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6 May 2008

The Secretary of the Senate
Standing Committee on Rural and Regional Affairs and Transport

Email: rrat.sen@aph.gov.au

Dear Sirs,

Inquiry into Meat Marketing

We refer to our telephone conversation with Jeanette Radcliffe and Kymiaki Mechanicos last week and as agreed now enclose our submission on behalf of Bindaree Beef Pty Limited.

The exhibit will be posted by express post to PO BOX 6100, Parliament House CANBERRA ACT 2600.

We would be pleased if you could acknowledge receipt of the submission and Exhibit 1 in due course.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Norman Hunt'.

Hunt Partners

Encl.

Principal
Norman Hunt B. Juris, LL.B.



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**HUNT PARTNERS SUBMISSION
TO THE SENATE STANDING COMMITTEE
ON RURAL AND REGIONAL AFFAIRS AND TRANSPORT**

INQUIRY INTO MEAT MARKETING

on behalf of

**BINDAREE BEEF PTY LTD
ACN 056 599 163
Inverell NSW**



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TABLE OF CONTENTS

BACKGROUND	1
<i>Bindaree Beef</i>	1
<i>Hunt Partners</i>	1
SUBMISSION	2
<i>Executive Summary</i>	2
<i>The Problem</i>	2
<i>Recent Attempts to Solve the Problem</i>	3
<i>MSA</i>	3
<i>Voluntary Retail Beef Labelling Agreement</i>	3
<i>Aus-Meat</i>	3
<i>Effectiveness of Recent Attempts to Solve the Problem</i>	3
<i>Parallel truth-in-labelling legislation</i>	5
<i>The Cost Benefit of a National Beef Grading System</i>	6
<i>Beef Grading Legislative Under-pinning Options</i>	6
<i>Industry Support</i>	7
<i>The Solution</i>	7
Annexure A	9
<i>Beef Grading – Recent History Outline</i>	9
Annexure B	12
Australian - State Legislative Framework	12
1. <i>Mutual recognition legislation</i>	12
2. <i>Australian & New Zealand Food Act</i>	12
3. <i>Food Regulation Agreement (formerly Inter-Government Agreement) dated</i> 3 November 2001	13
4. <i>NSW Food Production Safety Act 1998</i>	13
5. <i>NSW Food Act 1989</i>	13
6. <i>The Australian Quarantine Act</i>	13
7. <i>Commonwealth Trade Practices Act (TPA) & Fair Trading Act 1987 (NSW)</i> (<i>FTA</i>)	13

BACKGROUND

Hunt Partners have prepared this submission into the Standing Committee's inquiry into meat marketing on behalf of Bindaree Beef Pty Ltd.

Bindaree Beef

Bindaree Beef Pty Ltd:

- operates beef abattoirs in New South Wales;
- slaughters approximately 800 head of cattle a day;
- has 600 employees.

Approximately 65% of Bindaree Beef's production is exported and 35% sold on the domestic market.

Hunt Partners

Hunt Partners:

- is a Sydney law firm specialising in a range of rural and regional issues with particular emphasis on the beef, wool and sheep meat industries;
- has made submissions to, and appeared before, the Standing Committee on Rural and Regional Affairs and Transport, inquiries into: the EU quota; the introduction of a US beef quota allocation system; and the Australian Meat Industry consultative structure;
- was appointed to and commissioned to prepare a report to the New South Wales Safefood Truth-in-Labelling Cow Beef Working Group by Minister Amery, the then New South Wales Minister for Agriculture in the year 2000;
- principal, Norman Hunt, was a delegate to the Red Meat Advisory Council Limited (RMAC) Beef Industry Truth-in-Labelling Round Forum in 2003; and
- was appointed by RMAC to its Truth-in-Labelling legislative task force; and
- as a member of that legislative task force, met with all State Agricultural Ministers and FSANZ and prepared a report to the RMAC legislation task force on the options for the legal unpinning of a national beef labelling system.

SUBMISSION

Executive Summary

The greatest issue for the Australian beef industry in relation to domestic meat marketing is the lack of a national beef grading system which delivers a guaranteed product to consumers.

A national beef grading system underpinned by legislation has the potential to:

- increase Australian domestic beef consumption;
- reduce the Australian beef industry's dependence on overseas markets;
- provide an annual \$1 billion payoff to the Australian beef industry;

The Problem

Australia is currently the largest exporter of beef in the world. Approximately 65% of Australia's annual beef production is exported. All export meat leaves Australia in compliance with the labelling and grading standards of the respective importing countries. Yet, on the domestic market, due to the lack of enforceable labelling and grading standards, there has been a practice of substitution of low-grade beef (particularly cow beef) for high-quality meat.

In the United States, the average age of cattle slaughtered for the table is 22 months. In Australia, much of the beef consumed is from old cows, however, our overseas customers do not eat steak from Australian cattle with more than 6 incisors (i.e. up to an age of 42 months).

Australian meat processors exporting most of their product and those supplying the American hamburger market can increase their profits by dumping poor quality cow primals and rumps onto the domestic market at higher prices than they can obtain overseas.

These practices are detrimental to the long term profitability of the Australian beef industry and Australian consumers have no confidence in the quality or consistency of the taste and tenderness of the beef that they purchase.

In the last twenty odd years Australia per capita beef consumption has fallen by around 25% from 49.4 kilos per person in 1982 to approximately 38 kilos per person.

In the same period in the United States, which has had a well publicised consumer orientated beef grading system underpinned by legislation (USDA) in place for 90 years, beef consumption fell by only 6% (from 48 kilos per person in 1982 to 45 kilos per person)¹.

If Australia was able to lift its per capita beef consumption from its current 38 kilos per year back to the 1980's average of 43 kilos per year, the Australian beef industry at current retail prices would achieve a payout of well over \$1 billion per annum.

¹ For a detailed discussion on the comparison of beef, lamb, chicken and fish consumption in Australia and the United States see Hunt Partners Briefing Note on Beef Grading 2006 Tab 9 Exhibit 1. For a detailed discussion on the United States USDA beef grading system see Appendix C, tab 3, Exhibit 1.

The 2001 census figures show that 7,800 abattoir jobs were lost in regional Australia between 1996 and 2001. A further 2,160 jobs were lost from abattoir closures by 26 October 2003 (source Federal Secretary AMIEU). The AMPC (Australian Meat Processor Corporation) has predicted that 20% of the remaining Australian abattoirs will close within the next 10 years. Most of the abattoirs that have closed in the last 15 years have been those supplying the domestic market.

Recent Attempts to Solve the Problem

MSA

- Since 1996 Meat and Livestock in Australia (“**MLA**”) has invested between \$70 – 100 million of levy-payer’s funds into a quality assurance beef grading system known as MSA and accompanying, but now abandoned, Via:Scan technology.

Voluntary Retail Beef Labelling Agreement

- In 2002 a number of large Australian beef retailers signed a voluntary retail beef labelling agreement for beef from animals with eight permanent incisor teeth prepared by MLA in the context of the publication of the 2001 New South Wales Safe Food Working Groups Truth-in-Labelling Cow Beef Report (see tab 3 Exhibit 1).
- The voluntary Retail Beef Labelling Agreement required each retailer signatory to include the word “Budget” with the cut descriptor in the marketing, promotional, labelling and selling of fresh beef from animals with eight permanent incisor teeth.
- Tenderloin beef and mince beef were exempted from this requirement (see Retail Labelling Variation Agreement - Tab 1, Exhibit 1).

Aus-Meat

- In January 2002 changes in Aus-Meat labelling requirements for beef for the domestic market introduced the descriptors “Budget Ox”, “Budget Cow” and “Low Grade” from animals with eight teeth. (See Tab 2 Exhibit 1)
- In January 2003 the “Low Grade” term was replaced with “Manufacturing” and in February 2003 Aus-meat had incorporated MSA into their official descriptors. (See Tab 2 Exhibit 1)

Effectiveness of Recent Attempts to Solve the Problem

MSA

- MSA is a voluntary system with little consumer awareness or retail take-up and less than 5% of the beef sold for the domestic market in Australia is MSA graded.

- In the United States, 96% of the steers and heifers slaughtered are graded under the voluntary USDA Grading System underpinned by legislation with 51.7% of US table consumption labelled Choice, 37% Select and 3% Prime.

Voluntary Retail Agreement

- MLA claim that some 64% of beef retail is covered by supermarkets who have signed the voluntary Retail Truth-in-Labeling Agreement.
- The voluntary Retail Agreement does not impose any audited compliance requirements unless MLA receives a written complaint. We understand that the MLA has no record of formal complaints.
- Almost 40% of the beef retailed in Australia is sold by retailers who are not signatories to the voluntary Retail Truth-in-Labeling Agreement and there are unsubstantiated claims that beef labelled by abattoirs as “Budget” and “Manufacturing” are retailed in the domestic market under “Steer” or “Premium” labels and that cow beef is also traded at the wholesale level under “Steer Beef” labels. Without clear audit trail and compliance requirements it is impossible to verify whether these unsubstantiated claims are valid.
- There is no voluntary Retail Agreement for Manufacturing beef nor is there a voluntary Retail Agreement with respect to the MSA grading system.
- Beef labelled Budget is sold in retail outlets owned by the signatories to the Voluntary Retail Beef Labelling Agreement but there has been no consumer awareness program advising customers that Budget beef comes from old cattle.
- The word “Budget” is ambiguous and can be taken to represent “value” rather than signifying “poor quality”. The Australian Consumers Association believes that “...the word ‘budget’ isn’t enough by itself to let you know that the meat you are buying is from older animals” (see Choice Magazine article “Any Old Beef” – Tab 4, Exhibit 1).
- The voluntary Retail Truth-in-Labeling Agreement only applies to the worst meat and does not attempt to identify the top quality cuts.

Aus-Meat

- Domestic abattoirs and retailers are not bound by the Aus-Meat labelling requirements.
- The writer is yet to observe the marketing of any beef in retail outlets under the Aus-Meat “Manufacturing” label.

Comprehensive v Piecemeal

- Australia has no unified consumer orientated enforceable national grading and labelling system for both top quality and poorer grades of meat equivalent to the United States USDA labelling system of “Choice”, “Select” and “Prime” for table meat and “Standard”, “Commercial”, “Utility”, “Cutter” and “Canner” for old cow meat. (See detailed explanation of USDA grading system, Appendix C, tab 3, Exhibit 1).

Voluntary v Legislation

- Research over selected periods has shown that per capita beef consumption;
 - increased or broke even in countries such as South Korea, UK, US, Canada and Japan with beef grading legislation or government restriction on slaughter age for domestic consumption, but
 - declined in countries such as Australia and New Zealand with voluntary schemes. (See tab 4 Exhibit 1 – “Time to Stop the Bull about Tough Steak” advertisement.)

Parallel truth-in-labelling legislation

Australia currently has truth-in-labelling legislation for wine, lamb, fish and genetically modified vegetables (see detailed outline Appendix F, Tab 3, Exhibit 1).

New South Wales and some other States currently have truth-in-labelling provisions for lamb and hogget. (See schedule 8 of the New South Wales Food Production (Meat Food Safety Scheme) Regulation 2000.

Section 10 of the ANZFA Act states the objectives (in descending priority order) of the Authority in developing food regulatory measures as:

- (a) the protection of public health and safety; and
- (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
- (c) the prevention of misleading or deceptive conduct.

The ANZFA Food Standards Code currently contains a number of quality and consumer information protection provisions including truth-in-labelling for the wine industry, for scotch whisky² and genetically modified food and country of origin for imported products.

² See National Food Authority v Scotch Whisky Association, Appendix D, tab 3, Exhibit 1.

The Australian Wine and Brandy Corporation Act 1980 provides for a detailed wine industry label integrity program with respect to statements made for commercial purposes about the vintage variety or geographical location of wine manufactured in Australia. The legislation provides an associated audit trail and prosecutions for fraud have been extremely effective.

There have been recent reports in the national press regarding the initiation of proceedings with respect to false labelling of Canadian pork as Australian and the false labelling of hogget as lamb.

The Cost Benefit of a National Beef Grading System

- In 2003 the cost of USDA beef carcass grading inspection in the United States was 37c per head.
- Australia kills about 3 million head of cattle per year for the domestic market which at 37c per head amounts to \$1.1 million per year.
- If national beef grading legislation was to succeed and the number of cattle slaughtered for the Australian domestic market increased to 4.5 million head per year, the cost of grading inspection would be about \$1.6 million per year.
- The total cost to industry of meat inspection and retail auditing is therefore unlikely to exceed \$3-4 million per year.
- If beef grading led to Australians eating an additional 250 gr. meal of beef once every three weeks, it would result in an annual \$1 billion pay-off to the Australian beef industry.

Beef Grading Legislative Under-pinning Options

An outline of the relevant legislative framework and legislative constraints of legislative under-pinning of a national beef grading system is set out in Annexure B.

The RMAC Truth-in-Labeling Forum Legislation Task Force recommended the following options for a national beef grading system in order of preference:

1. State legislation under each State and Territory is equivalent of the New South Wales Food Act 1989 (similar to legislations applied for the USDA grading and preferred because of robust audit and compliance).
2. national legislation under Section 12 of the Foods Standards of Australia and New Zealand Act 1999 (FSANZ) (noted as worth exploring further).
3. a Retail Code under the Australian Competition and Consumer Commission (least preferred because of difficulty in finding evidence and finding an appropriate plaintiff).

Other options that have been discussed by the industry include:

- giving Aus-Meat the power to audit the compulsory beef grading system;
- extending compulsory Aus-Meat accreditation to all meat processing establishments.

Industry Support

Large sections of the Australian beef industry have been calling for a National beef grading system underpinned by legislation for over thirty years.

In November 2003 Bill Rupp the President of Cargill (Excel) USA said “Australians (should) follow the US example of adopting a national mandatory beef grading system which gives consumers different degrees of taste, tenderness and consistency”.³

In March 2004, the RMAC Beef Industry Grading Labelling Forum comprising producer and processor Peak Councils, Retailers, the Australian Consumers Association, Department and Ministerial advisors (convened by the beef industry at the request of the then Minister for Agriculture, Fisheries and Forestry) recommended the development of a voluntary beef grading system underpinned by regulation.

In July 2004, 1200 beef producers at the Roma Beef Forum voted unanimously for the introduction of a mandatory beef grading system.

Recently, Woolworths issued a press release supporting “a common system of quality grading for cattle (which) would simplify things for the entire beef supply from farm right through to customer”.

The Australian Consumers Association has been calling for a national beef grading standard overseen by the Australian New Zealand Food Authority since 2003. (See Choice Magazine article “Any Old Beef”, Tab 4 Exhibit 1.)

The Solution

There have been many attempts in recent years to implement a National Beef Grading System (see Beef Grading Recent History Outline Annexure A).

An effective National Beef Grading System under-pinned by legislation has the potential to increase Australian domestic beef consumption, decrease Australia’s beef industry dependency on overseas markets and produce an annual pay-off to the Australian beef industry which could be as high as \$1 billion a year.

A National Beef Grading System under-pinned by legislation can be achieved by:

- the establishment of an industry wide working group (in association with the Australian Consumers Association) to develop consumer friendly beef grading descriptors; and
- a public education program to assist consumers to understand the adopted grading language; and

³ Cargill operate beef abattoirs in Wagga Wagga and Tamworth NSW and has a beef feedlot at Temora.

- giving Aus-Meat the power to audit a compulsory beef grading system; and
- extending compulsory Aus-Meat accreditation to all meat processing establishments (ie export and domestic establishments); and
- the introduction of beef quality standards under Section 12 of the Food Standards Australia New Zealand Act 1991; or
- State regulation underpinning a voluntary Australian beef grading system in a similar way that the USDA voluntary beef grading system is underpinned by legislation.

Annexure A

Beef Grading – Recent History Outline

- The 18 March 1997 media release by the then Minister of Primary Industries & Energy, John Anderson, announcing the restructure of the Australian red meat industry organisations said, *“the Australian public also deserves a satisfactory grading system for red meat which delivers to consumers a guaranteed product. I call on the industry to make this issue a top priority to ensure consumers get exactly what they want when purchasing meat”*. (See Tab 4 Exhibit 1).
- Eleven years have passed and Australia still does not have a comprehensive beef grading system that guarantees product to the consumer.
- The MLA has invested over \$70 million of levy payer’s funds into a quality assurance beef grading system known as MSA. The MSA is a voluntary system with little consumer awareness or retail take-up and less than 5% of the beef sold in Australia is MSA graded.
- In 2000 – the Safe Food Working Group was established by the NSW Minister for Agriculture to investigate truth-in-labelling for cow beef.
- In 2001 - Draft Retail Voluntary Labelling Agreement for beef from animals with 8 permanent incisor teeth prepared by MLA to pre-empt Safefood Working Groups Trust-in-Labelling Cow Beef Report. (See Tab 1 – Exhibit 1.)
- In February 2001 – Safefood Truth-in-Labelling Cow Beef Working Group Report forwarded to Minister Amery. (See Tab 3 Exhibit 1).
- In May 2001, Warren Truss the then Federal Minister for Agriculture, Fisheries and Forestry requested an urgent report on a national beef grading system from RMAC.
- In 2002 – Bindaree Beef commenced a beef grading advertising campaign in the rural press (see the Case for Grading - Advertisements – “Government Soft on Tough Steak – Time to Stop the Bull about Tough Steak”, and “Tough Steak Merry-Go-Round” – Tab 4 Exhibit 1).
- In 2002 a number of large retailers signed the Voluntary Retail Beef Labelling Agreement. (See Tab 1 Exhibit 1.)
- May 2002 – RMAC writes to Aus-Meat seeking advice on the effectiveness of the beef labelling code and possible integration of MSA into labelling.
- May 2003 – RMAC convenes a Beef Grading/Labelling Round Table Forum in Sydney.

- June 2003 – RMAC establishes A Language Task Force, a Legislative Task Force and an R&D Task Force to report to the Forum on beef grading.
- July 2003 – February 2004 – Delegates of the RMAC Beef Grading Legislative Task Force meet with all State Ministers and the CEO of FSANZ regarding legislative under-pinning for beef grading system. (See Meeting Minutes Tab 8 Exhibit 1).
- 19 November 2003 –the then Chairman of RMAC, advises Warren Truss, the then Minister for Agriculture, Fisheries & Forestry, of the establishment and progress of the RMAC Beef Labelling/Grading Forum Legislation, Language and R&D taskforces noting that “...*any scheme (should) cover all areas of the meat supply chain including domestic slaughterhouses, voting rooms and wholesaler and retail establishments*” and recommended “...*an approach to labelling beef that involves an element of compulsion mixed with a commercial desire to ‘get it right’*”. The Minister for Agriculture was also advised that the Language Taskforce was being driven by AMIC “...*to explore the development of a grading system for the entire supply chain and to develop a consumer friendly language...*”. (See letter from RMAC to Warren Truss, Tab 7, Exhibit 1).
- March 2004 – Report from Hunt Partners to Legislative Task Force regarding legislative options to under-pin beef grading in each State (Tab 5 Exhibit 1).
- 12 March 2004 – RMAC Beef Grading/Labelling Forum recommended the development of a voluntary beef grading language and that State and Territory governments be requested to under-pin any agreed voluntary beef grading standard with regulation requiring those who adopted it to have compliance as a condition of their licence to handle beef (Tab 10 Exhibit 1).
- 23 March 2004 – the Red Meat Advisory Council forwards copy of Beef Grading/Labelling Forum Recommendations to peak councils for consideration.
- 30 April 2004 – AMIC writes to RMAC voting that AMIC did not support the recommendations developed by the Forum and did not believe that a new industry committee was required to design “*standards of language described beef eating quality*” (see letter from AMIC to RMAC, Tab 11, Exhibit 1).
- April 2004 – RMAC failed to adopt the recommendations of the industry-wide forum that it had convened.
- June 2004 – Beef grading language referred by AMIC to Aus-Meat Industry Language and Standards Committee and the MSA Standards Committee thereby supplanting the working group and language committee recommended by the RMAC Beef Grading and Labelling Forum.
- July 2004, 1,200 beef producers at the Roma Beef Forum voted unanimously for the introduction of a mandatory beef grading system.

- August 2005 – MLA prepares a new draft comprehensive Retail Labelling Agreement (Tab 12 Exhibit 1).
- 2008 – The 2002 Retail Labelling Agreement remains in place without amendment and Aus-meat has relaxed the grading and trim requirements for manufacturing beef to allow hot carcass grading.

Annexure B

Australian - State Legislative Framework

A brief outline of the relevant Federal and State legislative provisions which would facilitate and/or restrict the introduction of a national beef grading system underpinned by legislation is outlined below.

A more comprehensive outline is contained in Hunt Partners' Report to the Safe Food Truth-in-Labeling Cow Beef Working Group, February 2001, set out in tab 3, Exhibit 1 to this submission. See also the advice of Peter McClellan QC on 13 December 2000 Appendix E to that Report (Tab 3, Exhibit 1).

The relevant legislative framework in each state varies. An outline of the relevant legislation in each State can be found in Exhibit 1 under tab 5.

For ease of explanation, the outline summary below refers only to Commonwealth and relevant New South Wales legislation.

1. Mutual recognition legislation

Under the *Mutual Recognition Act 1992*, goods produced or imported into one State or Territory that are lawfully sold in that State or Territory may be sold in any other State or Territory either generally or in particular circumstances, without the need to comply with further requirements. Therefore, if specific labelling standards for the sale of cow beef and low-grade beef from aged bullocks were introduced in New South Wales, such beef from other States and Territories could be sold without specific labelling. In other words, States and Territories with lower standards would not be prevented from selling cow beef in New South Wales.

2. Australian & New Zealand Food Act

The Australia New Zealand Food Authority (the "ANZFA") is a statutory body established by the *Australia New Zealand Food Authority Act 1991* (the "ANZFA Act"). ANZFA works with a Council of Health Ministers (the Australia and New Zealand Food Regulation Ministerial Council), to develop and administer laws and systems which regulate food in Australia and New Zealand. Each State and Territory Minister for Health is a member of the Council, together with representatives from New Zealand.

ANZFA, in cooperation with Australian Federal, State and Territory Governments and the New Zealand Government, develops food standards and regulatory measures for Australia and New Zealand. This is known as the Foods Standard Code.

The States and Territories have agreed to delegate the policy making of food standards to ANZFA. In turn, all States and Territories have adopted the Food

Standards Code. However, the enforcement and compliance with the Food Standards Code and hygiene issues remain with the States and Territories.

3. *Food Regulation Agreement (formerly Inter-Government Agreement) dated 3 November 2001*

The Food Regulation Agreement dated 3 November 2000 is an agreement between the Australian Federal Government and the States and Territories and arguably restricts States or Territories from introducing a standard other than in accordance with that Agreement.

4. *NSW Food Production Safety Act 1998*

The *NSW Food Production Safety Act 1998* provides rules and regulations for the “hygienic” and safe operating procedures in food processing and handling.

Schedule 8 of the Regulations under that Act deal with prescribed brands for abattoir meat. Included in the schedule is a brand for “lamb”, “hogget” and “game meat”. The reference to the branding of lamb which was introduced by all States and Territories some 30 years ago to identify sheep of a certain age and to remedy the problem of hogget being sold as lamb.

5. *NSW Food Act 1989*

The *NSW Food Act 1989* provides the promulgation of regulations of food standards in New South Wales, however, the capacity of the New South Wales government to unilaterally make a beef grading truth-in-labelling regulation under that Act is confined by the Food Regulation Agreement.

6. *The Australian Quarantine Act*

Aus-Meat provides a mechanism for truth-in-labelling for accredited abattoirs but does not provide an avenue for enforcement of compliance by non-export accredited abattoirs.

7. *Commonwealth Trade Practices Act (TPA) & Fair Trading Act 1987 (NSW) (FTA)*

Successful action could currently be taken under both the TPA and FTA with respect to and retail practices such as selling of cow beef as export A, however, some other practices adopted by retailers such as the selling of cow beef as special rump may be more difficult. Actions under either Act must face significant evidentiary difficulty and it may be difficult to find an appropriate plaintiff.