluntary code.

The commission also engages fairly extensively with industry for non-prescribed voluntary industry codes, or simply 'voluntary industry codes', in two significant ways. Firstly, in relation to the role of administering and enforcing the provisions of the Trade Practices Act that go to anti-competitive conduct, we ensure that, where an industry code has elements that may risk contravening the competition provisions, we are able to consider, under the public benefit test, whether the code should nonetheless be allowed to stand and be authorised by the ACCC, where the public benefit of such a code would outweigh the perceived anti-competitive impact. We have engaged with a number of industry codes on that basis. Perhaps the most well known of those recently would be the Medicines Australia industry code, which deals with promotional efforts and so forth by pharmaceutical companies. But we also engage with a range of other industry codes on that basis.

Separately, we provide some assistance to industry associations that wish to develop industry codes of conduct to engage in some self-regulatory behaviour to ensure that high standards of conduct in the industry sector are maintained. We provide advice on practical aspects of industry codes that are more likely than not to foster a successful outcome. That is probably it.

CHAIR—Thank you. I am sure there are going to be a number of questions.

Senator HEFFERNAN—The horticultural code—do you think you have sorted out the mafia in the markets?

Mr Ridgway—The ACCC has been fairly active in administering and enforcing the horticultural code. The committee may or may not be aware that we engaged in a significant range of educational activities initially, before the code was introduced and shortly after the code was introduced; we continue to be able to provide education and advice. We have also taken a number of traders to task in the sector recently.

Senator HEFFERNAN—What is ‘task’ code for?

Mr Ridgway—We have accepted some administrative undertakings. We have accepted some enforceable undertakings.

Senator HEFFERNAN—Can you give us an example of that?

Mr Ridgway—I would have to check for details.

Senator HEFFERNAN—You see, you are fluent bureaucratically but not practical, to me. You are very good with the bureaucratic spiel but, when it comes to touch and feel, I have not heard one thing you have said this morning that I could touch and feel.

Mr Ridgway—Okay. Perhaps I could in less bureaucratic language note that some traders—

Senator HEFFERNAN—I mean, we are dealing in the markets in Melbourne, for instance, where there are well-established mafia. I want to know what you have done about that.

Mr Ridgway—We have investigated a number of concerns that have been raised with us and, not speaking directly about traders in the Melbourne market but in other markets, such as in Western Australia, we have found evidence that suggests contraventions of the horticultural code and we have required the traders to fix up the errors that they have engaged in and to—

Senator HEFFERNAN—What would be an example of the errors?

Mr Ridgway—The code requires, for example, that terms of trade are publicly posted and that the traders engage with the growers that they trade with with horticultural produce agreements that are compliant as prescribed by the horticultural code. We have had indications that some of the trade in that sector has not been consistent with the requirements of the code.

Senator HEFFERNAN—But you are still talking bureaucracy. Give me an example. Does someone lob down there with a load of lettuce and get into trouble because he is not signed up to

the mob, as it were? I know of instances of that, by the way. Give us an example. You have not touched anything yet. Give me an example of what you have discovered.

Mr Ridgway—Okay. The best example would be—and forgive me—

Senator HEFFERNAN—If you do not know the answer just say, ‘I don’t know’—just specifics.

Mr Ridgway—I might want to stay away from specifics so as not to misdirect the committee.

Senator HEFFERNAN—But you do not have to say in what state. You can say, ‘In a market in Australia this happened.’

Mr Ridgway—Okay. Generally, the mischief that we have seen so far has been that some of the wholesalers in the markets have not had in place the horticultural produce agreements that the code requires them to have in place. We have taken some of those traders to task. There have been other instances where the horticultural produce agreement itself has not been consistent with the requirements of the code. We have required those agreements and the templates that have been provided by the chambers of fruit and vegetable to be amended so that they comply, in our view, with the requirements of the code.

Senator HEFFERNAN—So to try and still get the answer to something that I can touch, have you discovered people that operate in the markets that do not disclose whether they are the agent or the reseller? That is what it comes down to. Blokes that go in there on a big day get duded; there is no question about that.

Mr Ridgway—We have some matters under investigation at the moment that may go to that issue of whether or not the wholesaler is acting as a trader, a merchant or an agent. They are matters that are under consideration and I probably cannot go into any more detail about them at the moment.

CHAIR—We might come back to meat and the relevance of the horticultural code and, if there has been a harmonisation of meat, what your experiences have been briefly, which you have touched on.

Senator HEFFERNAN—The reason I brought that up is that I would not necessarily have much confidence in the ACCC being effective in a meat shop, because it is as big a rogue as the vegetable blokes.

Mr Ridgway—Was there a particular—

Senator HEFFERNAN—No, I am just passing over.

Senator FISHER—I would like to ask a couple more questions about the horticultural code to get an idea, if there were to be a role for the ACCC in respect of meat, of the sorts of advances the ACCC may or may not have been able to make in respect to horticulture to see whether they may or may not be applicable in respect of the meat sector. Regarding the nature of the alleged breaches of the horticultural code that the ACCC has been looking at, without disclosing

anything, you have indicated the nature of one sort that is in respect of which a particular person is a wholesaler or an agent or something different. Can you give us examples of the nature of other allegations of breaches that the ACCC has been actively engaged in investigating?

Mr Ridgway—There were allegations regarding the opportunity provided by the horticulture code for certain existing written agreements to be grandfathered by the operation of that code and therefore exempt from its operation. Certain traders were asserting that they were relying on those grandfather agreements where the complainants were suggesting that they were not actually grandfather agreements in place and that, if that were the case, they were therefore in effect trading in contravention of the horticulture code.

Senator FISHER—Can you give us an example, without disclosing the specifics, of what sorts of things a grandfathering agreement might say, were it to exist—to give us a hands-on feel.

Mr Ridgway—Basically the code provides that, if there is a written agreement on or before 15 December 2006—I believe that is the date, but I would have to check the detail—regardless of the terms of that contract, to the extent that it continued to be in place between the parties, the requirements that are imposed by the code on those who do not have that agreement would not be imposed on those two parties. So the agreement could really be a matter of discretion between the two parties. That is basically it.

Senator FISHER—So that is the nature of another sort of allegation. Chair, I am not sure how much time I have.

CHAIR—You have plenty of time.

Senator FISHER—Could you continue with examples of allegations of breaches that the ACCC has been actively engaged in in the horticultural sector. My next question then will be: what sort of analogies do you see, if any, between the horticultural sector and the meat sector in terms of a potential role for the ACCC?

Mr Ridgway—I think I might have to take that question on the details of other breaches on notice, if that is okay. It is just that we do have a range of them and it has been some time.

Senator FISHER—Thank you. In so doing, I would ask that you also provide further particulars. These are the sorts of allegations that the ACC has been investigating.

Mr Ridgway—Yes.

Senator FISHER—Over a period of time, how many complaints have you received, how many have you investigated, how many have you proceeded to prosecution or otherwise, how many convictions have you had and what has been the outcome—essentially the standard data that you may have provided to estimates in the past.

Mr Ridgway—Sure.

Senator FISHER—Moving now to the meat sector: do you see, hypothetically to begin with, a potential role for the ACCC in terms of lamb marketing?

Mr Ridgway—To the extent that I am familiar with the issues being considered by the committee, the Trade Practices Act obviously already has provisions that prohibit misleading or deceptive conduct. To the extent that there are concerns about products being wrongly labelled and therefore arguably misrepresentations being made about the nature of that product, the ACCC already has a role that complements the work of the state licensing authorities and so forth.

Senator HEFFERNAN—If they supervise it. If they do their job, you can do your job.

Mr Ridgway—Indeed. The act is there to assist in the broad where there is misleading or deceptive conduct.

Senator HEFFERNAN—But you cannot do your job unless they do their job.

Mr Ridgway—If we had direct evidence—

Senator HEFFERNAN—But you do not have.

Mr Ridgway—No, we do not. We have had only one complaint in the last two years that I know of relating to this sort of issue. Although we pursued it to some degree, there was just a lack of evidence to substantiate it. So we do actually carry that role. But that is probably the short answer.

Senator FISHER—You are getting back on notice in respect of the allegations raised in the horticultural sector, but have you investigated allegations of misdescription in the horticultural sector? Is that an issue in the horticultural sector and have you investigated allegations to that end?

Mr Ridgway—The short answer is no. The obligations imposed by the horticulture code go to issues of transparency in the supply chain between growers and wholesalers and certainty of return.

Senator FISHER—Are there any other sectors which have codes of whatever sort whether it is mandated. You said there are no prescribed voluntary. You have referred to some industry codes. Are there any other sectors with codes of a sort in which the ACCC is or has been involved where misdescription or mislabelling has been the subject of complaint and is an issue?

Mr Ridgway—Not in the mandatory codes. The mandatory codes that are in place at the moment all deal with supply chain relationships between large and small traders in each of the sectors that those codes apply to. With the voluntary industry codes, the one that comes to mind would be the supermarket scanning code, which is not exactly an issue of misdescription but an issue of a self-regulatory code that deals with discrepancies between—

Senator FISHER—Mistakes.

Mr Ridgway—Price at the check-out and price on the shelf, and that code provides for certain remedies to be available to consumers in the event that an error occurs.

CHAIR—Is there a big-stick approach if someone does not follow the guide or code?

Mr Ridgway—The ACCC together with the fair trading agencies—the consumer affairs bureaus around the country—all have a regular process of monitoring, and there is some surveying of those issues.

CHAIR—Do you have a legislative bat that you can whack them around the head with if they step out of line? You do not?

Mr Ridgway—I suppose the short answer is: if someone represents that they are complying with the code and they do not actually comply with the code then that is arguably a misrepresentation. We would have to look at it on a case by case basis to see what the representation was and what the conduct was.

Senator HEFFERNAN—Are Woolworths and Coles excluded or included?

Senator FISHER—In the supermarket code are you talking about?

Senator HEFFERNAN—Are they in or out?

Mr Ridgway—My understanding is that Woolworths—

Senator FISHER—That might have been a rhetorical question, Mr Ridgway.

Senator HEFFERNAN—Are they excluded from the horticultural code?

Mr Ridgway—At the moment the horticultural code does not apply to retailers; it applies to wholesalers.

Senator FISHER—Can I continue my line of questioning please, Senator? Mr Ridgway, you have not inappropriately said there are higher level powers in the Trade Practices Act dealing with mislabelling. There is a supermarket code that deals specifically with mispricing. I want to explore for a minute why there would have been considered to be the need to have a supermarket code that deals with a sort of mistake when presumably there are already higher level powers for the ACCC to regulate a supermarket operator that mispriced. So are there already those higher level powers? Why was it considered necessary to nonetheless provide them in a supermarket code?

Mr Ridgway—I should perhaps clarify: the supermarket code is entirely a voluntary code of conduct; it is not something that is administered by the ACCC.

Senator FISHER—Nonetheless, the industry must have considered it necessary or appropriate.

Mr Ridgway—Yes. Although its genesis predates my work with the ACCC, I understand that, at the time it was introduced in I think about 1995-96, the industry was in the process of introducing scanner technology into retail supermarkets and there was some concern by industry that there would be a question of consumer confidence in that scanning technology. So the initiative came from a suborganisation of the Australian Retailers Association—it was a sort of supermarket industry association—to generate and develop this code of conduct to give consumers confidence in that new technology.

Senator FISHER—Indeed, which may be an appropriate signal that some wished to send, for example, in terms of lamb marketing. My final question on this issue, I think, is: in your view, does the fact that supermarket pricing is subject to a voluntary code give the ACCC additional powers in respect of alleged breaches by supermarkets in terms of pricing than the ACCC would otherwise have had were the code not in existence?

Mr Ridgway—To the extent that the industry signatories to the supermarket scanning code or any other voluntary code hold themselves to be maintaining a standard of conduct in some detail in the way that they manage their dealings with consumers, the operation of the Trade Practices Act, with its misleading or deceptive conduct provisions, can basically act as a mechanism to keep them to that undertaking. If they say they will do something but then do something else, arguably, they have contravened the act.

The obligations imposed or self-imposed by industry in those codes do not necessarily extend the powers of the ACCC or the range, but they do provide some practical application of the principles of the act to a degree. For example, with the supermarket scanning, while the Trade Practices Act applies that if there is representation as to a price to a consumer but then that price is not delivered, arguably—and this has been an issue that has been tested to a degree in some of the lower courts by some of the fair trading agencies—there is a risk that they are engaging in misleading conduct and the act would capture that. But the code provides a mechanism that basically says specifically: this is what the trader will do in the event that that error occurs. It enables the consumer to secure redress and remedy immediately without requiring the engagement of the regulator or the courts to get that outcome. Practically, with the low price and high volume of consumer products in supermarkets, it provides a practical adjunct to the act.

Senator FISHER—Is it making a practical difference, do you think, in supermarket retailing? Is it getting runs on the ground?

Mr Ridgway—I do not have the data to hand. My understanding is that those supermarkets that participate in the scheme hold it fairly closely as an important part of their consumer service. There are some questions, I understand, by us a little and fair trading agencies as to whether other traders who are not signatories to that code might improve consumer outcomes by considering joining up to the code.

Senator HEFFERNAN—So are the bulk of the retailers in or out? Are Coles, Woolworths, Aldi and Superbarn in?

Mr Ridgway—The large retailers are generally in. The smaller retailers are generally not.

Senator HEFFERNAN—Who is not in?

Mr Ridgway—Because it is a voluntary code, I do not have the details to hand.

Senator HEFFERNAN—But they are not in the horticultural code, are they?

Mr Ridgway—No.

Senator HEFFERNAN—But isn't that just a glaring example of bullshit? You said that the wholesalers are in the horticultural code; right?

Mr Ridgway—Yes.

Senator HEFFERNAN—But what if you bypass the wholesaler, as Coles and Woolies do, and just buy direct? They escape your scrutiny.

Mr Ridgway—The horticultural code deals with an issue in the supply chain between the grower and the wholesaler.

Senator HEFFERNAN—Yes, but the idea of it is to protect the poor bloody grower from unscrupulous conduct with market power, yet the greatest market power in the marketplace is not subject to your scrutiny.

Mr Ridgway—The retailers are not subject to the code—

Senator O'BRIEN—They might be subject to the scrutiny, but they are not subject to the code.

Senator HEFFERNAN—They are not subject to the code, and the code is all about producers getting duded when they front up to sell their produce, and the greatest buyers of the product are excluded from the scrutiny of the ACCC. Do you agree?

Senator O'BRIEN—And the industry representatives said they agreed with that.

Senator HEFFERNAN—Anyhow, I guess the same will apply in the meat market, because those same people who have 80 per cent of the market power in the supermarkets buy direct.

Mr Ridgway—The application of a code is a matter for the policy agency—

Senator HEFFERNAN—I appreciate that, but you are just wasting your time, as it were, as an effective tool if 80 per cent of the market bypasses you. You pick up the small fry. What about the complaints that Aldi have made about Woolies and Coles trying to get into shopping centres and the pressure that is put on the owner of the shopping centre and other retail outlets in the shopping centre. For instance—I will not name anyone—a big supermarket provider in a large supermarket centre says, 'If you let that bloke in there, either I want my rent halved or I'm going to leave.' What do you do about that stuff?

Mr Ridgway—The issues that you are alluding to are, as I understand it, matters that fall within the terms of reference of the grocery inquiry that is currently being undertaken by the ACCC.

Senator HEFFERNAN—But I am asking you whether, under the present authority of the ACCC, there is anything you can do about it. It seems to me that you have reams of bureaucratic mission statements, which you are demonstrating this morning—very effectively, and I congratulate you on your submission—but there is not much in there that you can touch and feel.

Mr Ridgway—The ACCC has the powers of the Trade Practices Act to administer, as it deals with allegations of anti-competitive conduct or misleading or deceptive conduct. To the extent that they apply to all traders in the marketplace, all corporations, the large retailers are subject to the Trade Practices Act. As a regulator, we generally need to deal with specifics and the facts of a particular matter so that we can engage, I guess, more meaningfully with concerns. I am not sure whether that is helpful but, to the extent that the large retailers are corporations—

Senator HEFFERNAN—I surrender.

CHAIR—If there are no other questions, I will just throw one at you, if I could. For the record, I think voluntary codes of conduct for those that enter into them are honourable, but unfortunately the ratbags get away with blue murder—and it does not matter what industry we are talking about, we know that. But if there were harmonisation of standards around the country and there were a mandatory code, how would the ACCC regulate it?

Mr Ridgway—If there were a mandatory code under the Trade Practices Act, if that is the nature of the question—

CHAIR—It is.

Mr Ridgway—we would administer it in the same way that we administer other—we would identify what the mischief is, which I think is reasonably apparent. We would put a fair bit of effort into bringing various members of the regulated community, the traders, up to date on and aware of their obligations before the code would commence. Once the code commenced, we would go through the process of dealing with concerns as and when they arose. Without any detail of what such a code would have—it is a bit difficult to talk in the hypothetical—we would bring to bear our enforcement and investigation powers as we do with other provisions of the TPA.

Senator HEFFERNAN—But would you have the authority to go into the abattoirs, or would you leave that to Safe Meat and the various state supervising bodies and just act on their reports?

Mr Ridgway—Generally, the powers of the ACCC to secure information that is not in the public domain require that we believe there has been a contravention of the law, so we would generally, in common language, have to have a reason to believe that securing certain information from those premises would assist us in investigating a matter we believe—

Senator HEFFERNAN—Gaining that knowledge, would you take the complaint from an operator, a supplier, a supervising authority—any of those bodies? If I am a meat buyer and selling lamb and I reckon someone is selling hogget and I ring up the ACCC, can you do anything about it, under the proposal?

Mr Ridgway—If that were the case—and again it is quite hypothetical—and we believed that a particular trader or member of the community, however best described, had information that would assist our investigation, we would be able to seek that information. We would have to have a reason to believe that a contravention had occurred.

Senator HEFFERNAN—Could you go in and test that information? If Safe Meat in New South Wales supervises an abattoir set-up, can you go in over the top of them?

Mr Ridgway—I would have to be more familiar with what their role is, I think, to comment.

Senator FISHER—Mr Ridgway, I actually enjoyed your initial submission where you outlined the structure and powers available to the ACCC under the Trade Practices Act. I understand that there are mandated codes and I understand what they entail. You referred to prescribed voluntary codes and I think said that, however, at this stage there are not any.

Mr Ridgway—That is correct.

Senator FISHER—Then I understand you to have described industry codes—for example, one applying in the medical sector—and then you talked about voluntary industry codes. Again I understand the concept of the fourth category: voluntary industry codes. However, can you please expand in a little more detail on the difference between a prescribed voluntary code and a mandated code and also the industry code that applies in the medical sector, which, if I understand you correctly, is a third category, if you like, of industry code, according to your description?

Mr Ridgway—I am happy to respond. Maybe to clarify the last point first, the code in the medical sector is a voluntary code; it is not of a different character.

Senator FISHER—Thank you; understood.

Mr Ridgway—Distinguishing between prescribed voluntary codes and mandatory codes, mandatory codes apply across an entire sector and industry, as described by the government as it brings the code into being. For example, the franchising code applies to all franchise traders in Australia and the horticulture code applies to all wholesalers and growers in the supply chain. With a prescribed voluntary code, the framework provides that certain traders within an industry may be subject to a code once they subscribe, but it would not be intended to apply to all traders in that particular sector. So, using the franchising sector as an example, if there were a prescribed voluntary code, it would apply to only those franchisors that sign up to the code and agree to be bound by it. There is of course a question of what incentive traders would have to sign up to a prescribed voluntary code. I think that has been explored once or twice, but that is probably a question that would need to be considered.

Senator FISHER—Of course—all that and some other factors as well. Is that the only difference between a mandatory code and a prescribed code? Of course, it is a significant difference, but is that the difference?

Mr Ridgway—That is the significant difference. Once a trader subjects themselves by becoming a signatory to a prescribed voluntary code—and I have to talk again in the

hypothetical, because we do not have a practical example to work from—they would be bound. The contraventions of the code would bring to bear the remedies available for contraventions of industry codes generally, which involve court orders, compensation orders, injunctions and so forth, which would not apply generally to a voluntary code but do apply to mandatory codes. The other difference of course is that, under a prescribed voluntary code, the trader will have a process by which they can unsubscribe or remove themselves from the code. That process is specified by the minister or by the government—both how they become subscribed and how they leave the operation of the code.

Senator SIEWERT—When you talk about a prescribed voluntary code, does that mean it would come under your bailiwick?

Mr Ridgway—That is correct.

Senator SIEWERT—And if it is just a voluntary code, it does not?

Mr Ridgway—Voluntary codes do not come directly to be enforced by the ACCC. That is correct. Perhaps I can extend a tiny bit: one voluntary code that might actually be on point to the question of misdescription and that is a code of conduct for the jewellery industry sector that was in place for some time. There are a number of provisions within that code, which is not current at the moment, but there is some consideration of renewing that code. Where certain representations or certain practices in the jewellery sector in retailing are addressed directly with certain kinds of requirements of traders who engage in that conduct.

The failure to meet some of those contraventions as well as being a contravention of the code is also misleading or deceptive conduct under the TPA. So the code, a bit like the supermarket scanning code, provides a practical and detailed adjunct to the operation of the broader Trade Practices Act and it provides some practical information for traders on how their obligations manifest themselves in their sector.

Senator FISHER—That is a voluntary code in the jewellery sector.

Mr Ridgway—Yes.

Senator FISHER—It is whether opals are doublets or triplets and whether gem stones are what they are described to be—that sort of thing?

Mr Ridgway—That is going in the direction of the issues, yes. There are issues of valuations and representations as to pricing and so forth as well.

Senator FISHER—Which ultimately, arguably, could have an analogy in lamb marketing because it is about description and it is price. How long has that code been in existence in the jewellery sector?

Mr Ridgway—As I understand it, at the national level, it was introduced I believe in 1995 and it was in operation for quite a few years. More recently, the industry has moved more towards operating from guidelines provided by the ACCC as to what are practical implications

of the act for their business. As I said, I believe there is a process underway within the sector to consider refreshing the industry code approach.

Senator FISHER—Have the misdescription—for want of a better word—provisions been in that code since its inception in 1995?

Mr Ridgway—Broadly, yes. The code was introduced to deal with a range of issues that go to representation to consumers of the products in that industry.

CHAIR—It is a national code?

Mr Ridgway—Yes. It initiated as a code within New South Wales and then it was picked up nationally about three years later.

Senator FISHER—Aside from obviously providing some guidance, albeit self-imposed, to the industry about what is proper description and what is not plus other things, has that code provided the ACCC an assistance with enforcing the higher level powers that the ACCC has under the Trade Practices Act in respect of misdescription and, if so, how?

Mr Ridgway—The short answer is I believe yes and to the degree that the administration committee of the code deals with a range of complaints and concerns that come often from competitors of identifying conduct by their competitors that they believe contravenes the code and to the extent that it marries up with the Trade Practices Act, therefore the Trade Practices Act. The code administration committee engages in a process of bringing that trader to improve their behaviour and so forth. If the trader is not responsive then the code committee can and has brought the issues to the attention of the ACCC so that we bring the regulatory powers that we have under the Trade Practices Act to bear and we can, if necessary, secure a court based outcome if the trader is unwilling to fix up their wrong conduct.

Senator FISHER—That court based outcome would still necessarily be based upon the normal rules of law. So the added edge that the ACCC gets from the existence, in this respect, of the voluntary code in the jewellery sector would be what? Would it include increased notification to the ACCC of alleged misdescription examples? Is it more than that. I guess it does include that? But is it more than that? Because you are still going to have to prove that someone was guilty of breaching the Trade Practices Act.

Mr Ridgway—That is correct. Practically, the benefit would be that those traders that subscribe are actively encouraged by their own industry association, often the association administering the code, to ensure that their practices are consistent with the requirements of the code and to the extent that the code aligns with the Trade Practices Act therefore consistent with the law. So there is a proactive compliance initiative by the industry to ensure that the legal requirements are being met. I guess the backstop function, in a way, of the ACCC in these circumstances is that where a trader subscribing to the code does not comply then that information is either dealt with immediately by the administration committee and/or brought to the attention and dealt with by the ACCC. So it really provides a bolster for the broader work of the ACCC in that regard.

Senator FISHER—So I guess you are springboarding, if you like, an increased climate of compliance from the sector but the sector itself has determined that it will implement this arrangement, and of course it would not necessarily be so in other sectors, including the meat sector.

Can I ask one more question about the mandatory codes, and I am sorry if my colleagues know the history. But how does a mandatory code come about and how have those mandatory codes come about? Has industry come to the ACCC? Have we had inquiries? How do they come about?

Mr Ridgway—Broadly, in each of the cases, the franchising, the horticulture and the oil sectors, there have been regimes in place in some cases for a number of years on a voluntary basis to address issues of concern in that sector. In each of these cases there has been some question about the utility of those voluntary regimes by governments of the day. And there has been a case made in each of those under the regulatory impact statement process to assert that there is benefit in bringing a mandatory code to bear in light of the concerns associated with the voluntary regime. That is it in a nutshell.

Senator FISHER—Ultimately, that has to be shown if a mandatory comes to pass at the end, but I guess I am more interested in the catalyst. For example, if Senator Heffernan's concerns about essentially retailers being left out of the horticultural code were to be addressed—well they could be addressed by the horticultural industry code, but there would need to be a process to bring that to bear and so whether that would be, for example, the industry coming to the government or—

Mr Ridgway—In short, the codes respond to the mischief that is identified by the policy agency or the government agency that is relevant and the code framework is developed to address those perceived mischiefs. The question of whether a particular trader is or is not subject to the code arguably goes to whether or not they were seen to be part of the mischief that was being addressed by the agency at the time.

Senator HEFFERNAN—The point I was trying to make is that, if you are in modern retailing, the big fellows tend to go direct to the feedlots et cetera. They do that in all states. In Victoria, if you had a similar arrangement to the horticulture code and they were excluded, the bulk of the meat that is sold is sold through Woolies and Coles. In Victoria, the supervision of lamb is not to the same level of scrutiny as in New South Wales. In New South Wales they look in every mouth; in Victoria they are only obliged to, if they do, look in five per cent of the mouths, which is just an exercise in bloody bullshit. But, if you exclude the major resellers, you leave the market open to what—it just will not work.

Mr Ridgway—It really is, as I say, a question of policy about which traders the code will apply to.

Senator HEFFERNAN—Like Qantas and the CASA thing, they do a lot of it, and Woolies and Coles want to protect their label; there is no doubt about that. But, if they are buying from one or two particular abattoirs in Victoria that we know about, when they buy their lamb from them and their branded lamb, we know, because of the way it is supervised, that not necessarily are Woolies getting lamb and there is not much they can do about it if this is branded 'lamb'.

Mr Ridgway—And that really goes to the issue of the regulatory impact statement—the process of making a case to say that this mischief is on foot and it is sufficient to warrant some intervention on a mandatory basis and that these particular traders may well be—

Senator HEFFERNAN—It would be reasonable to assume that, if there were a complaint—which we took evidence of at this hearing a couple of weeks ago—in a particular abattoir in Victoria. Who were they? Not MLA but Safe Meat?

CHAIR—AUS-MEAT.

Senator HEFFERNAN—AUS-MEAT. They reported the fact that they had discovered a bucket of heads—in amongst what was allegedly lamb a whole lot of hogget heads. For you to operate to actually be able to do anything about that, you would have to have a paper trail. They did it by ringing up the Safe Meat mob in Victoria and saying, ‘Oh, by the way, out here at’—wherever it was—‘we have just discovered some hogget branded as lamb,’ but other than the phone call there was no evidence. It is just not a fair dinkum process at the present time.

Mr Ridgway—There are practical issues associated with investigating any matter. We just obviously have to secure the evidence that we would need to show—

Senator HEFFERNAN—So, if we were making recommendations to include you in the process, we would also want to make some recommendations on the reporting process et cetera.

Senator FISHER—Chair, may I ask Mr Ridgway a question on notice?

CHAIR—Yes, of course.

Senator FISHER—Thank you. In respect of the jewellery industry voluntary code, I am interested in whatever lessons the committee can learn for the lamb marking sector from the existence of that code and the assistance that it may or may not provided the ACCC in terms of addressing what might be a misdescription in that sector and the extent to which similar lessons could apply to the lamb marketing sector. Any further information that the ACCC can provide in that respect please provide.

Mr Ridgway—We can do that.

CHAIR—The committee thanks you for your assistance today.

[11.06 am]

Paliskis-Bessell, Ms Renata, Chief Executive Officer and Managing Director, Western Australian Meat Industry Authority

Saunders, Mr David Michael, Projects and Operations Manager, Western Australian Meat Industry Authority

Donaldson, Mr John, Compliance Officer, Western Australian Meat Industry Authority

Evidence taken via teleconference—

CHAIR—Welcome. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. We have a senator with us via teleconference as well. Good morning, Senator McGauran.

Senator McGAURAN—I am attending from the so-called offending state.

CHAIR—I will invite you to make a brief opening statement and then the committee will ask questions. Ms Paliskis-Bessell, do you wish to make an opening statement?

Ms Paliskis-Bessell—Just to reiterate some of the points that were made in our submission. In Western Australia the Western Australian Meat Industry Authority is responsible for regulating lamb and hogget branding in this state, and the title of the legislation is the Western Australian Meat Industry Authority Act 1976 and the Western Australian Meat Industry Regulations 1985. The legislation specifies that it is a function of the authority to implement schemes and practices for the branding of any carcass or meat. The definition of ‘lamb’ is actually a prescribed product—is that right—in this state and the authority is responsible for ensuring or more regulating the lamb branding in this state to ensure that all product produced in this state defined as lamb must be proved to be lamb and branded accordingly.

CHAIR—Mr Saunders or Mr Donaldson, do you wish to make a brief opening statement before we go to questions?

Mr Saunders—Just to reiterate what Renata said, that in WA, unless the animal is lamb and determined as lamb at the point of slaughter, you cannot sell it as anything else. So mutton and hogget cannot be sold as lamb here.

CHAIR—We will go to questions. I think you have probably followed where the committee has been going with this hearing.

Senator SIEWERT—I want to follow up on the comments you made just then about ensuring that lamb that is sold as lamb is lamb. Could you for the record just tell us how you do that, because we have had evidence from other states about getting someone to check the mouth.

Mr Saunders—In WA the regulations require that every sheep be mouthed and that is done under the supervision of an inspector and only the carcasses that correspond with the requirements for lamb can have the brand applied.

Senator SIEWERT—Can you tell us at what stage that is done and how you ensure that the carcass is the same carcass that came in—that you actually certified?

Mr Saunders—It is done before the head is taken from the body. Most works have a system of identifying the carcasses. If you had a mutton carcass they might put two cuts on the back leg or on a hogget one cut. So, generally speaking, the lambs will be anything that has not been marked. The system differs from works to works, but it is quite a rigorous system.

Senator SIEWERT—In some of the evidence that we have heard previously there is stuff put on the hook and it is not the carcasses that are actually rolled until the end of the process, so I was just wondering how WA does this.

Mr Saunders—That is correct: you do not roll the carcasses until they have gone through the production chain. Because you have fairly rigorous determination of the various lines of animals coming in and mouthing of the carcasses, with an identification cut being put on the carcass, it is fairly hard to rot the system.

Senator SIEWERT—That is what we are trying to find out. Some of the abattoirs do not seem to actually mark the carcass until the very end, but you mark the carcass at the beginning.

Mr Saunders—Yes. Generally the person that is doing the mouthing will just do it.

Ms Paliskis-Bessell—It would be very difficult to prove that a product is lamb if the carcass is cut, for example, at the end of the production chain when the head is nowhere near the carcass.

Senator SIEWERT—That is what I was trying to find out—how WA actually made sure that there was that continuity through the process.

Ms Paliskis-Bessell—It is done just before the point where the head is taken off and that is when the animal is mouthed.

CHAIR—So every sheep is mouthed. Has that always been the case in WA?

Mr Saunders—Yes, since our legislation has been in. The only exception might be if you are doing a big line of mutton; you would not mouth them, but then no brands would be applied to that consignment.

CHAIR—How long have we had the legislation in Western Australia?

Mr Saunders—I think that particular legislation has been in since 1985, under our act, but prior to that we had the lamb board, which had a compulsory acquisition of lamb.

CHAIR—I should not be asking hypotheticals but, from a regulatory point of view, if that requirement to mouth every lamb or every sheep was removed, what do you reckon that would lead to?

Ms Paliskis-Bessell—Absolute disaster!

Mr Saunders—I think it would probably be exploited.

Senator O'BRIEN—I am interested to know the history of enforcement of your legislation. We have heard some evidence about rigorous enforcement of the Western Australian legislation. Can you tell us more about that, please?

Mr Saunders—Yes, that is correct. We are also helped over here in that, because all lambs have to be branded, that brand is also recognised as the health brand. If you start to tinker around with that, it actually becomes the criminal offence of fraud and we have quite close working relationships with the police department that enable us to bring another regulator in. But, essentially, we believe that at Western Australian works now there are very few problems. You might get the odd problem at a retail level of someone trying to sell a leg of mutton as lamb, but essentially we do not believe that there are any significant issues out there. In the past, there were some fairly big ones. With the powers of our regulations we were able to detect those offences and take appropriate action against the offenders.

Senator O'BRIEN—What was that?

Mr Saunders—There are a couple of things you can do. Obviously you can take legal action against them for the various offences under the act, but, in cases where there were significant non-compliance issues, we would withdraw the brands.

Ms Paliskis-Bessell—What about the issue of fraud? There was jailing involved.

Mr Saunders—Yes. In one particular case where fraud was involved, we did a joint investigation with the police and the proprietor of the abattoir did some time in jail.

Ms Paliskis-Bessell—How long?

Mr Saunders—I cannot remember the exact time. I think the person concerned got between one and two years for his offences.

Ms Paliskis-Bessell—Jail?

CHAIR—That is a good deterrent.

Senator SIEWERT—I am sorry; when was that again?

Mr Saunders—With the biggest case we had, the proprietor of the works got, I think, between one and two years jail when he was found guilty.

Senator HEFFERNAN—On what scale was he found guilty? Was he the operator or the inspector?

Mr Saunders—He was the owner or the managing director of the company that owned the abattoir.

Senator HEFFERNAN—That would work really well.

Ms Paliskis-Bessell—It did work really well.

Senator O'BRIEN—You said that the identification requires mouth checking under the supervision of an inspector—in all cases?

Mr Saunders—Yes.

Senator O'BRIEN—What was happening in the circumstance that led to the prosecution for fraud and jailing of the company owner or managing director?

Mr Saunders—In that particular circumstance, the abattoir operators had gained illegal access to the inspectors' lamb brand. At load-out time, they used to put some of the better mutton to one side and, when the inspectors were not on site, they were roller branding the mutton with the lamb brand. We were able to pick that up because of the markings on the back legs when we did an inspection at a city boning room.

Senator HEFFERNAN—So there was a bit of likeable rogue behaviour.

Senator FISHER—What is likeable about it?

Senator HEFFERNAN—Well, unlikeable rogue behaviour. I guess once you break the body up, as you say—for instance, strip loin—you could describe good mutton as lamb strip loin and no-one will know the difference.

Mr Saunders—With the way the brand is put on the carcass, you can pick up most of the cuts. The only ones you cannot really pick up are fillets.

Senator HEFFERNAN—That is right. That is the point I was making. By and large, it is a reasonable speed camera in the abattoir system, the system you use, and I congratulate you on it.

Mr Saunders—Thank you.

Ms Paliskis-Bessell—Very much so.

Senator HEFFERNAN—We have to get them to do that over here.

Senator O'BRIEN—Did the discovery require someone tipping you off, or was it just the system of marking and identification that allowed you to find the fraud?

Mr Saunders—I guess, like all regulators, we do rely on feedback from the industry at times and, in this particular case, we got some feedback. But I think it was the basics of the system itself that gave us the evidence to take action against the person. In other instances, we have picked up irregularities without information. So it is a combination of those things that enables you to regulate the industry.

Senator O'BRIEN—Could you give us any indication of the cost to the taxpayer and/or the industry of the system of regulation that applies to lamb?

Mr Saunders—I do not believe it to be great, because it is something the abattoirs do as part of their daily operations and we are only running with one compliance officer.

Ms Paliskis-Bessell—So, in terms of the cost to the taxpayer in this state, I would say that a generous figure would be \$100,000 a year. In terms of the cost to the industry, given that they themselves already have quality assurance systems in place within their plant that are audited by the likes of AUS-MEAT, the health department and us, the lamb identification component of that system is quite small. So I would say that the cost to industry would be negligible. The flip side of that is that the assurance that we are able to provide our consumer that whatever lamb product they pick up is in fact lamb is well worth the investment that is made at the taxpayer level and at the industry level.

Senator HEFFERNAN—Good on you.

Senator O'BRIEN—Is there any significant importation of lamb from other states into Western Australia?

Mr Saunders—Yes, and probably more so now that some of the supermarket chains are going to more centralised buying. It certainly used to happen before, dependent upon seasonal trends. Our regulations also require that any lamb that is brought into the state is branded in accordance with our regs.

Senator HEFFERNAN—Killed under that supervision or killed under Rafferty's rules in the east?

Mr Saunders—I am not sure that we can comment on that.

Senator SIEWERT—Could you go back? When it is brought into the state, how do you deal with it?

Mr Saunders—I suppose about 10 years ago, most of the product came over in carcass form and it could not be brought into the state unless it had a certificate from the meat inspection from the plant concerned verifying that it was lamb. If it did not have a lamb brand on it, it used to be branded at the main receival point. That has changed a bit in recent times with more boxed product coming over, but we work closely with the major supermarkets to ensure that, if they do bring it over, it comes from a plant that is using lamb branding. There have been some recent

incidents—when unbranded legs have come over to WA, they have been withdrawn from the market.

CHAIR—What state have they come from? Anywhere in particular?

Mr Saunders—They were coming through Coles, I think it was, from Victoria.

Senator HEFFERNAN—Why am I not surprised?

Senator SIEWERT—So lamb is only imported into WA if you can guarantee that it is lamb?

Mr Saunders—Yes, basically.

CHAIR—Since that misdemeanour from Coles in Victoria, has lamb from Victoria via Coles come into WA since then?

Mr Saunders—Yes. Generally, with the eastern states stuff, I do not believe it is so much a matter of animals that are not lamb coming over; it is where someone in the dispatch side over there has not understood our regulations.

Senator SIEWERT—So how do you know that substitution is not going on in the lamb that is coming into WA?

Mr Saunders—We have seen nothing to suggest that there is substitution there. If the product coming in has the lamb brand on it, we have to respect the fact that it has gone through an inspection and certification procedure in the east. If we find product that is unbranded here, we give the person that has brought it in the opportunity to provide appropriate identification to us and then they have the option of either rebranding it, if they want, or in many cases they elect to take it back or downgrade it to mutton.

Senator O'BRIEN—If it were established to your authority's satisfaction that meat had been branded as lamb and that it was subsequently shown that the works were applying the lamb brand to hogget and mutton, would that create a fraud prosecution?

Mr Saunders—I do not think so—that is off the top of my head—because I think the offence would have to take place in Western Australia.

Ms Paliskis-Bessell—So therefore it would be the responsibility of the particular state of origin authority to then go down the path of prosecution.

Mr Saunders—I think that if the relevant authorities or jurisdictions in the eastern states brought that to our attention we could have the product withdrawn from sale here.

Senator HEFFERNAN—So you could overcome all of those queries and puzzles if everyone applied the same set of standards to their abattoirs and meat slaughter. We had Herd in here the other day—he is on the Meat Safe set-up in Victoria that is supposed to enforce the correct branding of lamb—giving evidence that he did not actually believe in what they were meant to enforce. He did not think there should be such a thing as lamb. His attitude was that it ought to

be: if it tastes like lamb and it looks like lamb, you just call it lamb regardless of whether it is buffalo.

Ms Paliskis-Bessell—No, that would not be acceptable over here at all.

Senator HEFFERNAN—Very good. We are on your side—or I am, anyhow.

Mr Saunders—I think at the end of the day we are one country. It should be the same rules everywhere.

Senator HEFFERNAN—So you would have no objection to national harmonisation of the standards of branding and identification?

Mr Saunders—No.

Ms Paliskis-Bessell—No, not at all, provided the Western Australian system was not compromised at all.

Senator HEFFERNAN—Yes. Obviously that would make a lot of sense.

Senator SIEWERT—If lamb substitution is happening through imported lamb, the only sanction you have is really to refer it back to the state of origin or for the wholesaler, retailer or whoever who is bringing it in, telling them they are not allowed to put it on the market.

Ms Paliskis-Bessell—Yes.

Mr Saunders—Yes, and we can take legal action under the act against those people.

Senator SIEWERT—I am sorry, that is a bit different from what I understood from your answer before. What legal action could you take?

Mr Saunders—If we find that a wholesaler has brought into the state product that is unbranded, the act and regulations do allow us to take action against him for bringing that product in.

Senator SIEWERT—Because it is unbranded?

Mr Saunders—Yes. But, normally speaking, we would go to them and try to resolve it in a sensible fashion.

Senator SIEWERT—But if you discovered mutton branded as lamb you could not take action in WA; you would have to get the particular state of origin to take the action?

Mr Saunders—That is a difficult question. I think it would be a question of whether they knowingly forged it.

Senator McGAURAN—I have no questions at this point. I was happy to hear that the Western Australians called us one country, so they have given up their idea of seceding.

Senator SIEWERT—Don't jump to that conclusion too quickly!

Senator HEFFERNAN—But they did also say there was lamb coming from Victoria that was not lamb.

Senator McGAURAN—Yes, and then they went on to say that it was not a deliberate pattern surely by Coles; they did not understand the markings.

CHAIR—I am a West Aussie but I am not talking secession. That is nonsense, because you cannot eat iron ore. Lamb is nice but not in company with iron ore. I would like to thank the Western Australian Meat Industry Authority for their time. The committee does appreciate it. Senator McGauran, thank you.

[11.30 am]

Gorrie, Mr Geoff, Chair, Safe Food Production Queensland

CHAIR—Welcome. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Before we go to questions, do you wish to make a brief opening statement?

Mr Gorrie—Yes, I would like to make a brief statement, if you would not mind.

CHAIR—Please do.

Mr Gorrie—In fact, I was listening to some of those questions earlier, and I am not sure that I am that well-equipped to answer some of those detailed questions, but we will see how we go. Safe Food Production Queensland is a Queensland government statutory body established in 2002—so it is not very old—under the Food Production (Safety) Act 2000, to regulate the production of the primary production sector to ensure that primary produce is safe for consumption. The key words there are ‘safe for consumption’. This occurs through the development and implementation of risk based, outcomes focused food safety schemes developed in partnership with industry bodies. Currently, schemes have been implemented for meat, dairy and eggs and there are some under development right at the moment, one in seafood and one in plant products.

Our focus is very much on ensuring that the food is safe. Our experience has shown that questions of misrepresentation of lamb have really not been an issue that has been directly brought forward to Safe Food Production Queensland. Over the last three years we have had two complaints in this area. We have investigated both of them. With one we found that it was not substantiated and the other one we passed on to the Queensland Department of Health and, as far as I am aware, no action was taken there.

Senator HEFFERNAN—Was that Rockhampton?

Mr Gorrie—I am afraid I am not sure of the actual details, but I could find those out if you wish.

Senator HEFFERNAN—You might.

Mr Gorrie—Yes. So compared to the other states and territories, the sheep and lamb industry in Queensland is small. Our records indicate that we have 41 accredited abattoirs that slaughter sheep and that is solely for the domestic market. From the available data in 2007 these 41

abattoirs slaughtered about 414,000 sheep. This constitutes about 1.2 per cent of the nation's sheep that were slaughtered last year. Of the 41 abattoirs, there was one whose estimated slaughtering was about two-thirds of the total kill of sheep in Queensland.

Senator HEFFERNAN—Who was that?

Mr Gorrie—Again, I do not have the details here, but I can provide them to you. This abattoir, together with three others, is accredited with AUS-MEAT. In total, the four AUS-MEAT accredited abattoirs are believed to account for about three-quarters of the sheep kill in Queensland. A significant number of the abattoirs report that they slaughter for their own retail outlets. For instance, butcher shops may also have a slaughter facility, which would be a very small facility. In the last three years, as I mentioned earlier, we have only received two complaints.

False meat branding is not considered a food safety matter. Safe Food Production Queensland considers that this is primarily a consumer affairs and fair trading matter. Safe Food Production Queensland operates under the Food Production (Safety) Act 2000 and its associated regulation. As the legislation's key objective is the production of safe food and it has been drafted with a focus on outcomes, definitions such as lamb and quality aspects are not included in our legislation, although an accreditation holder may include such definitions in their own food safety program. The legislation does not include any requirements relating to misleading conduct or misrepresentation. There are no provisions in our act that relate to 'misleading' or 'misrepresenting'. We do have a follow-on from some of the earlier meat substitution issues, section 81, which is a species-specific meat substitution clause. To my knowledge there has been no need for Safe Food Production Queensland to act upon this provision since the commencement of our legislation.

One of the key principles underlying the meat food safety scheme is traceability and identification of product. This is essential to enabling the efficient withdrawal of potentially unsafe or unsuitable food from the market and to assist in food-borne illness investigations. Matters of misrepresentation as to how meat is described does not, in the opinion of Safe Food Production Queensland, directly impact on the safety of the meat, whether it be mutton lamb or beef. We operate under the national framework for food regulation. What that means is that we take our lead from the ministerial council on food regulation. They provide the policy guidance and policy framework within which we operate. We would then follow the lead of Food Standards Australia New Zealand in the production of a food standard. We would participate in their standards development committees in the various areas for primary production and we would then encompass their standard into our food safety schemes. That is how we try and work. So we would try and make all of our regulations and approaches consistent with that national standard. In that way we feel that we have an arrangement which does ensure that we have consistency across the whole of Australia—not uniformity, I must say, but consistency. That is all I wanted to say in relation to an opening statement. Thank you.

ACTING CHAIR (Senator O'Brien)—Thank you, Mr Gorrie. Welcome back to these rooms.

Mr Gorrie—Thank you.

ACTING CHAIR—If I understand what you are saying, there is actually no requirement to check dentition at abattoir level in the slaughter process of animals subsequently described as lamb in marketing.

Mr Gorrie—No. That is correct.

ACTING CHAIR—Are you aware of the volume of production of lamb in Queensland? Can you give us any material in relation to that?

Mr Gorrie—As I indicated, the annual slaughter numbers are about the 400,000 mark.

Senator HEFFERNAN—You do not make them up into lamb, mutton and hogget—you do not care?

Mr Gorrie—Again, I could ask if they could do that. Those records should be available at the various abattoirs and slaughterhouses. Whether we have them in Safe Food Production Queensland, I am frankly not sure but I can certainly find out.

ACTING CHAIR—The identification process for lamb—is there an acceptable brand or is it just a matter of what is on the box when someone buys it for marketing?

Mr Gorrie—As I pointed out, we do not really get into that aspect in a direct sense at all. So, if it comes out of an AUS-MEAT arrangement, we accept whatever is presented to us from that point of view.

ACTING CHAIR—So there is no legislation which deals with perhaps the concept of misleading and deceptive conduct in marketing a product to consumers?

Mr Gorrie—Not in the Food Production (Safety) Act, but there are provisions about misleading information on labels and so on in the Food Act, which is administered by the health portfolio in Queensland.

ACTING CHAIR—But, if they were to question something, there is no system which would establish a chain of proof about what the animal was prior to separation of its head from its carcass?

Mr Gorrie—We concentrate on trying to trace that animal right from the source of the farm, so that aspect we do.

Senator HEFFERNAN—How do you do that?

Mr Gorrie—A range of different arrangements.

Senator HEFFERNAN—Tell me what is it though? What is the arrangement? How do they trace them?

Mr Gorrie—Essentially, we rely on the NLIS system.

Senator HEFFERNAN—Have you implemented full lamb, sheep and mutton tagging in Queensland?

Mr Gorrie—Each abattoir is meant to keep records.

Senator HEFFERNAN—No. In Queensland, you are the chairman of Safe Meat. I have no idea what your background is. Do you have a system where, when I mark a lamb at Charleville, I put a tag in its ear so that when it turns up at the Rockhampton abattoir you know where it came from, other than some sort of paper declaration?

Mr Gorrie—It would be a paper declaration.

Senator HEFFERNAN—That is absolute bullshit.

Mr Gorrie—That is what we have. As I mentioned when you were out of the room, Safe Food Production Queensland is really not—

Senator HEFFERNAN—But you said you are focused on traceability.

Mr Gorrie—Traceability, yes.

Senator HEFFERNAN—If you do not have individual animal traceability, you do not have traceability.

Mr Gorrie—We use the NLIS framework for that traceability.

Senator HEFFERNAN—But the NLIS framework now says that every animal has to be tagged.

Mr Gorrie—That is right.

Senator HEFFERNAN—Do you have them tagged or not?

Mr Gorrie—The animals that—

Senator HEFFERNAN—If the answer is that you do not know, just say you do not know. If you do not know, you do not know. You might be an administrator and not on the ground.

Mr Gorrie—I am the chair of the company. The board does not really get into the operational detail. I can certainly take on notice any questions and come back to you with the detail.

Senator HEFFERNAN—Yes, because it is sort of farcical, if it is not—

Senator FISHER—I understand your description of the authority's obligations under the legislation and therefore, in your opinion, lamb description does not impact on safety issues—and I do not want to ask questions that dispute that at this stage. But to what extent do you think

therefore you are equipped to give an opinion as to the appropriateness, the need or otherwise of increased vigilance in respect of lamb marketing in Queensland?

Mr Gorrie—I think the position of the authority would simply be that it is not a safety issue per se, and we would not have an opinion one way or the other as to whether there was a need for more vigilance or otherwise.

Senator FISHER—Okay, that is you on behalf of the authority. What about you as a person from the industry? What about Mr Gorrie personally? Do you have observations that you would care to share?

Mr Gorrie—I do not have any other opinions other than the authority's opinion in my role as chair of that authority.

Senator HEFFERNAN—What is your background; what were you before you—

Senator O'BRIEN—He was a public servant for many years.

Mr Gorrie—I am a retired public servant.

Senator HEFFERNAN—But you are not out of the industry.

Mr Gorrie—I am not out of the industry, no.

Senator HEFFERNAN—That is fair enough. I hope you fish off the coast up there. That is a good idea.

Mr Gorrie—I used to be in the Department of Agriculture, Fisheries and Forestry.

Senator O'BRIEN—Indeed, as I welcomed, Mr Gorrie sat at estimates for over a number of years if not in other inquiries before this committee.

Senator HEFFERNAN—If you go to the supermarket, does it matter to you whether you are getting lamb or six-year-old wether from Charleville that looks like lamb?

Mr Gorrie—From Safe Food Production Queensland's point of view, the answer to that is basically no.

Senator HEFFERNAN—So, from the government's perspective in Queensland, it does not matter.

Mr Gorrie—No, I am talking—

Senator HEFFERNAN—But If you do not have a system in place to—

Mr Gorrie—I am talking about the legislation that our authority has to administer.

Senator HEFFERNAN—That is precisely what I am talking about. Under the legislation, the signal that that sends to the consumer is: we are not here to define whether you are eating lamb or mutton.

Mr Gorrie—Essentially that is true from the point of view of our legislation. There are no provisions in our legislation that relate to misleading behaviour or conduct or to misrepresentation.

Senator HEFFERNAN—I think that is a very good answer.

Mr Gorrie—No provisions at all.

ACTING CHAIR—Mr Gorrie did say earlier that there was other relevant legislation that dealt with consumers being misled, but I think we have also had evidence that said it would be very difficult to pursue that in any meaningful way.

Senator HEFFERNAN—That is just bureaucratic hyperbole.

Mr Gorrie—If a complaint was made to Safe Food Production Queensland in relation to misbranding or misrepresentation, we would either take it directly to Queensland Health to further investigate, or we would take it to the office of fair trading within the ACCC.

Senator HEFFERNAN—Is there a mandatory requirement to brand lamb as ‘lamb’?

Mr Gorrie—Within our legislation, the answer is no.

Senator FISHER—Mr Gorrie, that is what you would do. To your knowledge, has the authority done that?

Mr Gorrie—We have had two complaints. One was at the retail end, which we do not look after, and we passed that immediately over to the department of health. I am not aware of what happened precisely, but I understand that no follow-up was taken.

Senator FISHER—What was the nature of the complaint in that case?

Mr Gorrie—It was simply misbranding mutton as lamb, as I understand it.

Senator FISHER—By a retailer?

Mr Gorrie—It was in the retail sector. I have no other details of that.

Senator FISHER—Small, medium or large?

Mr Gorrie—I could find out for you and see what information we have.

Senator FISHER—Thank you very much. That would be appreciated. What about the second instance?

Mr Gorrie—The second one was in one of the butcher shops that is accredited by Safe Food Production Queensland. We had a look at that particular complaint and we found that there was no substantiation.

Senator HEFFERNAN—What was the complaint?

Mr Gorrie—Same thing—branding.

Senator HEFFERNAN—You are not equipped to answer the question of whether it is lamb or whether it is five-year-old wether, are you? So how do you respond to a complaint that ‘This stuff that has come into my butcher shop from that abattoir wholesale is not lamb’? You are not equipped to answer that question in any event.

Mr Gorrie—Essentially, as I understand it, the auditor went and spoke with the complainant and, after discussions, there was no further action.

Senator HEFFERNAN—But who is the auditor?

Mr Gorrie—The auditor is a person employed by Safe Food Production Queensland.

Senator HEFFERNAN—But under your terms and legislative charter, you are not equipped to answer the question anyhow.

Mr Gorrie—The purpose of following it up from our point of view was to simply see whether there was a need to pass it on to somebody else.

Senator HEFFERNAN—But it is not in your jurisdictional interest. If it was maggoty, if it was off or if something was wrong with the meat, it would be right up your bailiwick.

Mr Gorrie—That is right.

Senator HEFFERNAN—But you are not there to define whether it is mutton, lamb or hogget.

Mr Gorrie—That is correct.

Senator HEFFERNAN—You just say, ‘Well, sorry, old mate, that’s not our job.’

Mr Gorrie—Yes.

Senator FISHER—However, I seek further clarification. You led into these two instances by saying that the authority would refer them on, and I asked you about those two instances. You are now telling the committee about the second instance.

Mr Gorrie—Yes. The first one was in the retail sector, which we do not have, again, any—

Senator FISHER—Yes. In respect of the second one in the butcher's outlet, you said earlier, I think, that there were no allegations to take further. Is this, in fact, an instance where you referred on, as you said you would do, and then gave these two examples? I want to understand why on the one hand you are saying that issues of misdescription you would refer on to those bodies in whose bailiwick it falls, yet the second instance you are citing as an example of that you are saying—if I understand correctly—'We stopped it dead because the authority's auditor decided that there was no case to answer.' Can you explain that?

Mr Gorrie—I do not have the detail, but my understanding is that in the second case there was just no evidence that could be used in any way to provide to either Queensland Health or the Office of Fair Trading.

Senator FISHER—So I guess you are saying there is nothing that the authority thought was even worth passing on, albeit in an informal way.

Senator HEFFERNAN—That was not a judgement on the merit of the complaint; that was a judgement on the fact that the system does not work to allow that definition to be made.

Senator FISHER—It would have been accredited to the charter under the legislation.

Mr Gorrie—We had no definition in our legislation.

Senator HEFFERNAN—Who do you pass it to that has the definition?

Mr Gorrie—As I said, we have two avenues to pass it on. If it is in the retail sector, we pass it on to the Department of Health—

Senator HEFFERNAN—But the Department of Health are not going to be interested in whether it is a lamb, a hogget or a rabbit, as long as it is good food.

Mr Gorrie—They do have provisions in their legislation relating to misrepresentation and misleading information, which we do not have.

Senator HEFFERNAN—But the system itself in the abattoir does not demand the definition between the various meats—hogget, mutton and lamb. It is not in the system, is it?

Mr Gorrie—We have none of those definitions in our legislation.

Senator HEFFERNAN—You are a bleedingly obvious case in Queensland if consumers who eat lamb up there are interested in uniformity of product to have a system suggested to the Queensland government that might do that.

Mr Gorrie—The abattoirs that are producing lamb in Queensland are all AUS-MEAT accredited, and frankly we are relying on the AUS-MEAT accreditation for those descriptions. It is not based in legislation at all.

Senator HEFFERNAN—I appreciate that. We have had AUS-MEAT tell us at this inquiry that they had complaints at a Victorian abattoir where they found a bucket full of hogget heads—

bear in mind, they only inspect five in a 100, and it could be 50 this time and then 1,000 that you do not inspect. They just rang up and said, 'By the way, old mate, in Melbourne we found a few hogget heads today,' and put the phone down and that was the end of it. It is stupid.

Mr Gorrie—As I mentioned earlier, we do try and be consistent with a national approach. So if there was, if you like, a national initiative in this area—

Senator HEFFERNAN—Let us sharpen that up a bit. In the abattoirs in Queensland, what proportion of alleged lambs that are slaughtered have their mouth open before their head comes off?

Mr Gorrie—I cannot answer that question. I could try and find out for you. Frankly, I am not sure.

Senator HEFFERNAN—We would be interested in the answer. Would you be distressed as the Chairman of Safe Food Production Queensland if this committee suggested to you that it might be to the advantage of consumers in Queensland and to the producers of quality meat products if we suggested to the Queensland government that a system such as the one that we have just heard of in Western Australia be used in Queensland? Do you think there is anything wrong with what Western Australia does?

Mr Gorrie—I did hear some of the evidence.

Senator HEFFERNAN—Did it sound like a good idea to you?

Mr Gorrie—We would certainly have a look. I mentioned a moment ago that we are very much in favour of national consistency in food regulation and we have worked tirelessly at the CEO level and at the senior policy people level in Safe Food Queensland to contribute to the national policy development arrangements. So if something like that were suggested by the committee and went through that process within the standing committee level and then at the ministerial council level, we would certainly consider it. It would be a matter for the government.

Senator HEFFERNAN—The MLA has spent millions of dollars advertising the premium that lamb it represents. As I said before, I do not want Sam Kekovich up here punching my lights in because we damaged the lamb market. But surely, in view of all that advertising and all that PR, it would be a fundamentally good thing to have a system where you could actually audit what is happening.

Mr Gorrie—I do not disagree with that. But, as I said earlier, given that we have had two complaints brought forward to the authority within a three-year period—that is two complaints—it would seem to be me that the level of displeasure within the Queensland community is not terribly high.

Senator HEFFERNAN—But of course that has got nothing to do with the merits of the case. If you go to Woolies or to Billy Bloggs, the butcher, on the Sunshine Coast and you buy a rack of lamb or a shoulder or a leg and you take it home and say, 'Oh, that was a tough lamb,' that is about the end of it for you as the consumer. You say, 'Geez, that was tough'—and that

happens—and it is probably because it was a bit of old mutton. You are not in a position as a consumer to complain back through the process, because there is no process there to complain back through. There is no auditing system; therefore you are not going to get any complaints.

Mr Gorrie—Safe Food Queensland does have a complaints arrangement where people can ring up about anything that they think relates to our—

Senator HEFFERNAN—It is more focused on ‘the meat was maggoty,’ as it were.

Mr Gorrie—Certainly we get complaints about unsafe meat for consumption and we act upon those.

ACTING CHAIR—I think we have asked all the questions that we had for you, Mr Gorrie.

Mr Gorrie—I will follow up those issue that I undertook to get information on.

ACTING CHAIR—Thank you for your attendance. That concludes today’s hearing, which I declare closed.

Committee adjourned at 11.57 am