

# **Dissenting Report by Government Senators**

## **1. Rationale for the policy change**

In 2001, the Australian Government introduced a blanket ban on the domestic sale of beef and beef products from any country that had a confirmed case of BSE. It was implemented to protect the Australian population from BSE contamination in the food supply, because of the link made between the consumption of certain tissues from BSE infected cattle and the rare fatal human disease Creutzfeldt-Jakob Disease (vCJD).

At the time of the outbreak, the ban on the importation of beef into Australia was based on the best scientific knowledge available. It was acknowledged that this science was conservative, and that it would be subject to review.

The science has since been reviewed as a result of the now vast body of international scientific evidence that supports a relaxation of this approach.

Throughout the Inquiry, Government Senators have become aware of a number of key reasons as to why a change in policy was required:

1. The science has developed significantly since the ban on imported beef was introduced in 2001.
  - It is now scientifically evident that BSE cannot be introduced by the safe importation of beef (i.e. there is no viable pathway for BSE to enter Australia).
2. The risk to human and animal health can no longer be the reason to prevent imports of beef.
3. The vast majority of the Australian beef industry strongly support the change in policy
  - The peak body for the Australian beef industry (the Red Meat Advisory Council Ltd) sought these changes, noting that it had been an outstanding issue for more than two years.
  - The beef industry sought confirmation that they will be consulted in the development of the import protocols. FSANZ consulted with the peak industry body in the development of the policy.
4. The trade implications of not changing the policy are significant.

- Key to Australia's trade policy is our commitment to abide by the international trade rules. The former policy is inconsistent with current science and the relevant international standard.
5. Beef off the shelf
- The policy of 'beef off the shelves' is gone with the introduction of the new policy. For our domestic industry, this means we no longer have the ridiculous situation where if there was an outbreak in one corner of Tasmania, all Australian beef would have to be removed from all Australian shelves. That policy is finished with.

The change in policy was announced on 20 October 2009. The Department of Foreign Affairs and Trade (DFAT) in their Submission explained that the change in policy followed a Government Review that considered a range of issues, including the current international standard, international practice in BSE management, the latest scientific information on BSE and vCJD and international trade rules and trade implications.

The Committee has been told that the Government Review included extensive consultation with a wide range of health and beef industry stakeholders. No concerns were raised by those that were consulted. This has satisfied Government Senators that appropriate consultation took place. Indeed Government Senators acknowledge that the Department of Agriculture, Fisheries and Forestry's role in developing the new policy was to conduct consultations during policy development with peak beef industry bodies i.e. the Red Meat Advisory Council Limited (including its members the Cattle Council of Australia and the Australian Meat Industry Council), Meat and Livestock Australia and the National Farmers' Federation and the state and territory animal health officials.

## **2. Industry support**

Government Senators note the strong support from the vast majority of the Australian beef industry for this change in policy.

The Red Meat Advisory Council Limited (RMAC) is the peak body for the Australian beef industry. RMAC has as its members Australian Meat Industry Council, Cattle Council of Australia, Sheepmeat Council of Australia, Australian Lot Feeders' Association and Australian Livestock Exporters' Council.

RMAC's Submission to the Inquiry noted that "BSE is not a contagious disease, and its only significant route of transmission is through feeding cattle meat and bonemeal produced from BSE-infected cattle." (SAFEMEAT).

RMAC has clearly expressed their support for the policy change in their Submission to the Inquiry:

“The Federal Government’s decision to modernise Australia’s import policy as it relates to beef and beef products is scientifically justifiable and supported by industry. Until this change, Australia stood out from the international trading community as having an outdated policy developed at a time when scientific knowledge was significantly less than it is today. With the rigorous application of the new rules Australia will continue being recognised as a Negligible BSE Risk country and enjoying the level of trade this has traditionally brought” (RMAC Submission, 26 November 2009, p.7)

RMAC’s members include representatives from industry groups along the supply chain – from beef producers to processors to retailers. Government Senators feel confident that these views are therefore representative of the Australian beef industry.

The Committee heard that a key factor in the Government’s decision was the correspondence from RMAC urging a policy change. That is, that **a change in Australia’s BSE policy was sought by the Australian beef industry.**

The Cattle Council of Australia (CCA) is the peak national lobby group for beef cattle producers. CCA represents over 20,000 beef cattle producers and more than 50 per cent of the Australian beef cattle herd. In its submission to the inquiry, CCA explains that it:

“supports the policy being adjusted to better align with international standards and trading policies, provided that such a change is underpinned and justified by science.”

This view is also shared by the Australian Meat Industry Council, the Peak Council that represents retailers, processors, exporters and smallgoods manufacturers in the post-farm-gate meat industry. AMIC has noted they:

“support Australian food safety legislation coming into line with international standards so beef is not removed from sale if a BSE case is detected in Australia”.

In their Submission, CCA notes that it understands that it was intended that the policy be reviewed two years after it was instigated. It notes that the review commenced in 2003 but stalled sometime after. **Government Senators question why the previous government, with knowledge of the science, did not change this policy.**

## **Economic consequences of the policy change**

It is also evident to the Committee that **the Australian beef industry does not feel threatened by the economic consequences of this change in policy.** That is, the threat of imports 'taking over' is not real.

Prior to the ban, imports as a percentage of Australian beef consumption have historically been very low — mostly well under one per cent.

The highest ever beef imports into Australia were in 2004-2005, when Australia imported just over 8 thousand tonnes. That equates to 1.14% of Australia's total beef consumption. Importantly, this was before the ban on US beef (i.e. before they had a BSE outbreak) and includes periods of time when the Australian dollar was strong against the US dollar. This means that even in the year of the greatest ever amount of imported beef, it was only a tiny proportion of our overall beef consumption.

Also, the Committee heard that the Australian beef industry is very competitive. It is the second largest exporter of beef in the world, producing 4 per cent of the world's beef supply. It is a \$7.1 billion industry that exports more than 60 per cent of its production. Australian beef producers are clearly able to compete on the world stage. Therefore, the threat of product substitution is not real.

There has been specific concern that meat from the United States will flood the Australian market. Meat and Livestock Australia have indicated that the US consumes approximately 95 per cent of its production with the majority of its exports being forequarter cuts to Asia, tongues to Mexico and livers to Egypt. They further note that these cuts are unlikely to find a large consumer base in Australia.

This is backed up by ABARE in their most recent publication *Australian Commodities*, March quarter 2010:

"It is likely that the potential quantity of beef or beef imported under these changed conditions [the new BSE policy] will be small given the competitiveness of the Australian beef industry and the small quantities of imported beef, both historically and currently. The combined effect of the medium-term projections of saleyard prices and production, allowing Australia to remain a significant global beef exporter, and transport costs suggests that any potential imports would have to focus on small niche markets to be competitive. Prior to the decision in 2001 to stop imports from countries that had one or more cases of BSE in its cattle herd, Australia only imported small quantities of beef and beef products."

DFAT explained in their Submission that a change in policy may actually open up markets in the event of an indigenous case of BSE:

"Continuation of the 2001 policy may have resulted in our major markets treating Australia in similar terms to its treatment of them (i.e. banning our beef), leading to the closing of markets and very lengthy delays in reopening these markets. This would severely exacerbate the damage of any requirement to remove Australian beef from domestic butcher and

supermarket shelves. The new policy will put Australia in a stronger position to argue that it should not be excluded from its beef export markets should a BSE event occur in Australia”.

### **3. Human and animal health**

The Committee received Submissions and heard evidence relating to both the risks and risk mitigation strategies for both human and animal health under the new policy.

#### **Human health**

The Department of Health and Ageing (DoHA) commissioned Professor John Mathews in 2009 to review the current scientific evidence on BSE. Professor Mathews is an eminent scientist with 40 years experience as an epidemiological researcher and is well equipped to consider the implications of a change in policy for human blood, human blood products and other human therapeutic goods.

The scientific evidence since the ban in 2001 has improved significantly. In developing his Report in 2009, Professor Mathews built on two earlier reviews, conducted in 2005 and 2006. In recognition of the greater knowledge of BSE, the World Organization for Animal Health (the OIE) agreed to amend the standard in 2005 and adopt a three category country classification system assessing countries as either ‘negligible’, ‘controlled’ or ‘undetermined’ BSE risk.

The final report ‘Review of Scientific Evidence to Inform Australia’s Policy on

Transmissible Spongiform Encephalopathies (TSEs)’ (Mathews Report) concluded that the overseas epidemic of variant Creutzfeldt-Jacob Disease (vCJD) is declining, and that beef imports from “controlled risk” or “negligible risk” countries, with appropriate certification, would lead to only a negligible increase in risk for vCJD in Australia.

The Submission by DoHA to the Inquiry listed the key findings from the Mathews Report:

“The Mathews’ Report concluded that:

- Over the last five years the evidence for more effective control of the global BSE epidemic has strengthened. Passive and active surveillance, carried out in accordance with OIE guidelines and European Community legislation, has shown that numbers of BSE-affected cattle are falling year by year in virtually all affected countries;
- The amount of BSE-infected material entering the human food chain in “controlled BSE risk” countries such as the UK is now very small because of the decline in BSE, the removal of brain and other specified risk materials (SRMs) from carcasses, and the detection and destruction of infected animals;

- The risk of future food-borne transmissions leading to human vCJD is very small, if not negligible, even in the UK, where previously the risk was greatest; and
- An estimate of the absolute risk to Australians from UK beef imports, if this was to be allowed, is found to be 40 million times less than the risk from road accidents.”

The Committee was told that the Mathews Report was not only written by an expert, but it was also peer reviewed by expert scientists under the National Health and Medical Research Council’s Transmissible Spongiform Encephalopathies Advisory Committee. Australia’s Chief Medical Officer, Professor Jim Bishop, was also consulted.

The Australian Red Cross and their Blood Service are also satisfied that the change in policy will not impact on Australian blood supply. In a media release, the Red Cross has rejected claims that blood donations could be hindered by the Federal Government's decision to allow imports of beef from countries previously affected by mad cow disease.

**Government Senators are therefore satisfied with all the available scientific and medical evidence that the risk to human health is not a reason to avoid the policy change.**

### **Animal health**

Government Senators understand that BSE can only be transmitted by feeding cattle meat and bonemeal produced from BSE-infected cattle.

In its Submission to the Inquiry, the Department of Agriculture, Fisheries and Forestry (DAFF) explained that BSE is not a contagious disease and has a very different route of transmission from viral diseases of livestock such as foot and mouth disease. It does not spread directly between cattle.

“The only important route of transmission is by feeding cattle with meat and bone meal by rendering BSE risk materials, such as brain and spinal cord, from cattle that are infected with BSE... Australia has in place comprehensive regulatory controls which prohibit the feeding of meat and bone meal to cattle and other ruminant animals. Therefore, there is no plausible route by which this non-contagious disease could be transmitted to Australian cattle via safe, imported beef which, in the case of Category 2 countries has already had BSE risk materials removed in the country of origin” (DAFF Submission to the Inquiry, p. 11)

Government officials consistently explained that countries that want to export beef to Australia will need to meet Australia’s strict quarantine conditions. This includes undergoing a rigorous risk assessment for food safety led by Food Standards Australia New Zealand (FSANZ). An IRA conducted by Biosecurity Australia will examine the animal quarantine issues. The new import conditions will require exporting countries to prove they have acceptable controls in place, even if a country has not reported

BSE, and demonstrate that those controls are monitored. This will include controls on food safety, animal health, surveillance, feeding and slaughtering practices.

In their Submission, DAFF explains that countries do not need to have exactly the same arrangements in place as those in Australia.

“It means that the measures that they do have in place provide a safe supply of beef and beef products at or above Australia’s appropriate level of protection. Australian officials may also conduct in-country audits if considered necessary”.

Government Senators also understand that the new policy takes into account the requirements of the OIE Terrestrial Animal Health Code. DAFF has explained that Australia’s new policy is more conservative than this Code in some aspects because it is tailored to Australia’s specific needs.

They note “the risk assessment will include a desk audit of technical submissions from applicant countries against the OIE’s criteria and using the OIE’s methodology. Additionally, an in-country inspection by Australian officials to verify this information will be undertaken if necessary. This is not part of the OIE’s methodology.”

**From all the scientific evidence available, Government Senators are confident that the risk to animal health of importing beef is not a reason to avoid a change in policy.**

#### **4. Implications of not changing the policy**

Government Senators consider the Committee heard a number of compelling reasons for changing the existing BSE policy relating to international trade rules.

First, the policy change is needed to bring Australia into line with our obligations as a Member of the World Trade Organisation. In particular, the Committee heard Australia is bound by the WTO Sanitary and Phytosanitary Measures Agreement (the SPS Agreement). This means we are entitled to implement rules to protect human, animal or plant life, but must ensure these rules are based on international standards.

Second, Australia would have to ban the sale of Australian beef in the event of an outbreak of BSE in Australia. The Committee heard that this relates to WTO rules on ‘national treatment’ which mean we cannot discriminate between locally and foreign produced goods. In short, if we ban the sale of beef from countries that have had a BSE outbreak, and Australia has an outbreak, we have to ban our own beef. The Committee heard that the States and Territories enforce Australian food standards, not the Commonwealth. However, Government Senators agree that this does not change Australia’s international obligations; it does not matter what level of government makes a decision that breaches international trade rules. Australia would still be in

breach of international trade rules if the States did not ban Australian beef from the shelves if there was a BSE finding in Australia.

Third, Australia's current BSE policy exposed Australia to a WTO dispute. The Committee heard that for the reasons outlined above, a number of countries, including Canada and the US, had made representations on this policy and suggested it was inconsistent with our WTO obligations. In particular, we heard from DFAT that there was a strong risk of a WTO dispute challenge because:

“A number of trading partners have complained over a long period that Australia's 2001 policy was no longer consistent with the science, the relevant international standard or Australia's WTO obligations”.

The Committee also heard that Canada had already initiated a WTO dispute against Korea and that the issues in that case were very similar to the ones we would face. In fact, the Committee heard that Australia's current policy is even stricter than Korea's on BSE.

Fourth, the Committee heard there were commercial imperatives to compliance with international trade rules. The Committee heard that the beef industry is very important to Australia in terms of both its domestic and export value – more than 60% of the total \$7.1B of beef produced in Australia each year is exported. The Committee heard there would therefore be adverse ramifications for our beef export trade if the policy remained unchanged or a WTO dispute was brought against Australia. In particular, DFAT told the Committee that continuation of the 2001 policy may have resulted in retaliation, with major markets closing down trade in response to our ban on beef from those markets. Equally, the committee heard there would likely be significant damage to Australia's beef trade – both in domestic and foreign markets – if Australian beef was withdrawn from sale due to a BSE outbreak.

Fifth, there was little evidence to suggest there would be any significant change to the imports levels of beef into Australia following the change in BSE policy. The committee was told that the Australian beef industry is very competitive, being the second largest exporter of beef in the world, producing 4% of the world's beef supply, producing \$7.1B of beef annually and exporting around 60% of that production. Moreover, the Committee was told that historically Australia has imported very little beef, and that this trend was evident even before the BSE ban was in place and even during times when the Australian dollar was strong against the US dollar.

## **5. Food labelling**

Government Senators recognise that labelling has been raised as part of this debate.

Government Senators note that:

- Our quarantine standards protect consumer safety, whereas our food labelling laws are aimed at consumer information and choice
- Government Senators note, therefore, that it is our import standards on human and animal health that protect against the importation of unsafe beef, not country of origin labelling which serves to inform consumer choice
- There are anomalies in some of our labelling laws as a result of conflicting and contradictory rules developed under the previous government
- Therefore the Council of Australian Governments and the Australia and New Zealand Food Regulation Ministerial Council have agreed to undertake a comprehensive review of food labelling law and policy.
- Government Senators acknowledge that the Primary Industries Ministerial Council has noted the need for further consideration of country of origin labelling of red meat at its November 2009 meeting.

In response to consumer concerns, Government Senators note that the important issue of labelling is being addressed. In a press release of 9 March 2010, the Parliamentary Secretary for Health, the Hon. Mark Butler MP, stated:

“We have taken expert advice and implemented strict risk management procedures to ensure that our food safety standards will not be compromised by these changes. In addition, the Government is taking action to respond to consumer concern about labelling of beef products.

Australians can be confident that there will be clear labelling in place before any imports under the new rules occur so that consumers can easily choose to buy only Australian beef or beef products should they wish to do so”.

## **6. Announcement of an Import Risk Analysis (IRA)**

The Minister for Agriculture, Fisheries and Forestry has written to the Director of Quarantine requesting that IRA for the importation of beef from countries other than New Zealand be commenced.

Government Senators note the media release, issued by the Minister for Agriculture, Fisheries and Forestry, the Hon. Tony Burke MP, on 8 March 2010 explained:

“There has been significant community concern raised questioning whether or not the protocols which were to be put in place, adequately engaged the community and the extent to which they were different from a legislated Import Risk Analysis.

“These community concerns have been brought to me directly through Labor backbench colleagues and through the media. I have formed a view that conducting an Import Risk Analysis is the best way of reassuring the

Australian community that effective protocols will be put in place to provide for the safety of imports”.

Minister Burke also explained that “There are three differences between the decision I have taken today and the process which has been available since the first of March; this is a formal process with statutory time lines, guaranteed opportunities for community engagement and consultation, and involvement of the eminent scientists group”.

The IRA process will consider the animal biosecurity risks. Government Senators note that the IRA will provide additional reassurance and certainty to the Australian community. They also note that the IRA process will include the involvement of the Eminent Scientists Group.

## **7. Recommendations and Conclusions**

Government Senators are concerned about some of the statements and recommendations made in the Committee’s report. In relation to the specific recommendations, Government Senators make the following remarks:

### **Recommendation 1**

The Committee recommends that the provisions for the recall of beef, in the event of an Australian case of BSE, should be developed in consultation with the Australian beef industry.

Government Senators heard throughout the Inquiry that this is the approach that the Government took in developing the policy. This was reiterated by key industry representatives during the Inquiry, who explained the consultation process. Industry representatives also expressed their satisfaction with the consultation process.

The Committee heard that a key factor in the Government’s decision was the correspondence from RMAC urging a policy change because of this concern.

The change in policy means for our domestic industry that we no longer have the ridiculous situation where if there was an outbreak in one corner of Tasmania, all Australian beef would have to be removed from all Australian shelves. This is sensible policy, and the change in policy has been appreciated by the Australian beef industry.

As mentioned earlier in this Report, Government Senators cannot understand why the previous Government, with the knowledge of how much damage this could cause, did not address this issue earlier, particularly because it had been raised with them by the Australian beef industry.

The Committee also recommends a COAG process to seek input and agreement from the relevant Federal, State and Territory human health and food safety Ministers.

Government Senators recognise the importance of discussions between Commonwealth and state/territory governments. It is not, however, the role of this Committee to determine whether a discussion at COAG is necessary. Government Senators believe that this issue could be discussed via another means, such as the Primary Industries Standing Committee (PISC) and Primary Industries Ministerial Council (PIMC).

### **Recommendation 2**

Government Senators do not believe that all administrative process for the assessment of applications from countries seeking to import beef need to be suspended pending the outcome of a formal IRA. This does not add value to the process, nor make it more rigorous. Government Senators heard consistently from trade experts that this process should not be drawn out for longer than necessary.

The Government has made it clear that the necessary technical assessments – both protocols and the IRA - will be undertaken in a timely manner.

### **Recommendation 3**

The Committee recommends that the Questionnaire to assess BSE risk must demonstrate that applicant countries must demonstrate that they have in place a national animal identification scheme with the same physical ability to trace an individual animal from birth to point of retail sale.

Government Senators are confident that the traceability requirements under the new policy are stringent.

The traceability requirements on countries wanting to export beef to Australia have been discussed at length by Government officials, who explained that the ability to trace both backwards and forwards is necessary.

The rigorous nature of the traceability requirements was reinforced by the Chief Veterinary Officer, Dr Andy Carroll who said during the Inquiry that “we can be absolutely convinced that the traceability system meets our requirements”.

The CEO of FSANZ also remarked “that what we want to see, in doing our assessment of the risks for food safety, is the ability of a country to track animals from their property of birth through to the slaughterhouse and back, and, similarly, to trace the birth or cohorts of that animal from that same property, where they may have been exposed to contaminated meat and bone meal, through the system as well. The concept is quite simple”.

This has been reinforced in a paper provided to the Shadow Minister for Agriculture, the Hon. John Cobb MP, by the Minister for Trade, the Hon. Simon Crean MP. The Government’s approach to traceability has been clearly outlined:

“We will demand the same traceability standards of foreign beef producers as we demand of Australian beef producers”.

After listening to the technical experts, Government Senators feel confident that the traceability requirements for imported cattle under the new policy are adequate.

#### **Recommendation 4**

The Committee has recommended a mandatory in-country inspection be undertaken as part of the assessment for each import application.

Committee members heard repeatedly through the hearings that in-country inspections would be undertaken if necessary. It is unnecessary for this Committee to mandate such a requirement. Government officials are undertaking a science-based process. It is for the relevant food safety and quarantine authorities to determine if an in-country inspection is warranted.

#### **Recommendation 5**

The Committee has recommended a review of the administrative framework through which the policy relating to import applications is developed. It also recommends that the final responsibility for the development and administration of such policy should rest with the Minister, and should be subject to appropriate parliamentary scrutiny.

Government Senators make two points in relation to this recommendation.

First, Government officials – whether in FSANZ, Biosecurity Australia or elsewhere – are accountable. There has been no dilution or change to the normal accountability levels of officials for this process. It is irresponsible for the Committee to suggest otherwise.

Second, the final decision relating to Australia’s quarantine import arrangements is made by Government officials with the technical ability to make such decisions. Government Senators understand that this process has been deliberately kept at arms length from Ministers. The Committee has been pleased to see the remarks from both the Ministers for Trade and Agriculture that this is a science-based process.

#### **Recommendation 6**

The Committee has recommended that Australia’s current labelling requirements are amended to reflect the country of origin for all food products, including unpackaged fresh beef.

Government Senators make the following points:

- As noted above, food labelling concerns have been raised in this debate

- Australia's rigorous import standards on human and animal health protect against the importation of unsafe food, including beef, whereas country of origin labelling serves to inform consumer choice
- There are anomalies in food labelling laws inherited from the previous government
- Parliamentary Secretary Mark Butler has announced that Australians can be confident that there will be clear labelling in place before any beef imports under the new rules occur and that Australians will be able to choose to buy Australian beef
- The Committee has not been tasked to review food labelling for all food products. Nevertheless, Government Senators note that the Government has also launched the Blewett Review into food labelling laws, to address anomalies on labelling for food products

**Senator Glenn Sterle**  
**Deputy Chair**

**Senator Kerry O'Brien**

