



Australian Government

Inspector-General of
Live Animal Exports

Implementation of Moss Review recommendations

REVIEW REPORT NO. 2020/02



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Inspector-General of Live Animal Exports
c/- Department of Agriculture, Water and the Environment
GPO Box 858 Canberra ACT 2601
Telephone 1800 900 090
Email iglae@awe.gov.au
Web iglae.gov.au

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Review team and acknowledgements

Mr Glenn McMellon and Dr Hyo Ryung Lee assisted the Inspector-General of Live Animal Exports in this review.

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Review process

Objectives

This review examines the Department of Agriculture, Water and the Environment's progress in implementing the 31 recommendations of the September 2018 independent [Review of Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports](#) (Moss Review).

The department supports, or supports in principle, the 31 recommendations of the Moss Review. In its *Review of the regulatory capability and culture of the Department of Agriculture and Water Resources in the regulation of live animal exports: 2019 progress report* (Department of Agriculture 2019), the department stated that it would focus on:

- organising for a strong regulatory practice
- ensuring a transparent and well-engaged regulator
- delivering a regulator with the necessary skills and systems
- ensuring animal welfare is integral to its regulatory approach.

Scope

This review examines the department's progress with implementing the Moss Review recommendations, and considers:

- the department's formal response to each recommendation
- subsequent actions against each recommendation
- key deliverables since the release of the Moss Review
- progress of implementation of recommendations.

Out of scope

This review does not examine:

- industry's implementation of the Moss Review recommendations
- the Exporter Supply Chain Assurance System or Livestock Global Assurance Program, which will be covered in a separate Inspector-General of Live Animal Exports review
- [Monitoring and reporting during livestock export voyages](#)
- the approved arrangements framework, which will be covered in a separate inspector-general review
- livestock export permit systems and health certificate processes, which will be covered in a separate inspector-general review.

Methodology

During this review, the inspector-general:

- conducted an entry meeting with the department's executives to
 - communicate the review's objectives and scope
 - outline responsibilities
 - identify risks related to the review and any appropriate mitigation strategies
- conducted phone meetings and interviews with key stakeholders
- met with Mr Philip Moss AM and the Moss Review secretariat team to discuss the intent of recommendations
- invited submissions from stakeholders
- discussed preliminary data or information requirements with relevant departmental officers and requested data or information
- conducted a desktop audit of relevant department data and documentation, including instructional material, policies and communications material
- conducted an exit meeting with the department's executives that
 - provided an overview of initial review findings
 - outlined the process of release and response to the draft report.

A draft review with key findings and recommendations was presented to the secretary of the department for factual consideration. The secretary's response to the Inspector-General of Live Animal Exports recommendations is included in this report. The inspector-general provided the final report to the Minister for Agriculture, Drought and Emergency Management before publication on the [Inspector-General of Live Animal Export's reviews](#) webpage.

Summary

The [Review of the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports](#) (Moss Review) was published on 27 September 2018. The Moss Review was published with 31 recommendations to improve the Department of Agriculture, Water and the Environment's regulatory capability and culture (Moss 2018). The department supported 22 recommendations in full and 8 in principle. Recommendation 21 did not have a response.

In October 2019 the department published an implementation progress report (Department of Agriculture 2019). The report described progress made against all 31 recommendations, indicating that 15 were completed, 11 were in progress and 5 were ongoing. The inspector-general considers that the status definitions used by the department do not adequately reflect the need for ongoing maintenance and continuous improvement that was intended by the Moss Review recommendations. The inspector-general recommends the department use the following status definitions:

- In progress
- In progress (on hold)
- Implemented – ongoing

Using these definitions the inspector-general considers that 10 recommendations are in progress, 3 are in progress (on hold), and 18 are implemented – ongoing.

In the 2 years since the Moss Review was published the department has made significant progress in a number of framework and foundational areas. This includes:

- engagement with stakeholders
- review of the Australian Standards for the Export of Livestock
- the establishment of the Animal Welfare Branch
- a range of improvements to risk mitigation for animal health and welfare outcomes prior to, and during, export consignments
- responsiveness to third party reports
- transparency through publications
- implementation of the Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020
- improved skills and training of staff
- relationships and coordination within the department, Australian Maritime Safety Authority, and other government jurisdictions.

However, there is significant further work to be done to realise the full intent of the Moss Review recommendations and to move towards being a best practice regulator for livestock animal exports. Observations and recommendations in this report focus on 3 challenges for the department that are interdependent and cut across a number of Moss Review recommendations.

Firstly, the department's IT systems do not:

- support efficient operations
- provide for streamlined industry interaction
- support data and intelligence analytics to
 - target regulatory effort
 - contribute to the body of knowledge on risk mitigation to animal health and welfare.

This report makes a number of observations and recommendations aimed at improving the department's IT systems. The Australian Government's 2020–21 budget announcement 'The Busting Congestion for Agricultural Exporters package', worth over \$328.4 million over four years (Media release 2020), provides a substantial opportunity for these systems to be improved in a way which can underpin modern regulatory practice.

Secondly, the livestock animal exports regulatory function is still 'in transition' with the dispersed functional model of the department presenting a major challenge to delivering an integrated regulatory model. The inspector-general uses a case study of the 2017 MV *Awassi Express* incident to illustrate the importance of this.

Thirdly, the department needs to improve important aspects of its regulatory practice. Effective compliance monitoring, using a proportionate response model to address non-compliance and poor performance, are key elements of good regulatory practice. The department appears to determine the severity of an individual non-compliance in isolation from other factors. This is a reductive approach that risks not correcting underlying and ongoing unacceptable performance.

Balancing regulatory objectives is a critical element of regulatory decision-making. The inspector-general has used a case study of the June 2020 Al Kuwait exemption decisions to illustrate the importance in regulatory practice of considering broader community trust and confidence. This means applying rigour to both the decision making itself, as well as to the communication and publication of decisions. While not all stakeholders will agree with any particular decision, good regulatory practice involves reducing the risk of perceptions of disproportionate weighting between competing or conflicting objectives.

Inspector-general recommendations

Inspector-general recommendation 1

The department should change from a 3-year review of the Australian Standards for the Export of Livestock to an annual update of the standards. The review should address emerging issues and advances in scientific knowledge and technology associated with improved animal welfare outcomes.

Department's response: *Supported.*

The department is planning the next update of the ASEL for November 2021. This and future updates will include a progressive, issues based approach in close collaboration with stakeholders. The department will assess whether annual updates are effective at addressing known and emerging issues and advances in animal welfare science and technology sufficiently, or whether alternative review processes are required in some circumstances.

Inspector-general recommendation 2

The department should ensure that the investment in improved IT infrastructure announced in the 2020–21 budget:

- delivers improved regulatory operations and knowledge on animal health and welfare through effective use of data and information analysis
- enables disparate parts of the department to work more effectively through real-time access to all relevant records, policy, guidance and procedures
- reduces delays and duplication for industry through streamlined application processes, decisions and reporting.

Department's response: *Supported.*

The government has funded the department to make significant investments in new digital and data products and services, building on the advances in analytics delivered in Biosecurity focussed business areas. Central to this is an approach which starts by carefully examining and understanding the needs of users and regulators in the export supply chain and will co design services with them that reflect their needs.

In Biosecurity, the department has successfully deployed a Pest and Disease Repository which will be used as a template model for pulling together disparate and unjoined elements of information and records. By example Pest and Disease Registry brings together 42 different data sets and reconciles them through an overarching workflow tool that allows users to access the information they need to get their job done.

A further part of the department's planned activities is to carefully analyse current processes for all parts of our export responsibilities, including decision making and reporting, in order to identify opportunities to digitise, automate and remove non value added steps in the process.

There will be a strong drive to look at doing things differently, and employ innovative digital technology to get the task or outcome done. We will also consider 3rd parties, including the industry and exporters themselves, who might be able to do it better, provided the department can unambiguously assure itself that regulatory and compliance needs are being met.

Inspector-general recommendation 3

The department should ensure it has detailed business process maps for all live animal export regulatory processes to support improved regulatory effectiveness and efficiency, and to inform optimal IT investment in the systems that support these processes.

Department's response: *Supported.*

To support the introduction of the *Export Control Act 2020*, the department is reviewing its business and regulatory decision making processes to ensure they continue to align with legislative requirements. This work will provide a sound platform for a new and comprehensive business process mapping exercise to support the development of improved IT infrastructure, as announced in the 2020–21 budget. Business process mapping will be undertaken in collaboration with the Trade Reform Division and is expected to be finalised in 2021. The department will take a user co design approach in developing new IT systems, including any external interfaces that may be used by industry.

Inspector-general recommendation 4

That the department address the challenge that dispersed regulatory functions pose to improved regulatory practice. This could include:

- accelerating the expansion of the role of the Principal Regulatory Officer consistent with its original intent
- secondments and placements of staff from relevant functional regulatory areas into the Plant and Live Animal Exports Division
- instituting cross-functional multidisciplinary projects at strategic and operational levels as a business-as-usual approach to compliance monitoring.

Department's response: *Support in principle.*

The issue of potential disconnect across regulatory areas of the department and how to address is a key issue for the department. The Future Department Review released in November notes "At times, there is a disconnect between the policy and operational parts of the department, which leads to unclear lines of responsibility and potentially impractical policies."

The department is already addressing this in a number of ways. In addition to the progress on the development and implementation of the Regulatory Practice Statement, the Regulatory Practice Committee works across the department to improve regulatory practice, encourage consistency and work through roles and continues to address issues related to regulatory practice across the organisation. Since the Moss Review, machinery of government changes have broadened the department's regulatory reach, and the Regulatory Practice Committee has been an effective approach to managing shared regulatory practice issues. While it is not planned for the PRO position to expand in the immediate term, the PRO is deeply involved in the work of the Regulatory Practice Committee, as well as being a member of the department's Risk Committee.

Export related divisions within the department are also looking closely at processes and approaches to Instructional Material. A key recommendation of a preliminary report on instructional material recommends the close involvement of staff who are undertaking regulatory roles in the drafting and consideration of such material. Live Animal Exports Branch has been using this methodology for some time, ensuring that practitioner input is a key part of the process and that front line regulatory staff are in the team, rather than just consulted.

Further, Plant and Live Animal Export Division, along with the rest of the Agricultural Trade Group, is moving to use Agile project methodology for much of its work. This includes establishing multi disciplinary teams to tackle projects. As the division becomes more mature in using Agile methodology to run projects, it could examine whether this approach could be used to as a business as usual approach to compliance monitoring.

The Management Review Committee also operates across the dispersed functions of live animal export regulation to discuss and agree upon approaches to shared issues. This Committee will continue to strengthen oversight, information sharing and common regulatory attitudes and approaches.

The division has used secondments to bring in staff on an ad hoc basis.

Most recently, staff from the VEMG were seconded to help with ASEL 3 implementation. The division will continue to look to do this for specific tasks subject to timing and availability of staff in other divisions.



Ross Carter
Inspector-General of Live Animal Exports
15 December 2020

Background

On 9 April 2018 the Minister for Agriculture and Water Resources announced a review of the regulatory capability and culture of the Department of Agriculture and Water Resources. The announcement was made following video footage of dead and suffering sheep on voyages to the Middle East on the MV *Awassi Express* in 2017. On 19 April 2018 Mr Philip Moss AM was engaged as the independent external reviewer.

The review assessed and made recommendations on:

1. The regulatory powers available to the department to ensure compliance with the Australian Standards for the Export of Livestock (ASEL) and animal welfare standards, how effective those powers are to ensure compliance by the live animal exports industry, and how effectively the department uses those powers.
2. How the department assesses and determines regulatory conditions appropriate to achieve ASEL and animal welfare standards, and how those conditions are communicated and enforcement of them verified and measured.
3. The process for investigating reportable mortality events and complaints received about industry compliance with the ASEL and animal welfare standards.
4. The effectiveness of reporting obligations under relevant legislation.
5. Appropriate structures within the department to ensure regulatory responsibilities are met, including whether an Inspector-General of Livestock Exports would provide superior oversight of the regulator.
6. The development and maintenance within the department of an effective regulatory culture that delivers on animal welfare standards and the ASEL and in doing so supports a sustainable live animal exports industry.
7. The requisite skills, capabilities and systems for regulating the live animal export trade, as well as any improvements to support departmental officers in their regulatory capacity.
8. The effectiveness of the department's interaction with relevant state and territory authorities (and applicable state and territory legislation) as well as improvements to ensure the best level of Commonwealth, state and territory cooperation can be achieved.

9. The ability of the department to assess community expectations and its cultural capacity to respond, including the manner in which the department engages with key stakeholders, including the live animal exports industry and supply chain, animal welfare organisations, other regulators, community stakeholders and international trading partners and governments.

10. Any related matter.

On 27 September 2018 the 'Review of the regulatory capability of the Department of Agriculture and Water Resources in the regulation of live animals exports' (Moss review) was published with 31 recommendations to improve the department's regulatory capability and culture (Moss 2018). The department supported 22 recommendations in full and 8 in principle. Recommendation 21 did not have a response.

In October 2019 the department published an implementation progress report (Department of Agriculture 2019). The report described progress made against all 31 recommendations, indicating that 15 were completed, 11 were in progress and 5 were ongoing. This report was used to inform this review's submission process.

In June 2020 the inspector-general received an update on progress from the department. This review draws on both these sources to summarise the department's progress on implementation of the Moss Review recommendations.

Chapter 1

Recommendation status

In 2019 the department provided a progress report on the implementation of recommendations from the Moss Review. The [Implementation progress report](#) included a status indicator alongside each recommendation:

- In progress
- Ongoing
- Complete.

The inspector-general concluded that the status categories needed revision to reflect the cumulative and ongoing intent of the Moss Review's recommendations to:

- improve the performance of the department as the independent regulator of livestock animal exports
- instil the importance of animal health and welfare
- embed continuous improvement.

The department listed as 'complete' several recommendations associated with capability, systems, processes, legislative or policy change. However, the nature of these recommendations suggests that the changes need to be ongoing. A more useful status definition for these types of recommendations would indicate whether the changes necessary for implementation have been completed and are ongoing, or that a recommended process has been completed for the first time but requires regular review.

The inspector-general recommends the department use the following status definitions:

- In progress
- In progress (on hold)
- Implemented – ongoing.

The Moss Review listed its recommendations under each of the terms of reference. These required the review to assess the capability, powers, practices and culture of the department as the regulator of livestock animal exports. The review made recommendations on improvements to regulatory and investigative performance to ensure that persons involved in the livestock animal export trade comply with regulations and maintain animal welfare standards. The review also made recommendations to ensure that the department is a trusted regulator of the livestock export trade.

The Moss Review recommendations need to be considered holistically to deliver a step change in regulatory practice in the department. The department recognised this in determining 4 focus areas for its response to the recommendations:

1. Organising for a strong regulatory practice.
2. Ensuring a transparent and well-engaged regulator.
3. Delivering a regulator with the necessary skills and systems.
4. Ensuring animal welfare is integral to its regulatory approach (Department of Agriculture and Water Resources 2018).

The department has made significant progress against several recommendations.

1.1 Organising for a strong regulatory practice

In its 2018 response to the Moss Review, the department stated:

The department has acknowledged that it is a regulator in transition and is working to achieve a better alignment of live animal export regulatory functions across relevant areas of the department, to deliver a well-connected and coordinated regulatory approach, and enable a more consistent and effective response to non-compliance. The appointment of a Principal Regulatory Officer will be central to addressing this in practice (Department of Agriculture and Water Resources 2018).

Moss Review recommendation 3

That the department work with the live animal export industry to develop comprehensive animal welfare indicators relating to every point of the export supply chain and for those indicators to become part of the regulatory framework.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: In progress

Department's response: Support in principle

Under the industry's Livestock Export Program, the Australian Livestock Export Corporation (LiveCorp) and Meat & Livestock Australia (MLA) jointly fund a research project to establish a set of animal welfare indicators for every point of the export supply chain. Components completed so far include:

- a survey of stakeholders about animal welfare indicators
- a review of the literature on available indicators suitable for the live animal exports industry
- development of a protocol that is potentially applicable for pen assessments of cattle and sheep at pre-export and destination feedlot facilities and during sea transport.

Proposing a protocol is the first step towards developing a system that evaluates livestock welfare throughout the export supply chain. The project is due for completion in 2021.

The department engages regularly with industry, LiveCorp and MLA through the Live Export Animal Welfare Collaboration Working Group. The group reports on research into animal welfare indicators as a standing agenda item.

Industry's Livestock Export Research and Development Advisory Committee comprises producer and exporter representatives nominated by the peak industry councils, an independent technical advisor, and more recently a departmental observer. The committee oversees industry research, including into animal welfare indicators.

Inspector-general's assessment

Mortality rates on board livestock vessels remain the primary indicator of animal health and welfare outcomes for consignments used by the department and industry. It is an important outcome indicator, but it is not an indicator of individual animal health and welfare across a consignment.

The department and industry are using a range of quantitative indicators (for example, dry and wet bulb temperatures) and qualitative indicators (for example, stocking density, pad conditions and panting scores) to assess animal welfare conditions and risks on board livestock vessels.

The inspector-general noted in the [Monitoring and reporting during livestock export voyages](#) review that qualitative data is usually collected through either direct observation or photographic and video recordings. The report also recommended that to reduce subjectivity a future data quality and management strategy include actions to develop detailed guidance and training resources for all qualitative data.

The inspector-general considers that, while research and development evolves, industry and the department should continue to focus effort on active risk management. This should be informed by known risk factors to ensure consistency of good animal welfare outcomes. Collaboration should continue between the department's Animal Welfare Branch and LiveCorp to further develop animal welfare indicators. This should enable the department to incorporate improved indicators in regulatory requirements. Transparency and access to the results of research will help underpin the credibility of this work and give effect to Moss Review recommendation 28. Publishing research project outcomes and data, including through peer reviewed scientific journals, helps ensure transparency (and is critical to Moss Review recommendation 6).

Moss Review recommendation 4

That the department take steps to have the Australian Standards for the Export of Livestock prescribed as regulated standards, with appropriate penalties, for the purpose of strengthening the regulatory framework and encouraging compliance.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support in principle

The Australian Standards for the Export of Livestock (ASEL) version 3.0 was published in April 2020. Revisions included implementation of the Technical Advisory Committee recommendations supported by the department as practicable, and revision of language for clarity and to increase enforceability. ASEL 3.0 was implemented for all livestock animal exports occurring on or after 1 November 2020.

Inspector-general's assessment

Submissions and consultations for this review indicate that some stakeholders think that the department did not meet the intention of Moss Review recommendation 4:

Redrafting the ASEL 'with more enforceable language' does not change the legal status of the ASEL nor does it address the fundamental limitations identified in the Moss Review. The ASEL version 3.0 will still take the form of conditions placed on the exporter's licence and permit approval process. They will not be regulated standards in their own right. Accordingly, the range of available penalties will still be limited as will the scope of liability (RSPCA 2020).

The intent of Moss' recommendation can be inferred from RSPCA's submission to the Moss Review in 2018. The RSPCA has reiterated this position in its submission to the inspector-general review, stating that:

As compliance with ASEL is only a licence/permit condition, liability for non-compliance only applies to the exporter. However, there are a range of other parties involved in the export supply chain including transporters, stock handlers, contractors, the ship's master who could engage in conduct that breaches ASEL but not be held liable because they are not the exporter nor employed by the exporter (RSPCA 2020).

The inspector-general understands that the intent of Moss recommendation 4 was to ensure that appropriate sanctions are available to hold to account anyone whose breaches of ASEL result in actual or potential harm to animal health and welfare. The department's approach has not given full effect to this intent but is consistent with the 'in principle' commitment in the department's response to the Moss Review.

In the inspector-general review [Monitoring and reporting during livestock export voyages](#), the inspector-general indicates that exporters should be the primary regulated entity under the live export regulatory framework, with overarching responsibility and accountability for the actions of their employees, contractors and agents. Any changes envisaged by the department to give further effect to this recommendation should ensure that exporter liability remains primary. As discussed in the *MV Awassi Express* case study (Case study 1), the inspector-general remains concerned that, if a similar case occurs again, liability may not be sufficiently clear to ensure that responsible parties are held accountable and legally liable. More importantly, regulated entities need certainty and clarity about their obligations, which should assist in preventing incidents of this nature. Accordingly, the department should continue to review the clarity and enforceability of conditions in instruments intended to give effect to ASEL.

Moss Review recommendation 5

That the department as the regulator of live animal exports adopt a dynamic, forward looking posture to its regulatory responsibilities.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: In progress

Department's response: Support

The department is committed to:

- providing the inspector-general with a 6-monthly Moss implementation progress update
- responding to reports by and data requests from the inspector-general.

The department introduced several measures to improve its regulatory framework, including:

- conducting a regulation impact statement process for live sheep exports to the Middle East
- finalising the Export of Livestock Compliance Statement
- developing a draft Regulatory Practice Framework
- developing a Regulatory Information Management System
- establishing a Regulatory Training Framework.

Inspector-general's assessment

The department has focused on addressing inadequacies in its framework.

However, evidence does not indicate that this has been accompanied by a significant change in the department's operational regulatory practice. As discussed in the inspector-general's review [Monitoring and reporting during livestock export voyages](#) (Inspector-general 2020), the department should focus its regulatory efforts on preventing and mitigating harm by ensuring that industry participants execute operationally.

The intent of this recommendation is to anticipate risks, non-compliance and poor behaviour and to then target regulatory interventions to address non-compliance and improve behaviours. A clear objective is to improve animal health and welfare outcomes, and prevent incidents. If the department's regulatory operations were focused in this way, the inspector-general would expect to see evidence of multidisciplinary and cross-departmental field operations aimed at addressing issues of non-compliance or poor behaviour, with each project reporting on outcomes. In best practice regulators, this reporting usually indicates the range of non-compliance targeted and detected, and the regulatory responses that resulted.

Moss Review recommendation 7

That the department strengthen the approved arrangements model for live animal exports by introducing full inspections of consignments on a random unannounced basis.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: In progress

Department's response: Support

The department has mapped all regulatory processes to better understand regulatory risks, gaps in the regulations and potential control points in the livestock animal exports supply chain.

The Animal Welfare Systems Verification section is responsible for developing and administering a random, unannounced full consignment audit program in conjunction with other areas in the Plant and Live Animal Export and Exports and Veterinary Services Divisions.

The approach will examine exporter and registered premises compliance with legislative requirements, including:

- ASEL standards
- applicable approved export programs
- approved arrangements
- any applicable conditions, and conditions of any applicable export instruments.

The program is due to commence in 2021.

Inspector-general's assessment

The inspector-general has not been provided with evidence of improvements to the compliance monitoring approach that align with the intent of this recommendation. The department's inability to deliver tangible on-ground compliance monitoring actions until 2021 does not provide confidence in its agility, and does not meet the intent of Moss recommendation 5 or the inspector-general's recommendation 4(d) (Inspector-general 2020). It also casts doubt on the department's capacity to address the coordination and integration of effort issues implicit in Moss Review recommendations 10 and 13.

Addressing these recommendations is fundamental to the effectiveness and efficiency of regulatory practice. The Australian Government's 2020–21 budget measure for improving the regulation of agricultural exports provides an opportunity for the department to make the change in regulatory practice envisaged by Moss Review recommendations 5 and 7 (see [2 Improved regulatory practice](#)).

Moss Review recommendation 9

That the department ensure reportable mortality events and other non-compliance relating to live animal exports, are investigated by staff members with appropriate skills and training who are sufficiently resourced to deliver timely outcomes.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The Live Animal Export Branch has committed to providing the Exporter Supply Chain Assurance System and independent observer teams with training in the Certificate IV in Government Investigations (Regulatory Compliance). The teams have amended the way they provide investigation reports to the decision-maker. The basis of the investigation outcomes and the recommended penalties and corrective action are now more clearly presented.

Inspector-general's assessment

The inspector-general acknowledges that the department's Compliance Division has significant investigation expertise. However, all officers involved in the regulation of livestock animal exports, including officers with veterinary and animal science skills and expertise, need to be trained sufficiently in legal, investigation, compliance and enforcement matters to ensure that their work contributes effectively to an integrated regulatory approach. Providing training in Certificate IV in Government Investigations (Regulatory Compliance) is an important part of increasing and maintaining this capability in the Plant and Live Animal Exports Division and should continue.

Detection of non-compliance, and taking appropriate enforcement action where it is detected, are fundamental functions of an effective regulator. Despite a long history of significant incidents and events, as listed in the Moss Review's chronology (Moss 2018), the department has not put in place an effective proportionate regulatory model that includes strong enforcement action. There have been no prosecutions arising from major incidents under any of the live animal export Acts, even though several have had significant industry-wide implications including in some instances the suspension of trade.

The intent of Moss Review recommendation 9 was to seek improvements in regulatory practice that would ensure compliance through delivering timely outcomes from investigations. As with any regulated industry, there is a spectrum of performance that includes non-compliance, and in some cases repeated instances of non-compliance. It is therefore reasonable to expect that, at least in some instances, a timely outcome would involve prosecution action for specific and general deterrence (see [2 Improved regulatory practice](#)).

Moss Review recommendation 10

That a consolidated investigative capacity or a joint triage system be developed between the department's Live Animal Exports Branch and Enforcement and Sanctions Branch to investigate issues concerning industry non-compliance with the Australian Standards for the Export of Livestock, the Exporter Supply Chain Assurance System and animal welfare standards.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The Plant and Live Animal Exports Division meets monthly with the Compliance Division. The meetings focus on specific investigations. They enable the branches to prioritise investigations so that resources are directed to the most serious matters.

Inspector-general's assessment

The inspector-general notes the improvements to the coordination, prioritisation and handover of non-compliance matters. However, Moss Review recommendation 10 needs to be viewed in the context of several other Moss Review recommendations aimed at improving the department's regulatory practice (see [2 Improved regulatory practice](#)).

Moss Review recommendation 11

That the department ensure it receives the reporting necessary to assess the health and welfare of livestock during the export process.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: In progress

Department's response: Support in principle

Some of the recommendations from the ASEL Technical Advisory Committee have been incorporated into ASEL 3.0. These include recommendations for reporting additional information in daily reports, end of voyage and end of journey reports, and registered premises mortality reports. The department is working with industry to build these requirements into the LIVEXcollect data system to facilitate collection of this data, and improve access and analysis capabilities within its systems. New reporting requirements were implemented from 1 November 2020.

The independent observer program is in place to provide additional assurance of the effectiveness of exporter arrangements in managing animal welfare on board vessels. This includes providing information to the department on ASEL compliance. Summary reports are published for each voyage.

The veterinary-led Technical Analysis Team in the Animal Welfare Branch supports the use of evidence-based technical analysis of animal welfare in live animal exports. This data is used to investigate animal welfare issues, report on voyage outcomes and support continual improvements to the trade.

Working groups have been established on animal welfare indicators (industry-led) and consistency in terminology for animal welfare reporting (department-led). Their outputs will be used to improve the collection, consistency and understanding of animal welfare reporting.

Inspector-general's assessment

The department has made good progress in implementing Moss Review recommendation 11. This work also contributes to meeting the inspector-general's recommendations (Inspector-General 2020) that relate to developing a data quality and management strategy, and improving independent observer and Australian government accredited veterinarian reporting. The Australian Government's 2020–21 budget announcement 'The Busting Congestion for Agricultural Exporters package', worth over \$328.4 million over four years (Media release 2020) provides an opportunity for the department to further improve the effectiveness of reporting while also reducing the regulatory burden.

Moss Review recommendation 13

That the roles and responsibilities within the department performed by the Exports Division, Compliance Division and Biosecurity Operations Division be clarified to develop common sense of purpose, identity and alignment in relation to the regulation of live animal exports.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: In progress

Department's response: Support

Different sections of the department regularly meet to discuss these issues to ensure ongoing alignment, in particular through the Management Review Committee. They also have very clear ongoing interaction at all levels to ensure that they remain aligned.

Representatives from the Veterinary and Export Meat Branch, Live Animal Export Branch, Animal Welfare Branch and independent observer teams participate in monthly meetings.

In 2019, the Live Animal Export Branch and Veterinary and Export Meat Branch:

- reviewed the protocol- and permit-based trade process to clarify roles and responsibilities
- developed a decision-making template for granting an Export Permit and Issuing a Health Certificate
- reviewed and updated the charging record template.

In January 2020, the Veterinary and Export Meat Branch, Audit and Assurance Group and Live Animal Export Branch held a workshop to clarify roles and responsibilities in relation to issues that can be addressed at audit and those that need to be addressed by the Regional Veterinary Officer in real time. Improving communication between areas was also addressed.

Inspector-general's assessment

The inspector-general notes that the department has clarified roles, responsibilities and procedures. However, recommendation 13 needs to be viewed in the context of other Moss Review recommendations aimed at improving the department's regulatory practice. The key outcome in this recommendation is to '... develop a common sense of purpose, identity and alignment in relation to the regulation of live animal exports' (Moss 2018) (see [2 Improved regulatory practice](#)).

Moss Review recommendation 19

That the department require Australian Government Accredited Veterinarians and authorised officers to make a declaration each year of any personal conflict of interest.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support in principle

In January 2019, the department placed conditions on all Australian government accredited veterinarians (AAVs) that required them to provide the department with a statement of material interests. Rather than require AAVs to submit a statement each year, the conditions included a requirement to provide an updated statement of material interests within 30 days of an AAV's circumstances changing. This has been incorporated into the draft Animal Rule to require AAVs to provide a conflict of interest statement as part of the AAV application and renewal process.

All external applicants for independent observer roles are required to submit a conflict of interest declaration as part of the selection process. They must also undergo an enhanced integrity checking process that includes open-source validation by the department's Integrity Team.

Conflict of Interest declarations for internal applicants are managed through the department's annual performance management cycle 'Employee Commitment Declaration'. Enhanced integrity checking is not performed for internal applicants.

Moss Review recommendation 20

That the department establish the position of Principal Regulatory Officer to enable its staff members engaged in the regulation of live animal exports to develop a culture of being professional regulators, an approach which would also apply to the department's other regulatory activities.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The department has developed an ongoing culture of discussion and open engagement on regulatory issues with their staff. For example, following the decision on exemption applications for northern summer sheep exports, the Animal Welfare Branch and Live Animal Export Branch came together with the senior executive, including the decision-maker. They discussed how the decision was made, as well as principles and approaches to administrative decision-making. Staff at all levels were encouraged to (and did) ask questions about process, issues and outcomes. This kind of open engagement is central to the culture of the Live Animal Export Branch. Other work underway includes:

- encouraging participation in department work around the regulatory practice framework
- holding informal meetings to discuss a range of issues, including Freedom of Information, how we engage with regulated entities, the process of making laws and what is important in regulation
- increasing training options, including development of a targeted diploma in government that focuses on regulation.

Inspector-general's assessment

The inspector-general encourages the formal and informal discussions and engagement on regulatory issues that are occurring within the Plant and Live Animal Exports Division. These are a critical part of developing a culture of being professional regulators.

The department's original response to the Moss Review indicated strong aspirations for the role of the Principal Regulatory Officer (Department of Agriculture and Water Resources 2018). The department stated:

The initial focus for this role will be on improving regulatory culture, capability and practice in relation to live animal exports. Over time, the Principal Regulatory Officer will help drive a departmental work program focusing on wider regulatory capability and culture in the department, regulatory risk management, non-compliance response, strategic communication and engagement, and regulatory practice and performance evaluation.

and

The department has acknowledged that it is a regulator in transition and is working to achieve a better alignment of live export regulatory functions across relevant areas of the department, to deliver a well-connected and coordinated regulatory approach, and enable a more consistent and effective response to non-compliance. The appointment of a Principal Regulatory Officer will be central to addressing this in practice.

and

The Principal Regulatory Officer will be responsible for working with the senior executive to drive regulatory practice maturity and provide regulatory practice support and guidance to the department, across all regulatory systems administered by the department.

The department's October 2019 progress report stated that:

The office currently provides oversight of the regulation of live animal exports and supports the department's Regulatory Practice Framework. This role is expected to expand over time.

The inspector-general is concerned that the full intent and potential of the Principal Regulatory Officer role has been reduced from the department's original intent. The current Principal Regulatory Officer role is substantially limited to the First Assistant Secretary of the Plant and Live Animal Exports Division. However, the inspector-general notes that there are some examples of overarching responsibility for regulatory practice such as leading the department's work with the Australian Public Service Commission and the Department of the Prime Minister and Cabinet to develop new regulatory training for agricultural export regulators.

Not all staff involved in the regulation of livestock animal exports work in the Plant and Live Animal Exports Division. As a result, the Principal Regulatory Officer does not appear to have a cross-divisional overarching governance imprimatur to deliver '... a well-connected and coordinated regulatory approach'. Regulatory practice does not yet demonstrate significant progress in giving effect to an '... arrangement [that] will provide for the end-to-end management of pressing regulatory issues and improved regulatory practice through decision-making that is integrated, consistent and timely' (Department of Agriculture and Water Resources 2018) (see [2 Improved regulatory practice](#)).

Moss Review recommendation 21

That the department engage in a cultural shift in its role as the regulator of live animal exports and ensure that its staff members understand the need for and implications of this change.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Unknown

Executive staff continually lead discussions about their regulatory culture at branch and divisional meetings. Informal sessions continue to run on a monthly basis to discuss regulatory practice.

The Live Animal Export Branch EL1 leadership program has covered topics relevant to regulatory culture and best practice. Guest speakers are often asked to address the division as part of this program, including:

In February 2020, the Director of Regulatory Programs Regulatory Operations Division, EPA Victoria spoke about the experiences of a state regulator, lessons learnt and best practice regulation.

In June 2020, the CEO of the Murray–Darling Basin Authority spoke about successfully engaging with risk.

The department has undertaken new regulatory activities. For example, in June 2020 an exporter was issued with a notice of reprimand and a public statement about this action was published on the department's website. A reprimand had never previously been issued.

Inspector-general's assessment

The inspector-general acknowledges and encourages the discussions and engagement that are occurring within the Plant and Live Animal Exports Division.

An issue that will benefit from this ongoing discussion and engagement is the way the department balances the range of objectives it seeks to achieve. Several submissions to this review noted that some stakeholders continue to perceive a conflict between the department's role as a regulator and its role as a trade facilitator. This was recognised in the Moss Review:

The focus on trade facilitation and industry deregulation appears to have had a negative impact the department's culture as a regulator (Moss 2018).

Recent departmental decisions in relation to exemptions to the Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020 have reinforced this perception among some stakeholders (see 2 [Improved regulatory practice](#)).

Moss Review recommendation 31

That the department strengthen its regulatory capability and culture, including in relation to live animal exports, by developing its whole-of-department integrity measures.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

Raising staff awareness about integrity is a priority for the department and updating integrity policies and processes is an ongoing task.

The department's integrity framework states that all officers have a critical role in upholding integrity through their decision-making processes and by using good judgement. The framework outlines the department's commitment to limit integrity risks and build capabilities and capacity to maintain trust. It focuses on key themes, including privacy, unacceptable behaviour, fraud and corruption, misuse of IT, conflicts of interest and security.

In 2018, the department commenced a national training program to ensure all staff understand how positive integrity practices affect their work. Raising staff awareness about integrity is part of the department's longer-term plan to improve the way its people work and deal with challenging integrity issues, and to support those who need to manage difficult integrity situations. Integrity awareness sessions have continued in 2020.

1.2 Animal welfare being integral to the regulatory approach

In its 2018 response to the Moss Review, the department stated:

The department is committed to ensuring animal welfare is integral to its regulatory approach for exports. It has commenced work to improve regulation of livestock exports through the reviews of the Australian Standards for the Export of Livestock (ASEL) and the heat stress risk assessment model. Scientifically based animal welfare indicators will be incorporated into the livestock export framework. The department will also re-establish an Animal Welfare Branch, which will include in its mandate ongoing activities to support the effective implementation and regulation of animal welfare standards for live animal exports (Department of Agriculture and Water Resources 2018).

Moss Review recommendation 1

That the department ensure the Australian Standards for the Export of Livestock are reviewed on a regular basis to reflect industry, scientific and regulatory developments and community expectations concerning live animal exports.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The ASEL review was completed in 2018–19. ASEL 3.0 was implemented on 1 November 2020.

The department is now committed to 3-yearly reviews of ASEL based on consultation, science, evidence and international best practice. The next review is scheduled to commence in late 2022. The department will also review implementation issues and make adjustments on the standards annually, as required. The department is working through methodology and approaches to the yearly update and prioritising any issues that occur. The department's Animal Welfare Branch will lead this work.

Inspector-general assessment

The inspector-general notes the significant work undertaken by the department to review ASEL. The ASEL 3.0 review took 3 years from commencement to implementation. The review appeared to follow a robust process involving public submissions on an issues paper, analysis of submissions, release of draft recommendations for public comment, and delivery of a consultation report. The review was informed by a technical advisory committee that included an independent chair and experts in animal health and welfare and regulatory design, and the livestock industry.

However, to repeat such an extensive review process on a 3-yearly cycle may be a barrier to making timely improvements to animal welfare outcomes based on emerging science, improved practices, or changes in international standards. It may also be a barrier to identifying and rectifying any practical, operational or disproportionate consequences that emerge during implementation.

Industry submissions to this review have raised concerns about practical and cost burden consequences that were not fully identified until implementation and that may not result in a proportionate, or in some instances well-defined, improvement in animal health and welfare outcomes.

The inspector-general recommends that the department commit to an annual update to ASEL. This would accommodate any changes in science, evidence or international best practice in a timely manner, and allow consideration of issues raised by industry. The annual update would be an alternative to a full review every 3 years. In consultation with stakeholders, the department could also develop a priority list of issues for each annual review as part of an ongoing annual work program. This approach would also align with Moss Review recommendation 6.

Inspector-general recommendation 1

The department should change from a 3 year review of the Australian Standards for the Export of Livestock to an annual update of the standards to address emerging issues and advances in scientific knowledge and technology for improved animal welfare outcomes.

Moss Review recommendation 6

That the department develop a regulatory approach which fosters and incorporates scientific best practice to ensure continual improvements in animal welfare outcomes for live animal exports.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: In progress

Department's response: Support

The department continues to ensure it takes a robust, science-based approach to regulating live animal exports.

The Animal Welfare Branch works closely with the Live Animal Export Branch and the Veterinary and Export Meat Branch's independent observer program on operational aspects of data collection and analysis.

The veterinarian-led analysis team in the Animal Welfare Branch has increased the department's access to evidence-based and up-to-date decision-making tools. This will help ensure policy and regulation are responsive to changes in animal welfare outcomes. The team has a program of monitoring voyages and analysing the outcomes in terms of animal welfare, morbidity and mortality. Analysis is used in decision-making and shared with internal and external stakeholders as appropriate.

The Animal Welfare Branch now works closely with the Bureau of Meteorology to determine forecast conditions for voyages and prevailing conditions in export ports.

Advice from the Animal Welfare Branch helped inform the department's decision to grant an exemption for the Al Kuwait under exceptional circumstances. The advice was based on data from sheep export voyages in May 2019 and 2020, including environmental monitoring and independent observer-collected videos and observations.

A representative from the Animal Welfare Branch has joined industry's Livestock Export Research and Development Advisory Committee as an observer.

Animal welfare issues identified by Veterinary and Export Meat Branch staff during inspections are raised with the exporter and reported in the Livestock Export Consignment Report.

Independent observers provide observations against ASEL and report on-board conditions and animal management practices. This data helps the Animal Welfare Branch build information holdings to assess improvements in animal welfare outcomes. Independent observers trial technology and tools to gather objective data that supports scientific analysis and methodologies.

Inspector-general assessment

The inspector-general commends the department for its increased technical capability, and relationship building with other technical agencies and organisations. However, the inspector-general is concerned that ongoing and adequate resourcing of what are often viewed as back-of-house capability and capacity functions often comes under pressure from departmental efficiency measures. In the long-term, this diminishes effectiveness and is a major barrier to the delivery of sustainable efficiency through improved modern regulatory practice.

The department should commit ongoing resources for the development of in-house technical capability and capacity. The department should rely on improvements in regulatory practice, including investment in IT technology, to deliver necessary efficiencies. There may also be opportunities for the department to build capacity and efficiency in the Animal Welfare Branch through increased functional alignment with other areas of the department that work in the animal welfare sphere.

Moss Review recommendation 28

That the department engage with the live animal export industry to demonstrate joint unequivocal commitment to animal welfare.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support in principle

The department meets with livestock exporters regularly to discuss matters related to the daily operations of live animal exports, trade regulation, and is providing a regular newsletter.

The department uses a range of other forums to meet with exporters individually and collectively to discuss regulatory changes and improvements, including those relating to animal welfare. One of these forums is LIVEXchange, the annual conference hosted by LiveCorp and the Australian Livestock Exporters' Council (ALEC). The department works closely with representative bodies, such as ALEC, when developing new policies and procedures.

The department has established the Live Export Animal Welfare Collaborative Working Group to regularly liaise with industry representatives on animal welfare issues.

Inspector-general assessment

The inspector-general commends the engagement and contribution of industry and other stakeholders in improving ASEL. Industry has continued investing in research into animal welfare indicators and introduced a voluntary northern summer moratorium in 2019 for sheep exports to the Middle East. Several stakeholders commented to the inspector-general that the northern summer moratorium and the changes to sheep stocking densities were the major factors contributing to improved animal health and welfare outcomes for sheep exports over this northern summer period.

Both the department and industry must continue to pursue improved animal health and welfare outcomes and indicators. This commitment may be unclear to other stakeholders when the public dialogue reverts to mortality rates alone (a more simplistic, albeit important, outcome indicator).

1.3 A regulator with the necessary skills and systems

In its 2018 response to the Moss Review, the department stated:

The department is committed to investing in its staff and ensuring they have the right skills and capabilities, and are provided the necessary support and training to be effective regulatory professionals. In its submission to the Independent Review of the Australian Public Service (APS Review), the department identified that improving the regulatory skill base is essential in building our regulatory workforce capability. At the same time, the department's effective regulation of live animal exports (and other areas of regulatory responsibility) requires greater investment to modernise ICT systems and to improve regulatory capability. This point was also highlighted in the department's submission to the APS Review (Department of Agriculture and Water Resources 2018).

Moss Review recommendation 12

That the department make arrangements to enable on-board Australian Government Accredited Veterinarians and independent observers to contact the department at all times, including, when necessary, through the Australian Maritime Safety Authority response centre.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support in principle

The department has formalised arrangements with the Australian Maritime Safety Authority (AMSA) to support the safety and wellbeing of independent observers during deployment. AMSA has advised that established communication protocols are in place for direct communications between the independent observers and the department.

Australian government accredited veterinarians and independent observers report to the department daily, submitting their reports via email. Independent observers are also provided with satellite phones as a communication backup if shipboard internet or mobile phone coverage is inadequate.

Inspector-general's assessment

The inspector-general acknowledges the department's implementation of Moss Review recommendation 12. Exporters consider that being able to contact the department at any time should not be limited to Australian government accredited veterinarians and independent observers on voyages. A submission to this review indicated that it was sometimes difficult to get access to the Plant and Live Animal Exports Division outside of business hours. This issue will be discussed in the forthcoming inspector-general's review on livestock export permits and health certificates.

Moss Review recommendation 14

That the department re-establish an Animal Welfare Branch and place animal welfare at the centre of its regulatory activities in relation to live animal exports.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The Animal Welfare Branch was established in October 2018. The branch is responsible for the ongoing development of ASEL, systems verification and broad stakeholder engagement. It also provides ongoing support for the effective regulation of animal welfare standards for live animal exports.

The addition of a significant number of positions requiring veterinary degrees has greatly increased the internal veterinary technical expertise available to support the department's focus on animal welfare.

Inspector-general's assessment

The inspector-general commends the department for the progress it has made in relation to Moss recommendation 14.

Moss Review recommendation 16

That full cost recovery be accepted by the live animal export industry as underpinning the model of regulation and that the department ensure that the model operates effectively.

Implementation status

- Department's assessment: In progress (on hold)
- Inspector-General's assessment: In progress (on hold)

Department's response: Support in principle

In Budget 2020–21 the government announced as part of the Busting Congestion for Agricultural Exporters package, a decision to freeze fees and charges in 2020–21 for exports cost recovery and then gradually return to full cost recovery by 2023–24. In addition, the package invests in reform of export regulation increase efficiency and effectiveness. Revised fees and charges will be implemented on 1 July 2021 following consultation with industry on a draft cost recovery implementation statement (CRIS) in the first quarter of 2021.

Inspector-general's assessment

Several submissions mentioned cost recovery in the context of efficiency and effectiveness:

Industry accepts the need for regulatory oversight and the associated costs, on the proviso that regulatory activities are outcomes focused, streamlined and efficient. DAWE's regulatory activities have, however, become increasingly prescriptive, slow and inefficient. Any proposed change to cost recovery arrangements must include efficiency improvements and be consistent with Australian Government Cost Recovery Best Practice Guidelines (ALEC 2020).

Cost recovery arrangements must incentivise regulatory efficiency improvements. All regulatory costs need to be continually assessed to ensure regulation is well targeted and efficient in its operation (NFF 2020).

The inspector-general considers that modern regulatory practice should be both effective and efficient. Observations and recommendations arising from the inspector-general's reviews are intended to improve the department's regulatory practice in both dimensions. A key principle underpinning regulation in Australia is recovering costs from those creating the risk and deriving benefit from the activity. However, improving regulatory effectiveness and efficiency may also warrant a public investment where the regulatory asset (systems, processes, capability or capacity) is insufficient or has declined over time.

This could be targeted at raising the regulatory regime up to an effective and efficient state, with ongoing operations and maintenance subject to full cost recovery. In this regard the government's recent 2020–21 budget announcement provides a substantial investment in modernising the department's regulation of exports and a pause in fees and charges. The department needs to deliver the effective and efficient regulation envisaged by this investment. During this reform, the department should also ensure that it identifies and collects the data required to transparently and fairly recover costs.

Moss Review recommendation 17

That the department implement fully integrated information sharing between the divisions and branches that regulate live animal exports when developing its client relationship management system and other information technology.

Implementation status

- Department's assessment: In progress (on hold)
- Inspector-general's assessment: In progress (on hold)
- On hold due to larger departmental budget constraints.

Moss Review recommendation 23

That the department invest in information technology systems to achieve enhanced information management in relation to live animal exports.

Implementation status

- Department's assessment: Ongoing (2019) In progress (on hold 2020)
- Inspector-General's assessment: In progress (on hold)
- On hold due to larger departmental budget constraints.

Department's response: Support recommendation 17, Support in principle recommendation 23

Inspector-general's assessment

The inspector-general considers Moss Review recommendations 17 and 23 to be priority actions the department should pursue because it also impacts the effectiveness of implementing Moss Review recommendations 5, 6, 9 and 10. This is a view shared by the industry:

The systems and processes used internally by DAWE appear to be predominately paper-based and archaic, which lends itself to being inefficient, slow and backwards-looking. This may be as a result of a lack of investment by DAWE into information technology solutions. Maintaining contemporary systems and processes is DAWE's responsibility and appropriated funding is therefore required to rectify the situation. (ALEC 2020).

In its 2020–21, 'Busting Congestion for Agricultural Exporters package', the Australian Government announced investment in improving the department's agricultural exports approach, including processes and IT systems. The poor functionality of current systems is a major barrier to improving regulatory practice in terms of effectiveness and efficiency and places a burden on industry. Improving these systems and processes is critical to:

- support regulatory operations and build knowledge on animal health and welfare through effective use of data and information analysis
- enable disparate parts of the department to operate together more effectively through real-time access to all relevant records, policy, guidance and procedures
- reduce delays and duplication for industry through streamlined application processes and decisions.

However, successful delivery of this investment should be supported by a sound business case that is clear on the benefits of improvements to regulatory operations, and the capability and governance that will be deployed to deliver the new systems and their benefits. It is critical that the department deliver this functionality based on a sound enterprise-wide IT architecture that is configured to meet the needs of livestock animal exports. This will require intensive business-led development, including industry user co-design for any external interfaces such as licence and permit applications and reporting. In fulfilling its role as the business lead in system configuration, the Plant and Live Animal Exports Division must ensure that it has detailed business process maps and standard operating procedures.

Inspector-general recommendation 2

The department should ensure that the investment in improved IT infrastructure announced in the 2020–21 Budget:

- delivers improved regulatory operations and knowledge on animal health and welfare through effective use of data and information analysis
- enables disparate parts of the department to work more effectively through real-time access to all relevant records, policy, guidance and procedures
- reduces delays and duplication for industry through streamlined application processes, decisions and reporting.

Moss Review recommendation 22

That the department identify the skills and experience necessary to enhance its regulatory capability in relation to live animal exports and employ people with relevant skills and experience.

Implementation status

- Department's assessment: Complete (2019) Ongoing (2020)
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

Despite the whole-of-department budgetary constraints on recruitment, the Plant and Live Animal Exports Division has increased the number of veterinary and technical analysis staff. Since the October 2019 update, the division has or is planning to provide training, learning and development activities for its staff.

The Live Animal Export Branch has committed to providing the Regulatory Performance team with training in Certificate IV in Government Investigations (Regulatory Compliance). The team has amended the way it provides investigation reports to the decision-maker. The basis of the investigation outcomes and the recommended penalties and corrective action are now more clearly presented.

During 2020, the Live Animal Export Branch will run an EL1 leadership program to enhance leadership skills in a regulatory context.

The Animal Welfare Branch includes 4 technical officers, and 7 qualified veterinarians with a high level of technical veterinary knowledge of livestock behaviour, physiology and welfare. The veterinarians have experience in the livestock industry, and skills and expertise in areas including systems verification. These skills support continual improvement through the provision of evidence-based technical analysis of animal welfare in relation to live animal exports. To build capacity in this area, in March 2020 the Animal Welfare Branch ran a lead auditor course on ISO 9001 Quality management systems.

The Live Animal Export Branch and Animal Welfare Branch developed and presented inductions to support their larger recruitment processes. These sessions included an introduction from the SES, and training on the regulatory framework, export supply chain and relevant processes and systems. New staff received a starter guide with a range of relevant resources.

The Principal Regulatory Officer coordinated training for staff across the division to improve the capabilities and core skills required to perform functions in the Australian Public Service.

The Principal Regulatory Officer is establishing a Diploma in Government that will be delivered with a regulatory focus. This will support the regulatory capabilities outlined in the proposed Professional Regulator Capability Framework being developed by the Compliance Division and People Division.

The Veterinary and Export Meat Branch employ fully qualified and Australian registered veterinarians to complete inspection and certification of live animal exports and a proportion of the voyage monitoring and reporting. The Live Export Program and Veterinary and Export Meat Branch registered veterinarians also provide technical veterinary input as required, for example when operationalising policy and negotiating protocols. Continuing professional development is required for veterinarians to maintain their registration in the states and territories. These development sessions are supplied internally and externally.

Veterinary and Export Meat Branch provides ongoing needs-based internal training at half-yearly 2-day veterinary officer workshops. Veterinary independent observers are encouraged to attend when available.

All independent observers undertake specialist training and induction. This includes training in legislation and contemporaneous note taking, work instructions and guidance.

Moss Review recommendation 24

That the department work with the live animal export industry and the Australian Maritime Safety Authority to develop automated monitoring of animal welfare indicators on-board vessels.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: In progress

Department's response: Support in principle

Under the Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East – Northern Summer) Order 2020, conditions apply to voyages departing between 1 May and 31 October to manage the risk of heat stress in sheep. During this period, vessels must be equipped with automated environmental data loggers, with the temperature and humidity recorded and reported to the department.

The department is also exploring whether other technologies can be effectively deployed for future voyages and is considering a trial of movement-activated cameras on vessels.

Inspector-general's assessment

The inspector-general discussed and made recommendations about appropriate monitoring technology in [Monitoring and reporting during livestock export voyages](#).

Moss Review recommendation 25

That instructional material relating to live animal exports be updated in consultation with operational areas in order to reflect current policy and operational requirements.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The Plant and Live Animal Exports Division's project board is monitoring the project to update instructional material. A key outcome of the initial project is to embed a process in the division's business as usual work that ensures instructional material is periodically reviewed and updated.

Relevant staff in the Live Animal Export Branch are updating work instructions. Some delays have occurred with staff turnovers and changes to the Instructional Material Library. The branch has assigned a project officer to complete work instructions with a specific Veterinary and Export Meat Branch regional veterinary officer. The project is on track in line with an agreed priority list.

Inspector-general's assessment

The department has not provided regulatory process mapping in response to data requests. The inspector-general considers that detailed mapping of all regulatory processes should be in place to support consistent administration, decision-making, performance measurement and continuous improvement. Standard operating procedures should also be in place for each regulatory process, and appropriate internal and external guidance and training provided. This is a critical requirement to ensure that the government's investment (from the 2020–21 budget) delivers the intended outcomes and benefits (see Moss Review recommendations 17 and 23 and inspector-general recommendation 3).

Inspector-general recommendation 3

The department should ensure it has detailed business process maps for all live animal export regulatory processes to support improved regulatory effectiveness and efficiency, and to inform optimal IT investment in the systems that support these processes.

1.4 A transparent and well-engaged regulator

In its 2018 response to the Moss Review, the department stated:

The department acknowledges that it can improve its engagement with exporters, with producers who rely on the live export trade, with stakeholders who have a strong interest in animal welfare, the broader Australian community, and with other regulators, including the Australian Maritime Safety Authority (AMSA) and states and territories who have their own regulatory responsibilities in relation to animal welfare. In relation to states and territories, it is worth noting that the Australian Government's constitutional authority to regulate animal welfare is restricted to issues related to exports, and the interaction between regulatory responsibilities will need to reflect the legislative obligations of each level of government (Department of Agriculture and Water Resources 2018).

The inspector-general notes that the department's Plant and Live Animal Exports Division has generally improved the level of transparency of its processes and decisions through increased publication. This should be commended as progress on an important pillar of community trust and confidence in regulatory practice. The department should continue to look for opportunities to further increase transparency and accessibility.

Moss Review recommendation 2

That the department undertake to clarify the interaction between the *Export Control Act 1982* and the Australia Standards for the Export of Livestock and the operation of state and territory animal welfare laws regarding live animal exports.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The department has met, and continues to meet, with jurisdictions and is preparing a high-level summary of the various responsibilities along the live animal exports supply chain to assist stakeholders' understanding. This is due to be finalised by September 2020.

Inspector-general's assessment

The department has consulted with state and territory governments to clarify the roles, responsibilities and regulatory activities of each jurisdiction.

Moss' recommendation aimed to ensure that stakeholders with an interest in animal welfare in livestock animal exports would be able to not only easily understand jurisdictional responsibilities, but also be able to direct their inquiries and provide reports or complaints to the responsible jurisdiction in a timely manner. This recommendation was intended by the Moss Review to work in conjunction with recommendation 8, to ensure that the 'eyes and ears' of the community were more effectively harnessed as an important source of information for compliance monitoring.

Moss Review recommendation 8

That the department adopt a regulatory approach that recognises the contribution of animal welfare organisations in identifying non-compliance with the Australian Standards for the Export of Livestock, the Exporter Supply Chain Assurance System and animal welfare standards.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The department continues to meet with relevant stakeholders on a regular basis. The department continues to investigate issues and information on breaches received from animal welfare bodies and acknowledges and adheres to the department's client service standards.

Inspector-general's assessment

Stakeholders have noted an improvement in the timeliness and responsiveness of the department, consistent with client service standards.

Moss Review recommendation 15

That an independent external entity, known as the Inspector-General of Live Animal Exports, oversee the department in its role as the regulator of live animal exports.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

On 18 March 2019, the Minister for Agriculture appointed Mr Ross Carter as Interim Inspector-General of Live Animal Exports. The Inspector-General of Live Animal Exports Bill 2019 passed both houses of parliament on 18 September 2019, with legislation coming into effect on 3 October 2019. Mr Carter was appointed as the Inspector-General of Live Animal Exports for 12 months from 11 December 2019 and was appointed for a further 4 years from 11 December 2020.

The inspector-general provided a 3-year indicative work program to the Minister for Agriculture in June 2019. The first review into [Monitoring and reporting during livestock export voyages](#) was published in March 2020.

Moss Review recommendation 18

That the department develop a system to ensure that any issues and concerns raised by staff members in the context of live animal exports are addressed in a transparent and timely manner.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

A whistleblower hotline was established in April 2018. Information about the hotline is available on the department's website and can be used both by staff and the public. The Australian Meat and Live-stock Industry (Export of Sheep by Sea to the Middle East) Order 2018 also requires all exporters to display posters with information about the whistleblower hotline at all registered premises, embarkation ports and vessels.

The Plant and Live Animal Exports Division continues its work to create a culture of open engagement. This is demonstrated through regular stand-up meetings led by the Principal Regulatory Officer for Live Animal Exports, with input from branch heads. The leadership team have regular discussions with staff to ensure people feel comfortable about raising concerns.

Within Veterinary and Export Meat Branch staff issues and concerns in relation to live animal exports can be raised via Biosecurity and Exports Risk Tool (BERT), the Live Animal Export Management Committee (LAEMC) issues register, and Livestock Export Compliance Rating (LECR) spreadsheet. The Veterinary and Export Meat Branch team site is used as a platform to discuss issues, and staff are consulted about topics they would like include in the veterinary officer workshops. Information on high-profile decisions is shared and discussed with staff.

Moss Review recommendation 26

That the department work with the states and territories to review jurisdictional and operational arrangements between the department and relevant state and territory authorities.

Implementation status

- Department's assessment: In progress
- Inspector-general's assessment: In progress

Department's response: Support

The department has met with state and territory regulators of livestock exports and animal welfare to document jurisdictional roles and responsibilities. A summary statement is being prepared to help stakeholders understand roles and responsibilities along the live animal exports supply chain.

Moss Review recommendation 27

That the department engage with the states and territories and other stakeholders to develop national animal welfare coordination to improve animal welfare outcomes in relation to live animal exports.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: In progress

Department's response: Support

See department's response to recommendation 26.

Inspector-general's assessment

The department has consulted with state and territory governments to clarify the roles, responsibilities and regulatory activities of each jurisdiction.

A nationally consistent approach to animal welfare standards is required, as noted by a submission to this review:

... both the standards for cattle and sheep, developed jointly by industry and government, have been endorsed by all jurisdictions, but have not been adopted by all states and territories. The department has a responsibility to promote consistency in application and assessment of animal welfare outcomes (NFF 2020).

Moss recommendation 27 was also intended to ensure that members of the public could easily identify jurisdictional responsibilities and report their concerns for timely consideration and response, as discussed in relation to Moss Review recommendation 8.

Moss Review recommendation 29

That the department and the Australian Maritime Safety Authority, in their respective regulatory roles, develop and maintain a collaborative relationship for the effective regulation of live animal exports.

Implementation status

- Department's assessment: Ongoing
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

On 8 May 2019, the department and the Australian Maritime Safety Authority (AMSA) signed a formal information-sharing agreement to help clarify expectations and provide a clear foundation for inter-agency cooperation.

At a local level, regional veterinary officers (RVOs) may engage ad hoc with AMSA personnel during a livestock inspection on the wharf or via email if there are vessel-related issues that the RVO needs to be aware of. The independent observer program is represented at the regular meeting between AMSA and the department.

Inspector-general's assessment

The inspector-general notes the improved coordination and cooperation between the department and AMSA. There may be further opportunities for the organisations to explore joint operational activity and intelligence sharing.

Moss Review recommendation 30

That the department establish appropriate forums to consult with stakeholders and assess community expectations.

Implementation status

- Department's assessment: Complete
- Inspector-general's assessment: Implemented – ongoing

Department's response: Support

The department has formally expanded engagement with industry and the community by establishing the Live Export Animal Welfare Advisory Group (LEAWAG). This group provides a forum for strategic consultation between stakeholders and the department about animal welfare practices, standards and legislation in Australia that relate to the livestock export trade. LEAWAG brings together representatives from industry, animal welfare organisations, academia, and state and territory governments to discuss and facilitate improvements to animal welfare across the industry.

The department has introduced an online consultation portal [Have Your Say](#), which enables stakeholders and the community to present their views on issues being considered by the department, including those relating to live animal exports and animal welfare.

Inspector-general's assessment

The inspector-general considers the LEAWAG a useful forum for the department to disseminate information to stakeholders. However, feedback from stakeholders indicates that the group is too large to effectively manage constructive input and the information flow is largely one-directional. The often widely disparate views across stakeholder groups also detract from the forum being useful for constructive input. The inspector-general suggests that the department also establish a focused set of forums based on stakeholder alignment where detailed input is sought.

Chapter 2

Improved regulatory practice

This chapter examines 2 themes within the department:

1. Organising for a strong regulatory practice, where compliance and enforcement is examined.
2. Ensuring animal welfare is integral to its regulatory approach, where regulatory culture is examined.

Observations and recommendations are made to improve the effectiveness and efficiency of the department's regulatory practice for each of these themes. This chapter also builds on the discussion of regulatory practice and recommendations in the inspector-general's first review, [Monitoring and reporting during livestock export voyages](#).

2.1 Organising for a strong regulatory practice – compliance and enforcement

Effective compliance and enforcement are key attributes of strong regulatory practice. Several Moss Review recommendations were intended to contribute to the department improving its practices in this regard. These recommendations addressed the need to:

- improve the enforceability of requirements, particularly those related to animal welfare (Moss Review recommendations 3 and 4)
- ensure appropriate expertise, skills and supporting systems for effective investigations and enforcement actions are coordinated and developed (Moss Review recommendations 9, 10, 17, 20, 22 and 23)
- improve compliance monitoring to detect and correct non-compliance (Moss Review recommendations 5, 7, 9, 10, 13, 20 and 21).

The Moss Review sought to increase the enforceability of animal welfare standards through recommendation 3 for animal welfare indicators to '... become part of the regulatory framework' and recommendation 4:

... that the department take steps to have the Australian Standards for the Export of Livestock prescribed as regulated standards, with appropriate penalties, for the purpose of strengthening the regulatory framework and encouraging compliance (Moss 2018).

Strong regulatory practice is underpinned by legislation and instruments, such as licences and permits, which are clear on the obligations and on who is required to meet them. A regulator's core work includes compliance monitoring, seeking to detect non-compliance, and, where it is detected, using a proportionate response model to correct the non-compliance and prevent future occurrence.

However, despite the well-documented history of incidents in the live export trade, the inspector-general is concerned that a proportional response regulatory model is not being used to hold industry participants to account and ensure improved performance. For example, since 2011 there have only been 2 successful prosecutions under the criminal code or provisions of the *Australian Meat and Live-stock Industry Act 1997* and the *Export Control Act 1982*. Sanctions such as licence suspension or cancellation have also rarely been used. Since 2016, 3 suspended licences were cancelled, and one other was cancelled with no prior suspension. However, the range of sanctions available to the department has hampered the effective use of a proportionate regulatory response model (see [Monitoring and reporting during livestock export voyages](#), page 9). In the context of this limited range of sanctions the department has used a range of responses including, for example, suspending supply chains (or parts of them), applying additional conditions to licences, and additional audit requirements.

The inspector-general considers that some features of the department's approach to non-compliance and proportionate regulatory response need to be examined to improve regulatory practice. During this review and the concurrent reviews into ESCAS and livestock export permits and health certificates, the inspector-general noted that the department appears to determine the severity of an individual non-compliance in isolation from other factors. For example, a technical or administrative non-compliance may be automatically categorised as of low impact or severity, and accordingly attract a regulatory response at the lower end of the department's proportionate response model. This is a reductive approach that risks not correcting underlying and ongoing unacceptable performance. It may also be unfair to those who invest in systems and processes to ensure high compliance performance. This can have the effect of not creating a level playing field that gives a commercial advantage to poor performers.

The Prosecution Policy of the Commonwealth, while intended to guide decisions to prosecute, also provides useful guidance for determining other regulatory responses:

The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so. The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases (CDPP 2019).

A better practice approach would separate the consideration of culpability from liability. Determining whether a non-compliance has occurred is a matter of fact and evidence. Under a proportionate model, determining an appropriate regulatory response is discretionary and should be based on a broad assessment of culpability – how significant the non-compliance is in the context in which it has occurred. The department should consider modifying how it uses its proportionate response model when responding to non-compliance. The inspector-general intends to examine this issue in more detail in the forthcoming reviews of ESCAS and livestock export permits and health certificates.

Case study 1 MW Awassi Express 2017

On 1 August 2017, the livestock carrier *MV Awassi Express* left Fremantle, Western Australia, carrying 63,804 sheep. The consignment sailed to Kuwait, Qatar and the United Arab Emirates. Over 2,400 sheep died from heat stress during the 23-day voyage. The voyage had a mortality rate of 3.76%, well above the reportable 2% rate. The reportable rate has since been reduced to 1%.

On 5 April 2018, Animals Australia made a formal complaint to the Department of Agriculture and Water Resources. Footage of this journey (and 4 other voyages on the *Awassi Express*) taken by a crew member was shown on national television by *60 Minutes* in April 2018.

That same month, the department commenced an investigation into whether criminal offences had been committed on board the *Awassi Express* during 2017. After a detailed investigation, the department submitted a brief of evidence to the Office of the Commonwealth Director of Public Prosecutions (CDPP) to consider whether the evidence obtained was sufficient to support prosecution. The CDPP concluded that it could not be satisfied that there were reasonable prospects of conviction of those alleged to have been involved.

On 21 August 2018, the department cancelled Emanuel Export's export licence under the *Australian Meat and Live-stock Industry Act 1997*. On 5 September 2018, the department also cancelled the licence of EMS Rural Exports, a subsidiary company of Emanuel Exports. At the time, the parent company was the largest exporter of Australian sheep to the Middle East.

The decision and action to cancel the licences was taken by the department independently of the criminal investigation (Department of Agriculture, Water and the Environment 2020b).

The *Awassi Express* incident was viewed by the then Minister for Agriculture and the public as an egregious failure to ensure appropriate animal health and welfare outcomes during an export voyage. A significant public and political debate ensued. The government responded by taking a range of actions, including commissioning the Moss Review, to improve the performance of the industry and the department as the regulator. At the time, the Minister for Agriculture stated in a media release that:

We need to make sure the regulator has the right tools, training and culture to make sure exporters do the right thing. This requires prosecutions and heavy penalties where breaches occur (Ministerial media release April 2018).

The department clearly considered that the severity of the incident, and the actions of the exporter, supported a decision to cancel the export licence (this decision is currently subject to an appeal before the Administrative Appeals Tribunal). However, despite a lengthy investigation, no prosecution action was seen to be viable.

The *Awassi Express* case study raises questions that may help the department improve its regulatory practice and meet the holistic intent of the Moss Review recommendations:

- Did the department have sufficient expertise to undertake an investigation of this nature and if necessary, produce the standard of proof required in criminal cases?
- Were there deficiencies in the legal framework (the legislation itself, the conditions of licences and permits, standards such as ASEL, and the manner in which the elements of this framework interact) that were unclear or ambiguous in terms of obligations and requirements, accountabilities and responsibilities?
- Were there deficiencies in monitoring and reporting, records and record keeping, or investigation powers that compromised the department's capacity to compile compelling evidence?

In relation to the first dot point the inspector-general considers that the department does have a high level of expertise in conducting investigations. This conclusion is based on evidence provided to this review, including interviews with departmental officers.

In continuing to progress Moss Review recommendations 3 and 4, and as part of implementation planning for commencement of the *Export Control Act 2020* (scheduled for implementation in April 2021), the department should closely analyse the circumstances and outcomes from the *Awassi Express* 2017 incident and investigation.

Any necessary increase in clarity of obligations, requirements and responsibilities provides improved guidance to industry on compliance expectations aimed ultimately at preventing future incidents occurring. It would also ensure that if a similar incident occurred, a timely outcome that demonstrates appropriate accountability could be delivered.

An analysis of this nature should lead to fundamental improvements in the regulatory framework that applies to livestock exports. However, the inspector-general has identified other relevant barriers to improving regulatory practice that the Moss Review sought to address. This is implicit in Moss Review recommendation 5, 9, 10, 13 and 20.

The Moss Review noted (Moss Review 2018, paragraph 258 and 259) that:

It is evident that the department's regulatory capability is dispersed ...

and

... under this structure, accountability is diffused and relevant divisions and branches have challenges in working effectively together to ensure that regulatory responsibilities are met.

It is likely that recent departmental machinery of government changes have exacerbated this diffusion. Live animal export regulatory responsibilities and skills are now dispersed across 3 groups, 4 divisions and 6 branches. This presents challenges to achieving improved regulatory practice.

The department indicated in its [Implementation progress report](#) (Department of Agriculture 2019) that Moss Review recommendation 13 had been completed. However, the inspector-general considers that the underlying intent to '... develop a common sense of purpose, identity and alignment in relation to the regulation of live animal exports' is an ongoing process that requires further attention.

Moss Review recommendation 20, to establish the position of Principal Regulatory Officer, is complementary to recommendation 13 and is also considered to be completed by the department. However, the inspector-general considers that this recommendation should also be considered as ongoing. In its formal response to the Moss Review, the department made a commitment to a wide remit for the Principal Regulatory Officer. The role currently appears largely confined to the responsibilities of the First Assistant Secretary of the Plant and Live Animal Exports Division, with little evidence of either the imprimatur or resourcing to ‘... drive a departmental work program focusing on wider regulatory capability and culture in the department ...’ (Department of Agriculture and Water Resources 2018).

The department is large and has a wide range of regulatory responsibilities to deliver. It is not surprising that in this operating context the senior executive have chosen a largely functional structural model. This can deliver efficiency and has the advantage of providing for centres of excellence with increased critical mass in skills and expertise. However, from a regulatory practice perspective it is a model that best works where the regulatory schemes it supports are at a mature standard of practice. For livestock animal exports this is not the case. The department needs to consider a range of approaches to overcome the challenges this presents. These approaches need not be structural.

Specialist investigation resources are appropriately directed at the most serious matters (see the department’s response to Moss Review recommendation 10, chapter 1). However, they are also critical to improving the capability and regulatory practice of line areas through capacity building to ensure that compliance rigour is built into every aspect of regulatory work. This includes input into developing licence conditions, design and execution of compliance monitoring projects, how letters are written, the nature and records of conversations and other interactions, and the identification and response to minor non-compliance. Likewise, compliance monitoring projects should also have the benefit of the skills of regional operational staff, auditors, and communications experts as well as Plant and Live Animal Exports Division staff.

The inspector-general considers that the intent of Moss review recommendation 13 was ultimately to ensure that the livestock export regulatory work of departmental branches was integrated operationally if not structurally. Functional organisational alignments pose an inherent risk to improving and maturing regulatory practice for individual schemes. The inspector-general considers that this is a barrier to improving regulatory practice in livestock animal exports that Moss Review recommendations 22, 21, and 20 were also intended to address.

This issue is also illustrated by the department’s response to Moss recommendation 7, with the improvement to compliance monitoring envisaged by that recommendation not able to be implemented until at least 2021. It appears that the department is not sufficiently agile to take the multidisciplinary approach required to deliver effectively against Moss Review recommendation 7 (and inspector-general recommendation 4(d) (Inspector-general 2020)). The inspector-general considers the dispersed functional model is a major challenge to delivering against these recommendations.

The department should consider a range of mechanisms to achieve the intended outcomes of Moss Review recommendations 4, 5, 7, 10 and 13, and mature its livestock exports regulatory function. Secondments and placements of staff from functionally aligned areas is one approach. Another approach involves cross-departmental multidisciplinary projects, both operational and more strategic. This would also aid implementation of Moss Review recommendation 20 by fulfilling the department’s original intent of establishing the Principal Regulatory Officer by ‘driving closer coordination and collaboration between relevant business areas’ (see Moss Review recommendation 20 in [1 Recommendation status](#)).

Inspector-general recommendation 4

That the department address the challenge that dispersed regulatory functions pose to improved regulatory practice. This could include:

- accelerating the expansion of the role of the Principal Regulatory Officer consistent with its original intent
- secondments and placements of staff from relevant functional regulatory areas into the Plant and Live Animal Exports Division
- instituting cross-functional multidisciplinary projects at strategic and operational levels as a business-as-usual approach to compliance monitoring.

2.2 Ensuring animal welfare is integral to the department's regulatory approach – regulatory culture

The Moss Review (2018) was clear on the importance of animal welfare in the regulation of livestock animal exports, concluding that:

The department, together with industry, must place animal welfare at the centre of its regulatory activities relating to live animal exports consistent with legislative obligations (Moss 2018).

Moss Review recommendation 14 was intended to give effect to this conclusion, recommending:

That the department re-establish an Animal Welfare Branch and place animal welfare at the centre of its regulatory activities in relation to live animal exports (Moss 2018).

Likewise, one of the objects of the *Inspector-General of Live Animal Exports Act 2019* is:

... to ensure that live-stock export officials, in performing functions and exercising powers, consider the welfare of animals in Australia's live-stock exports.

In its response to the Moss Review, the department stated that it:

... is committed to ensuring animal welfare is integral to its regulatory approach for exports ...' and that it will '... re-establish an Animal Welfare Branch, which will include in its mandate ongoing activities to support the effective implementation and regulation of animal welfare standards for live animal exports (Department of Agriculture and Water Resources 2018).

The Moss Review addresses regulatory culture in the department from various perspectives. It draws on a submission to observe that: '... the live animal export industry relies on community support or social licence, which relies on trust in the regulatory structure'. The Moss Review discussion led to recommendation 28:

That the department engage with the live animal export industry to demonstrate joint unequivocal commitment to animal welfare.

The department and industry have made substantial improvements in relation to this recommendation, with the northern summer voluntary moratorium, northern summer prohibition, and ASEL 3.0 providing very tangible examples of action (see [1 Recommendation status](#)).

The Moss Review also points to a critical aspect of regulatory practice, noting that:

... the regulator must not only balance regulatory objectives, but also ensure that the regulation sufficiently meets the expectations of the Australian community while operating within the legislative framework established by Parliament (Moss 2018).

Balancing regulatory objectives is a critical element of regulatory decision-making. This is an ongoing issue for the department because it is an important element in community trust and confidence in the regulator. The Moss Review draws attention to what some submissions saw as a fundamental contradiction in the department's functions. Moss noted that the department's focus on trade facilitation means that it is balancing competing factors in its role as the regulator of livestock animal exports and concluded that:

The department's focus on trade facilitation means that it is balancing competing factors in its role as the regulator of live animal exports (Moss 2018).

The focus on trade facilitation and industry deregulation appears to have had a negative impact the department's culture as a regulator (Moss 2018).

The issues of trade facilitation and regulation are not irreconcilable under the current framework. The Moss Review noted that:

... regulation is not to be seen as a barrier to trade, but as the means to facilitate trade to operate within prescribed parameters, essential to its proper functioning (Moss 2018).

However, the way in which the department is perceived to balance these objectives requires ongoing attention and clarity in governance and decision-making. The department needs to be mindful of the importance of community perception in maintaining regulatory legitimacy. Clarity is also required to guide departmental officers in the performance of their regulatory duties.

Concerns about the recent *MV Al Kuwait* exemption decision have been raised in submissions to this review and directly with the inspector-general. As described in Case study 2, the department undertook 2 assessments of different applications for this exemption. The department demonstrated good regulatory practice in publishing its decisions and reasons in a timely manner. In both instances, the decision-makers sought to set out the critical issues and evidence that they considered, and how this was weighed in determining a decision.

The *Inspector-General of Live Animal Exports Act 2019* explicitly excludes the review of only a single performance of a function, or a single exercise of a power by a single livestock export official (section 10(2)). Therefore, the inspector-general makes no observations on the actual decisions. However, the inspector-general can use elements of this case study to help the department improve regulatory practice and community confidence in it as a regulator. These elements are intended to prompt reflection by the department, particularly on the way that it articulates its decisions.

Case study 2 MV Al Kuwait northern summer exemption, June 2020

On 22 April 2020 the Department of Agriculture, Water and the Environment issued an export advisory notice (EAN 2020/05) of the new requirements for exporting sheep to, or through, the Middle East from 1 May to 31 October inclusive. Under section 8 of the Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East – Northern Summer) Order 2020, an exporter is prohibited to export sheep that will travel through Middle Eastern waters (north of latitude 11°N) from 1 June. The order is in place as an animal welfare measure to reduce the risk of high heat stress in exported sheep.

On 27 May 2020 the department received an application for exemption (pursuant to s 11 of the Order) to export a consignment of 56,000 live sheep and 420 cattle to Kuwait. The shipment was delayed after crew members had tested positive for COVID-19. As a result, the vessel was quarantined.

On 2 June 2020 the department refused to grant the exemption pursuant to section 12(1) of the Order. The decision was based on several considerations, including:

- exceptional circumstances (COVID-19 pandemic)
- Bureau of Meteorology weather data and Animal Welfare Branch analysis of likely wet bulb temperatures (WBTs) indicating significant risk of heat stress
- adequacy of exporter's animal welfare management plan
- past performance of exporter
- past performance of proposed vessel.

On 8 June 2020 the department received a second application for exemption. The new application was substantially different from the previous one in the degree of specificity, the number and type of livestock to be exported and the proposed mitigation measures.

The second application included an updated management plan for the proposed voyage, and expert opinions in relation to meteorological data and impact on animal welfare. The applicant also argued that refusal would result in significant financial and ongoing trade impacts and would affect Kuwaiti food security.

On 13 June the department granted an exemption from section 8 of the Order, subject to conditions. To comply with the conditions, 23,000 sheep were removed from the consignment, resulting in 33,341 sheep being exported to Kuwait. The MV *Al Kuwait* left Fremantle Port on 17 June 2020 and discharged in Kuwait on 1 July.

The additional voyage report indicated a mortality rate of 0.08% (28 sheep), which was below the 1% (333) reportable rate. A 155 negative head count discrepancy was indicated for the voyage. Thirty-four Kestrel environmental data loggers recorded temperature and humidity levels every 20 minutes throughout the voyage.

When the vessel entered the Gulf of Oman around 29 June, the data loggers indicated that WBT's had exceeded 29°C. From this point on, more than 80% (26,670) sheep had a heat stress score of 2 (discomfort) or more. In the Strait of Hormuz, up to 12% (4,000) sheep had a score of 3 (extreme discomfort) and 3% (1,000) had a score of 4 (distressed). The highest WBT recorded was 31.9°C through the Strait of Hormuz on day 14 of the voyage (Department of Agriculture, Water and the Environment 2020a).

The voyage recorded a low mortality rate, but a significant number of sheep suffered from heat stress in the later stage.

Under the *Australian Meat and Live-stock Industry Act 1997*, the secretary can delegate their powers as appropriate within the department. The secretary is accountable to government and parliament for a wide range of responsibilities. In the context of livestock animal exports, this includes trade facilitation and regulation. These are not mutually exclusive functions. Effective regulation is essential to the livestock animal exports trade, ensuring importing country requirements are met and helping maintain trust and confidence that the industry is meeting community expectations. How the department weighs potentially competing objectives between trade and animal health and welfare in its decision-making is important.

The department also needs to consider how the presentation of its decision making may affect community perception. The inspector-general received submissions and stakeholder comments on the *MV Al Kuwait* case (Case study 2). Some stakeholders (not confined to animal welfare advocacy groups) believed that the department gave significantly more weight to trade and financial considerations than to animal health and welfare considerations in granting the second application.

The published decision is clear on the weight given to trade considerations and to the financial implications for the applicant. The decision also indicates significant changes in the risk mitigation approach to animal health and welfare proposed by the applicant. However, the published decision is less clear on the differences between the first and second applications, the additional mitigation of the risk of poor animal health and welfare outcomes that these changes constituted, and the weight given to them.

Some stakeholders view industry regulation and trade facilitation as contradictory, so the department needs to consider how it will manage community perception, and hence community confidence and trust in it as a regulator. The department could have provided more detail on each aspect of its decision, and where relevant drawn more attention to any enhanced risk mitigation measures and additional conditions. This may have helped those interested in the decision better understand the department's reasoning. In publishing reasons for decisions, the department needs to apply administrative law but also use plain English, so that not only those with legal training can evaluate the decision. In this regard the department should consider whether decisions of this nature would benefit from input from public communications experts prior to finalisation and publication.

There were clearly substantial differences between the 2 exemption applications. Accordingly, the same decision-maker that refused the first application may have reached a different conclusion for the second application and approved it. The nature of regulatory decision-making means that, for a given set of circumstances, different decision-makers may reach different conclusions, and hence decisions. Clarity in objectives, standards, policy and practice should alleviate this possibility to a large extent.

The department chose to use a different decision maker for the second application. It is entirely appropriate for the department to consider and change decision makers for different applications. In this instance it may have been to manage any perception that the first decision maker had a fixed or biased perspective. However, the decision-maker was elevated from the Plant and Live Animal Exports Division to a deputy secretary, whose role is represented in the organisational structure as being responsible for trade development and facilitation, as well as regulation, and who has recently moved from a trade role into the department. This has been perceived by a range of stakeholders as a sign of trade considerations outweighing animal health and welfare considerations.

The department should consider how the selection of decision-maker could affect external perceptions of it as the independent regulator. It should also reflect on the internal perceptions and potential cultural impact this may have on regulatory officers. Providing an explanation of the department's rationale for a change in decision-maker of this nature may have helped to reduce the risk of stakeholders reaching their own conclusions.

The animal health and welfare outcome from the voyage was a mortality rate of 0.08% (28 sheep), which was below the 1% (333) reportable mortality rate for this voyage (noting a 155 negative head count discrepancy). The heat stress scores observed during the voyage (see Case study 2) appear to confirm that exporting sheep to the Middle East during the northern summer prohibition period results in a poor animal health and welfare outcome for many of the animals, despite the additional risk mitigations undertaken by the exporter. This points to the soundness of the industry's decision to put in place a voluntary moratorium in 2019, and the department's decision to impose the Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020.

Appendix A

Department's response



Ref: xxx

Mr Ross Carter
Inspector-General of Live Animal Exports
Department of Agriculture, Water and the Environment
GPO Box 858
CANBERRA ACT 2601

via email: iglae@agriculture.gov.au

Dear Mr Carter

Thank you for providing your draft report on *Implementation of Moss Review recommendations (version 15)* to me on 4 November 2020; and for providing the opportunity to respond to your findings.

The Moss Review was important to live animal exports as it provided deep consideration of the culture and practice of regulation in this area. The department has taken its implementation very seriously and, as you note, has achieved significant progress. I do not resile from the fact that there are still areas of work to be undertaken, particularly around systems improvement and in becoming a best practice regulator. It was important though that first the department dealt with a number of core underpinning issues.

The department accepts your recommendations relating to the implementation of improved IT infrastructure. The department was pleased to secure the funding for a major project relating to export systems in the 2020-2021 Budget. While the project will encompass all export areas, the department will ensure that the key recommendations of the Moss Review, as well as your own recommendations, are addressed through this project. As you will appreciate, building new systems can take time and will be delivered in stages, but the recommendations go to the core of the issues the Congestion Busting package was funded to address.

Similarly, the department will maintain its focus on regulatory practice across the board, but particularly in live animal exports. The department is continuing to innovate in how it does its business, and a greater use of multi-disciplinary teams and a focus on having all parts of the regulatory chain involved in developing policies, processes and instructional material will help to address the issue of dispersed regulatory functions.

The department accepts your comments on the approach to nomenclature regarding the status of implementation, and this will be reflected in the next update on progress on the Moss Review which is set to be published in February.

In relation to your specific recommendations, I have provided a detailed response at Enclosure 1.

Yours sincerely

Andrew Metcalfe AO

Secretary

7/12/2020

# Inspector-general recommendation	Department response
<p>1 The department should change from a three year review of the Australian Standards for the Export of Livestock to an annual update of the standards to address emerging issues and advances in scientific knowledge and technology for improved animal welfare outcomes.</p>	<p>Supported.</p> <p>The department is planning the next update of the ASEL for November 2021. This and future updates will include a progressive, issues-based approach in close collaboration with stakeholders. The department will assess whether annual updates are effective at addressing known and emerging issues and advances in animal welfare science and technology sufficiently, or whether alternative review processes are required in some circumstances.</p>
<p>2 The department should ensure that the investment in improved IT infrastructure announced in the 2020–21 budget:</p> <ul style="list-style-type: none"> • delivers improved regulatory operations and knowledge on animal health and welfare through effective use of data and information analysis • enables disparate parts of the department to operate more effectively together through real-time access to all relevant records, policy, guidance and procedures • reduces delays and duplication for industry through streamlined application processes, decisions and reporting. 	<p>Supported.</p> <p>The government has funded the department to make significant investments in new digital and data products and services, building on the advances in analytics delivered in Biosecurity focussed business areas. Central to this is an approach which starts by carefully examining and understanding the needs of users and regulators in the export supply chain and will co-design services with them that reflect their needs.</p> <p>In Biosecurity, the department has successfully deployed a Pest and Disease Repository which will be used as a template model for pulling together disparate and unjoined elements of information and records. By example Pest and Disease Registry brings together 42 different data sets and reconciles them through an overarching workflow tool that allows users to access the information they need to get their job done.</p> <p>A further part of the department's planned activities is to carefully analyse current processes for all parts of our export responsibilities, including decision-making and reporting, in order to identify opportunities to digitise, automate and remove non-value added steps in the process.</p> <p>There will be a strong drive to look at doing things differently, and employ innovative digital technology to get the task or outcome done. We will also consider 3rd parties, including the industry and exporters themselves, who might be able to do it better, provided the department can unambiguously assure itself that regulatory and compliance needs are being met.</p>
<p>3 The department should ensure it has detailed business process maps for all live animal exports regulatory processes to support improved regulatory effectiveness and efficiency, and to inform optimal IT investment in the systems that support these processes.</p>	<p>Supported.</p> <p>To support the introduction of the <i>Export Control Act 2020</i>, the department is reviewing its business and regulatory decision-making processes to ensure they continue to align with legislative requirements. This work will provide a sound platform for a new and comprehensive business process mapping exercise to support the development of improved IT infrastructure, as announced in the 2020–21 budget. Business process mapping will be undertaken in department will take a user co-design approach in developing new IT systems, including any external interfaces that may be used by industry.</p>

# Inspector-general recommendation	Department response
<p>4 That the department address the challenge that dispersed regulatory functions pose to improved regulatory practice. This could include:</p> <ul style="list-style-type: none"> • accelerating the expansion of the role of the Principal Regulatory Officer consistent with its original intent • secondments and placements of staff from relevant functional regulatory areas into the Plant and Live Animal Exports Division • instituting cross-functional multi-disciplinary projects at strategic and operational levels as a business-as-usual approach to compliance monitoring. 	<p>Support in principle.</p> <p>The issue of potential disconnect across regulatory areas of the department and how to address is a key issue for the department. The Future Department Review released in November notes "At times, there is a disconnect between the policy and operational parts of the department, which leads to unclear lines of responsibility and potentially impractical policies."</p> <p>The department is already addressing this in a number of ways. In addition to the progress on the development and implementation of the Regulatory Practice Statement, the Regulatory Practice Committee works across the department to improve regulatory practice, encourage consistency and work through roles and continues to address issues related to regulatory practice across the organisation. Since the Moss Review, machinery of government changes have broadened the department's regulatory reach, and the Regulatory Practice Committee has been an effective approach to managing shared regulatory practice issues. While it is not planned for the PRO position to expand in the immediate term, the PRO is deeply involved in the work of the Regulatory Practice Committee, as well as being a member of the department's Risk Committee.</p> <p>Export-related divisions within the department are also looking closely at processes and approaches to Instructional Material. A key recommendation of a preliminary report on instructional material Animal Exports Branch has been using this methodology for some time, ensuring that practitioner input is a key part of the process and that front-line regulatory staff are in the team, rather than just consulted.</p> <p>Further, Plant and Live Animal Export Division, along with the rest of the Agricultural Trade Group, is moving to use Agile project methodology for much of its work. This includes establishing multi-disciplinary teams to tackle projects. As the division becomes more mature in using Agile methodology to run projects, it could examine whether this approach could be used to as a business-as-usual approach to compliance monitoring.</p> <p>The Management Review Committee also operates across the dispersed functions of live animal export regulation to discuss and agree upon approaches to shared issues. This Committee will continue to strengthen oversight, information sharing and common regulatory attitudes and approaches.</p> <p>The division has used secondments to bring in staff on an ad-hoc basis. Most recently, staff from the VEMG were seconded to help with ASEL 3 implementation. The division will continue to look to do this for specific tasks subject to timing and availability of staff in other divisions.</p>

Appendix B

List of submissions

The inspector-general's review team received 12 submissions from the following organisations, groups and individuals. To respect their privacy, confidential submissions have not been identified.

Name of organisation	Type of organisation
Australian Livestock Exporters' Council (ALEC)	Industry peak body
Cattle Council of Australia	Exporter and industry
National Farmers' Federation	Industry peak body
Northern Australian Live Export Working Group	Exporter and industry
RSPCA Australia	Animal welfare
Sentient	Animal welfare
Sheep Producers Australia	Industry
Simpson, Dr Lynn	Veterinary
Vets Against Live Exports	Veterinary
Wellard Limited	Industry

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