

Report of the  
**Kashrut Commission of Inquiry**

Commissioned by the  
**NSW Jewish Board of Deputies**



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## **GLOSSARY**

ACCC:	Australian Competition & Consumer Commission
ACCC Letter:	Letter dated 17 February 2006 by the ACCC to then solicitors of the KA
ACCC Submissions:	Submissions in opposition to exclusive dealing notification lodged by NSW Kashrut Authority Inc (N91747): lodged on behalf of Front Page Caterers on about 21 July 2005
ACNC:	Australian Charities and Not-for-profits Commission
AGM:	Annual General Meeting
AIT:	Caterers with Passion Pty Ltd trading as Amaze In Taste
AKO:	The Association of Kashrus Organisations
Associations Act:	Associations Incorporation Act 2009 (NSW)
CKB:	Continental Kosher Butcher
Community:	Members of the Jewish community of NSW who are, or may become, kosher or who may currently, or in the future, require to purchase kosher products, or use the services of Kosher Establishments
COS	Council of Orthodox Synagogues (NSW)
COSA	Council of Orthodox Synagogues (Australia)
Deloitte:	Deloitte Touche Tohmatsu
Fair Trading:	NSW Government Fair Trading
FB:	Fringe benefits
Hadassa:	Eilat at Hadassa Kosher Butcher
Halacha (halachic):	Orthodox Jewish Law

Hechsher:	Rabbinical product or service certification that food conforms to the requirements of Halacha
JBD:	NSW Jewish Board of Deputies
JCA:	JCA NSW (formerly known as Jewish Communal Appeal)
JNF:	Jewish National Fund Australia
KA:	NSW Kashrut Authority Inc
KCI:	Kashrut Commission of Inquiry
Kosher Establishments:	Kosher caterers, restaurants, kitchens, cafeterias, canteens, dining rooms and other food outlets
MAP:	Modified atmosphere packaging
Mashgiach (mashgichim):	Kosher supervision operator(s)
M&M:	M & M Poultry Pty Ltd
New KA Constitution:	KA Constitution approved on 24 July 2014 and lodged with Fair Trading on 3 October 2014
NSW:	New South Wales
ORA:	Organisation of the Rabbis of Australasia
Passion8:	Passion8 Catering Pty Ltd prior to voluntary administration
RKA:	Revamped KA
SBD:	Sydney Beth Din
Shechita:	Ritual slaughter
Shochet (shochetim):	Ritual slaughterer(s)
UIA:	United Israel Appeal
VIC:	Victoria

## **SUMMARY OF RECOMMENDATIONS**

- The market for kosher products and services in NSW should be as open and competitive as possible so as to facilitate the reduction of costs for consumers.
- Urgent structural reforms in relation to the provision of kashrut certification in NSW should be made.
- The certifying kashrut authority should be transparent, representative of the Community, and run as a not-for-profit operation, with a recognised set of governance rules consistent with community norms.
- Community funds should be made available to seed and/or support such a kashrut authority.
- A resolution must be arrived at immediately in relation to:
  - a strategy and timetable for implementing cost savings;
  - the provision of a permanent kashrut certification to each of the Kosher Establishments in NSW not currently certified by the KA;  
and
  - the permissibility of meat products from inter-state certified providers to licenced Kosher Establishments in NSW.
- The Executive of the JBD should delegate to three people, one being a member of the JBD Executive and two being members of the KCI, to supervise the implementation of these recommendations as far as possible.

## INTRODUCTION

1. The creation of the KCI was deeply rooted in the principle that the Community requires a range of kosher products and services (including catering and supervision services) at affordable prices, and requires delivery of these services in a transparent manner. Indeed, the sustainable, affordable and transparent provision of such products and services is a fundamental pillar of a strong Jewish community.
2. As a result of the development of significant solvency issues of kosher caterer Passion8 in 2013, a group of philanthropists and JCA donors asked the JCA to assist with the conduct of a financial review of Passion8's business with a view to salvaging the business. This was felt essential due to Passion8 playing a pivotal role in the provision of kosher catering to the Community. Following the completion of the review, Passion8 was placed into administration.
3. In August 2013, during the review, the KA approached the JCA for financial support. It asked the JCA for a one-to-two year bridging loan in the approximate amount of \$68,000, equivalent to the debt claimed to be owed to it by Passion8.<sup>1</sup> It is not in the JCA's charter to provide loans, nor to fund non-constituents, and the JCA could not therefore agree to provide such a loan or funding.

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<sup>1</sup> As part of those discussions, the KA freely tendered MYOB printouts of the unaudited Profit and Loss accounts for the years ending December 2010, 2011 and 2012 to the JBD and JCA representatives. The accounts of the KA will be dealt with in more detail below.

4. Shortly after Passion8's closure, a new caterer, AIT, was formed. AIT acquired some of the assets of Passion8 from its administrator, and it was granted a temporary licence by the KA. When the temporary licence expired in October 2013, after being on foot for three weeks, and after negotiations between AIT and the KA broke down, a number of communal organisations saw an impending crisis where no kosher caterer would be able to deliver the majority of the large functions in Sydney, particularly in the period from November 2013 to January 2014, when a communal function and many private functions were then due to take place. The JBD, supported by the JCA, started a mediation process between AIT and the KA in an attempt to avoid such a crisis. COSA was also involved in an attempt to mediate a solution.
5. After operating for several weeks without a Hechsher from the KA, in late November 2013, AIT began to operate under kosher certification from Rabbi Yossef Feldman.
6. Once it was made public that they had become involved in the discussions with the KA, the JBD and the JCA were approached by multiple stakeholders (including the UIA, the JNF and Kesser Torah College) to review the current state of kashrut in NSW. They began engaging with many industry participants, including the meat and poultry suppliers, Kosher Establishments, rabbis and other communal organisations.



7. The JBD and the JCA did not succeed in getting the KA and AIT to agree on mutually acceptable terms to resolve their outstanding issues and withdrew from that process. Discussions with the KA, however, continued on the broader issues raised.
8. In the course of the negotiations and mediation the JBD and the JCA recommended to the KA that it move to an independently appointed rabbinic board, and that it expand the lay membership of the KA board. The KA initially welcomed the concept of additional lay members. The JBD and the JCA recommended five shomer Shabbat candidates who they felt could add balance and significant expertise to the KA board. Only one of the candidates was deemed acceptable by the KA. The KA made it clear that the structure and selection of the rabbinic leadership of the KA was an issue solely in the domain of the SBD and was not something that was open for discussion in any negotiations. This precluded the JBD and the JCA from taking this issue any further.
9. In November 2013, the KA published a document online and in the Australian Jewish News referring to the JCA having viewed its accounts.

(<http://www.jwire.com.au/news/ka-myths-and-facts/>).

After consideration, the then CEO and the President of the JCA felt that the document was potentially misleading as it implied that the JCA endorsed the accounts of the KA.

10. The JCA suggested, and the KA agreed, that the KA participates in a forensic review of its accounts. The JCA Executive believed that this would be beneficial for community confidence in KA finances.
11. Martin Bloom, former managing partner of Horwath NSW and then principal at Deloitte, was invited by the JBD and the JCA to conduct an independent review. Mr Bloom's services were initially accepted by the KA. He had one meeting with the KA and other meetings with industry representatives. The KA declined Mr Bloom's request for a subsequent meeting and asked that he be replaced by Peter Hersh, the KA's own auditor.
12. While not questioning Mr Hersh's expertise, the Presidents of the JBD and the JCA came to the conclusion, after careful consideration and consultation, that it would not be appropriate for an independent review to be conducted by the KA's own auditor.
13. The KA withdrew any participation in the review and claimed that any use of the word 'forensic' had an implication of inappropriate behaviour. This issue had not previously been raised at any point in the previous months of discussion by the KA or their representatives. The JCA immediately agreed to drop the term "forensic" but recommended that the review should continue. The KA declined to agree.
14. As a result of the KA's refusal to agree to an independent review of its accounts, its refusal to accept the appointment of independent directors to the lay board as suggested by the JCA and JBD at that

time, the Presidents of the JBD, the JCA, the UIA and the JNF came together and requested the JBD to establish the KCI.

15. In January 2014 the KCI, was established by the JBD to examine kashrut in NSW on its behalf and to report back to the JBD with its findings and recommendations. The establishment of the KCI also followed discussions with, and had the imprimatur of, the COS, which is the roof body representing the majority (15) of orthodox synagogues in NSW.
16. The following members were appointed on a voluntary basis to the KCI by the JBD with input from the COS and the communal organisations referred to in paragraph 14:
  - Robert Gavshon, chairman.
  - Bruce Fink, member (representing the UIA).
  - Romy Leibler, member (representing the COSA).
  - Geoffrey H Levy, AO, member.
  - Yair Miller, member (representing the JBD).
  - Peter Philippsohn, OAM, member (representing the JCA).
  - David Sandler, member.
  - Richard Scheinberg, member.

## **TERMS OF REFERENCE**

17. Pursuant to its terms of reference, the KCI was required to:

- examine the status quo in regard to kashrut in NSW;
- consider the appropriate model for the delivery of kosher services in NSW;
- establish governance requirements, including constitutional set-up, accountability, transparency, corporate and halachic governance and lay involvement;
- investigate pricing, including pricing policies, the need for Shechita in NSW, current practice of prohibiting meat and poultry from being purchased by caterers and restaurateurs from other States, particularly having regard to the economic and logistical landscape, law and Halacha;
- consider the manner in which the community may bring the most affordable supply of kosher products to as many people as possible without adversely affecting the best interests of kosher consumers and the Jewish community generally in NSW; and to
- make recommendations.

## **WORK OF THE KCI**

### **Professional and other services**

18. Legal services were provided to the KCI, on a pro bono basis, by the law firm, Arnold Bloch Leibler. Accounting services were provided to the KCI, on a pro bono basis, by the accounting firm, Deloitte.
19. The KCI has also consulted with reputable rabbis, worldwide, on matters related to Halacha.
20. An administrator, Nicolas Meer, was appointed to sit on the KCI to handle the day-to-day administration of the KCI.

### **Submissions**

21. The KCI published advertisements in the Jewish Press (AJN and JWIRE) on or about 28 February 2014 pursuant to which it called for submissions. In addition, the JBD invited communal organisations, synagogues and their rabbis and presidents to make submissions. The KCI received submissions from past and present industry participants, Kosher Establishments, institutions and individuals in response to those advertisements.

### **Interviews**

22. The KCI identified the main stakeholders in the provision of kashrut services in NSW, including the butcher, poultry producer, restaurants, caterers, shochtim, mashgichim and others. Interviews were arranged with those persons between March 2014 and December 2014.

Furthermore, meetings and discussions were also held with certification authorities, butchers and caterers in VIC, Canada, South Africa, the United Kingdom and the United States of America.

### **Meetings and mediations with the KA**

23. The KCI made every effort to engage with, and indeed include, the KA in the investigative process. The KCI wished to adopt a co-operative approach.
24. On 21 February 2014 the KCI had a meeting with the KA in order to invite the KA to participate in the inquiry with the KCI.<sup>2</sup> The KA sent the KCI a letter on 27 February 2014 declining the KCI's invitation to be involved<sup>3</sup>.
25. In pursuing its investigations, the KCI met with various personnel of the KA. Certain personnel would only attend a meeting with the KCI if it was in the presence of the Honourable Frank Marks. The KCI agreed to that condition, and a meeting was held.
26. The Chairman of the KCI asked the Honourable Frank Marks if he would be willing to facilitate a meeting between the KCI and the leadership of the KA (the Rabbinic Administrator, Rabbi Gutnick and the President, Baron Revelman). The Honourable Frank Marks agreed to do so, and a meeting took place in May 2014.

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<sup>2</sup> The KA was represented by its then president, Baron Revelman, Rabbinic Administrator, Rabbi Gutnick, and Treasurer, Rabbi Franklin. The KCI was represented by Robert Gavshon, Bruce Fink and the administrator of the KCI, Nicolas Meer.

<sup>3</sup> Shortly prior to the publication of this Report the KA requested to see a copy of the draft Report, but that request was declined by the KCI.

27. At the conclusion of that meeting the KA agreed that it would respond to a due diligence questionnaire prepared by Deloitte on behalf of the KCI.
28. Notwithstanding that agreement, the KA did not answer the questionnaire including the provision of its audited accounts. The due diligence questionnaire and the KA's response are Schedules 1 and 2 to this Report. (The KCI ultimately obtained copies of such of those accounts of the KA as were lodged with Fair Trading.)
29. Deloitte has not been afforded sufficient cooperation by the KA to enable it to conduct a meaningful and proper financial review.
30. The KCI invited international kashrut experts to come to Sydney to assist and was informed that this was opposed by the SBD. Eventually Rabbi Saul Emanuel, Executive Director of Montreal Kosher (MK in Canada), came to Sydney at the invitation of the KCI. During his visit he met with stakeholders and the KA itself. Rabbi Emanuel is highly respected throughout the kashrut world and is on the executive of AKO.
31. Further attempts at informal mediation with the KA through ORA, COSA, the KCI and Rabbi Emanuel have been unsuccessful to date.

### **Overview of the KA**

32. The KA is currently the sole permanent Kashrut certifying authority based and operating in NSW and according to the KA itself, it is the

kashrut licencing arm of the SBD<sup>4</sup>. According to the KA President's Report 25 November 2014, the KA is acting as the SBD's agent and is "*accountable to it in all matters related to kashrut*" and, according to the footer of that report, the KA is "*under the auspices of the Sydney Beth Din*". A copy of the KA President's Report 25 November 2014 is attached as Schedule 3.

33. The KA is registered with Fair Trading under the entity name "The NSW Kashrut Authority Inc" as an incorporated association.
34. The KA is registered with the ACNC as a charity.
35. Other business names registered in the name of the KA include "The Kashrut Authority", "The Kashrut Authority of Australia", "The Kashrut Authority of Australia and New Zealand" and "IKOSHER".
36. The KA provides services to the Community in the fields of, inter-alia, kashrut supervision (e.g. caterers and butchers), shechita, licensing (e.g. restaurants) and kosher product certification.
37. The KA approved a new constitution on 24 July 2014. The KA Board consists of Baron Revelman (President), Rabbi Selwyn Franklin (Vice-president), Chana Warlow-Shill (Secretary) and Anthony Greenfield (Ordinary Board Member). The SBD representatives consist of Rabbi Moshe Gutnick (Rabbinic Administrator), Rabbi David Rogut and Rabbi Yoram Ulman.

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<sup>4</sup>

See KA website



## Financial review

38. The following words appear on the KA website:

*“Is the KA transparent and accountable? The KA's accounts are independently audited, and are fully available and open to the public. They are filed annually with the Dept of Fair Trading.”*<sup>5</sup>

39. At the commencement of its inquiry, the KCI requested the KA to provide to it a copy of its audited accounts for the years 2010, 2011, 2012 and the financial statements for 2013. Although the President of the KA informed the members of the KCI that he would approve the release of those accounts to the KCI, and notwithstanding the above-quoted statement on the KA website, no accounts were provided by the KA to the KCI following requests made by the KCI both to the KA and to the KA's auditor: in fact, at the beginning of 2014 no *“independently audited [accounts of the KA for those years were] fully available and open to the public”*.<sup>6</sup>

40. In reliance upon the above statement on the KA website, the KCI approached Fair Trading in order to obtain copies of the KA's accounts. Despite the representation made on the KA website, it was ascertained (in about March 2014) that the KA's audited accounts for 2010, 2011, 2012 and 2013 had not yet been lodged with Fair

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<sup>5</sup> <http://www.ka.org.au/index.php/FAQ-abouttheka.html>

<sup>6</sup> Certain unaudited MYOB print outs (in relation to 2010, 2011 and 2012) had been provided by the KA to the JBD in about November 2013.

Trading, noting, however, that the 2013 accounts were only due for lodgement on 31 July 2014.<sup>7</sup>

41. The KA's 2011 and 2012 audited accounts were ultimately lodged in May 2014, the 2010 accounts only lodged thereafter in August 2014 and the 2013 accounts lodged in October 2014. The table below shows the due date for lodging audited accounts with Fair Trading by the KA in accordance with Section 45 of the Associations Act and the date on which Fair Trading extracts indicate they were lodged by the KA.

<b>Year Ending 31 Dec</b>	<b>Accounts due date as per the Associations Act</b>	<b>Accounts lodged date</b>
2010	31 July 2011	26 August 2014
2011	31 July 2012	20 May 2014
2012	31 July 2013	20 May 2014
2013	31 July 2014	24 October 2014

Fair Trading extracts indicate that the KA made several requests for extension of the deadline to lodge its accounts with Fair Trading. For year end 2011, two extensions were requested to Fair Trading, to 28 February 2013 and to 30 April 2013, for year end 2013 an extension was requested to 31 July 2014.

42. Based on the audited accounts lodged with Fair Trading, the KCI notes that for the year ending 31 December 2013 the *liabilities of the KA exceeded its assets by \$318,000 (liabilities exceeded assets by \$232,000 at year end 2012) and there was deficiency in the working*

<sup>7</sup> The KA accounts for the 2013 financial year were lodged with Fair Trading on 24 October 2014 and are publicly available on the KA's website.

capital of \$340,000 (deficiency in working capital of \$296,000 at year end 2012). The KCI can express no definitive view as to the solvency of the KA by reason of the fact that the KCI has not received the detailed information it has sought from the KA (see paras 23-31).<sup>8</sup>

43. The MYOB documents, tendered to the JCA, only for financial years 2010, 2011 and 2012, show a *profit/surplus* for the year ended 31 December 2012 (Financial Year 2012) of \$1,157, while the audited financial statements of the KA show a *loss* of \$24,180 for that same period. On the information available to the KCI, no reconciliation was possible.
44. The MYOB documents show that personnel costs of the KA for the 2012 and 2011 financial years amounted to \$1,427,370 and \$1,388,566 respectively made up as follows:

\$	2012	2011
Wages and salaries	614,002	597,735
Sub-contractors	55,158	51,942
FB Senior Management	267,731	282,212
FB Shochtim	126,354	118,545
FB Supervision	306,636	279,580
Training	4,420	5,500
Workers compensation	4,639	5,252
Superannuation	47,966	47,800
Other employee expenses	463	-
<b>TOTAL</b>	<b>1,427,370</b>	<b>1,388,566</b>

<sup>8</sup> The figures in this paragraph are rounded to the nearest \$1,000

45. According to the 2013 audited accounts of the KA, the employee expenses were \$1,512,042, but the KCI does not have available to it the break-up of the costs for that year.
46. Wages, employment and contractors costs of the KA for 2012, comprise approximately 80% of its total expenses of \$1,772,799 as reflected in the MYOB documents.<sup>9</sup>
47. It is difficult to analyse the above figures, by reason of the KA's failure to respond to the due diligence questionnaire or to make the information publicly available:
- It was not made known to the KCI who comprises: "FB Senior Management"; "FB Shoctim"; "FB Supervision", what their respective roles are and what their remuneration is.
  - It was not made known to the KCI what the total compensation amount paid to Management and Administration Staff is.
  - It was not made known to the KCI what the total compensation amount paid for Supervision is.
  - It was not made known to the KCI what the total compensation amount paid to Shochtim is.
  - It was not made known to the KCI what role Sub-Contractors play and what their remuneration is.

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<sup>9</sup> The KCI has been advised that during the past year certain personnel of the KA have experienced delays in payments of their compensation.

48. The *motor vehicle expenses* as disclosed in the MYOB accounts amounted to \$89,578 and \$92,662 in the 2012 and 2011 financial years respectively.<sup>10</sup>

49. These motor vehicle expenses comprised:

\$	2012	2011
Insurance and registration	10,353	-
Leases	43,603	44,855
Petrol	23,999	22,281
Maintenance	3,769	6,318
Bridge toll	7,854	6,819
<b>TOTAL</b>	89,578	92,662

50. Again, it is difficult to analyse the above figures. By reason of the KA's failure to respond to the due diligence questionnaire or to make the information publicly available, it was not made known to the KCI:

- how many vehicles are leased;
- what the on-going commitments are in relation to each such vehicle;
- who uses each vehicle;
- how much, if any, is for private use; and
- whether the use of a vehicle is part of the remuneration of the particular employee that uses the vehicle.

<sup>10</sup> It is noted that, as will appear below, in the balance sheet of the KA for 2012, property, plant and equipment at 31 December 2012 includes motor vehicles at a cost of \$262,503, and a book value of \$119,991.

51. The relevant audited accounts lodged with Fair Trading show that property, plant and equipment at 31 December 2012 include motor vehicles at a cost of \$262,503<sup>11</sup> and a book value of \$119,991<sup>12</sup>.
52. Again, the above figures are difficult to analyse in the absence of the following information:
- How many vehicles are owned by the KA?
  - Who uses the vehicles?
  - What is the KA's policy in regard to company-owned vehicles?
  - Were any vehicles bought or sold?
53. The audited accounts lodged with Fair Trading note hire-purchase liabilities as at 31 December 2012 of \$94,238. The hire purchase liabilities as at 31 December 2011 were \$140,073. Again, these figures are difficult to analyse in the absence of information as to:
- what assets are being referred to?
  - what are the monthly commitments?
54. It is noted based on the audited accounts lodged with Fair Trading that the current liabilities as at December 2012 include "*revenue received in advance*" of \$110,544. "Revenue received in advance" in the 2011 financial year was reflected as \$103,873.
55. Again, it is not possible to discern from the accounts what these liabilities relate to, although it appears to be unearned income. Nor is

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<sup>11</sup> Those figures were identical in the 2011 financial year

<sup>12</sup> The book value in the 2011 financial year was \$141,167. These figures are additional to the motor vehicle expenses as disclosed in the MYOB profit and loss accounts amounting to \$89,578 and \$92,662 in the 2012 and 2011 financial years respectively.

it possible to discern when the revenue becomes “earned”, and what expenses need to be incurred to earn that income.

56. The KCI considers that the accounts available to it, including those which are publicly available, are not sufficiently detailed to produce a comprehensive picture of how the KA operates, and have led the KCI to make the following findings.

## **FINDINGS**

### **Financial condition**

57. Based upon the matters referred to in paragraphs 28, 39, 42 to 55, the request for loans from the JCA, the loss of a large revenue stream from Passion8, and the apparent delay in payments to some mashgichim<sup>13</sup>, the KCI is of the opinion that prima facie there are questions about the financial condition of the KA.

### **Transparency**

58. For the reasons identified in paragraphs 28, 39 to 55, the KCI is of the opinion that there is a lack of transparency in relation to the operations, finances and workings of the KA. As noted, the KA refused an independent financial review. Notwithstanding requests from the KCI referred to earlier, and representations on the KA website, the KA has failed to provide the KCI with sufficient information in regard to its accounts, to enable the KCI to form a comprehensive and accurate understanding of its business and financial operations. It is incumbent on the KA as a registered charity and charged with responsibility for a Hechsher in NSW to ensure that there is complete transparency in all of its commercial operations and finances, beyond bare compliance with government auditing, reporting and regulatory requirements.

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<sup>13</sup> See footnote 9



### **Arm's Length**

59. Immediately prior to the adoption of the New KA Constitution, the KA rabbinic members apparently consisted of Rabbis Ulman and Rogut; and the Rabbinic Administrator of the KA, Rabbi Moshe Gutnick; Rabbis Gutnick, Ulman and Rogut were and are members of the SBD and were the SBD representatives on the KA. They are currently the only rabbis of the SBD. Under a number of licence agreements between the KA and its licensees disputes are to be determined by the SBD. Accordingly, the KCI is of the opinion that this dispute resolution provision has the potential to result in a breach of a fundamental rule of procedural fairness– namely, that no person can be judge in his or her own cause.<sup>14</sup>

### **Accountability to Community**

60. In the opinion of the KCI, the Community has not been and is not properly represented on the KA. There are no representatives of any communal organisations who sit, in that capacity, on the board of the KA and only recently was it suggested to the JBD and the COS to each nominate a “suitable candidate”, but given the pendency of this Report the suggestion, understandingly, was not taken up by either organisation.
61. The KA states that it is the agent of the SBD<sup>15</sup>. The SBD consists of Rabbi Gutnick (the administrator of the KA), Rabbi Ulman and Rabbi

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<sup>14</sup> The KA President's Report dated 25 November 2014 states that the KA acts as the agent of the SBD, and see paragraphs 32, 70, 71, 72 and 73 of this Report.

<sup>15</sup> See footnote 14 above.

Rogut, each of whom, under clause 2(4) of the New KA Constitution, is automatically considered a member of the KA. Furthermore, in the opinion of the KCI, they each appear to be entitled to attend all board meetings of the KA<sup>16</sup>.

62. No regular operating reports are made available to the Community. The documents lodged by the KA with the ACNC and Fair Trading which may be accessed by the public are not operating reports.

### **Conflicts of Interest**

63. Based upon the matters referred to in paragraphs 64, 65 and 66, the KCI is of the opinion that a conflict of interest situation arose in the past, and currently exists, in relation to the KA which is not in the best interests of the Community.
64. The KCI reviewed information provided to it by a participant in the Inquiry which was to the effect that: some years ago an entity for which the KA provided certification services and from which it received a substantial income (possibly by way of profit share with Rabbi Moshe Gutnick), stopped using the services of the KA and instead started using the services of Rabbi Moshe Gutnick personally for the purposes of certification, thus causing that KA income to cease. The KCI was also informed by a participant in the Inquiry that three lay board members of the KA who were aware of these matters, resigned.
65. The KCI understands from statements made to the Inquiry that it may be the position of Rabbi Moshe Gutnick that the relevant entity

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<sup>16</sup> Under clause 20(9) of the New KA Constitution and see bullet point 6 in paragraph 75.

was using the services of the KA initially as a result of the efforts of Rabbi Gutnick, and that entity then decided that it wished to deal with him directly and not through the KA. The KCI further understands on the same basis that it may be the position of Rabbi Gutnick that this occurred with the consent of the rabbis of the KA and that rabbinical advice was received from a leading overseas rabbi that this was not inappropriate.

66. The KCI notes that:

- there is an entity in existence known as Kashrus Australasia Inc, which carries out kashrut certification services; a certificate of kashrut issued by Kashrus Australasia Inc is attached as Schedule 6;
- Kashrus Australasia Inc has the same initials as the KA;
- Kashrus Australasia Inc purports to serve “Australia, New Zealand, and Asia/Pacific”, just as the KA also purports to serve “Australia, New Zealand, and Asia/Pacific”;
- the Rabbinic Administrator of Kashrus Australasia Inc is Rabbi Moshe Gutnick, who is also the Rabbinic Administrator of the KA;
- the address of Kashrus Australasia Inc is the home address of Rabbi Moshe Gutnick; and
- the email address of Rabbi Moshe Gutnick given in Kashrus Australasia Inc documentation is Rabbi Gutnick’s KA email address, that is, [rabbig@ka.org.au](mailto:rabbig@ka.org.au).

67. According to the summary of financial affairs lodged with Fair Trading, Kashrus Australasia Inc produced revenue of \$138,277,

\$159,754, \$206,811 and \$186,613, and had expenditure of \$136,309, \$157,817, \$183,602 and \$184,744 in 2010, 2011, 2012 and 2013 respectively. The KCI was informed that the activities of Kashrus Australia Inc relate to kashrut in New Zealand.

### **Certifying Authority**

68. The KCI maintains it may be in the Community interest for there to be a single certifying authority. There is also a perception among some that a single Hechsher is conducive to communal harmony.
69. If there is but one authority, it is all the more important, in the opinion of the KCI, that such authority be completely open and transparent<sup>17</sup>.
70. The KCI considers it is in the Community interest that such body be conducted in a market that is open and competitive so as to facilitate the reduction of costs for consumers.

### **New KA Constitution<sup>18</sup>**

71. Subsequent to the formation of the KCI and the commencement of its work, the members of the KA adopted a new constitution. In the opinion of the KCI, the New KA Constitution does not address a number of concerns. It states that: only the KA board may deal with financial aspects and matters of the KA unless those matters have

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<sup>17</sup> In the opinion of the KCI, if there is but one authority it is imperative that that authority be a community based registered charity run as a not-for-profit entity, with a recognised set of governance rules. The KCI does not, however, suggest that there should be any prohibition on the existence of any other certifying authority. Even in the area of certification, competition may be in the interests of the community as a whole depending on factors such as scale and demographics.

<sup>18</sup> Clause references in this section are references to clauses in the New KA Constitution.

halachic ramifications; only the KA board can make financial decisions on behalf of the KA – see clauses 13(d) and (e); and all issues of Halacha are to be interpreted and decided solely by the SBD and its decisions thereon shall be final and binding on the KA and each member and director of the KA – see clauses 2(1)(e), 13(d), and 14(7). As noted in paragraph 61, the KA is the agent of the SBD. In addition to the fact the November 25, 2014 Report of the President of the KA states that the KA acts as the SBD’s agent and is “accountable to it in all matters relating to Kashrut”, the footer to that report also states that the KA is “under the auspices of the Sydney Beth Din”. Moreover, it is clear from the New KA Constitution itself that the SBD has very substantial power in the KA – see last two lines at page 3 of the New KA Constitution; - see also clauses 2(1)(c) to (e), 2(2)(c) to (e), 2(4), 4(e), 10(2) and (3), 13(d) to (f), 14(6) and (7), 15(10), 20(9), 22(1) and (5), and 24(4). A copy of the New KA Constitution is attached as Schedule 4. The KCI, on the basis of the above facts, is of the opinion that the KA and SBD by virtue of their dual Rabbinic membership, clearly do not operate at arms length from one another.

72. Furthermore: a member of the SBD is automatically considered a member of the KA – see clause 2(4); directors can be removed by members and the SBD has limited discretion to approve membership – see clauses 2(1) and 19(1); SBD Representatives as defined are entitled to attend all board meetings – see clause 20(9); Questions at board meetings are to be determined by a majority of votes of “Directors and Members of the Board” – see clause 22(1); and SBD

representatives are not entitled to vote on financial issues relating to the KA – see clause 22(3). These clauses read together suggest to the KCI that the SBD representatives can attend and vote at board meetings on all matters except finance and are actually shadow directors.

73. The New KA Constitution arguably gives the SBD the ability to disqualify a person from being eligible to be or remain a member of the KA - see clauses 2(1)(c), 2(1)(d) and 4(e).

74. All halachic disputes (including disputes between members or between a member and the KA) are to be determined by the SBD, save possibly for the very narrow question as to whether a particular matter is the subject of halachic purview and subject to the jurisdiction of the SBD; if that situation arises and is not resolved “then that dispute will be referred to the London Beth Din but only ‘for determination as to jurisdiction.’ However, if the London Beth Din determines the matter is halachic, then the decision on the matter reverts to the sole and binding jurisdiction of the Sydney Beth Din” - see clause 13(f).

75. The KCI believes that matters of corporate governance are not adequately addressed:

- The board of the KA only needs to meet on three occasions in each year – see clause 20(1). The KCI believes this to be inadequate having regard to the KA’s role and overseas and interstate comparisons.

- Disputes between members or between a member and the KA are to be determined ultimately by the SBD, but the individual SBD members, who are automatically members of the KA –see clause 2(4), are not eligible to hear the dispute – see clauses 10(2) and (3). On this basis, the dispute can never be determined.
- A person is only permitted to be a member of the KA if the person is “Jewish in accordance with Orthodox Halacha” – see clause 2(1)(b) and adheres to and is strictly observant of Halacha including but not limited to the Sabbath and Jewish Kosher Dietary Laws to a standard acceptable to the SBD – see clause 2(1)(c). The SBD can disqualify a person for failing to adhere to 2(1)(b) (being Jewish in accordance with Orthodox Halacha) or 2(1)(c) – see clause 2(1)(d). This is unnecessarily restrictive and precludes the participation of persons with suitable business and financial expertise who would otherwise be eminently qualified to serve on the KA as lay members.
- A person is only entitled to remain as a director if that director appears to and observes orthodox Halacha “solely to be decided upon by the SBD” – see clause 15(10). This is also unnecessarily restrictive for the reasons given immediately above.
- There are no limitations either on the total period of service of existing or future office bearers, or their service in a particular office.
- “Sydney Beth Din Representative” is defined as “the observer of the Kashrut Authority’s activities” – see clause 1(4). There is no mechanism in the New KA Constitution for the observer’s

appointment, who qualifies as an observer and how the observer is removed, and tenure.

- There is confusion in the New KA Constitution as to the distinction between Directors and “Members of the Board” – see clause 20(5) and it may well include the SBD representatives.
- It is unclear from the New KA Constitution if SBD Representatives are merely observers of the KA board with no voting rights or in fact entitled to vote at board meetings on matters other than financial issues – see clauses 13(e) and 22(3)<sup>19</sup>.
- All issues or matters involving orthodox Halacha are to be interpreted and decided solely the SBD representatives and should be binding on the KA – see clause 24(4). Again by virtue of their dual Rabbinic membership, there can be no independent determination of any such question.

This appears to be a contradiction with other dispute provisions of the New KA Constitution.

### **Continental Kosher Butcher**

76. The KCI understands that the KA still does not allow its licenced Kosher Establishments to purchase kosher meat from CKB in Melbourne, the largest kosher butcher in Australia, and which is under the certification of Kosher Australia, a highly respected Melbourne certifying authority. The KCI considers allowing CKB meat

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<sup>19</sup> The KCI notes that an error appears in the New KA Constitution in that there are two clause 22(3)’s. Reference is made to the first one of these clauses.



to be purchased by the Kosher Establishments in NSW would create a highly competitive environment with the concomitant benefits.

77. It is noted that the previous policy of the KA used to be that restaurants under its supervision (such as Beaches Kosher Restaurant – which no longer exists – and Katzys) were permitted to purchase meat from CKB, although the caterers were not so permitted.<sup>20</sup>
78. It is noted that CKB is a major supplier of kosher meat to NSW (through the supermarket chains, including Coles, Woolworths and IGA) and is widely regarded, by rabbis of Sydney, as being kosher. The information obtained by the KCI is that the prices charged by CKB are often highly competitive. The KCI holds that it would be in the interests of kosher consumers in NSW if Kosher Establishments were permitted to purchase meat from CKB or any other supplier certified by a recognised Hechsher. The table below highlights retail price differential between Hadassa and its key competitors. The table must be read with some caution because Hadassa, and CKB samples cover *fresh meat*, Coles covers *packaged fresh meat*, whilst Krinsky's sample is for *frozen food* from Solomon, a Melbourne butchery.

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<sup>20</sup> See ACCC Submission at paragraph 5.

<b>7 NOVEMBER 2014</b>	<b>NSW</b>	<b>NSW</b>	<b>NSW</b>	<b>VIC</b>
<b>Meat / per kg</b>	<b>Hadassa</b>	<b>Coles</b>	<b>Krinsky's</b>	<b>CKB</b>
Beef Regular Mince	\$18.95	\$18.20	\$14.95	\$16.32
Beef Premium Mince	\$21.95	\$20.20	\$18.25	\$18.30
Beef Scotch Fillet	\$45.95	\$39.90	\$36.25	\$39.09
Lamb Forequarter Chops	\$34.95	\$27.30	\$23.50	\$24.88
Lamb Cutlets	\$51.95	\$51.50	\$44.50	\$48.35

79. The KCI received information that wholesale price differences in respect of meat are significant between NSW and VIC suppliers and at times 30% lower in VIC.
80. As noted above, Kosher Australia appears to be a highly regarded certifying authority, with Rabbi Mordechai Gutnick<sup>21</sup> as Rabbinic Administrator, and appears to be widely accepted by the Sydney rabbinate. In the past, the KA allowed restaurants under its supervision to purchase meat from CKB certified by Kosher Australia (then known as Melbourne Kashrut). The KCI understands that the Montefiore Home has in the past and continues at the present time to purchase meat from CKB. Rabbi Rogut, until recently was one of the board members of the KA, is a Dayan of the SBD and consequently a member of the KA, is the Spiritual Dean of the Montefiore Home and a member of the Religious Committee of the Montefiore Home, which has responsibility, inter-alia, for the provision of kosher meals<sup>22</sup>. The KCI understands that most of the Rabbis in Sydney accept the kashrut of CKB, and purchase meat from it, which is sold in Sydney

<sup>21</sup> Rabbi Mordechai Gutnick is the brother of Rabbi Moshe Gutnick.

<sup>22</sup> See the Annual Report 2013-2014 of the Montefiore Home and the Montefiore Life June 2010 publication

supermarkets. In the past, the KA has given ad hoc permission to caterers to purchase from CKB and, the KCI understands that at the time of writing this Report, the KA allowed the Shalom Institute to purchase meat from CKB. Statements were made to the ACCC that, in the past, rabbinic members of the KA themselves purchased meat from CKB.

### **Third line forcing**

81. By reason of the Notification (N91747) given by the KA to the ACCC in 2005, the KA enjoyed immunity to the effect that licensed Kosher Establishments may only purchase meat from sources supervised and/or approved by the KA. The immunity is not time bound and subject to review. The ACCC letter states: *“the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct. Should it become clear that the KA fails to follow through with genuine efforts to address the competition concerns identified above and to provide greater transparency as to the reasons for its policy, the ACCC may review the notification in the future”*.
82. In the KA’s President’s Report of 25 November 2014 (Schedule 3) it is asserted that:  
  
*“Many of our Policies are available on our website and some are even endorsed by Government such as our Meat Policy with the ACCC.”*

83. An analysis of the ACCC Letter (Schedule 7), demonstrates that the ACCC did not in fact “endorse” the third line forcing of the KA. To the contrary, in the penultimate paragraph of that letter the following words are written:

*“Finally, I would emphasise that the ACCC’s decision not to take further action at this stage should not be seen as an endorsement of the KA. Indeed, as noted above, the ACCC has ongoing concerns in relation to the anti-competitive effects of the conduct.”*

84. In the ACCC Letter, the ACCC wrote amongst other things:

*“In the case of the KA’s claims that the conduct would protect local suppliers from competition from interstate providers of kosher meats, the ACCC is unable to accept the argument put by the KA. In fact, any protection of a less competitive local providers is more likely to constitute a public detriment as discussed further below. It is surprising that the KA place such focus on this claim, noting it is clearly contrary to the objectives of the TPA.*

*Having regard to the information provided by the KA and interested parties, the ACCC considers that the notified conduct reduces the level of competition in the market for the supply of kosher meats to caterers and restaurants in NSW. The practical effect of the KA’s Meat Policy has been to force caterers and restaurants to source their poultry from one to two suppliers, and their red meat from one supplier. In situations where choice is limited, this will often impact on the price consumers pay, the level of service provided, and potentially the variety and quality of*

*products on offer. The ACCC notes that while there is general community acceptance that some restrictions are necessary to maintain kosher standards, it is this practical effect of limiting sources of supply that has caused most concern.”*

85. In the ACCC Letter, the ACCC also wrote:

*“A key question, therefore, in determining the balance of benefit and detriment is whether the KA is exercising its judgment in accordance with religious requirements. It is difficult for the ACCC to arbitrate on this question.”*

86. In our opinion based on the ACCC letter, it was for the above reason that the ACCC decided not to take any further action in 2006. However, the ACCC encouraged the KA to work further with the Community in addressing the anti-competitive community concerns, including exploring mechanisms to allow meat produced in Melbourne to be used by KA certified caterers and restaurants.

87. Since then and until recently, the KA compelled Kosher Establishments<sup>23</sup> to purchase meat from a single nominated supplier, Hadassa, and poultry from M&M. In practice, however, most Kosher Establishments purchased M&M poultry from Hadassa as the reseller. Prior to 2006, restaurants – but not caterers – were permitted to buy meat from CKB. Since the immunity has existed, new entrants have

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<sup>23</sup> To which it was providing certification

tried to distribute KA supervised meat but failed.<sup>24</sup> The KA, in effect, brought about a monopoly (that of Hadassa).

88. Kosher industry participants told the KCI that the monopolistic situation led to many irregularities in pricing and supply. Some kosher industry participants mentioned that there was no organised wholesale market in NSW and most of the time they would pay retail prices - *or even more* - to guarantee delivery. Other participants discussed orders not being delivered, last minute changes, cold-chain or other supply issues.
89. The KCI is of the opinion that the third line forcing policy of the KA, which requires Kosher Establishments to purchase meat only from one source, namely Hadassa<sup>25</sup> has led to undesirable price increases in a market in which prices are already high. It has led to a reduction in choice, prevented Kosher Establishments from choosing their own suppliers on the basis of normal commercial considerations of quality, choice and price, and has therefore been prejudicial to consumers in NSW. In the view of the KCI, the policy is anti-competitive and obviously leads to a substantial lessening of competition in the NSW kosher market.
90. The KCI notes that, during the course of its investigations, there was a positive move on the part of the KA to partially open the market by agreeing to permit Kosher Establishments under its certification to

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<sup>24</sup> See in particular Cleaver's butchers. Of course, consumers can purchase meat from Melbourne (CKB) from the major supermarkets. Restaurants and caterers have not been permitted to do so in recent years.

<sup>25</sup> More recently the KA has permitted Kosher Establishments to purchase meat from Solomon Kosher Butcher (see paragraph 90).

purchase meat and poultry from Solomon Kosher Butcher located in VIC. At the time of writing this Report, the KCI understands that there has been a limited take-up by Kosher Establishments as Solomon Kosher Butcher's terms of trade are onerous and it is only supplying frozen products. The move itself, however, has had the effect, in our view, of bringing the price of chicken down substantially by the mere prospect of competition. For example, since the granting of permission to KA-certified Kosher Establishments to purchase meat and poultry from Solomon Kosher Butcher, the price of cooked chickens has fallen from \$27 a chicken to \$17 (37% reduction) and sales volume trebled in some Kosher Establishments.

91. In our opinion, based on the ACCC Letter, the ACCC did not take action in relation to third line forcing of the KA because the ACCC, as regulator, did not wish to controvert the assertion by the KA that Jewish Law prevented it from certifying as kosher any establishment that purchased meat which was not slaughtered under its direct supervision, irrespective of trustworthiness and reliability of the certifying authority under which the animals were in fact slaughtered.
92. The KCI is of the opinion, on the information before it, that the third line forcing is not based on halachic considerations relating to the kashrut of such meat. This opinion is based upon the following: in the past, the KA provided its certification services to restaurants (such as Beaches and Katzy's)<sup>26</sup> that purchased CKB meat; Montefiore Home

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<sup>26</sup> Either it was able to certify the establishment as kosher, or it was not able to do so; it seems to be inconceivable that it was able to certify that restaurants that used such meat were kosher; but that it was not able to certify that a caterer was kosher if it used that same meat.

has over time been allowed, and continues to be allowed, to purchase meat from CKB (see paragraph 80); the KCI understands that in the past KA rabbis themselves have purchased CKB meat; and in the past the KA has given ad hoc permission to some Kosher Establishments to purchase meat from CKB.

93. The KCI firmly believes that the third line forcing (in relation to meat which is accepted to be kosher) enures to the prejudice of the Community as a whole and is not in the public interest.
94. The KCI considers that it would be in the interests of kosher consumers if Kosher Establishments were able to source meat from all kosher suppliers, including CKB, which are certified by a recognised Hechsher.<sup>27</sup>

### **Costs**

95. Whilst the KCI appreciates that the KA, amongst other things, undertakes product certification and shechita services, the KCI is of the opinion that the fixed costs of \$1.4m per annum and the motor vehicle costs are inordinately high for the size and nature of the KA's business and there should be scope for rationalisation.
96. The charge-out rate, of mashgichim which includes a 15% administration charge on the cost (including on-costs), in relation to the service rendered also appears to the KCI, to be high.

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<sup>27</sup> If, contrary to the above, the KA asserts that the meat of CKB is not kosher, then the KCI regards it as the duty of the KA to advise the Community accordingly as a large number of kosher consumers in NSW purchase such meat from Coles, Woolworths and Franklins in the belief that that meat is kosher.



97. The KCI notes that the KA levies a per head cover charge for supervised catered functions. According to the KA's website ([http://www.ka.org.au/index.php/Function\\_Charges.html](http://www.ka.org.au/index.php/Function_Charges.html)), the cover charge is \$4.68 per guest for functions where the per head cost is above \$20 and \$1.29 otherwise. On application, communal organisations may be entitled to a discount of 50% of the \$4.68 per guest function charge, but not the \$1.29 per guest charge for functions with a catering charge of below \$20 per guest, no discount is available on this charge.
98. The KCI learned that the KA shechita team operates both in Austral (M&M factory) for poultry, and in Wilberforce (abattoir used by Hadassa) for meat. The slaughter schedule for Austral is approximately 4,500 chickens per week. The Wilberforce schedule also includes approximately 25 beef carcasses, 60 lambs and six calves per week. Given the mild weather in Australia compared to other countries with colder weather (which increases the rate of rejection), the KCI is informed by participants in the Inquiry that the reject ratio (quantity of animals rejected by the shochet after a post slaughter inspection as unfit) is one of the lowest in the world at less than 30%.
99. In addition to the mashgichim costs in relation to shechita, the KCI was informed by participants in the Inquiry that the cost of shechita in NSW borne by M&M and Hadassa is in excess of \$7,200 in aggregate per week, which is in excess of \$374,400 per year. This amount is paid to cover the cost of two primary shochtim and a back-up shochet for poultry. The two shochtim work on average two days a

week each, as the slaughter schedule is operated over a two day period at each site. This amount of \$374,400 per year (approximately \$1,870 per day per schochet) seems in the opinion of the KCI, therefore, to be high.

100. The supervision of Kosher Establishments in NSW is primarily carried out by mashgichim working for the KA. The KCI heard from participants in the Inquiry that many mashgichim in NSW are not working mashgichim, i.e. they are not involved in working at the Kosher Establishments beyond the tasks associated with the supervision of kashrut. In essence the task of the non-working mashgichim is, inter-alia, to turn on/off the cooker, unlock/lock the fridge door and check the certification on products. There is only a marginal difference between the rate of pay of a working and non-working mashgiach. The KCI understands that non-working mashgichim are being phased out in other parts of the world.

### **The kosher consuming market**

101. Extrapolating from the GEN08 Jewish Continuity Report (June 2011), the KCI notes that the kosher consuming population in NSW is significantly smaller than in VIC, and relatively small in comparison to other markets, but under the right conditions could grow.
102. In addition the KCI notes that the 4 leading Jewish communal organisations in NSW (JBD, JCA, JNF, and UIA) provide approximately 10,000 kosher meals per year at their events, see table

below for breakdown. Any cost reduction will, in itself, result in meaningful cost savings to the Community.

<b>Organisations</b>	<b>Kosher Meals Served per year</b>
JBD	3,000
JCA	2,000
JNF	1,600
UIA	3,500

103. The information before the KCI suggests that the Community, in particular in relation to products and functions, is shrinking. For example, for the premium end of the market, approximately a decade ago, around 70% of Jewish functions were in fact catered kosher. Today, the information available to the KCI suggests that only around 30% are in fact catered kosher - and the balance is simply "Kosher Style" or otherwise.
104. The KCI accepts that "Kosher Style" is in fact not kosher at all. A religiously observant person would not eat at a "Kosher Style" function.
105. The KCI has concluded that one of the reasons for the shrinkage in general relates to the high cost of kashrut. For instance, in the case of fresh meat, the KCI established that retail prices are generally higher in Sydney than in Melbourne. The KCI believes that in an open market in Sydney wholesale prices would be much lower and potentially, as stated in paragraph 79, by some 30%. The KCI also believes that in an open market, ordinary competitive pressures would result in a

substantial flow-on of the reductions in wholesale prices into kosher meat prices at catered functions, restaurants, school camps and the like. It is therefore imperative that, the Community does whatever is possible to ensure that kosher functions and products can be provided at more affordable prices, including a reduction in the cost of kashrut certification. The KCI notes that a decrease in meat and poultry prices alone, whilst bringing about a significant reduction in the price of the meat component of a function, will not bring about a significant decrease in the overall cost of a function especially for the top end of the market. Caterers will need to examine their cost structures to bring about efficiencies to help reduce prices and there needs to be a reduction in certifying costs, kashrut supervision charges and changes to kashrut supervision practices as dealt with this Report.

### **Hadassa**

106. Hadassa is the sole independent local kosher butcher in NSW. It is based in Bondi. It is both a retailer and a wholesaler for kosher meat and poultry. It buys its meat carcasses from a boutique abattoir in Wilberforce and its fresh poultry from M&M.
107. Historically there have been several butchers in NSW but they closed one after the other, apparently due to the difficult market conditions in which they were operating.
108. As the only remaining independent butchery, Hadassa plays an instrumental part in the provision of kosher meat and poultry in NSW.

109. The KCI heard from participants in the Inquiry that retail customers of Hadassa generally value the service it provides, as well as the convenience of its location and the quality of its products; in particular the ability to obtain tailored meat-cuts and freshly processed poultry.
110. The KCI was also provided with information that certain wholesale customers have experienced irregularities in the delivery of the service and pricing by Hadassa. For example, recently the KCI received unsolicited information from one of the Jewish community institutions that it experienced a number of serious issues with meat deliveries from Hadassa – meat in unacceptable temperature range, late delivery, inappropriate labelling and incorrect packaging. The KCI is of the opinion that the situation may, at least in part, be attributable to the fact that Hadassa has been operating under a protected regime – namely, the third line forcing of the KA.
111. The KCI is informed that Hadassa has managed to significantly increase its retail sales volume this year, even with competition from Coles, IGA and Woolworths, (which stock CKB meat and M&M poultry) and the KCI has concluded that Haddasa should be able to do likewise with wholesale sales volumes in an open and competitive market. Hadassa should also be at liberty to source its meat from any abattoir where the meat has been produced under the supervision of a recognised Hechsher.

112. The KCI foresees, that by opening the wholesale market for meat and poultry which is under the supervision of all recognised Hechsherim, the quality of products and services will continue to improve, prices will become more affordable, more consumers will buy kosher meat and poultry, and Hadassa's wholesale sales volume should increase.

**AIT**

113. The KCI is advised that AIT has a major share of the market in relation to kosher functions (both private and communal) in NSW and that it currently sources a significant part of its meat products from CKB.
114. AIT has a temporary Hechsher from Rabbi Yossef Feldman. Some uncertainty appears to exist within a small section of the Community in NSW in relation to this Hechsher. The KCI notes that the vast majority of people in the Community, including most Rabbis, accept this Hechsher. For example, during the Shabbat Project, in which more than 6,000 people participated in Sydney, AIT catered at numerous organised functions including those held in orthodox synagogues around Sydney.
115. The Community therefore requires certainty in relation to this temporary Hechsher and the provision of a more permanent kosher certification for AIT and any other qualifying Kosher Establishments in NSW as soon as possible.

116. The KCI reiterates the need for caterers generally to examine their cost structures to bring about efficiencies to help reduce prices. Furthermore caterers should itemise all actual kashrut costs to consumers including those costs that are properly treated as being payable to the certifying kashrut authority and collected by the caterers on behalf of the authority.

## **RECOMMENDATIONS**

### **Cost Reduction**

117. Based on the information available to the KCI, it is difficult for the KCI to quantify with precision the actual cost reductions that in the opinion of the KCI will be effected. The KCI has, however, identified four areas to help drive down cost:

- Competition in wholesale supply of Meat and poultry.
- Certifying authority costs.
- Shechita.
- Technology.

### **Competition**

118. The KCI recommends that the entity supervising kashrut in NSW allows its licensees to obtain meat and poultry from any wholesaler supervised by a recognised Hechsher, particularly given technology, logistics, and expertise available nationally. By changing the status-quo in NSW, the KCI maintains that market forces will drive efficiencies in the wholesale supply chain, which ultimately will benefit the end-consumers through similar price reductions for meat as has started to occur with poultry.

### **Certifying Authority Costs**

119. The certifying authority should operate on a pure cost recovery basis.



120. The KCI recommends that the fixed overheads should be thoroughly examined so as to work on a cost recovery model, driving down cost with an aim of reaching a benchmark for:

- administration charges for mashgichim being no greater than 10% of the actual cost; and
- cover charges for supervised catered functions at \$2+GST per head, which would be comparable with VIC.

121. The KCI also recommends the training and deployment of working mashgichim only.

### **Shechita**

#### ***Centralised shechita***

122. The KCI is of the opinion that, given the limited size of Australian Jewry (approximately 120,000), in order to substantially reduce cost, in the fullness of time, shechita for the whole of Australia should be centralised in one state for meat (VIC), and one state for poultry (NSW), under the supervision of a Rosh Hashochetim. Substantial savings could be realised in slaughter room management, shochetim travel, in cattle and carcasses freight and in general economies of scale.

123. The KCI understands that the inherent complexity of setting up a centralised shechita in Australia probably presents too formidable an obstacle to overcome at this time, even though it would be the

preferred solution. In any event the KCI recommends that the setting up of centralised shechita should be revisited at least bi-annually.

124. The KCI also recognises that centralised shechita could represent some risk in the event of a disease outbreak closing up livestock movements between Australian states. The risk can be mitigated by the introduction of ad-hoc crisis kosher rooms at abattoirs and poultry processors in each state.

### ***Alternative - Streamlining of shechting days***

125. The KCI recommends that the slaughter schedule be streamlined and executed over a shorter period of time without compromising Halacha. This could be accomplished either through better management of the supply chains for the meat producers, or greater efficiency in meat slaughter. For instance, the KCI learnt that in Montreal, Canada (which has a highly respected Hechsher) 45 cattle are slaughtered ritually per hour, taking into account a 50 to 70% rejection ratio (67 to 76 animals, compared to a maximum of 32 animals in Sydney slaughtered over two days).

## **Technology**

### **CCTV**

126. The KCI believes that introducing CCTV supervision would substantially reduce the cost for Kosher Establishments. Given the geographic concentration of these establishments in the eastern suburbs of Sydney, CCTV could be implemented easily subject to

Halacha. Many highly respected Hechsherim around the world are looking into this technology. The licensees would install cameras in their establishments. These cameras would be providing live pictures to a central location. At this location, mashgichim would supervise the activities at the establishment. The mashgichim would still come to the establishments to turn on and off the cookers and open and close the refrigerators as well as carrying out random spot checks. The technology could be used mainly by restaurants and caterers. Instead of employing a non-working mashgiach per establishment, the licensees would use a pool of mashgichim and therefore share the cost. Thus the use of CCTV could lead to substantial savings for Kosher Establishments.

### ***Modified atmosphere packaging***

127. The KCI understands that MAP is a cost effective technology that has been developed and used worldwide to ensure that packaged food products stay fresh and attractive for as long as possible. One of the main causes of the spoilage of food is the growth of microbes such as bacteria, yeasts and mould that are present all around us. To keep food fresh for as long as possible without additives is a challenge, and the KCI understands one key technology for achieving this goal is to seal the food product in a package which contains a mixture of natural gases in carefully controlled proportions that significantly slow down the process of decay by inhibiting processes of oxidation and the growth of microbes. Using the correct modified atmosphere-packaging conditions, shelf life of red meat can typically be increased from

around two to four days to between five and eight days under refrigeration, while that of poultry can be increased from four-seven days to 16-21 days.

128. Introducing MAP in the production of meat and poultry in NSW could allow the producers to better control their supply chain, therefore significantly reducing transport cost. All the meat and poultry produced in VIC sold in NSW is currently distributed in MAP.

**Initial Cost Reduction Targets:**

129. The KCI believes that the following targets for cost reductions might be achievable:

- Poultry: based on recent experience there could be a saving of up to 30% in prices on a number of poultry products in an open and competitive market.<sup>28</sup>
- Meat: with an open and competitive market, an average reduction in wholesale prices of 20% could result in a saving for the benefit of the NSW kosher market as a whole of approximately \$300,000 per annum.<sup>29</sup>
- Certifying authority costs: apart from specific overhead rationalisation, using the benchmark referred to in paragraph 120, a \$2 cover charge and a 10% administration charge on mashgichim rates, should result

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<sup>28</sup> See paragraph 90

<sup>29</sup> See paragraph 79 and the NSW wholesale kosher meat market has been estimated to be \$1.5m per annum.

in a saving for the benefit of the NSW kosher market as a whole in excess of \$100,000 per annum.<sup>30</sup>

- Shechita: by streamlining shechita, including the use of modern technology, but not having regard to nationally centralised shechita, there could be a saving for the benefit of the NSW kosher market as a whole of approximately \$200,000 per annum<sup>31</sup>.
- CCTV: the introduction of CCTV and centralised supervision at two or more Kosher Establishments could result in savings of at least \$500 per week for each Kosher Establishment.<sup>32</sup>

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<sup>30</sup> See paragraph 120. The MYOB accounts of the KA for year end 2012 show a supervision revenue of \$915,000 including a 15% administration charge and Caterer Revenue of \$140,000. Reducing the administration charge to 10% would save approximately \$40,000. Reducing the cover charge to \$2 per head would save \$70,000.

<sup>31</sup> See paragraphs 98 and 127. Shortening the slaughter period from four to two days would reduce shechita costs and travel expenses by approximately 50%, equating to \$200,000.

<sup>32</sup> See paragraph 126. The number of man hours for two Kosher Establishments could be reduced from 20 to 12 hours per day and on the basis of paying \$25 per hour, it would represent a saving of \$100 per day or \$500 per week for each Kosher Establishment. If more than two Kosher Establishments were part of the CCTV program there would be incremental savings by virtue of the control room being able to monitor a limited increase of additional Kosher Establishments at no extra cost.

## **STRUCTURAL REFORM**

130. In the KCI's view, structural reform is urgently required in relation to the provision of kashrut certification in NSW. As a precursor, the KCI has identified a set of principles and corporate governance rules, which in its opinion are necessary for **any** Kashrut certifying authority to ensure financial and commercial transparency and hence Community trust and appropriate probity as follows:

### **Set of Fundamental Principles**

- 130.1. The entity should work solely for the purpose of organising and managing kashrut for the benefit of the Community, and for promoting kashrut within the Jewish community of NSW as a whole.
- 130.2. The entity should have as a key aim the reduction of kashrut charges for the Community.
- 130.3. The entity, while retaining proper halachic standards, should be strongly attached to the principles of the open-market, and should endeavour to promote it at all times, and ought therefore to avoid engaging in anti-competitive practices like third line forcing, and, to that end, it should recognise, wherever halachically possible, the certification of other reputable certifying authorities.
- 130.4. The entity should be accountable to the Jewish community of NSW.

- 130.5. The entity should be overseen by the JBD and the Jewish orthodox synagogues' membership of NSW.
- 130.6. The entity's financial/administrative functions, and its halachic functions, should be completely independent from one another. In other words, there should be a separation of power between the entity's financial and administrative functions, on the one hand, and its halachic functions on the other hand.
- 130.7. All board appointments, rabbinic and lay, should be ratified by the majority of the entity members.
- 130.8. The entity should be fully transparent on its cost and revenue structure.
- 130.9. Any financial excess generated through the operations of the entity should be used to reduce the overall cost of kashrut by way of a reduction of fees and charges to the licensees.
- 130.10. Any financial loss generated should be covered through support from the Jewish community of NSW.
- 130.11. The entity should aim to reduce the cost of kashrut in NSW and realise cost savings wherever possible without compromising Halacha.
- 130.12. The entity must ensure that conflicts of interest are avoided and where perceived conflicts or potential conflicts arise,

generally accepted corporate governance and probity measures should be implemented.

### **Principles of Corporate Governance**

131. Based on the principles of corporate governance prepared by the JCA and the JBD, the Kashrut certifying authority ought to be guided by the following principles of corporate governance:

131.1. No member of the lay board shall be appointed for more than 12 years in total including past service.

131.2. Any office bearer and especially the President shall be limited to six years in each position and nine years total as an office bearer.

131.3. To ensure a cohesive and functional leadership, the position of president, treasurer, vice president, and secretary shall be voted from within their membership and shall not be directly elected by the members.

131.4. Efforts should be made to ensure that directors, and especially office bearers, have the correct skill-set mix. This can be achieved by the ex-officio appointments acting cooperatively.

131.5. The directors and especially the lay leadership should represent a cross-section of the orthodox community of NSW and should not be overly weighted to one religious representation and gender.



132. The KCI deems it as imperative that such a certifying authority must ensure that conflicts of interest are avoided, and the potential for conflicts of interest are minimised.<sup>33</sup>

133. Clear procedures ought to be set in place to ensure that conflicts of interest do not arise.

### **Certifying Authority**

134. The KCI recommends one of three possible options in which the interests of the Community may best be served by a certifying authority.

135. The first option is that of a national authority serving the interests of Australian Jewry as a whole; the second option is the revamping of the KA; and the third option is the establishment of a new Hechsher for the benefit of the Community.

### **A National Entity**

136. The KCI would ideally recommend the introduction of a national entity to supervise and certify kashrut in Australia, subject to that authority being a community based registered charity run as a not-for-profit organisation, with a recognised set of governance rules and with an open market philosophy. It would bring all the benefits of economies-

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<sup>33</sup> Obviously in certain circumstances a potential conflict of interest may arise - for example if a consultant is used who is also involved in a different certifying authority in a different country. In the opinion of the KCI the necessary criteria for managing such a conflict of interest are that it must be established that it will not cause any loss of revenue to the entity, and that both the lay board and the rabbinic board of the entity approve of the potential conflict with full knowledge of the ramifications of it, and that such approval be granted independently; and that the potential conflict is clearly disclosed. In the opinion of the KCI it is inappropriate for a senior employee of the organisation to actually compete with the organisation in relation to work that is usually done by the organisation.

of-scale and harmonisation. It would allow the promotion of a more unified Australian Jewish community.

137. The KCI believes that due to the relatively small size of Australian Jewry (see paragraph 122), multiple certification authorities, with their own administrative cost bases, is not the most optimal option.
138. Economies-of-scale and substantial cost savings could be realised for the entire Jewish community if all ritual slaughter was managed and operated centrally and from a reduced number of abattoirs. For instance, a major share of kosher meat in the US is ritually slaughtered in Iowa.
139. Historically there have been many attempts to form a single authority in Australia. In spite of generally agreeing on common halachic views, these attempts have failed.
140. The KCI understands that the inherent complexity of setting up a national community Hechsher in Australia is probably too formidable an obstacle to overcome at this time, even though it would be the preferred solution. Possibly a start could be made in this direction with the introduction of national product certification.
141. Accordingly, the KCI concludes that, although in its opinion such an option is difficult to attain, at least in the short-term, this is a goal which the Australian Jewish community should strive to achieve.

## **A Revamped KA**

142. It is the view of the KCI that there are numerous issues associated with the KA in its current form. The KCI stresses, however, that there is general widespread acceptance of the kashrut standards of the KA.
143. Subject to the full co-operation of the current Rabbinic Administrator, board of the KA and the SBD being forthcoming, it would be possible and desirable for the KA to be revamped so as to address the concerns identified. In order for that to occur it would be necessary for the criteria identified earlier in this Report to be met, summarised as follows:
144. First, it would be necessary for the business of the RKA to be run in a completely transparent manner.
145. Secondly, the RKA would have to be run in a manner that it is accountable to the Community.
146. Thirdly, it would be necessary to ensure that no employee of the RKA is in any way placed in a potential conflict of interest situation. Thus, the issue in relation to Kashrus Australasia Inc would have to be re-addressed. The KCI does not believe that it is appropriate for the Rabbinic Administrator of the RKA to have any involvement with a company that might act in competition with the RKA. As noted in paragraph 63, the KCI is of the view that a senior employee of such an organisation must not compete – directly or indirectly – with the organisation.

147. Fourthly, it is the view of the KCI that it is essential that the RKA, in truth and in substance, adopts an open market philosophy, and that it does not seek to prevent any entity to which it provides a licence from purchasing goods or services from any other entity for any reasons whatsoever that are unconnected strictly with the kashrut of those goods (including meat) or services.
148. Fifthly, the RKA would have to adopt the principles listed in paragraphs 130 and 131 to the extent to which it already may not do so.
149. Sixthly, in the view of the KCI it would be necessary for the structure of the RKA to be revamped in the following way: -

### ***Members***

150. The members of the RKA should consist of the SBD, COS and JBD and all resolutions of members will be required to be passed with more than 65% voting in favour.

### ***Board of RKA***

151. The board of the RKA should consist of a minimum of five and a maximum of seven lay members, and a minimum of seven and a maximum of 11 rabbis.
152. The lay members should be appointed by the JBD (two thirds) and the COS (one third).

153. The rabbinic board should consist of the Rabbinic Administrator, two rabbis nominated by the SBD, and four rabbis nominated by COS. The remainder of the rabbis should be appointed by those elected.

***Functions and Powers of the lay board***

154. The lay board's responsibilities should include the following:
- 154.1. Setting the parameters and non-halachic policies within which the RKA may act and take decisions.
  - 154.2. Establishing and managing governance and compliance, including in particular procedures for avoiding conflicts of interest.
  - 154.3. Running the administration of the RKA.
  - 154.4. Ratifying or modifying annual budgets.
  - 154.5. Managing finances.
  - 154.6. Managing the implementation of the approved budget.
  - 154.7. Determining the fees and charges payable for the services of the RKA.
  - 154.8. All matters relating to the employment of all employees of the RKA, including salaries, benefits, terms and conditions.
  - 154.9. Operating banking accounts.

- 154.10. Ensuring that true and proper accounts are kept, lodged in a timely manner and management accounts prepared and distributed to the lay board monthly.
- 154.11. Acquiring, encumbering or alienating all forms of property.
- 154.12. Entering into, suspending or cancelling licence agreements on behalf of the RKA on the recommendation of the rabbinic board.
155. In addition to the above, the lay board will have the right to hire and terminate the employment of the Rabbinic Administrator. It is noted, however, that in hiring or terminating the Rabbinic Administrator, the lay board will be guided by recommendations from the rabbinic board.

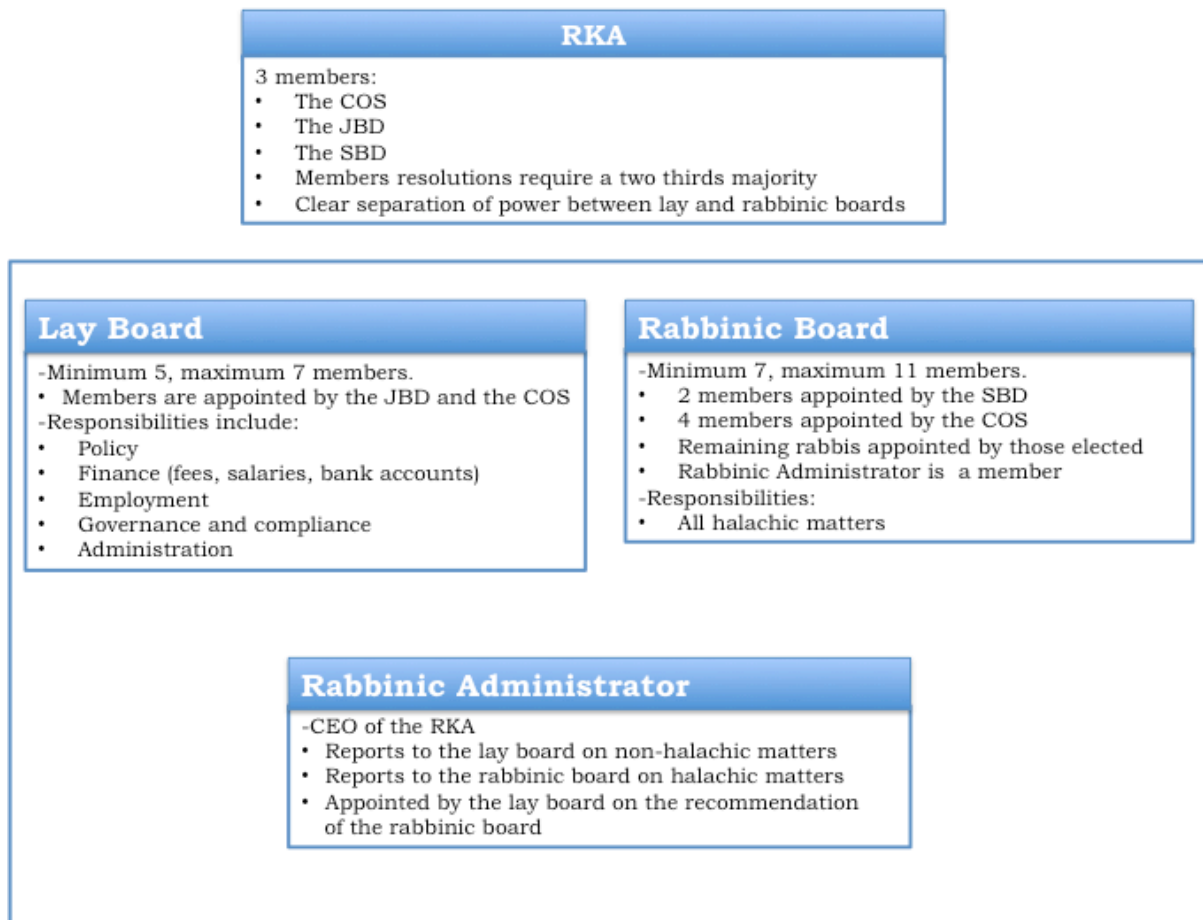
### ***Functions of the rabbinic board***

156. The rabbinic board, which will consist of members who have knowledge and interest in kashrut, should be responsible for all halachic matters in relation to kashrut.

### ***Rabbinic Administrator***

157. The Rabbinic Administrator should be the Chief Executive Officer of the RKA, and run the Hechsher on a day-to-day basis. He should execute the decisions taken by the lay and rabbinic boards, interact with other hechsharim, and manage the staff working for the RKA, including mashgichim. He should not have any conflicting business interests other than those that are expressly disclosed to, and approved by, the lay board.

158. The following chart shows the structure of the RKA.



### ***Appeal***

159. In the event of a conflict between the lay board and the rabbinic board of the RKA in relation only to the characterisation of a question as halachic or administrative, the KCI recommends that there be a clear and independent mode of appeal to an independent higher authority – such as the London Beth Din, the Beth Din of Johannesburg, or the Va’ad Hair of Montreal.

### **New Communal Entity in NSW**

160. In the event that the KA does not agree to the recommendations under the heading “A Revamped KA” by 13 March 2015, the KCI recommends that in the interests of the Community a new communal Hechsher ought to be established, initially for the purpose of certifying the kashrut of Kosher Establishments. It is noted that product certification is being undertaken by Kosher Australia, the KA, the Orthodox Union (OU) and other recognised kashrut authorities.
161. The KCI notes that it should be a matter entirely for Kosher Establishments to determine as to whether to elect certification by the new body or to seek certification under the KA or another recognised Hechsher.
162. It is emphasised that it is not the intention of the KCI to seek the impairment or demise of the KA.
163. The new communal certifying authority would have to adopt the principles listed in paragraphs 130 and 131. Its members will be the JBD and the COS and all resolutions of members will be required to be passed by at least a two thirds majority.
164. Halachic decisions of the new entity will be made by the rabbinic board, and the new entity will seek membership of the AKO and follow its guidelines.
165. The KCI has investigated and analysed the cost of running a Hechsher without product certification. Based on the benchmark charges



recommended in paragraph 120, to a large extent, the running costs should be recovered from those charges. Additional funds, which may be required, will be sourced from the Community.

### ***Lay Board of New Entity***

166. The lay board of the new entity should consist of a minimum of five and maximum of seven members.
167. The JBD should appoint four members, and the COS three members of the lay board.
168. The KCI suggests that each member of the lay board should, subject to the corporate governance rules be allowed a maximum tenure of 12 years and as an executive officer for a maximum of six years in one capacity and a maximum of three years in a different capacity.
169. The responsibilities of the lay board would be those referred to in paragraph 154.

### ***Rabbinic Board***

170. The rabbinic board should consist of a minimum number of seven, and the maximum number of 11 rabbis.
171. It is suggested that five of the members of the rabbinic board should be appointed by the COS, and that the remainder of the rabbinic board should be appointed by those COS rabbis.
172. The rabbinic board would be responsible for all matters of Halacha relating to the activities of the new entity. Overseas authorities have

indicated they would provide training if required, and overseas kashrut experts have indicated they would give counsel on halachic issues if required.

### ***Rabbinic Administrator***

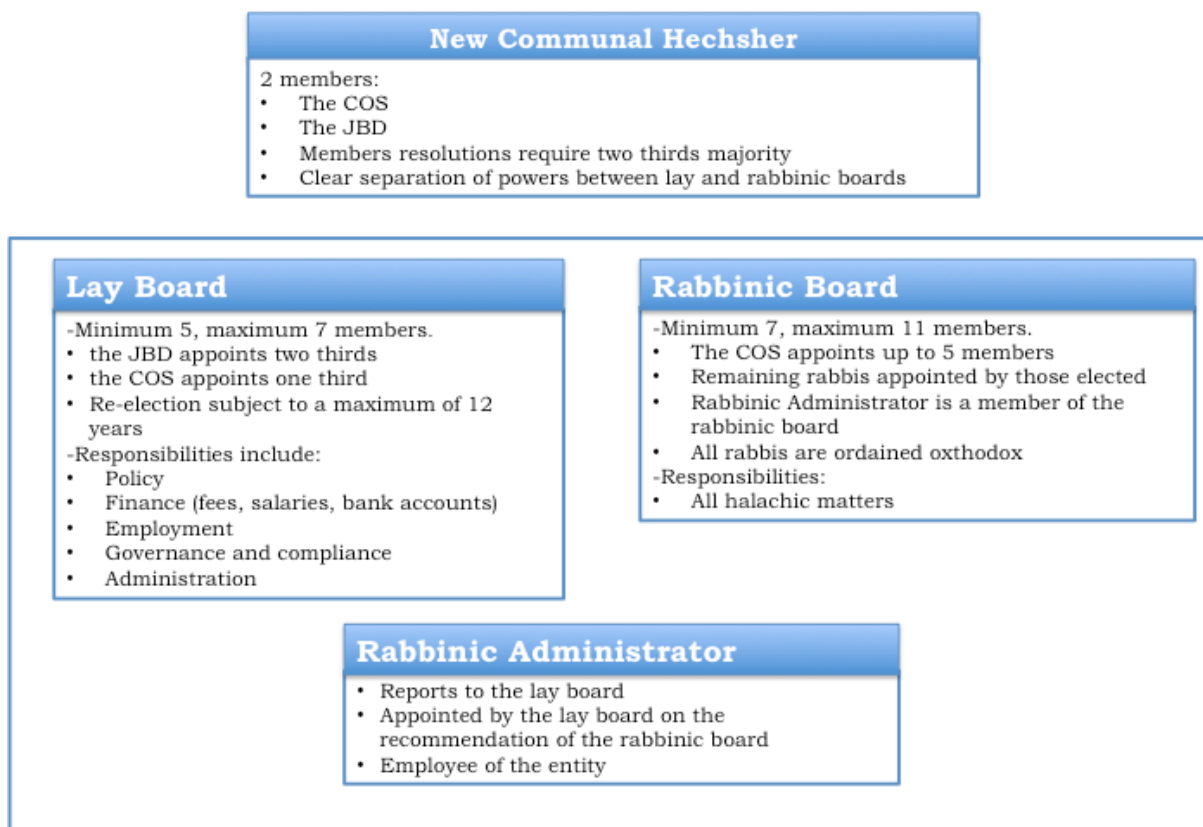
- 173. A Rabbinic Administrator ought to be appointed by the lay board on the recommendation of the rabbinic board when it is appropriate to do so.
- 174. The Rabbinic Administrator will be an employee of the new entity.
- 175. The Rabbinic Administrator will be a member of the rabbinic board.
- 176. The Rabbinic Administrator will report to the lay board on non-halachic matters.

### ***Separation of Powers***

- 177. There should be a clear separation of powers in relation to financial and administrative matters, on the one hand, and halachic matters, on the other hand.
- 178. One of the important benefits of this separation of powers is that it will ensure that halachic considerations are not influenced by economic, commercial or other considerations.
- 179. The separation will be enforced by the existence of the two boards. The Rabbinic Administrator will be required to report and be accountable to the lay board on non-halachic matters.

180. Annexed to this Report as Schedule 5 is a draft constitution for the new entity.

181. The following chart shows the structure of the new communal Hechsher.



### ***Appeal***

182. In the event of a conflict between the lay board and the rabbinic board of the new entity in relation to the responsibility and jurisdiction for a particular matter whether or not halachic, the KCI recommends that there be a clear and independent mode of appeal to an independent higher authority – such as the London Beth Din, the Beth Din of Johannesburg, or the Va'ad Hair of Montreal.

## **ISSUES REQUIRING URGENT RESOLUTION**

183. The KCI recommends, that at their first meeting the boards of the RKA, or, as the case may be, the new communal entity, deal in the context of their respective responsibilities, with a strategy and timetable for implementing the cost savings identified in this Report for the benefit of the Community.
184. The second issue to be dealt with at this first meeting is the provision of a licence to AIT, and other Kosher Establishments in NSW not currently certified by the KA, on commercial terms that are mutually acceptable and consistent with a level playing field, if these establishments meet kashrut requirements.
185. The investigations of the KCI suggest that a large proportion of the kosher consuming community in NSW (including most of the rabbis in NSW) in fact purchase meat emanating from CKB from outlets such as Coles, IGA and Woolworths, and that the Kosher Australia Hechsher is highly regarded by the Sydney rabbinate.
186. In those circumstances, the KCI recommends that, at its first meeting, the rabbinic board of the RKA or, as the case may be, the new communal entity, gives urgent consideration to the question whether or not to allow CKB and other suppliers to supply Kosher Establishments.
187. If, on halachic grounds relating to Kashrut (that is on grounds unconnected to issues relating to competition or economics) the

rabbinic board is of the view that CKB should not be allowed to supply Kosher Establishments then it should provide a detailed report to the lay board providing precise reasons for its decision.

188. Notwithstanding the limited appeal provisions of the applicable constitution, the lay board of the RKA or, as the case may be, the new communal entity should then seek a final halachic ruling from an independent Beth Din.

## **CONCLUSION**

189. It is imperative that the Community obtains certainty about kashrut in NSW as soon as possible. To this end, the Executive of the JBD should delegate to three people being a member of the JBD Executive and two members of the KCI, to supervise the implementation of the recommendations in this Report. If the KA agrees to the RKA, another independent person should subsequently be appointed by the JBD to determine which of the recommendations in this Report referred to in paragraphs 144 to 149 have been implemented by 13 March 2015.

Dated 27 January 2015 – 6 Shvat 5775

## **SCHEDULES**

**Schedule 1: Questionnaire prepared by Deloitte on behalf of the KCI**

**Schedule 2: KA response to questionnaire dated 4 June 2014**

**Schedule 3: KA President's Report of 25 November 2014**

**Schedule 4: New KA Constitution**

**Schedule 5: New Communal Entity draft constitution**

**Schedule 6: A kashrut certificate issued by Kashrus Australasia Inc**

**Schedule 7: ACCC Letter**

**Schedule 1: Questionnaire prepared by Deloitte on behalf of the KCI**



## FINANCIAL DUE DILIGENCE

### REQUEST FOR INFORMATION – 20 MAY 2014

We set out below a preliminary list of information requested to be made available. It is likely that we will have to request further information as a result of our review.

Please provide soft copies / MYOB extracts in excel format where possible.

Ideally, we would appreciate being able to supplement this information by face-to-face discussions with your internal and/or external accountants.

Unless otherwise stated, information is requested in respect of the years ended 31 December 2012 (FY12), 31 December 2013 (FY13) and three months to 31 March 2014 (YTD14) (Review Period).

	Query	Comment
<b>1</b>	<b>Entity overview</b>	
1.1	Please provide legal entity chart Also, please advise who owns the business names	
<b>2</b>	<b>Historical trading</b>	
2.1	Please provide monthly Profit & Loss for FY12, FY13 and YTD14 (download from MYOB as 'multi-period' spreadsheet).	
2.2	Please provide detailed trial balances at 31 December 2012, 31 December 2013 and 31 March 2014.	
2.3	Please identify any material non-recurring or abnormal item of income or expense during the Review Period.	
<b>3</b>	<b>Customers and revenue information</b>	
3.1	Please provide revenue by customer for each of the years of the Review Period in respect of:	
	• Shechita:	
	- Meat	
	- Poultry	
	• Caterers - Per head	
	• Supervision:	
	- Caterers	
	- Shechita	
	- Butchers	

	Query	Comment
	<ul style="list-style-type: none"> <li>Licensing fees:</li> </ul>	
	<ul style="list-style-type: none"> <li>License fees</li> </ul>	
	<ul style="list-style-type: none"> <li>Domestic</li> </ul>	
	<ul style="list-style-type: none"> <li>Certification fees</li> </ul>	
3.2	Please provide details of pricing/rates for FY13 and current period per major customer for each of the above categories.	
<b>4</b>	<b>Expenses</b>	
4.1	Please provide payroll reports for FY12, FY13 and YTD14, agreeing to 'Wages and Salaries' as shown in the accounts.	
4.2	Please provide make-up of the following categories (name and role) and amount paid for FY13 and YTD14):	
	<ul style="list-style-type: none"> <li>Sub-contractors</li> </ul>	
	<ul style="list-style-type: none"> <li>FB senior management</li> </ul>	
	<ul style="list-style-type: none"> <li>FB shochtim</li> </ul>	
	<ul style="list-style-type: none"> <li>FB supervision</li> </ul>	
	<ul style="list-style-type: none"> <li>Superannuation</li> </ul>	
4.3	Please provide current pay rates (including FBT amounts) for:	
	<ul style="list-style-type: none"> <li>Shochtim</li> </ul>	
	<ul style="list-style-type: none"> <li>Supervisors</li> </ul>	
	<ul style="list-style-type: none"> <li>Management</li> </ul>	
4.4	Please provide details of motor vehicle leases:	
	<ul style="list-style-type: none"> <li>Description of vehicle</li> </ul>	
	<ul style="list-style-type: none"> <li>User of vehicle</li> </ul>	
	<ul style="list-style-type: none"> <li>Monthly lease payment</li> </ul>	
<b>5</b>	<b>Bank statements</b>	
5.1	Please provide copies of bank statements for each bank account for FY13 and YTD14.	

**Schedule 2: KA response to questionnaire dated 4 June 2014**

**KWS**  
**LEGAL**  
SOLICITORS & NOTARIES

Our Ref: HWS:TL:121205  
Your Ref:  
Contact: Tiago Louzada  
Direct Email: [tiago.louzada@kwslegal.com.au](mailto:tiago.louzada@kwslegal.com.au)

4 June 2014

Alfie Nehama  
Deloitte Touche Tohmatsu  
Grosvenor Place  
225 George Street  
Sydney NSW 2000

**By Email:** [ANehama@deloitte.com.au](mailto:ANehama@deloitte.com.au)

Dear Sir

**RE: NSW JEWISH BOARD DEPUTIES-INQUIRY INTO KASHRUT**

We refer to your correspondence dated 30 May 2014.

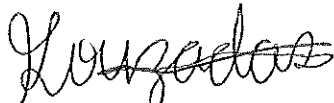
Our client's willingness to impart information to your client was based on the assumption there would be ongoing negotiations in good faith. However, we are instructed that negotiations between the parties have now ceased.

Before we are able to provide you with the information you requested, please kindly set out-

- The legal standing of your client that entitles it to make these requests of the Kashrut Authority (KA); and
- The basis relied on to assert that the KA is obliged to answer these questions.

Please note that we will require the cost of answering these requests to be paid into our trust account before proceeding further.

Yours faithfully



**Tiago Louzada**  
Associate  
KWS Legal

**Schedule 3: KA President's Report of November 25 2014**



# The Kashrut Authority

Serving Australia, New Zealand & the Asia Pacific region

ועד הכשרות דסידני והמדינה

## The Kashrut Authority President's Report – November 25 2014

I am writing to you to report on the positive developments that have taken place in the Kashrut Authority over the past year and to advise you of what we have planned for 2015.

During 2014 we took a number of steps to improve our corporate governance and management, to update our finances, and to expand our marketing initiatives.

Our role is to act as a licensing body that serves the community by ensuring the highest standards of kashrut in New South Wales. It is therefore appropriate that the Sydney Beth Din (SBD) – the pre-eminent halachic body in NSW – be the decider of Jewish Law for the Kashrut Authority. We act as its agent and are accountable to it in all matters related to kashrut, following the same model as in other major Jewish communities such as London Manchester and Johannesburg.

All our halachic policies are carefully researched and are based on the highest standards of Halacha endorsed by the SBD, taking advice when necessary from overseas kashrut agencies such as the Orthodox Union (OU) and the Organised Kashrut Laboratories (OK). They are matched to our unique circumstances and take into account the needs of our community. Many of our policies are available on our website and some are even endorsed by government such as our meat policy with the ACCC.

During the year we reformulated our constitution to properly reflect the structure of the organisation and the highest standards of corporate governance expected from an Australian not-for-profit. Our new constitution describes and enshrines the above structure, with the SBD deciding on matters of Halacha and a constitutionally separate Board of Management managing the finances and commercial aspects of the Authority. There is a clear separation of powers between the Rabbis of the SBD who decide Halacha and the members of the Board who make the commercial decisions. Working together, the SBD and the Board of Management ensure the smooth and efficient operation of the Kashrut Authority and the administration of kashrut in NSW. Our new constitution is available for download from our website as well as the makeup of our current board at [http://www.ka.org.au/index.php/KA\\_Board.html](http://www.ka.org.au/index.php/KA_Board.html). As per the constitution there are still three positions vacant on the board and interested persons who fill the criteria outlined in the constitution are welcome to apply.

We are registered as a not-for-profit organization with the Australian Tax Office and the Australian Commission of Not-for-Profits and Charities. Our accounts are up to date, having been audited by chartered accountants Logicca (who also audit many of our communal organizations), and have been lodged with the Department of Fair Trading. A summary report is also available for download from our website at [http://www.ka.org.au/index.php/KA\\_Board.html](http://www.ka.org.au/index.php/KA_Board.html)

In terms of our human resources, our community is blessed that our Rabbinic Administrator is Rabbi Moshe Gutnick. He is a member of the SBD, internationally renowned and arguably the most experienced and knowledgeable Rabbi in Kashrut in Australia.

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### The Kashrut Authority of Australia & New Zealand

Registered in NSW as: The NSW Kashrut Authority Inc; Under the auspices of the Sydney Beth Din

Rabbinic Administrator: RABBI MOSHE D. GUTNICK, President: BARON M REVELMAN

PO Box 7206 Bondi Beach NSW 2026 Australia

Tel: 1300 KASHRUT/+ 61 2 9365 2933 | Fax: + 61 2 9365 0933 | Website: [www.ka.org.au](http://www.ka.org.au) | Email: [info@ka.org.au](mailto:info@ka.org.au)

Rabbi Moshe D. Gutnick - [rabbig@ka.org.au](mailto:rabbig@ka.org.au); Baron M Revelman - [president@ka.org.au](mailto:president@ka.org.au); Girgee Barukh (accounts) - [girgee@ka.org.au](mailto:girgee@ka.org.au); Reception - [office@ka.org.au](mailto:office@ka.org.au)

Rabbi Gutnick came to the position of Rabbinic Administrator in 1990 after over a decade of communal disharmony created originally by the licensing of a caterer by a Rabbi other than of the SBD. Sydney Jewry overwhelmingly opted to return to only one Kashrut agency and the KA was formed. Since then, with the successive leadership of Sam Fisher AM, Frank Levy AM, Rabbi Selwyn Franklin and now myself, we have served the needs of the kosher consumer for nearly 25 years and are very proud of our accomplishments.

We have witnessed an unprecedented growth of kashrut in NSW over that period. Rabbi Gutnick has brought the most modern techniques in kosher supervision while always maintaining the highest halachic standards. Through him we have worked collaboratively on projects with organizations such as the OU and the OK and the Eida Hachareidit of Jerusalem. Rabbi Gutnick was one of the first in the world to use FaceTime as a means of overseeing kosher production in circumstances where video could replace a supervisor and has lectured on his innovations at international kashrut conferences.

In 2007, after a period of advertising and vetting, the Board of Management appointed Rabbi Aaron Groner to assist Rabbi Gutnick as assistant Rabbinic Administrator. He has brought the zest of youth to the KA and now plays an indispensable role in the growth and administration of kashrut. Rabbi Groner is at the helm of successful recent initiatives such as pop-up restaurants, introducing Turkish dining and most recently Japanese cuisine to the palate of kosher consumers in NSW.

We are particularly proud of our initiatives with Coles, IGA and Harris Farm Markets supermarkets (which include the implementation of our new product labelling system in Coles enabling products to be identified as kosher with a printed KA symbol on the price tag), the availability of fresh roasted kosher BBQ chickens at competitive prices and the general expansion of the kosher sections. The dedicated Kosher Supermarkets have made available imported products the likes of which have never before been seen in Australia.

The KA has never been as accessible and open as it is today. Through our presence on Facebook members of our community can find out more about kashrut. Halachic policies are defined and clarified. Suggestions are made as to which products consumers would like to see certified, and what improvements can be made for kashrut in NSW in general. We welcome your feedback and we strive to implement anything that will further advance kashrut.

All the above is the solid base from which we intend to continue to grow and expand. We plan to continue to increase the availability of kosher products. We will continue to oversee the growth of kosher dining and catering in Sydney with all of our outstanding caterers, restaurateurs and takeaways including the newly licensed Intercontinental Hotel. KA supervised products have won for the third year in a row the coveted top position at Kosherfest – the largest showcase of kosher products in the world.

In order to further enhance this growth we have recently invited both the NSW Jewish Board of Deputies and the Council of Orthodox Synagogues of NSW to each nominate a suitable candidate to join the board of the KA.

Finally, I would like to thank our staff for their dedication and hard work towards our goal of “keeping kosher made easy”. The outlook for kashrut in our community is bright and we look forward to ongoing community support for a vibrant, growing and united Kashrut Authority.



Baron M Revelman  
President

**Schedule 4: New KA Constitution**



**THE NSW KASHRUT AUTHORITY INC**

**CONSTITUTION**

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# Part 1 – Preliminary

## ***Constitution***

Of

## ***The NSW Kashrut Authority Incorporated***

### ***1. Name, Purpose, Limitations and Definitions***

- (1) The Name of the association is The NSW Kashrut Authority Incorporated ( The NSW Kashrut Authority).
- (2) The Purposes for which the association has been established are:
- (a) “To serve the Jewish community in ensuring the highest standards of Kashrut supervision and the availability of Kashrut services, all maintained in accordance with Orthodox Halacha.”
  - (b) “To do its utmost to ensure that Kosher food is as readily available and as affordable as possible.”
  - (c) “To be a resource for the dissemination of information related to Torah observance in general and Kashrut observance in particular.”
  - (d) “To at all times adhere to the highest standards of Halachic observance including the highest standards of honesty and integrity.”
- (3) Limitation:
- (a) The NSW Kashrut Authority is a religious organisation and all its conduct activities and operations shall be in accordance with Orthodox Halacha.
  - (b) The NSW Kashrut Authority is a not-for-profit association and as such all income and property of The NSW Kashrut Authority will only be applied towards the promotion of the purpose as set out in clause 1.2a.

(4) Definitions:

In this constitution:

***Ordinary Board Member*** means a member of the Board of Directors who is not an office bearer of the association.

***Orthodox Halacha or Halacha*** means Jewish Law Theology and religious outlook as practiced, interpreted and understood by such bodies as the London Beth Din, The Chief Rabbinate of the State of Israel and the Sydney Beth Din, The decider of Halacha in this constitution shall be the Sydney Beth Din.

**Secretary** means:

- (a) the person holding office under this constitution as Secretary of the association, or
- (b) if no such person holds that office - the public officer of the association.

**Special General Meeting** means a general meeting of the association other than an annual general meeting.

**the Act** means the *Associations Incorporation Act 2009*.

**the Regulation** means the *Associations Incorporation Regulation 2010*.

**Sydney Beth Din Representative** means the observer of the Kashrut Authority's activities.

(5) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(6) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act. Part 2 - Membership

## **2. Membership generally**

(1) A person is eligible to be a member of the association if:

- (a) the person is a natural person,
- (b) The person is Jewish in accordance with Orthodox Halacha,
- (c) the person adheres to and is strictly observant of Orthodox Halacha including but not limited to the Sabbath and Jewish Kosher dietary laws to a standard acceptable to the Sydney Beth Din
- (d) the person has not been disqualified by the Sydney Beth Din for failing to adhere to clause 2.1.(b) and (c) above,
- (e) the person agrees to follow the decisions and interpretations of the Sydney Beth Din on all issues regarding Orthodox Halacha in all matters associated with the NSW Kashrut Authority,
- (e) the person has been nominated and approved for membership of the association in accordance with clause 3, and
- (f) the person is not otherwise disqualified by applicable law or by the association constitution or other governing documents and principles.

- (2) A person is taken to be a member of the association if:
  - (a) the person is a natural person,
  - (b) The person is Jewish in accordance with Orthodox Halacha,
  - (c) the person adheres to and is strictly observant of Orthodox Halacha including the Sabbath and Jewish Kosher dietary laws to a standard acceptable to the Sydney Beth Din,
  - (d) the person has not been disqualified by the Sydney Beth Din for failing to adhere to clause 2.2(b) above,
  - (e) the person agrees to follow the decisions and interpretations of the Sydney Beth Din on all issues regarding Orthodox Halacha in all matters associated with the NSW Kashrut Authority,
  - (f) the person is not otherwise disqualified by applicable law or by the association constitution or other governing documents and principles, and
  - (g) the person was:
    - (i) in the case of an unincorporated body that is registered as the association - a member of that unincorporated body immediately before the registration of the association, or
    - (ii) in the case of an association that is amalgamated to form the relevant association - a member of that other association immediately before the amalgamation, or
    - (iii) in the case of a registrable corporation that is registered as an association - a member of the registrable corporation immediately before that entity was registered as an association.
- (3) A person is taken to be a member of the association if the person was one of the individuals on whose behalf an application for registration of the association under section 6 (1) (a) of the Act was made.
- (4) A member of the Sydney Beth Din shall automatically be considered a member of the Kashrut Authority.

### ***3. Nomination for membership***

- (1) A nomination of a person for membership of the association:
  - (a) must be made by a member of the association in writing in the form set out in Appendix 1 to this constitution, and
  - (b) must be lodged with the secretary of the association.
- (2) As soon as practicable after receiving a nomination for membership, the Secretary must refer the nomination to the Board which is to determine whether to approve or to reject the nomination.
- (3) As soon as practicable after the Board makes that determination, the Secretary must:
  - (a) notify the nominee, in writing, that the committee approved or rejected the nomination (whichever is applicable), and
  - (b) if the Board approved the nomination, request the nominee to pay (within the period of 28 days after receipt by the nominee of the notification) the sum

payable under this constitution by a member as entrance fee and annual subscription.

- (4) The Secretary must, on payment by the nominee of the amounts referred to in subclause (3)(b) within the period referred to in that provision, enter or cause to be entered the nominee's name in the register of members and, on the name being so entered, the nominee becomes a member of the association.

#### ***4. Cessation of membership***

A person ceases to be a member of the association if the person:

- (a) dies, or
  - (b) resigns membership, or
  - (c) is expelled from the association, or
  - (d) fails to pay the annual membership fee under clause 8 (2) within 3 months after the fee is due.
- (e) the person has been disqualified by the Sydney Beth Din for failing to adhere to clause 2.1. (c) or (d) above.

#### ***5. Membership entitlements not transferable***

A right, privilege or obligation which a person has by reason of being a member of the association:

- (a) is not capable of being transferred or transmitted to another person, and
- (b) terminates on cessation of the person's membership.

#### ***6. Resignation of membership***

- (1) A member of the association may resign from membership of the association by first giving to the Secretary written notice of at least one month (or such other period as the Board may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the association ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the Secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

#### ***7. Register of members***

- (1) The public officer of the association must establish and maintain a register of members of the association specifying the name and postal or residential address of each person who is a member of the association together with the date on which the person became a member in accordance.
- (2) The register of members must be kept in New South Wales:
- (a) at the main premises of the association, or
  - (b) if the association has no premises, at the association's official address.

- (3) The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.
- (4) A member of the association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
  - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association, or
  - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

## ***8. Fees and subscriptions***

- (1) A member of the association must, on admission to membership, pay to the association a fee of \$1 or, if some other amount is determined by the Board, that other amount.
- (2) In addition to any amount payable by the member under subclause (1), a member of the association must pay to the association an annual membership fee of \$2 or, if some other amount is determined by the Board, that other amount:
  - (a) except as provided by paragraph (b), before 1 July in each calendar year, or
  - (b) if the member becomes a member on or after 1 July in any calendar year - on becoming a member and before 1 July in each succeeding calendar year.

## ***9. Members' liabilities***

The liability of a member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the member in respect of membership of the association as required by clause 8.

## ***10. Resolution of disputes***

- (1) A dispute between a member and another member (in their capacity as members) of the association, or disputes between a member or members of the association and the association, are to be referred to the Jewish Arbitration and Mediation Service or a community justice centre for mediation under the Community Justice Centres Act 1983.
- (2) If a dispute is not resolved through mediation within 3 months of referral to JAMS or a community justice centre, the dispute shall be referred to the Sydney Beth Din for arbitration.

(3) In all cases of a dispute referred to the Sydney Beth Din, a Din Torah / Halachic arbitration shall be arranged under their auspices. However, any members of the Sydney Beth Din who are also members or Directors of The NSW Kashruth Authority shall not be eligible to sit as judges on the Din Torah/arbitration panel.

## ***11. Disciplining of members***

- (1) A complaint may be made to the Board by any person that a member of the association:
  - (a) has refused or neglected to comply with a provision or provisions of this constitution, or
  - (b) has wilfully acted in a manner prejudicial to the interests of the association.
- (2) The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Board decides to deal with the complaint, the Board:
  - (a) must cause notice of the complaint to be served on the member concerned, and
  - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint, and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The Board may, by resolution, expel the member from the association or suspend the member from membership of the association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- (5) If the Board expels or suspends a member, the Secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the Board for having taken that action and of the member's right of appeal under clause 12.
- (6) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - (b) if within that period the member exercises the right of appeal, unless and until the association confirms the resolution under clause 12, whichever is the later.

## ***12. Right of appeal of disciplined member***

- (1) A member may appeal to the association in general meeting against a resolution of the Board under clause 11, within 7 days after notice of the resolution is served on the member, by lodging with the Secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.



- (3) On receipt of a notice from a member under subclause (1), the Secretary must notify the Board which is to convene a general meeting of the association to be held within 28 days after the date on which the Secretary received the notice.
- (4) At a general meeting of the association convened under subclause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the Board and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
  - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (5) The appeal is to be determined by a simple majority of votes cast by members of the association.

## **Part 3 - The Board of Directors**

### ***13. Powers of the Board of Directors***

Subject to the Act, the Regulation and this constitution and to any resolution passed by the association in general meeting, the Board of Directors ("Board"):

- (a) is to control and manage the affairs of the association, and
- (b) may exercise all such functions as may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association, and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the association.
- (d) Notwithstanding the general powers of the Board enumerated under Clause 13 herein, all issues of Orthodox Halacha are to be interpreted and decided solely by the Sydney Beth Din and their decisions in these regards and matters shall be final and binding on The NSW Kashrut Authority. However, only the Board of Directors ( Board members) of The NSW Kashrut Authority may deal with financial aspects and matters of the Association unless those matters have Halachic ramifications.
- (e) Only The Directors (Board members) and not the Sydney Beth Din Representatives can make financial decisions on behalf of the NSW Kashrut Authority.
- (f) If any dispute shall arise as to whether a particular matter is the subject of Halachic purview and subject to the jurisdiction of the Sydney Beth Din or whether it is the purview of the board of directors , and the dispute is not resolved, the matter shall be referred to the London Beth Din for determination as to jurisdiction. However if the London Beth Din determines the matter is Halachic, then the decision on the matter reverts to the sole and binding jurisdiction of the Sydney Beth Din.

### ***14. Composition and membership of the Board of Directors***

- 1) The Board of Directors is to consist of:
  - a) the office-bearers of the association:
    - i) the President,
    - ii) the Vice-President,
    - iii) honorary Treasurer,
    - iv) honorary Secretary, and
  - (b) 3 Ordinary Board Members, each of whom is to be elected at the annual general meeting of the association under clause 15.
- (2) The minimum amount of members of the board shall be three and the maximum number of members of the board is to be 7.
- (3) At least 3 of the Directors or Ordinary Board Members must be resident in the Commonwealth of Australia.

- (4) An individual Director may hold up to 2 offices (other than both the President and Vice-President offices).
- (5) Each Director is, subject to this constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.
- (6) Each Director must adhere to and be strictly observant of Orthodox Halacha including but not limited to Shabbat and Jewish Kosher dietary laws to a standard acceptable to the Sydney Beth Din.
- (7) Each Director must agree to follow the decisions and interpretations of the Sydney Beth Din on all issues regarding Orthodox Halacha in all matters associated with the NSW Kashrut Authority

## ***15. Election of Board of Directors***

- (1) Nominations of candidates for election as Directors of the association or as Ordinary Board Members:
  - (a) must be made in writing, signed by 2 members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination), and
  - (b) must be delivered to the Secretary of the association at least 7 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (2) If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (3) If insufficient further nominations are received, any vacant positions remaining on the Board are taken to be casual vacancies.
- (4) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (5) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (6) The ballot for the election of office-bearers and Ordinary Board Members of the Board is to be conducted at the annual general meeting in such usual and proper manner as the Board may direct.
- (7) A person nominated as a candidate for election as a Director or as an Ordinary Board Member of the association must be a member of the association.
- (8) A person nominated or appointed as an office bearer or Board Director may not otherwise be disqualified by applicable law or by the association constitution or other governing documents and principles other than due to a breach of clause 10. Both those persons nominated and those persons currently serving as Directors must sign a statement certifying that they are not disqualified from serving as a responsible person on the Board of Directors for the association. The Board Charter shall contain language to be used for the non-disqualified disclosure statement.
- (9) a board member may be an employee of the Association but must not participate in the decision making process in a matter in which he has a pecuniary interest.

- (10) Any issues or questions that may arise regarding a Director's adherence to and observance of Orthodox Halacha shall solely be decided upon by the Sydney Beth Din. If the Sydney Beth Din makes a determination that a Director in question is not adhering to and observant of Orthodox Halacha, the person will be disqualified from being or continuing to be a Director of the Board, such notice of disqualification to be given in writing to the President by the Sydney Beth Din and in the case of disqualification of the President to the Vice President.

## **16. Secretary**

- (1) The Secretary of the association must, as soon as practicable after being appointed as secretary, lodge notice with the association of his or her address.
- (2) It is the duty of the secretary to keep minutes of:
- (a) all appointments of Board Directors, and
  - (b) the names of Directors of the Board present at a Board meeting or a general meeting, and
  - (c) all proceedings at Board meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the President or Chairperson of the meeting or by the President or Chairperson of the next succeeding meeting.

## **17. Treasurer**

It is the duty of the Treasurer of the association to ensure:

- (a) that all money due to the association is collected and received and that all payments authorised by the association are made, and
- (b) that correct books and accounts are kept showing the financial affairs of the association, including full details of all receipts and expenditure connected with the activities of the association.

## **18. Casual vacancies**

- (1) In the event of a casual vacancy occurring in the membership of the Board, the Board may appoint a member of the association to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a member of the Board occurs if the Director or Ordinary Board Member:
- (a) dies, or
  - (b) ceases to be a member of the association, or
  - (c) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (d) resigns office by notice in writing given to the Secretary, or
  - (e) is removed from office under clause 19, or

- (f) becomes a mentally incapacitated person, or
- (g) is absent without the consent of the Board from 3 consecutive meetings of the Board, or
- (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
- (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth or prohibited or otherwise disqualified by the Australian Charities and Not-for-profits Commissioner from being a responsible person of the association.

## **19. Removal of Board Directors and Members**

- (1) The association in general meeting may by resolution remove any member or Director of the Board from the office of Director or Board Member before the expiration of the Director's or Board Member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the Director or Board Member so removed.
- (2) If a Director or Member on the Board to whom a proposed resolution referred to in subclause (1) relates makes representations in writing to the Secretary or President (not exceeding a reasonable length) and requests that the representations be notified to the members of the association, the Secretary or the President may send a copy of the representations to each member of the association or, if the representations are not so sent, the Director or Member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **20. Board meetings and quorum**

- (1) The Board must meet at least 3 times in each period of 12 months at such place and time as the Board may determine.
- (2) Additional meetings of the Board may be convened by the President or by any Director or Member of the Board.
- (3) Oral or written notice of a meeting of the Board must be given by the Secretary to each Director of the Board at least 48 hours (or such other period as may be unanimously agreed on by the Directors of the Board) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 Directors or Members of the Board constitute a quorum for the transaction of the business of a meeting of the Board.
- (6) No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.

- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the Board:
  - (a) the President or, in the President's absence, the Vice-President is to preside, or
  - (b) if the President and the Vice-President are absent or unwilling to act, such one of the remaining Directors or Members of the Board as may be chosen by the Directors and members present at the meeting is to preside.
- (9) The Sydney Beth Din's Representatives shall be entitled to attend all board meetings.
- (10) Meetings may be attended via live electronic media and such attendance shall be considered attendance for the purpose of a quorum.

## ***21. Delegation by the Board to a sub-committee***

- (1) The Board may, by instrument in writing, delegate to one or more sub-committees (consisting of such member or members of the association as the Board sees fit) the exercise of such of the functions of the Board as are specified in the instrument, other than:
  - (a) this power of delegation, and
  - (b) a function which is a duty imposed on the Board by the Act or by any other law.
- (2) A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- (4) Despite any delegation under this clause, the Board may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.
- (6) The Board may, by instrument in writing, revoke wholly or in part any delegation under this clause.
- (7) A sub-committee may meet and adjourn as it thinks proper.

## ***22. Voting and decisions***

- (1) Questions arising at a meeting of the Board or of any sub-committee appointed by the Board are to be determined by a majority of the votes of Directors and Members of the Board or sub-committee present at the meeting.
- (2) Each Director and Board Member present at a meeting of the Board or of any sub-committee appointed by the Board (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

- (3) The Sydney Beth Din Representatives are not entitled to vote on any financial issues in relation to the Kashrut Authority.
- (3) Subject to clause 20 (5), the Board may act despite any vacancy on the Board.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a sub-committee appointed by the Board, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any Director and/or Member of the Board or sub-committee.
- (5) Any decision of the board not made in accordance of Orthodox Halacha shall be deemed null ab-initio.

## **Part 4 - General meetings**

### ***23. Annual general meetings - Holding of***

- (1) The association must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The association must hold its annual general meetings:
  - (a) within 6 months after the close of the association's financial year, or
  - (b) within such later time as may be allowed by the Director-General or prescribed by the Regulation.

### ***24. Annual general meetings - calling of and business at***

- (1) The annual general meeting of the association is, subject to the Act and to clause 23, to be convened on such date and at such place and time as the Board sees fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - (b) to receive from the Board reports on the activities of the association during the last preceding financial year,
  - (c) to elect Directors and Members of the Board of the association,
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as such in the notice convening it.
- (4) All issues or matters involving Orthodox Jewish Halacha (law) are to be interpreted and decided solely by the Sydney Beth Din Representatives and their decisions in these regards and matters shall be binding on The NSW Kashrut Authority. The Sydney Beth Din Representatives may attend all general meetings. However, only the Members of the Board of Directors of the association may deal with financial aspects of the association unless they impact on Halacha.

## ***25. Special General Meetings - calling of***

- (1) The Board may, whenever it thinks fit, convene a Special General Meeting of the association.
- (2) The Board must, on the requisition in writing of at least 5 per cent of the total number of members, convene a Special General Meeting of the association.
- (3) A requisition of members for a Special General Meeting:
  - (a) must state the purpose or purposes of the meeting, and
  - (b) must be signed by the members making the requisition, and
  - (c) must be lodged with the Secretary, and
  - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the Board fails to convene a Special General Meeting to be held within 1 month after that date on which a requisition of members for the meeting is lodged with the Secretary, any one or more of the members who made the requisition may convene a Special General Meeting to be held not later than 3 months after that date.
- (5) A Special General Meeting convened by a member or members as referred to in subclause (4) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Board.

## ***26. Notice***

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the Secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the Secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 24 (2).
- (4) A member desiring to bring any business before a general meeting may give notice in writing of that business to the Secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

## ***27. Quorum for general meetings***

- (1) No item of business is to be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.



- (2) Five members present (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members, is to be dissolved, and
  - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being at least 3) are to constitute a quorum.

## ***28. Presiding member***

- (1) The President or, in the President's absence, the Vice-President, is to preside as chairperson at each general meeting of the association.
- (2) If the President and the Vice-President are absent or unwilling to act, the members present must elect one of their members to preside as chairperson at the meeting.

## ***29. Adjournment***

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the Secretary must give written or oral notice of the adjourned meeting to each member of the association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subclauses (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## ***30. Making of decisions***

- (1) A question arising at a general meeting of the association is to be determined by either:
  - (a) a show of hands, or
  - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.

- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

### **31. Special resolutions**

A special resolution may only be passed by the association in accordance with section 39 of the Act.

### **32. Voting**

- (1) On any question arising at a general meeting of the association a member has one vote only.
- (2) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (3) A member is not entitled to vote at any general meeting of the association unless all money due and payable by the member to the association has been paid.
- (4) A member is not entitled to vote at any general meeting of the association if the member is under 18 years of age.

### **33. Proxy votes not permitted**

Proxy voting must not be undertaken at or in respect of a general meeting.

*Note: Schedule 1 of the Act provides that an association's constitution is to address whether members of the association are entitled to vote by proxy at general meetings.*

### **34. Postal ballots**

- (1) The association may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation.

## **Part 5 - Miscellaneous**

### ***35. Insurance***

The association may effect and maintain insurance.

### ***36. Funds - source***

- (1) The association is a not-for-profit association. The funds of the association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, such other sources as the Board determines.
- (2) All money received by the association must be deposited as soon as practicable and without deduction to the credit of the association's bank or other authorised deposit-taking institution account.
- (3) The association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### ***37. Funds - management***

- (1) Subject to any resolution passed by the association in general meeting, the funds of the association are to be used in pursuance of the objects of the association in such manner as the Board determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 Directors or members of the Board or employees of the association, being members or employees authorised to do so by the Board.

### ***38. Change of name, objects and constitution***

An application to the Director-General for registration of a change in the association's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a Director or Member of the Board.

### ***39. Custody of books etc***

Except as otherwise provided by this constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the association. The public officer must be a resident of New South Wales and maintain custody of the books, records and other documents relating to the association in New South Wales.

### ***40. Inspection of books etc***

- (1) The following documents must be open to inspection, free of charge, by a member of the association at any reasonable hour:
  - (a) records, books and other financial documents of the association,
  - (b) this constitution,

- (c) minutes of all Board meetings and general meetings of the association.
- (2) A member of the association may obtain a copy of any of the documents referred to in subclause (1) on payment of a fee of not more than \$1 for each page copied.

#### **41. Service of notices**

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

#### **42. Financial year**

The financial year of the association is:

- (a) the period of time commencing on the date of incorporation of the association and ending on the following 31 December, and
- (b) each period of 12 months after the expiration of the previous financial year of the association, commencing on 1 January and ending on the following 31 December.

*Note: Schedule 1 of the Act provides that an association's constitution is to address the association's financial year.*

# Appendix 1 Application for membership of association

(Clause 3 (1))

## APPLICATION FOR MEMBERSHIP OF ASSOCIATION

.....

[*name of association*]

Incorporated (incorporated under the *Associations Incorporation Act 2009*)

I, .....

[*full name of applicant*]

of .....

[*address*]

.....

[*occupation*]

hereby apply to become a member of the above named incorporated association. In the event of my admission as a member, I agree to be bound by the constitution of the association for the time being in force.

.....

*Signature of applicant*

Date

I, .....

[*full name*]

a member of the association, nominate the applicant for membership of the association.

.....

*Signature of proposer*

Date

I, .....

[*full name*]

a member of the association, second the nomination of the applicant for membership of the association.

.....

*Signature of seconder*

Date

**Schedule 5: New Communal Entity draft constitution**

## Constitution

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# Constitution

Community Kashrut Limited  
ACN #[ACN]#  
("Company")

## 1 Definitions and interpretation

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### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**"Alternate"** means a person appointed as an alternate Director under clause 15.

**"Board"** means the board of Directors of the Company from time to time.

**"Chairperson"** means the person appointed as the chair of a general meeting pursuant to clause 9.4 or a Board meeting pursuant to clause 19.8 (as applicable).

**"Chazakah"** means permanent tenure conferred by Halacha.

**"Company"** means the company defined at the beginning of this Constitution.

**"Constitution"** means this Constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force.

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"COS NSW"** means #[insert]#.

**"Director"** means a person occupying the position of director of the Company and includes any person acting as an Alternate.

**"Disputant"** has the meaning given to that term in clause 23.1.

**"Eligible Charity"** means a fund, authority or institution:

- (a) which is charitable at law; and
- (b) if required under the Tax Act, which has objects and purposes similar to the objects and purposes of the Company and which is not carried on for the profit or gain of its members.

**"Executive Offices"** means the following positions of the Board held by the Directors appointed to those positions from time to time pursuant to clause 14.2:

- (a) President;
- (b) Vice-President
- (c) Treasurer; and
- (d) Honorary Secretary.

**"Final Period"** has the meaning given to that term in clause 23.4.

**"Foreign Beth Din"** means either:

- (a) the London Beth Din (official title - 'D'Kehila Kedosha London Bet Din Vehamedina') of 305 Ballards Lane, North Finchley London N12 8GB;
- (b) the Beth Din Of Johannesburg of 58 Oaklands Road, Orchards 2192, Johannesburg, South Africa; or
- (c) the Montreal Vaad Hair of 6825 Decarie Blvd, Montreal, Quebec H3W3E4, Canada.

**"Further Period"** has the meaning given to that term in clause 23.4.

**"Gift Fund"** means the Community Kashrut Gift Fund established or to be established for the purposes of the Tax Act in accordance with clause 4.

**"Halacha"** or **"Halachic"** means orthodox Jewish law.

**"Honorary Secretary"** means the Director appointed to the Executive Office of Honorary Secretary of the Board from time to time pursuant to clause 14.2.

**"Initial Period"** has the meaning given to that term in clause 23.3.

**"Jurisdiction Dispute"** has the meaning given to those term in clause 22.3.

**"Mashgiach"** means a person who supervises the kashrut status of any business, manufacturer, producer, establishment, premises, Simcha, function or event or as otherwise required by Halacha, and **"Mashgichim"** means more than one Mashgiach.

**"Member"** means a person who is entered in the Register as a member of the Company.

**"Membership"** means the contractual rights of a person to membership of the Company, being the rights attaching to the class of membership conferred on that person.

**"Month"** means calendar month.

**"Nominee"** means, in respect of a Member who is not a natural person, the natural person nominated in writing to the Company and authorised by that Member to exercise all the rights of that Member under this Constitution.

**"NSW JBOD"** means #[insert]#.

**"Office"** means the Company's registered office.

**"Ordinary Resolution"** means in the case of a vote or resolution of the Board, Directors entitled to vote who together hold more than 50% of the votes.

**"Present"** means, when used in relation to a Member at a meeting, present in person or by proxy, attorney, or representative.

**"President"** means the Director appointed to the Executive Office of President of the Board from time to time pursuant to clause 14.2.

**"Rabbinical Administrator"** means the person appointed as the Rabbinical Administrator from time to time pursuant to clause 22.7.

**"Register"** means the register of members of the Company.

**"Secretary"** means the person appointed as company secretary from time to time pursuant to clause 20.1.

**“Security Interest”** means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance and includes any “security interest” within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth).

**“Shechita”** means the slaughtering of mammals and birds for food.

**“Simcha”** means a private party or celebration, and **“Smachot”** means more than one private party or celebration.

**“Special Resolution”** means a vote or resolution passed by (as relevant):

- (a) in the case of a vote or resolution of Members, at least two-thirds of Members entitled to vote;
- (b) in the case of a vote or resolution of the Board, at least 75% of Directors entitled to vote.

**“Tax Act”** means the *Income Tax Assessment Act 1997* (Cth).

**“Treasurer”** means the Director appointed to the Executive Office of Treasurer of the Board from time to time pursuant to clause 14.2.

**“Vaad HaRabbonim”** means the council of Vaad HaRabbonim of the Company from time to time.

**“Vaad HaRabbonim Member”** means a person appointed from time to time pursuant to clause 22.1 as a member of the Vaad HaRabbonim.

**“Vice-President”** means the Director appointed to the Executive Office of Vice-President of the Board from time to time pursuant to clause 14.2.

## 1.2 Words and expressions

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (e) a reference to this Constitution includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;

- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it;
- (o) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation;
- (p) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution; and
- (q) if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement may be given conditionally or unconditionally or withheld in that party’s absolute discretion;

### **1.3 Replaceable rules**

To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.

### **1.4 Chazakah**

- (a) Notwithstanding any provision of this Constitution or rules made pursuant to this Constitution, the principles of Chazakah do not apply at any time to any person appointed to any office or position of the Company or to any person that is otherwise employed or engaged by the Company (including to any Director, Executive Officer, Vaad HaRabbonim Member or Rabbinical Administrator).
- (b) The Company and each Director is permitted to take all necessary action to give full effect to the provisions of clause 1.4(a).

### **1.5 Company type**

The Company is a company limited by guarantee.

## **2 Objects**

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### **2.1 Principal objects**

The principal objects of the Company are to advance and promote the continuity of the Jewish religion by (without limitation):

- (a) establishing and operating a kashrut licensing and advisory organisation to provide certain kashrut services, including (among other services as may be required from time to time):
  - (i) the certification and supervision of food and products as being kosher;
  - (ii) the granting of kashrut licenses to Jewish communal organisations, businesses and persons, and the supervision, regulation and enforcement of such licenses;

- (iii) engaging in the koshering, certification and/or supervision of any Smachot, functions, events, premises or establishments within the Jewish community;
- (iv) establishing and operating a Shechita system in accordance with strict standards of kosher slaughter;
- (v) providing or procuring appropriate Mashgiach courses for the training of Mashgichim;
- (vi) promoting kashrut through education; and
- (vii) generally organising and managing kashrut for the benefit of the Jewish community and promoting kashrut within the community;
- (b) doing its utmost to ensure that kosher food, products and services are as readily available and as affordable as possible; and
- (c) encouraging and increasing the number of members of the Jewish community and Jewish communal organisations purchasing and using kosher products and having kosher Smachot and functions by, to the extent possible, reducing the cost of purchasing kosher products and holding such Smachot and functions.

## **2.2 Ancillary objects**

For the purpose of achieving the principal objects set out in clause 2.1, the Company has and will continue to:

- (a) administer one or more funds into which all gifts, contributions, donations and bequests to the Company for the purposes of the Company will be credited;
- (b) organise communal seminars, lectures and educational programmes;
- (c) establish close communications with entities, organisations and groups that may have related interests to the Company, including kashrut authorities located elsewhere in Australia and overseas as the Company deems appropriate;
- (d) seek and co-ordinate funding from Federal, State and Local Government and the private sector (as may be relevant) in the form of grants, gifts, donations, sponsorship and bequests committed to the objects of the Company;
- (e) encourage and promote and generally to create greater community awareness regarding the principal objects of the Company;
- (f) provide or attract funds for the facilitation of any of the objects of the Company;
- (g) disseminate information and literary matters that the Company considers necessary or desirable for the promotion of the objects of the Company; and
- (h) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.

The objects of the Company will be pursued principally in Australia.

## **2.3 Not for profit**

- (a) The objects of the Company will not be carried on for the purpose of profit or gain to its Members and the income and property of the Company, from whatever sources derived, will be applied solely towards the promotion of the objects of the Company and to otherwise reduce the costs of the provision of kashrut services by the Company in the Jewish community. No income or property of the Company will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (b) Notwithstanding anything contained in clause 2.3(a), nothing contained in that clause will prevent the payment, in good faith, of remuneration to any officers or servants of the Company (including any Director, Executive Officer, Vaad

HaRabbonim Member or Rabbinical Administrator) or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual course of business, or prevent the payment of interest at a rate not exceeding the commercial rate fixed for the purposes of this clause 2.3(b) by the Board on money borrowed from any Member or the payment of reasonable and proper rent for premises demised or let by any Member to the Company.

### **3 Powers of the Company**

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- 3.1 The Company has, subject to the Corporations Act, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- 3.2 Without limiting the generality of clause 3.1 and clause 17.2, the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
- (a) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
  - (b) make available (whether in writing or in any other form) information relating to the Company and its functions;
  - (c) occupy, use and control any land or building owned or held under lease or licence by any other person made available to the Company;
  - (d) acquire, hold and dispose of real and personal property and any other assets;
  - (e) lease the whole or any part of any land or building for the purpose of the Company;
  - (f) enter into contracts;
  - (g) borrow money and provide guarantees, mortgages, charges and other Security Interests in respect of its own indebtedness;
  - (h) erect buildings;
  - (i) employ or engage consultants, advisers, managers and employees to implement the objects of the Company and pay such fees, salaries and expenses as the Board considers reasonable to such persons;
  - (j) employ or engage professional service providers including lawyers, accountants and other persons and pay such fees and expenses as the Board considers reasonable to such persons;
  - (k) purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
  - (l) act as trustee of moneys or other property vested in the Company on trust; and
  - (m) do anything incidental to any of the Company's objects.
- 3.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company on trust or accepted by the Company subject to a condition, will not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.
- 3.4 It is intended that the public will contribute to the Gift Fund (if established or to be established for the purposes of the Tax Act in accordance with clause 4) and the



Company will invite the general public to make gifts to the Gift Fund for the purpose of carrying out the objects of the Company.

## **4 Gift Fund**

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- (a) The Company may (and will, if required under the Tax Act) establish and maintain, for the specific purposes set out in clause 2, the Gift Fund:
  - (i) to which gifts of money, contributions or property for those purposes must be made;
  - (ii) to which any money received by the Company because of those gifts, contributions or property must be credited; and
  - (iii) that does not receive any other money, contributions or property.
- (b) The Gift Fund will not be maintained for the purpose of profit or gain to the Members of the Company.
- (c) All gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions will be applied solely towards the promotion of the objects of the Company set out in clause 2, and no portion of the Gift Fund will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (d) The Company will maintain a separate bank account for the Gift Fund and must comply with subdivision 30-BA of the Tax Act with respect to the administration of the Gift Fund.
- (e) The Gift Fund will be administered by a committee of not less than three persons appointed by the Board. The Gift Fund committee will have the sole responsibility for decisions regarding the use and application of all gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions for the purposes set out in clause 2.
- (f) In accordance with the Tax Act, receipts issued for gifts must state:
  - (i) the name of the Company and Gift Fund;
  - (ii) the ABN applicable to the Company; and
  - (iii) the fact that the receipt is for a gift or contribution.
- (g) Clauses 4(b) to 4(f) (both inclusive) apply only if the Company is required to establish a Gift Fund by the Tax Act or if determined by the Board.

## **5 Membership**

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### **5.1 Number and classes of Membership**

- (a) Subject to the provisions of this Constitution and the Corporations Act, there must be at least two Members.
- (b) The Board may, from time to time, prescribe a maximum number of Members.
- (c) The initial Members shall be:
  - (i) the NSW JBOD; and
  - (ii) the COS NSW.
- (d) The Board may, from time to time but subject to clauses 6.2 and 6.3, establish different classes of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classes of Membership.

## 5.2 Nominee

- (a) The initial Nominees of each Member shall be:
  - (i) in respect of the NSW JBOD, #[insert]#; and
  - (ii) in respect of the COS NSW, #[insert]#; and.
- (b) A Nominee may be removed or replaced by written notice to the Secretary, signed or executed by the Member which that Nominee represents.

## 5.3 Undertaking

Every Member undertakes to contribute to the property of the Company if the Company is wound up while it is a Member, or within one year after it ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before it ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$50.00 per Member.

# 6 Rights of members

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## 6.1 Rights and privileges

- (a) Subject to this Constitution, the Members are entitled to all the rights and privileges of Membership of the Company.
- (b) A right, privilege, or obligation of a person by reason of their Membership:
  - (i) is not capable of being transferred or transmitted to another person; and
  - (ii) terminates on cessation of Membership whether by death, winding-up, insolvency, bankruptcy or resignation.

## 6.2 Variation of Rights

If at any time the Directors exercise the powers under clause 5.1(d), the rights, restrictions or obligations of Members or any class of Members may only be varied with the written consent of the existing Members.

## 6.3 Effect of new class of Membership

If the Board establishes a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not treated as a variation of the rights attaching to that class.

## 6.4 Resignation of Member

- (a) A Member who has paid all amounts due and payable by it to the Company may resign from the Company by first giving one Month's notice in writing to the Secretary of their intention to resign and on the expiration of that period of notice, the Member will cease to be a Member.
- (b) If a Member resigns its Membership, it continues to be liable for all amounts due and unpaid by it at the date of its resignation and for all other moneys due by it to the Company and for any sum not exceeding the aggregate amount of \$50.00 for which it may become liable as a Member under clause 5.3.

# 7 Register of members

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The Secretary must keep and maintain a Register as required by the Corporations Act.

## **8 General meetings**

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### **8.1 Annual General Meeting**

- (a) If the Company is required by the Corporations Act to hold an annual general meeting, it will be held within five months after the end of the Company's financial year in accordance with this Constitution and the Corporations Act.
- (b) To the extent applicable to the Company, the business of the annual general meeting may include:
  - (i) the consideration of the financial reports of the Company, the Directors' report and the auditor's report;
  - (ii) any special business of which notice has been given in accordance with this Constitution; and
  - (iii) such other business as may be properly transacted at the annual general meeting.

### **8.2 Calling**

- (a) The Board may call a general meeting at any time, other than the annual general meeting which must be held pursuant to clause 8.1(a).
- (b) The ability of Members to:
  - (i) request that the Board call a general meeting; and
  - (ii) call and arrange to hold a general meeting themselves,is limited to the powers set out in the Corporations Act.

### **8.3 Notice**

Subject to the provisions of the Corporations Act allowing general meetings to be held on shorter notice, at least 21 days written notice of a general meeting must be given to:

- (a) each Member;
- (b) each Director;
- (c) any auditor of the Company; and
- (d) any other person required by law.

No other person is entitled to receive notice of a general meeting.

### **8.4 Content of notice**

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and the special resolution itself; and
- (d) contain a statement specifying that:
  - (i) the Member has a right to appoint a proxy;
  - (ii) the proxy does not need to be a Member; and
  - (iii) a Member entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

### **8.5 Failure to give notice**

The failure or accidental omission to send notice of a general meeting to, or the non-receipt of a notice by, any person entitled to notice does not invalidate the proceedings or any resolution passed at the meeting.

### **8.6 Postponement or cancellation or change of general meeting**

Subject to the Corporations Act, the Board may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other person to whom notice was given, in any manner permitted under clause 28.

### **8.7 Resolutions without general meetings**

- (a) Subject to the Corporations Act, the Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Member signs.

## **9 Proceedings at general meetings**

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### **9.1 Quorum**

No business may be transacted at an annual general meeting or any other general meeting unless a quorum is Present at the time when the meeting proceeds to business. A quorum consists of more than 65% of Members entitled to vote at the meeting, unless otherwise agreed to by all Members in writing. A quorum must be present for the entire meeting.

### **9.2 Determining quorum**

Each individual present at a general meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, attorney or representative, only one of them may be counted towards a quorum.

### **9.3 Quorum not present**

If a quorum is not present within 15 minutes after the time appointed for a general meeting:

- (a) if the meeting was convened at the request of Members, it is automatically dissolved; and
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place on the fifth business day after the meeting; and
  - (ii) if a quorum is not present within 15 minutes from the time appointed for the adjourned meeting, the Members Present will comprise a quorum.

### **9.4 Chairperson of meeting**

The President (or, in the President's absence, the Vice-President) will chair every meeting of the Members as the Chairperson. If:

- (a) there is no President or Vice-President;

- (b) neither the President nor the Vice-President is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the President and the Vice-President are unwilling to act as chair of the meeting,

the Members Present and entitled to vote will elect a Member or Director to act as Chairperson to chair the meeting.

#### **9.5 Function of Chairperson of general meeting**

The Chairperson of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

#### **9.6 Adjournment by Chairperson**

The Chairperson of a general meeting at which a quorum is present:

- (a) may, with the consent of the meeting; and
  - (b) must, if directed by a resolution of the meeting,
- adjourn the general meeting to another time and place.

#### **9.7 Adjourned meeting**

The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting. Notice of the adjourned general meeting must be given if the general meeting is adjourned for one Month or longer.

#### **9.8 Show of hands**

Unless a poll is demanded under clause 9.10:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and
- (b) a declaration by the Chairperson of the general meeting that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

#### **9.9 Decisions by Special Resolution**

A vote or resolution of Members must be passed by a Special Resolution of Members entitled to vote on the resolution unless otherwise required by this Constitution.

#### **9.10 Demanding a poll**

Either before or on declaration of the result of a show of hands, a poll may be demanded by:

- (a) the Chairperson of the general meeting;
- (b) any Member entitled to vote on the resolution; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.

The demand for a poll does not affect the continuation of the general meeting for the transaction of other business and may be withdrawn.

#### **9.11 When and how polls must be taken**

A poll will be taken when and in the manner the Chairperson directs, except for:

- (a) a poll demanded on the election of a Chairperson; or
- (b) a poll demanded on the adjournment of a general meeting,

which must be taken immediately. The result of the poll will be the resolution of the meeting at which the poll was demanded.

#### **9.12 Equal number of votes**

If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Member, proxy, attorney or representative; and
- (b) the resolution is not passed.

### **10 Voting at general meetings**

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#### **10.1 Number of votes**

Subject to this Constitution and any rights or restrictions imposed on or attached to a class of Membership, every Member who is Present at a general meeting and entitled to vote on a show of hands and on a poll, has one vote.

#### **10.2 Objections**

An objection to the qualification of any voter:

- (a) may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote; and
- (b) must be determined by the Chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the Chairperson does not disallow pursuant to an objection is valid for all purposes.

### **11 Proxies, attorneys and representatives**

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#### **11.1 Proxies**

A Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting. A proxy may be an individual or a body corporate.

#### **11.2 Number of proxies**

A Member entitled to one vote at a general meeting may appoint one proxy. A Member entitled to more than one vote may appoint no more than two proxies.

#### **11.3 Proportion of votes exercisable by proxies**

If a Member appoints two proxies, the appointment may specify the proportion or number of the Member's votes each proxy may exercise. If the appointment does not specify this, each proxy may exercise half of the votes and any fractions of votes will be disregarded.

#### **11.4 Rights of proxies**

Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Member to speak at a general meeting, to vote and to join in and demand a poll.

#### **11.5 Voting rights of proxies**

A proxy may vote either on a show of hands or a poll, unless a Member has appointed two proxies at a meeting, in which case neither may vote on a show of hands. If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions in accordance with the Corporations Act.

### **11.6 Attorneys and representatives**

A Member may:

- (a) appoint an attorney; or
  - (b) if the Member is a body corporate, appoint a representative,
- to act for the Member at general meetings or to appoint a proxy to act for the Member at general meetings.

### **11.7 Rights of attorneys and representatives**

Unless restricted by the terms of appointment or the Corporations Act, an attorney or representative may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

### **11.8 No membership requirement**

A proxy, attorney or representative may, but need not be, a Member.

### **11.9 Standing appointments**

A Member may appoint a proxy, attorney or representative to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment.

### **11.10 Instrument of appointment of proxies**

Subject to clause 11.12, the instrument of appointment of a proxy must be in a written form approved by the Board and must be signed or executed:

- (a) if the appointing Member is an individual, by the appointing Member or that Member's attorney; and
- (b) if the appointing Member is a body corporate, by the body corporate in accordance with the Corporations Act or by the body corporate's duly authorised attorney or representative or Nominee.

### **11.11 Instrument of appointment of attorneys and representatives**

Subject to clause 11.12, the instrument of appointment of an attorney or a representative must be in a written form and must:

- (a) if an individual Member appoints an attorney, consist of a valid power of attorney signed by the appointing Member in the presence of at least one witness; and
- (b) if a body corporate appoints an attorney or representative, consist of a valid power of attorney or, in the case of a representative, valid certificate of appointment executed by the appointing Member in accordance with the Corporations Act.

### **11.12 Alternative method of appointment**

Notwithstanding clauses 11.10 and 11.11, the instrument of appointment of a proxy, attorney or representative will be valid if it is in a form and is authenticated in any manner prescribed by the Corporations Act.

### **11.13 Company must receive appointments**

The appointment of a proxy, attorney or representative is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 11.15:

- (a) in the case of a proxy or attorney, at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period); and

- (b) in the case of a representative, before the commencement of the meeting or adjourned meeting.

#### **11.14 Definition of receipt**

The Company receives the documents referred to in clause 11.13 when they are received:

- (a) at the Office;
- (b) at a fax number at the Office;
- (c) at a place, fax number or e-mail address specified in the notice of meeting; or
- (d) if the notice of meeting specifies other means by which a Member may give the documents, by those means in accordance with the Corporations Act.

#### **11.15 Additional documents**

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.

#### **11.16 Chairperson may declare appointment valid**

If:

- (a) the instrument of appointment of a proxy, attorney or representative does not comply with the terms of this Constitution; or
- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,

the appointment will be treated as invalid unless the Chairperson declares otherwise.

#### **11.17 Adjourned meetings**

An appointment of a proxy, attorney or representative for a particular general meeting is valid at the adjourned meeting.

#### **11.18 Rights of proxies and attorneys if Member present**

A proxy or attorney has no power to act for a Member at a general meeting at which the Member is present in person or, in the case of a body corporate, by representative. A proxy has no power to act for a Member at a general meeting at which the Member is present by attorney.

#### **11.19 Priority of conflicting appointments**

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Member having more proxies than the Member is entitled to under clause 11.2;
- (b) the proxy appointment made first in time under clause 11.19(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney or representative appointed by a Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:
  - (i) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and



- (ii) subject to clause 11.19(c)(i), the more recently appointed attorney or representative may act to the exclusion of an attorney or representative appointed earlier in time.

### **11.20 Continuing authority**

A vote cast by a proxy, attorney or representative at a general meeting will be valid even if, before the vote, the appointing Member:

- (a) dies or becomes mentally incapacitated; or
- (b) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

## **12 Class meetings**

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The provisions of this Constitution relating to general meetings apply, with any necessary modifications, to separate meetings of a class of Members.

## **13 Directors**

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### **13.1 Minimum and maximum number**

The Company will have at least 5 Directors and a maximum of 7 Directors, unless otherwise provided by the Corporations Act or approved by Members by a Special Resolution. Each Director will be appointed in accordance with clause 14.1(a).

### **13.2 Other positions**

A Director may simultaneously hold any other office or position in the Company on terms determined by the Board.

### **13.3 Meetings of Members**

A Director is entitled to notice of, and to attend, all general meetings and class meetings.

### **13.4 Appointment and removal by Members**

- (a) Subject to clause 13.1 and clause 13.4(b), the Company may by resolution passed in general meeting:
  - (i) appoint a person to be a Director;
  - (ii) remove a Director from office; and
  - (iii) appoint another person in a Director's place.
- (b) Any resolution of the Company pursuant to clause 13.4(a) involving the removal of a Director from office that was appointed by a Member pursuant to clause 14.1(a) does not take effect until a replacement person to represent the Member has been appointed as a Director in accordance with clause 14.1(a).

### **13.5 Casual vacancy or addition to Board**

In the event of a casual vacancy on the Board:

- (a) if an Executive Office becomes vacant, the Board may by a Special Resolution appoint another Director to the vacant office; and
- (b) if the vacancy is in relation to a Director appointed by a Member pursuant to clause 14.1, the Board must, subject to clause 14.1(b), appoint the new person nominated by the relevant Member to fill the vacant position,

and the person appointed will hold office for the remainder of the term of office of the Director whose office has become vacant and will, subject to clause 13.6, be eligible for re-appointment.

### **13.6 Term of office - Board and Executive Officers**

Subject to clause 13.7, unless otherwise approved by Members by a Special Resolution:

- (a) a Director holds office for a maximum period of up to 12 years;
- (b) a Director may only hold an Executive Office for a maximum period of up to 6 years; and
- (c) if a person has already held an Executive Office for the maximum period set out in clause 13.6(b), then that Director may only hold a different Executive Office for an additional period of up to 3 years.

### **13.7 Cessation of appointment**

A person automatically ceases to be a Director and to hold any Executive Office if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Director;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under this Constitution;
- (f) the person is absent without permission of the Board from 3 consecutive meetings of the Board; or
- (g) the term for which the person was appointed expires.

## **14 Appointment of Directors and the Executive Officers**

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### **14.1 Appointment of Directors**

- (a) Subject to clause 14.1(b), the Members have the following Board appointment rights:
  - (i) the NSW JBOD is entitled to appoint up to 4 Directors; and
  - (ii) the COS NSW is entitled to appoint up to 3 Directors.
- (b) A person appointed by a Member as a Director must be a person of good reputation and communal standing.
- (c) Subject to the provisions of this Constitution, each Member may remove and replace a Director appointed by it by written notice to the Company.
- (d) Each Member must give the Company notice of each appointment or removal of a Director together with any relevant consents to act. An appointment or removal takes effect at the time notice is given to the Company.
- (e) As at the date of this Constitution, the initial Directors are:
  - (i) in respect of the NSW JBOD's rights under clause 14.1(a), #[insert]#, #[insert]#, #[insert]# and #[insert]#;
  - (ii) in respect of the COS NSW's rights under clause 14.1(a), #[insert]#, #[insert]# and #[insert]#.

## **14.2 Appointment of Executive Officers**

- (a) A person holding any Executive Office must be a Director.
- (b) A person may only hold one Executive Office at any time, unless otherwise approved by a Special Resolution of the Board.
- (c) A Director may only be elected to an Executive Office by a Special Resolution of the Board.
- (d) Subject to clause 13.6 and clause 13.7, each Director elected to an Executive Office will hold that office until that Director is removed from that office by a Special Resolution of the Board.
- (e) As at the date of this Constitution, the initial Directors holding the Executive Offices are:
  - (i) #[insert]# as President;
  - (ii) #[insert]# as Vice-President;
  - (iii) #[insert]# as Treasurer; and
  - (iv) #[insert]# as Honorary Secretary.

## **15 Alternates**

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### **15.1 Appointment**

With the approval of the Board, a Director may appoint an Alternate to act in the appointing Director's place for a specified period and may terminate that appointment at any time.

### **15.2 Powers and duties**

An Alternate is entitled to the same rights and powers as a Director while acting in that capacity (including the right to receive notice of and to attend and vote at Directors' meetings) and is subject to the same duties.

### **15.3 Cessation of appointment**

An Alternate's appointment ceases if:

- (a) the appointing Director terminates it;
- (b) the appointing Director ceases to be a Director; or
- (c) an event occurs that would cause the Alternate to cease to be a Director under clause 13.7 if the Alternate were a Director.

### **15.4 Written notice**

The appointment of an Alternate or its termination by the appointing Director is only effective when it is in writing signed by the appointing Director and a copy is given to the Company.

## **16 Remuneration of Directors**

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### **16.1 Honorary**

The Directors (excluding those who are salaried employees of the Company) will be honorary. The Company is prohibited from paying any fees to Directors.

## **16.2 Expenses**

Subject to clause 16.3, the Company may pay Directors all reasonable travelling and other expenses properly incurred:

- (a) in attending Board meetings or any meetings of committees of Directors;
- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

## **16.3 Board approval for payments**

All payments to Directors under clause 16.2 or otherwise must be approved by the Board by a unanimous resolution.

# **17 Powers and duties of Directors**

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## **17.1 Management of the Company**

The business of the Company will be managed by the Board. The Board may exercise all the powers of the Company except any powers that are required by this Constitution or the Corporations Act to be exercised by the Company in general meeting.

## **17.2 Specific powers**

Without limiting the generality of clause 17.1, the Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) grant Security Interests in relation to any of the Company's property or business to secure any debt, liability or obligation of the Company or any other person;
- (c) guarantee, indemnify or otherwise become liable for the payment of money or the performance of any obligation by or of any other person;
- (d) pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by the Company;
- (e) in respect of the activities of the Company regarding matters of kashrut:
  - (i) set the strategic direction and parameters within which the Company may act and take decisions, and monitor the implementation and review of such strategy and parameters;
  - (ii) operate the administration of the Company, including monitoring the performance of its employees and other personnel; and
  - (iii) determine all fees and charges payable for the services of and provided by the Company;
- (f) establish corporate governance policies and procedures (including in respect of the activities of the Company regarding matters of kashrut), and manage the compliance of such policies and procedures;
- (g) determine or modify annual budgets and otherwise manage all finances of the Company (including in respect of the activities of the Company regarding matters of kashrut), including the implementation and review of an approved budget;
- (h) open, close and otherwise operate and maintain all bank accounts of the Company; and
- (i) acquire, hold and dispose of real and personal property and any other assets, and otherwise encumber or alienate such property and assets,

on any terms determined by the Board.

### **17.3 Duties under the Corporations Act**

A Director must comply with the Corporations Act and fulfil any duties prescribed in it or otherwise required by law.

### **17.4 No disqualification**

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

### **17.5 Disclosure of interests**

If required by the Corporations Act, a Director must disclose to the Board any material personal interest the Director has in a matter relating to the affairs of the Company. The Secretary must record details of any such disclosures in the minutes of the relevant Board meeting and in the register of disclosures of interest to be maintained by the Company.

### **17.6 Voting if Director has an interest**

If a Director discloses a material personal interest in a matter being considered at a Board meeting or the interest is not one requiring disclosure under the Corporations Act:

- (a) the Director may vote on matters that relate to the interest and may be counted towards a quorum;
- (b) any transactions that relate to the interest may proceed and the Director may participate in the execution of any relevant document; and
- (c) if disclosure is made before the transaction is entered into:
  - (i) the Director may retain benefits under the transaction; and
  - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

### **17.7 Obligation of secrecy**

Every Director and other agent or officer of the Company must:

- (a) keep the transactions and affairs of the Company confidential, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company (which, for the avoidance of doubt, permits the person to disclose such information to the Company's employees, agents or advisers who have a need to know the information, but only to the extent they have a need to know);
  - (ii) as required by the Board or the Company in general meeting; and
  - (iii) as required by law; and
- (b) if requested by the Board, sign a confidentiality undertaking consistent with this clause 17.7.

## **18 Delegation of Directors' powers**

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### **18.1 Power to delegate**

The Board may delegate any of its powers to:

- (a) a committee of Directors;
- (b) a Director;
- (c) an employee or adviser of the Company; or
- (d) an attorney.

### **18.2 Terms of delegation**

A delegation of powers under clause 18.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including the power to delegate further) and subject to any restrictions that the Board determines.

A document of delegation may contain provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

### **18.3 Delegate to comply with directions**

A delegate under clause 18.1 must exercise its powers subject to any direction from the Board.

### **18.4 Board may revoke delegation**

The Board may revoke a delegation of its powers at any time.

## **19 Board meetings**

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### **19.1 Procedure**

- (a) Subject to this Constitution and the Corporations Act, the Board may meet, adjourn and otherwise regulate its meetings as it determines.
- (b) The Board may invite any other person it considers necessary or appropriate to attend and speak at any meeting but that person is not entitled to vote.
- (c) Vaad HaRabbonim Members are only entitled to attend and speak at meetings and proceedings of the Board with the prior written invitation of the Board.

### **19.2 Calling**

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting.

### **19.3 Notice**

Each Director must be given reasonable notice of a Board meeting or the resumption of an adjourned Board meeting. Notice may be given in any manner determined or adopted by the Board from time to time.

### **19.4 Use of technology**

A Board meeting may be held using any audio, audio-visual or other technology:

- (a) that enables the participating Directors to simultaneously hear each other and participate in discussion; or
- (b) to which all Directors have consented.

A minute certified by the chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

#### **19.5 Consent**

A Director's consent under clauses 19.3 and 19.4 may be a standing one and may only be withdrawn within a reasonable period before the meeting.

#### **19.6 Quorum**

The quorum necessary for the transaction of business at a Board meeting is 2 Directors, which must include at least one Director appointed by each of the NSW JBOD and the COS NSW, unless the Board determines a greater number by Special Resolution. A quorum must be present for the entire meeting.

#### **19.7 When a Director is treated as present**

If a Board meeting is held by audio or audio-visual technology:

- (a) a Director is treated as present if the Director is able to hear and be heard by all others attending; and
- (b) unless the Chairperson is notified that a Director is leaving the meeting, the Director will be assumed to have been present for the duration of the meeting.

If a meeting is held using any other technology consented to by all Directors, the Board must determine the basis on which Directors are treated as present.

#### **19.8 Chairperson**

The President (or, in the President's absence, the Vice-President) will chair every meeting of the Board. If:

- (a) there is no President or Vice-President;
- (b) neither the President nor the Vice-President is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the President and the Vice-President are unwilling to act as chair of the meeting,

the Directors present and entitled to vote will elect a Director to act as Chairperson to chair the meeting.

#### **19.9 Number of votes**

Subject to this Constitution, each Director is entitled to one vote in respect of a resolution or decision of the Board.

#### **19.10 Decisions**

Unless otherwise provided in this Constitution, a resolution of the Board must be passed by a majority of votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Director; and
- (b) the resolution is not passed.

#### **19.11 Too few Directors**

The Directors may continue to act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum required under clause 13.1, the continuing Directors may act as a Board only:

- (a) to convene a general meeting of Members; or

- (b) in emergencies.

### **19.12 Written resolutions passed by multiple Directors**

The Directors may pass a resolution without holding a Board meeting if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

### **19.13 Signing written resolutions**

For the purposes of clause 19.12, the Company may accept a copy of a signed document sent by facsimile or electronic means.

### **19.14 Valid proceedings**

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

## **20 Secretary**

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### **20.1 Appointment**

- (a) Subject to the Corporations Act, the Board must appoint a Secretary who may (but need not) be a Director. The appointment may be made for a specified period or without specifying a period and the Board may remove the Secretary from office at any time.
- (b) Notwithstanding clause 20.1(a), for the avoidance of doubt the Secretary may (but need not) be the person appointed as Honorary Secretary. In the event that the Secretary is the person appointed as Honorary Secretary, the appointment of the Secretary must be made in accordance with clause 14.2 and the provisions of that clause 14.2 and clause 13.6 regarding the term of office of the Secretary will apply in relation to the Secretary as if the term Honorary Secretary refers to the Secretary.

### **20.2 Terms**

Subject to clause 20.1(b), the appointment of a Secretary will be on the terms that the Board determines.

### **20.3 Cessation of appointment**

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under this Constitution;



- (f) the person is absent without permission of the Board from 3 consecutive meetings of the Board; or
- (g) the term for which the person was appointed expires.

## **21 Minutes**

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### **21.1 Board must keep minutes**

The Board must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members, Directors and committees of Directors;
- (b) the names of Directors present at each meeting of Directors or committees of Directors;
- (c) any resolutions passed by Members or Directors without a meeting;
- (d) any disclosures or notices of Directors' interests; and
- (e) any other matters for which the Corporations Act requires minutes to be kept.

### **21.2 Minutes must be signed**

Minutes must be signed in accordance with the Corporations Act. Minutes of a meeting must be signed within a reasonable time after the meeting by:

- (a) the person acting as Chairperson of that meeting; or
- (b) the person acting as Chairperson of the next meeting.

### **21.3 Minutes as evidence**

A minute recorded and signed in accordance with the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proven.

### **21.4 Access to minutes**

The Company must ensure that the minute books for meetings of Members and for resolutions passed by Members without meetings are open for inspection by Members free of charge.

## **22 Vaad HaRabbonim**

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### **22.1 Appointment of Vaad HaRabbonim Members**

- (a) The Vaad HaRabbonim will have at least 3 Vaad HaRabbonim Members and a maximum of 11 Vaad HaRabbonim Members, unless otherwise approved by Members by a Special Resolution. Each Vaad HaRabbonim Member will be appointed in accordance with clause 22.1(b).
- (b) Subject to clause 22.1(c), each of the COS NSW and the Vaad HaRabbonim themselves have the following rights to appoint Vaad HaRabbonim Members:
  - (i) the COS NSW is entitled to initially appoint up to 5 Vaad HaRabbonim Members; and
  - (ii) the Vaad HaRabbonim (once established) is then entitled to appoint up to 6 Vaad HaRabbonim Members.
- (c) A person appointed as a Vaad HaRabbonim Member must be:
  - (i) ordained as an orthodox Rabbi; and

- (ii) of good repute and communal standing who will act in good faith in the best interests of the Company.
- (d) Subject to the provisions of this Constitution, each of the COS NSW and the Vaad HaRabbonim may at any time remove and replace a Vaad HaRabbonim Member appointed by it by prior written notice to the Company.
- (e) Each of the COS NSW and the Vaad HaRabbonim must give the Company and each other notice of each appointment, re-appointment or removal of a Vaad HaRabbonim Member. An appointment or removal takes effect at the time notice is given to the Company.

## **22.2 Term of office of Vaad HaRabbonim Members**

- (a) Subject to clause 22.2(b), a Vaad HaRabbonim Member holds office for a fixed term of 2 years.
- (b) Each Vaad HaRabbonim Member must retire (and will be deemed to have so retired) from office no later than 2 years following their initial appointment or last appointment as a Vaad HaRabbonim Member, but may be re-appointed as a Vaad HaRabbonim Member in accordance with clause 22.1(b).

## **22.3 Halachic matters**

- (a) Notwithstanding any other provision of this Constitution (except for clause 22.3(b)), but at all times subject to any applicable law or any obligations at law:
  - (i) subject to clause 22.3(a)(ii), the Vaad HaRabbonim shall be solely responsible for all matters of Halacha relating to the activities of the Company; and
  - (ii) the Directors shall be responsible for the day to day administration and operation of the Company and its related activities, finances and operational requirements (and all other matters set out in this Constitution and as otherwise required by law).
- (b) In the event of any dispute (“**Jurisdiction Dispute**”) as to whether a particular matter is the responsibility and jurisdiction of the Board or the Vaad HaRabbonim under clause 22.3(a):
  - (i) the provisions of clause 23 will apply; and
  - (ii) the Board and the Vaad HaRabbonim (and each individual Board Member and Vaad HaRabbonim Member) must comply with and shall be bound by the provisions of clause 23.

## **22.4 Meetings of the Vaad HaRabbonim**

- (a) Subject to clause 22.4(b), the Vaad HaRabbonim is free to determine the rules that regulate its meetings and proceedings.
- (b) The Vaad HaRabbonim must cause minutes to be kept of:
  - (i) the proceedings and resolutions of its meetings;
  - (ii) the names of Vaad HaRabbonim Members present at each of its meetings; and
  - (iii) any resolutions passed by Vaad HaRabbonim Members without a meeting.
- (c) Members and Directors are only entitled to attend and speak at meetings and proceedings of the Vaad HaRabbonim with the prior written invitation of the Vaad HaRabbonim.

## **22.5 Remuneration of Vaad HaRabbonim Members**

- (a) Unless approved by the Board by a Special Resolution, each Vaad HaRabbonim Member (excluding those who are salaried employees of the Company) will be honorary.
- (b) Subject to clause 22.5(c), the Company may pay Vaad HaRabbonim Members all reasonable travelling and other expenses properly incurred:
  - (i) in attending Vaad HaRabbonim meetings; and
  - (ii) in connection with the Company's business.
- (c) All payments to Vaad HaRabbonim Members under clause 22.5(b) or otherwise must be approved by the Board by a Special Resolution.

## **22.6 Removal of Vaad HaRabbonim Members**

A person automatically ceases to be a Vaad HaRabbonim Member if:

- (a) the person would not be permitted by the Corporations Act (or an order made under the Corporations Act) to be a director of a company;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person consistently fails to attend to their duties;
- (e) the person fails to comply with any of the material rules, regulations or by-laws of the Company (including the terms of this Constitution);
- (f) the person engages in serious misconduct or is guilty of any conduct which is unbecoming of a person appointed as a Vaad HaRabbonim Member or prejudicial to the interests of the Company or its Members;
- (g) the person is no longer considered to be:
  - (i) a person of good repute and communal standing; and or
  - (ii) acting in good faith in the best interests of the Company;
- (h) mental or physical incapacity renders the person unable to perform their duties for a period in excess of 3 Months;
- (i) the person is removed from office under this Constitution;
- (j) the person resigns by notice in writing to the Company and the Vaad HaRabbonim; or
- (k) the term for which the person was appointed expires.

## **22.7 Appointment of Rabbinical Administrator**

- (a) If the Board decides to employ or engage a person on a full or part time basis to undertake the position of Rabbinical Administrator, the Board must appoint such person as recommended by the Vaad HaRabbonim to the Board by notice in writing.
- (b) The appointment of the Rabbinical Administrator will be on such terms as the Board determines together with the Vaad HaRabbonim.
- (c) Subject to clause 22.6, the Board may only remove a person appointed as Rabbinical Administrator from their position by:
  - (i) a Special Resolution of the Board; and
  - (ii) with the prior written consent of the Vaad HaRabbonim,

unless:

- (iii) the right exists pursuant to the Rabbinical Administrator's employment contract or other similar agreement; or
  - (iv) the Board or Company is entitled to do so in accordance with any law; or
  - (v) the Rabbinical Administrator materially breaches a term of their appointment or otherwise engages in serious misconduct or is guilty of any conduct which is unbecoming of a person appointed as Rabbinical Administrator or prejudicial to the interests of the Company or its Members.
- (d) A person appointed as the Rabbinical Administrator, will, from their date of appointment, also be appointed as a Vaad HaRabbonim Member. Such appointment will be deemed to have been made by the COS NSW in accordance with its Vaad HaRabbonim appointment rights under clause 22.1(b) (and the COS NSW must do all things necessary, including if required, removing an existing representative of theirs, to give full effect to this clause).

## **22.8 Disclosure of interests**

- (a) During the term of their appointment, each Vaad HaRabbonim Member must disclose to the Vaad HaRabbonim and the Company any material personal interest the person has in a matter relating to the affairs of the Company. The Secretary must record details of any such disclosures in the register of disclosures of interest to be maintained by the Company.
- (b) If a Vaad HaRabbonim Member has or is perceived to have a conflict of interest in a matter relating to the affairs of the Company, that person must not be involved in the relevant matter unless permitted to do so by Halacha and all of the parties affected by the relevant matter have consented in writing to that person's involvement.

## **22.9 Confidentiality**

- (a) Each Vaad HaRabbonim Member must:
- (b) keep the transactions and affairs of the Company confidential, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by the Board or the Company in general meeting; and
  - (iii) as required by law; and
- (c) if requested by the Board, sign a confidentiality undertaking consistent with this clause 22.9.

## **22.10 Meetings of the Board and the Vaad HaRabbonim**

- (a) The Board will, on an annual basis, convene a meeting, inviting all Vaad HaRabbonim Members and Directors to attend, at which meeting the persons present shall provide their views on:
  - (i) the effectiveness of the Company in meeting its objectives;
  - (ii) the possible ways to improve the operations of the Company; and
  - (iii) any other matter of concern to any Vaad HaRabbonim Member or Director regarding the Company and its administration or activities.
- (b) Both the Board and the Vaad HaRabbonim may at any time, by giving each Director or Vaad HaRabbonim Member (as applicable) reasonable notice, convene a meeting requiring all Vaad HaRabbonim Members and Directors to

attend to discuss any matter of the Company that is of material concern to the Board or the Vaad HaRabbonim (as applicable).

## **23 Jurisdiction Dispute**

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### **23.1 No arbitration or court proceedings**

- (a) The provisions of this clause 23 will only apply to a Jurisdiction Dispute.
- (b) If a Jurisdiction Dispute arises, each party to the Jurisdiction Dispute ("**Disputant**"):
  - (i) must comply with this clause 23; and
  - (ii) is prohibited from starting arbitration or court proceedings (except proceedings seeking interlocutory relief) unless it has first complied with this clause 23.

### **23.2 Notice**

A party claiming that a Jurisdiction Dispute has arisen must promptly notify each other Disputant in writing giving details of the Jurisdiction Dispute and its proposal for a resolution.

### **23.3 Initial Period**

For a 14 day period after a notice is given ("**Initial Period**") each Disputant must use all reasonable endeavours to resolve the Jurisdiction Dispute and an authorised representative of each Disputant will meet within the first 7 days of that period with that aim.

### **23.4 Appointment of Foreign Beth Din**

If the Jurisdiction Dispute remains unresolved at the end of the Initial Period, each Disputant must within 5 Business Days after the end of the Initial Period refer the Jurisdiction Dispute for determination to:

- (a) the Foreign Beth Din approved by the Disputants; or
- (b) if the Disputants have not agreed on which Foreign Beth Din will determine the Jurisdiction Dispute within 5 Business Days after the end of the Initial Period, the Foreign Beth Din approved by the Board.

### **23.5 Role of Foreign Beth Din**

- (a) The Foreign Beth Din will act as an expert and not as an arbitrator. The rules of evidence will not apply to the determination process, unless the Foreign Beth Din's usual procedures require otherwise. The Foreign Beth Din may use such procedures and rules as it deems necessary or desirable to sufficiently determine the Jurisdiction Dispute.
- (b) Unless the Foreign Beth Din's usual procedures require otherwise, the Foreign Beth Din must, by a majority decision, make a determination in respect of the Dispute as soon as practicable and in any event within 30 days after the Jurisdiction Dispute is referred to the Foreign Beth Din in accordance with clause 23.4.
- (c) The decision of the Foreign Beth Din in accordance with this clause 23 will be final and binding on all Disputants in the absence of manifest error.

### **23.6 Timeframe**

Each Disputant must use its best endeavours to ensure that the Foreign Beth Din makes a determination as soon as practicable and in any event within the time period set out in

clause 23.5(b), including, but not limited to, providing the Foreign Beth Din with all relevant information relevant to the Jurisdiction Dispute as requested.

#### **23.7 Confidentiality**

Any information or documents disclosed by a Disputant under this clause must be kept confidential and may not be used except to attempt to resolve the Jurisdiction Dispute.

#### **23.8 Costs**

The Company must bear the reasonable costs incurred by each Disputant in complying with this clause 23 (including any costs of the Foreign Beth Din), unless the decision of the Foreign Beth Din states otherwise.

#### **23.9 Breach of this clause**

If, in relation to a Jurisdiction Dispute, a Disputant breaches any provision of clauses 23.1 to 23.8, each other Disputant need not comply with those clauses in relation to that Jurisdiction Dispute.

### **24 Seal and execution of documents**

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#### **24.1 Common seal**

The Board may decide whether or not the Company has a common seal. The Board is responsible for the safe custody of a common seal and any duplicate seals.

#### **24.2 Use of seals**

A common seal or duplicate seal may only be used with the authority of the Board.

#### **24.3 Executing documents**

Every document to which a common seal or duplicate seal is affixed must be signed by:

- (a) two Directors or a Director and a Secretary; or
- (b) any other person or combination of persons appointed by the Board to attest to the fixing of the seal.

If a document is not required at law to be executed under seal, it will be binding on the Company if signed by two Directors or a Director and a Secretary or some other person or combination of persons appointed by the Board for that purpose.

### **25 Accounts and records**

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#### **25.1 Obligations**

The Company must keep written financial records in accordance with the Corporations Act and prepare any reports required by the Corporations Act.

#### **25.2 Inspection**

A constituent member of a Member may, free of charge, inspect the following records of the Company during normal business hours:

- (a) the Company's financial records and audited financial statements; and
- (b) the register of disclosure of interests to be maintained by the Company.

## **26 Audit**

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The Board must appoint an auditor unless the Members at a general meeting have appointed an auditor or unless otherwise required or permitted by the Corporations Act.

## **27 Amending the Constitution**

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The Constitution of the Company may only be amended by Members by a Special Resolution.

## **28 Notices**

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### **28.1 Method**

A notice is properly given by the Company to a person if it is:

- (a) in writing;
- (b) signed by a person duly authorised by the Company (by original or printed signature) or, where transmitted by e-mail, sent by a person duly authorised by the Company;
- (c) directed to the intended recipient's registered address (or an alternative address nominated by the intended recipient); and
- (d) either:
  - (i) hand delivered;
  - (ii) sent by prepaid post; or
  - (iii) transmitted by e-mail or facsimile to an e-mail address or fax number nominated by the intended recipient.

### **28.2 Receipt**

A notice given in accordance with clause 28.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
  - (i) within Australia, on the second business day after the date of posting;
  - (ii) to or from a place outside Australia, on the seventh business day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a business day or is after 5.00pm (recipient's time) on a business day, the notice is taken to be received at 9.00am (recipient's time) on the next business day.

### **28.3 Evidence of service**

A certificate in writing signed by a Director or Secretary that a notice was sent is conclusive evidence of service.

## **29 Winding up**

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### **29.1 Distribution of Company's assets**

On the winding up or deregistration of the Company, any surplus assets of the Company after satisfaction of all debts and liabilities of the Company must be paid, distributed or transferred to:

- (a) one or more Eligible Charities; or
- (b) to the extent required or permitted by the Tax Act, funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act.

### **29.2 Distribution of Gift Fund assets**

If clause 4 applies, on the winding up or dissolution of the Gift Fund, the remaining money or property (if any) forming part of the Gift Fund must be transferred to one or more Eligible Charities.

### **29.3 Conditions of distribution to Eligible Charities**

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the Tax Act are satisfied, a transfer under this clause 29 must be made in accordance with those conditions.

### **29.4 Identity of Eligible Charities**

The identity of an Eligible Charity for the purposes of this clause 29 will be determined by the Board at or before the time of winding up or deregistration of the Company or the Company ceasing to be a fund under item 1 of the table contained in section 30-15 of the Tax Act and (where applicable) approved by a Commissioner and, in default, will be determined by the Supreme Court of New South Wales.

## **30 Indemnity and insurance**

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### **30.1 Indemnity and insurance**

Subject to and to the maximum extent permitted under the law, the Company:

- (a) indemnifies each of its officers; and
- (b) may enter into and pay premiums on a contract insuring any of its officers, against any liability incurred by an officer in that capacity, including any legal costs incurred in defending an action for such a liability.

### **30.2 Survival of indemnity**

The indemnity in clause 30.1 will continue notwithstanding that an officer ceases to be an officer of the Company.

### **30.3 Indemnity and insurance subject to law**

For the avoidance of doubt:

- (a) the indemnity in clause 30.1 does not apply so as to indemnify an officer from any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act; and
- (b) the Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act.



**Schedule 6: A kashrut certificate issued by Kashrus Australasia Inc**

# Kashrus Australasia Inc

Serving Australia New Zealand and the Asia Pacific  
Rabbinic Administrator: Rabbi Moshe D Gutnick

"

01 May 2014

## CERTIFICATE OF KASHRUT

This to certify that the following products manufactured and packed in New Zealand by Fonterra Ltd, Auckland, New Zealand at the designated NZ Plant are Kosher Dairy – Chalav Stam. *Cypher identification is required when so marked.*

PRODUCT	PLANT NO	CYPHER or BATCH CODE
Caseinates	All NZ Plants	N/A
Fresh Frozen Milkfat for Recombining (FFMR)	All NZ Plants	N/A
Frozen Cream	All NZ Plants	N/A
Lactic Casein	All NZ Plants excluding 4774 which must be cypher or batch code certified	N/A
Milk Protein Isolate (MPI)	All NZ Plants	N/A
Milk Protein Concentrate* (MPC)	All NZ Plants excluding 3677, 4776, and 4778	N/A
Mineral Acid Casein	All NZ Plants	N/A
Pure Creamery Butter (Salted and Unsalted)	All NZ Plants	N/A
Lactic Butter	All NZ Plants	N/A
Pastry Butter Sheets, 34 & 37	All NZ Plants	N/A
Golden Pastry Butter Sheets	All NZ Plants	N/A
Total Milk Protein (TMP)	All NZ Plants	N/A

\* MPC 4864 and MPC 4764 are kosher but require batch code or cypher certification

MPCs from plants 3677, 4776, and 4778 are batch code or cypher basis kosher certified.

This Certificate expires on 31 May 2015 and must be renewed at that time.

5 Reina St Nth Bondi 2026 NSW Australia  
Phone: +61 411 757 372; +612 9343 4247  
Fax: +612 9343 4287 email: rabbig@ka.org.au

*Moshe D Gutnick*

Rabbi Moshe D Gutnick  
Rabbinic Administrator

*This certificate has been electronically signed for email transmission – it may be authenticated and verified by emailing rabbig@ka.org.au*

5 Reina St Nth Bondi 2026 NSW Australia  
Phone: +61 411 757 372; +612 9343 4247  
Fax: +612 9343 4287 email: rabbig@ka.org.au

## **Schedule 7: ACCC Letter**



**Australian  
Competition &  
Consumer  
Commission**

PO Box 1199  
Dickson ACT 2602  
  
470 Northbourne Ave  
Dickson ACT 2602  
  
ph (02) 6243 1111  
fax (02) 6243 1199  
  
[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: C2005/870  
Contact Officer: Isabelle Arnaud  
Contact Phone: (02) 6243 1049

17 February 2006

Mr Michael Frankel  
Michael Frankel & Co. Solicitors  
268 Devonshire Street  
SURRY HILLS NSW 2010

Facsimile: (02) 9318 1690

Dear Mr Frankel

#### **NSW Kashrut Authority Inc notification - N91747**

I refer to the above notification lodged by your client, the New South Wales Kashrut Authority (the KA) on 24 May 2005 in relation to its meat policy. Legal immunity conferred by the notification commenced on 7 June 2005.

#### **Notifications - the relevant statutory provisions**

Section 93 of the *Trade Practices Act 1974* (TPA) provides that a corporation that engages or proposes to engage in conduct of a kind referred to in subsection 47(6) or (7) may give to the ACCC notice, as prescribed, setting out particulars of the conduct or proposed conduct. The effect of such notice is to give statutory protection in relation to conduct that might otherwise breach the TPA.

Under section 93(3A) of the TPA, if the ACCC is satisfied that the likely benefit to the public from the conduct or proposed conduct will not outweigh the likely detriment to the public from the conduct or proposed conduct, the ACCC may give the corporation a written notice stating that the ACCC is so satisfied and setting out its reasons why.

#### **The notified conduct**

In summary, the KA has notified its policy of providing caterers and restaurants with kosher certification on condition that those businesses acquire their meat needs from butchers supervised by the KA. While there has been some debate on the issue, it is apparent to the ACCC that, to date, the policy has restricted caterers and restaurants wishing to obtain KA certification to two suppliers of poultry and one supplier of red meat.



## **ACCC assessment**

As you are aware, the ACCC has undertaken an extensive review of the notified conduct. In addition to consultation with the KA, the ACCC also contacted and received submissions from a wide variety of interested parties.

In accordance with s 93 the TPA, consideration has been given to the public benefit and detriments likely to flow from the notified conduct.

The ACCC accepts that there is a public benefit of substance in allowing the KA to exercise its religious functions and set standards in accordance with its beliefs and laws. However, it considers that a public benefit such as this is difficult to quantify and analyse within a competition framework.

In its submissions the KA has also claimed that additional public benefits would flow from the notified conduct in the form of community cohesion; guaranteed supply of local kosher meat; and increased economies of scale for local butchers.

The ACCC does not accept these additional benefits. In the case of community cohesion, given the level of community concern raised in response to the notification, it is questionable whether the inflexible approach now taken by the KA will deliver such an outcome. Even where community cohesion was delivered as suggested by the KA, the ACCC would consider this simply a subset of the benefit of allowing the exercise of religious functions as discussed above.

In the case of the KA's claims that the conduct would protect local suppliers from competition from interstate providers of kosher meat, the ACCC is unable to accept the arguments put by the KA. In fact, any protection of less competitive local providers is more likely to constitute a public detriment as discussed further below. It is surprising that the KA placed such focus on this claim noting that it is clearly contrary to the objective of the TPA.

Having regard to the information provided by the KA and interested parties, the ACCC considers that the notified conduct reduces the level of competition in the market for supply of Kosher meat to caterers and restaurants in NSW. The practical effect of the KA's meat policy has been to force caterers and restaurants to source their poultry from one of two suppliers, and their red meat from one supplier. In situations where choice is limited, this will often impact on the price consumers pay, the level of service provided, and potentially the variety and quality of products on offer. The ACCC notes that while there is general community acceptance that some restrictions are necessary to maintain kosher standards, it is this practical effect of limiting sources of supply that has caused most concern.

The ACCC has found it difficult to balance the benefit in allowing the KA to undertake its religious functions with the anticompetitive detriments that clearly arise from the policy.

It seems to the ACCC that both the anticompetitive detriments and public benefits flowing from the KA policy exist because the community places its trust in the judgment of the KA in undertaking its certification functions in accordance with religious requirements. A key question, therefore, in determining the balance of benefit and detriment is whether the KA is exercising its judgment in accordance with religious requirements. It is difficult for the ACCC to arbitrate on this question.

Accordingly, after thorough consultation and careful assessment, the ACCC does not propose to take any further action at this stage.

This said, it is clear from the submissions provided to the ACCC and the extent of the debate on the issue that there is serious community concern about the lack of flexibility and degree of transparency exercised by the KA and the consequential anticompetitive effects of its policy. The ACCC encourages the KA to work further with the community in addressing these concerns, including through exploring mechanisms to allow meat produced in Melbourne to be used by KA certified caterers and restaurants and greater efforts to explain the basis for its policy.

The ACCC notes advice from the KA that on 16 February 2006 Cleaver's Kosher Meats commenced supplying selected Woolworths supermarkets, and will also provide meat at the wholesale level. The ACCC also notes that the KA is exploring other opportunities to mitigate against any anticompetitive detriment including offers to undertake supervision activities both within and outside New South Wales. While it is unclear what the competitive impact of such measures will be, these are positive steps.

As with any notification, the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct. Should it become clear that the KA fails to follow through with genuine efforts to address the competition concerns identified above and to provide greater transparency as to the reasons for its policy the ACCC may review the notification in the future.

Finally, I would emphasise that the ACCC's decision not to take further action at this stage should not be seen as an endorsement of the KA policy. Indeed, as noted above, the ACCC has ongoing concerns in relation to the anticompetitive effects of the conduct.

If you have any inquiries about this matter, please contact Isabelle Arnaud on 02 6243 1049.

A copy of this letter has been placed on the ACCC public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping loop at the end.

Scott Gregson  
General Manager  
Adjudication Branch