



Livestock export licences and approved arrangements

Review report no. 2022-01



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Review team and acknowledgements

Mr Glenn McMellon and Ms Heidi Barbour assisted the inspector-general in this review.

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

The inspector-general gratefully acknowledges the cooperation and advice of the Australian Government Department of Agriculture, Fisheries and Forestry and those that provided input into this review.

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Summary

This is the inspector-general's 5th review and, collectively, these reviews cover all the major processes involved in the regulation of livestock exports. The reviews are intended to be considered as a body of work providing guidance for the department to improve Live Animal Export's regulatory practice in accordance with the objectives of the *Inspector-General of Live Animal Exports Act 2019*.

This review examined approved arrangements (AA) and export licences. A livestock export licence is the primary instrument that allows an exporter to operate and provides a few conditions that an exporter must comply with. While AAs are determined under a separate section of the legislation to export licences, in practice they are often considered concurrently with an export licence application (unless exempt as a small or infrequent exporter). Once approved, the AA provides part of the requirements for exporters to meet during their ongoing operations.

Approved arrangements were put in place in 2016 as part of a red tape reduction reform. As this preceded the Awassi incident, and subsequent Australian Government response, the review examined the basis for, and implementation of, approved arrangements. The inspector-general concluded that the regulatory impact statement and policy documentation that preceded implementation indicated reasonable principles and approaches that aligned with improved regulatory practice. If livestock export AAs were implemented in accordance with these principles and approaches, there should have been departmental and industry efficiency gains. Importantly, performance and compliance levels should also have been maintained or increased.

However, several of the elements of the original reform proposal were not implemented and efficiency gains were the predominant focus. The reform was also supported by a 'Risk analysis on the key preventative and detective controls within the export supply chain' that was fundamentally flawed. Consequently, implementation that failed to deliver on all elements of the reform proposal, and that relied on a flawed risk analysis, was unlikely to maintain or improve compliance and performance levels.

Shortly after AAs were implemented, a major heat stress incident occurred with a consignment of sheep on board the *MV Awassi Express* to the Middle East. Whether this would have been prevented, had all the elements of the reform been fully implemented, is impossible to determine. However, the fact that efficiency gains were the focus of the reform, with little attention paid to maintaining risk controls, supports the view that it was a contributing factor. Consequently, the inspector-general reiterates the need for the department to be rigorous in its approach to risk controls (Recommendation 1).

The purpose of the AA in the context of an export licence application or renewal is to give the department confidence that the applicant for a licence has the capability, capacity, systems and processes in place to be able to be a compliant exporter. Once the licence is granted, and the AA is also approved, it then becomes part of the operational requirements for the exporter in undertaking their activities.

Shortly after AAs were mandated, significant changes to the administration of AAs occurred in response to the Awassi incident. As often occurs in response to a regulatory failure a one size fits

all approach was taken, rather than a more risk-based approach. For example, a similar level of assessment and scrutiny applies to sheep exporters to the Middle East, as it does to short haul cattle exports to Indonesia. The inspector-general has heard that the AA application and variation process has become arduous involving detailed assessments and multiple iterations between the department and exporters.

The inspector-general suggests that the department consider a fundamental change in the way export licences and approved arrangements are used to identify required outcomes more clearly. Accordingly, the inspector-general recommends that a range of documents which currently form part of or are connected to AAs should be prescribed by the department (Recommendation 2).

If implemented this would mean that the AA function in the regulatory framework becomes more about overarching governance and administration by the exporter, than day to day operational requirements for export consignments. This lends itself to a more hands off approach by the department (more like the approach taken with meat industry AAs) and increases the importance of the department's audit function for compliance monitoring and continuous improvement (Recommendation 3).

The review then considered matters that would arise from the changes recommended to approved arrangements, an ongoing issue from the Moss Review, and the department's progress on implementing a proportionate response model.

The inspector-general considers that the department can make greater use of the export licence. In this regard the inspector-general suggests that the export licence be the primary instrument for setting outcomes that can be framed as enforceable conditions.

A critical element of modern regulatory practice is the ability to respond effectively when non-compliance is detected. Unfortunately, the provision of accessible regulatory tools suited to the live animal exports context did not occur with the introduction of the *Export Control Act 2020* or the Export Control (Animals) Rules 2021 and the linkage to the *Regulatory Powers (Standard Provisions) Act 2014*.

The inspector-general is not aware of any examples of where the department has used the sanctions available to it under the *Export Control Act 2020*. There may be regulatory maturity or other structural impediments to the department seeking to impose stronger sanctions in the face of egregious non-compliance. One of the impediments that may exist is a low level of capability and capacity in the use of regulatory powers and sanctions outside of specialist areas in the department. The active consideration of a range of potential sanctions in response to non-compliance is an important factor in developing this capability and capacity with all staff involved in regulation.

Accordingly, the inspector-general recommends that the department develop options to provide a more accessible regulatory powers and sanctions regime (Recommendation 4).

Review process

Objectives

This review examined the effectiveness of the department's administration of livestock export licences under the *Export Control Act 2020* and the system of approved arrangements under the Export Control (Animals) Rules 2021. The review focused on:

- the effectiveness of the department's monitoring, reporting, compliance and enforcement capability in the framework of approved arrangements and export licences
- what, if any, improvements should be made to the current arrangements.

Scope

The review considered:

- if approved arrangements are effective in achieving intended outcomes, such as reducing red tape
- decision-making process for export licences and approved arrangements
- approved export programs
- compliance management and regulatory responses, including sanctions
- approved arrangement audit requirements and processes
- effectiveness of approved arrangement audits
- how approved arrangements give effect to the Australian Standards for the Export of Livestock
- the roles and responsibilities of persons directly responsible for holding an export licence and or managing an approved arrangement
- the extent to which current requirements support the mitigation and management of departmental risks, industry risks and animal health and welfare risks
- the department's processes for engagement and consultation with industry.

Out of scope

The review did not examine:

- approved arrangements not specific to livestock exports
- cost recovery of approved arrangements.

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
 - discuss preliminary data and information requirements
 - provide an opportunity for all parties to discuss the proposed review process
- conducted in-person and phone meetings with key stakeholders
- invited submissions from stakeholders
- conducted a desk-top audit of relevant department data and documentation (such as instructional material, policies and communications material)
- undertook fieldwork to discuss, observe and verify the department's procedures and operations (noting that this was limited by COVID-19 travel restrictions)
- developed a draft review report with key findings and recommendations
- conducted an exit meeting with departmental executives that
 - provided an overview of initial review findings
 - outlined the process of release of and response to the issues paper and draft report
- requested a fact check by the department's relevant line areas to correct any factual errors or misinterpretations of evidence and to provide further evidence
- requested that the secretary provide a management response to the draft review report
- provided a final report to the Minister for Agriculture, Fisheries and Forestry and published it on the [IGLAE review](#) web page.

Recommendations

The departmental response to the recommendations is at [Appendix A](#).

Recommendation 1

The department should conduct a holistic risk analysis of the livestock export framework to identify risks, and the critical control points for these risks in the department's business processes. Once identified the department should examine the effectiveness of the controls in place and undertake treatments to address any shortcomings.

Department's response

Agreed

Recommendation 2

The department should prescribe a range of documents that are currently part of or connected to approved arrangements, such as standard export plans, vendor, spay and pregnancy declarations, health declarations, and elements of management plans.

Department's response

Agreed in principle

The department agrees there would be benefits in standardising many of the required documents used by exporters. The department will consider how the recommendation can be practically implemented.

Recommendation 3

The department should change the approach to livestock export approved arrangements to one that is more aligned to the approach taken with meat export approved arrangements. This includes reviewing the performance indicators to improve clarity and including performance tests and targets that are directly linked to legislation and standards.

Department's response

Agreed in principle

The department agrees with the principle of having clear performance indicators, tests and targets that are linked to legislation and standards.

Recommendation 4

The department should develop options to provide a more accessible regulatory powers and sanctions regime, linked to clear and enforceable requirements in export licences and approved arrangements. If there are options that are within the power of the secretary, they should be implemented. If there are options that require legislative change, these should be provided to the minister for consideration.

Department's response

Agreed

A handwritten signature in black ink, appearing to read 'Ross Carter', enclosed within a faint rectangular border.

Ross Carter

Inspector-General of Live Animal Exports

6 October 2022



Introduction

Australia has exported live animals for over 150 years to over 60 countries. In 2021–22 the livestock export industry was valued at over \$1.6 billion. The industry supports the livelihood of many people in rural and regional Australia (DAWE 2022a).

The Australian Government Department of Agriculture, Fisheries and Forestry is responsible for government policy and regulation of livestock exports. The regulatory framework includes the *Export Control Act 2020* and the *Export Control (Animals) Rules 2021*.

Under this regulatory framework livestock exporters must have an export licence and have either an approved arrangement (AA), or an operations and governance manual if exempt from having an AA as a small and infrequent exporter. As the regulator, the department needs to decide whether to grant an export licence and approve an AA and set any conditions that should apply. Once an export licence and AA are in place the department must ensure they are complied with.

There are 2 primary outcomes sought from this framework. Firstly, for exporters to ensure that management of livestock meet the Australian Standards for the Export of Livestock (ASEL). Exporters are required to meet the standards to ensure animal health and welfare is maintained when exporting livestock. Secondly, that importing country requirements are met.

In August 2013 the Australian Government released its policy for a competitive agriculture sector. The policy included measures to improve performance efficiency and reduce unnecessary red tape in export certification and the exporter supply chain assurance system (Policy 2013). Opportunities were identified to simplify the livestock export certification process, reduce government intervention in individual export consignments and provide exporters with greater responsibility. The policy led to a significant reform of livestock export regulation and the implementation of AAs.

From December 2014 to March 2016 the department designed and trialled the AA model in consultation with industry. Approved arrangements became available to livestock exporters from April 2016. All exporters were required to have an AA by January 2017, unless exempt as a small and infrequent exporter.

In 2018 footage of poor animal welfare from the *MV Awassi Express* was aired on television. This resulted in 2 reviews of livestock exports and numerous recommendations. The major changes included the creation of the Northern Summer prohibition period for exporting sheep to the Middle East, reintroduction of notices of intention to export (NOI), and an increase in departmental regulatory oversight and scrutiny.

In 2020, ASEL V3.0 was implemented to increase clarity on exporter requirements and improve animal health and welfare. This included changes to the preparation time for livestock, notifiable mortality rates, and new requirements for management plans. In the following year the *Export Control Act 2020* and the *Export Control (Animals) Rules 2021* were implemented.

1 Reform

This review considered whether the implementation of approved arrangements (AAs) was consistent with the principles established as a basis for the reform. It considered whether the full intentions of the AA reform were realised, and whether this aligned with good regulatory practice.

1.1 Pre-reform

Prior to AAs, the Export Control (Animals) Order 2004 required livestock exporters to lodge a notice of intention to export, a consignment risk management plan (for sea consignments) and an exporter supply chain assurance system (for feeder and slaughter consignments) for departmental assessment. Exporters detailed how they would meet importing country requirements and ASEL in their submission.

The department's role was to assess the notice of intention (and consignment risk management plan) against importing country requirements and the ASEL. The department issued an approval letter and approved export programs if satisfied with the exporter's application. The approved export programs addressed any specific concerns the department had with a consignment and allowed the exporter to prepare the consignment with the assistance of an Australian Government accredited veterinarian.

Exporters would also submit a range of supporting documentation, depending on the export destination. Examples include import permits, dispensations, treatment schedules, heat stress risk assessments and travel and load plans. There were also numerous documents related to disease status such as state and territory certification, vendor and transport declarations. A business process review conducted from January to October 2013 estimated that the department's live animal exports program manually assessed over 14,900 documents over this 10-month period. This included over 7,300 documents related to specific livestock export consignments (Partners 2014).

The assessment and approval process for documentation occurred on a consignment basis and was considered highly repetitive and duplicative for both the department and industry. As many consignments were similar (same exporter, species, port of export, market), exporters often had to produce almost identical paperwork and submit these to the department each time.

The department already held information about how an exporter would comply with ASEL as it was contained in the exporter's operations and governance manual. This was an existing requirement for obtaining their export licence.

Legislation required exporters to wait for departmental approval of their NOI, consignment risk management plan and exporter supply chain assurance system plan (if exporting livestock for feeder or slaughter purposes) before they could begin sourcing animals for a consignment. Approved export plans were issued at the same time as the NOI approval. However, in practice, exporters routinely sourced and prepared livestock before submitting NOIs. The department advised exporters that they could start to prepare at their own risk as NOI approval could not be guaranteed.

Exporters of livestock by sea applied for a health certificate and permission to 'leave for loading' to move the prepared consignment to the place of departure. For every consignment, a departmental regional veterinary officer (RVO) would inspect 100% of animals at the registered premises for sea voyages. Not all air consignments had approved premises. Some air consignments would be inspected at the premises and the airport, whereas others would only be inspected at the airport. These inspections provided the department additional assurance that the exporter had complied with ASEL, importing country requirements and the animals were eligible for export.

The exporter was required to apply for an export permit. Export permits were issued, along with health certificates, only when all livestock were loaded onto the vessel. For air consignments, livestock had to be loaded into crates at the airport prior to the export permit being issued. The RVO would conduct a final on-board inspection on the vessel, or of crates at the airport, and provide approval for the consignment to depart from Australia.

1.2 Policy design

In April 2014 the department set up the Live Animal Export Industry Roundtable (the industry roundtable) to support live animal export reforms and to provide a dedicated consultation platform. Members of the industry roundtable included the department, the Australian Livestock Exporters' Council (ALEC), Australian Livestock Export Corporation (LiveCorp) and Meat and Livestock Australia (MLA). The duplication and multiple regulatory checkpoints in the consignment approval process were key concerns that industry put forward through the roundtable.

The department proposed that streamlining consignment approvals was a key priority and recommended the option of developing an AA system. The department also identified the potential to address some of the other issues raised by industry, including the need to streamline regulatory arrangements for exporters based on their performance and experience, and reduce duplication between the work of Australian Government accredited veterinarians and RVOs (DAWR 2015).

The department already had AAs in place for other export commodities such as dairy, egg, fish and meat. These AAs were used as a guide for developing livestock exports. However, there was a major difference. Livestock exports involve living animals with their health and welfare requiring acceptable management under ASEL, while other export commodities focused on hazard analysis and critical control points relating to food safety.

Ministerial approval for AAs was provided in December 2014. The department developed the AA model through consultation with industry bodies (ALEC, LiveCorp and MLA), exporters and departmental officers experienced with AAs for other export commodities (DAWR 2015). Six key principles guided the design of the livestock exports AA system (Table 1).

Table 1 Approved arrangement reform principles

Principle	Explanation
1) Be risk-based and allow the department to direct its efforts and resources to areas that pose the greatest risk	<p>Verification of livestock consignments and exporters' approved arrangements will be focused on areas of highest risk and will be informed by intelligence gathering and data analysis.</p> <p>The department will be responsive to changing risks, including to help minimise the regulatory impact on compliant participants.</p>
2) Ensure exporters are responsible for their consignments	<p>Exporters are responsible for complying with legislation and preparing their livestock consignments in accordance with regulatory requirements. They must have systems for actively identifying and correcting issues and ensuring that corrective actions are effective.</p> <p>Exporters and their staff must proactively manage any consignment issues, rather than wait for regulatory intervention.</p> <p>Exporters will be encouraged to communicate openly with the department including seeking advice when necessary.</p>
3) Recognise and reward good compliance behaviour and encourage the efficient and effective use of government services	<p>The department's approach to livestock consignments will be based on an assessment of risk and take into account the compliance performance of exporters.</p> <p>High levels of compliance are the best and most cost-effective way to manage risks. Government intervention can be kept to a minimum.</p> <p>The department will recognise good compliance by reducing intervention and costs to compliant participants.</p>
4) Effectively respond to and manage non-compliances	<p>The department will implement regulatory response measures proportionate to the degree of non-compliance and risk.</p> <p>It will apply effective sanctions when non-compliance with requirements is identified.</p>
5) Encourage open communication	<p>Approved arrangements will strengthen partnerships with all participants in the livestock export process.</p> <p>The department will engage with participants to encourage compliance with regulatory requirements.</p>
6) Ensure decisions are consistent and transparent	<p>The department will be accountable, transparent, consistent and fair in its dealings with participants.</p> <p>Decisions will be intelligence-led and evidence-based and consistently applied across regions.</p>

1.2.1 Changes

The intention of livestock export AAs was to reduce unnecessary regulatory burden for compliant exporters, streamline the certification process, improve timeframes for consignment approval and cut down on duplicative checks carried out by the department.

Approved arrangements also intended to allow the department to focus its efforts and resources on areas of highest risk, while recognising the efforts of compliant exporters. A livestock exporter's performance would be monitored through audits, livestock inspection and documentation verification. The department intended to introduce a risk-based system of verification checks based on the compliance history of exporters.

Exporters who invested in quality management systems and processes that enabled them to consistently meet all regulatory requirements would be subjected to less paperwork, fewer audits and less departmental intervention (DAWR 2016a). Essentially, livestock exporters were given more responsibility for complying with livestock export regulations and managing the risks posed by their businesses. With this arrangement in place, the department could move to a

clearer regulatory role in assuring compliance. Table 2 outlines the changes that occurred to streamline the livestock export certification process.

Table 2 Approved arrangement reform to livestock export certification

Pre reform	Reform
100% of documents assessed	Core documents assessed
Notice of intention (NOI) to export assessment	Required (not fully assessed)
NOI approval advised before sourcing livestock	Not required
Permission to leave for loading for exports by sea required	Not required
100% departmental inspection of livestock	Sample inspection
Department issues approved export program (AEP)	AEP not required
Consignment risk management plan (CRMP) assessed and approved for exports by sea	CRMP not required
Load plans assessed	Not required
Heat stress risk assessment (HSRA) assessed and checked by department	HSRA required (not checked by the department)
Export licences renewed yearly	Renewed every 1 to 5 years
Operations and Governance Manual (OGM) a condition of export licence	OGM as part of AA
Low risk tolerance by department	Risk-based approach
Exporter licence audit regime	Approved arrangement audit regime
Risks mitigated by departmental staff	Increased exporter responsibility

An exporter's AA would set out their operations to manage the preparation of livestock for export, identify the classes and species of livestock, the export markets and mode of transport. The AA would be assessed and approved by the department once and could apply to multiple consignments. These changes were intended to allow the department to focus on tracking exporter compliance performance, including data collection, management, analysis and reporting.

The department also identified several IT system requirements that needed to be implemented as part of the reform, including to:

- allow integration of financial information with departmental invoicing systems
- generate certificates of all live animal exports to importing country requirements
- record ESCAS data and track all assessment workflows
- enable automatic validation of conditions applying to consignments, covering importing country, exporters, registered premises, and any other special conditions applicable (which would have provided an automated check of a NOI for export)
- integrate with audit data
- improve data analysis to inform areas of highest risk
- develop and implement workflow processes to support regulatory changes.

Until the IT systems were delivered the department would undertake a manual NOI check (not approval) for each consignment.

In consultation with the industry roundtable, the department designed a trial of AAs and selected 4 licenced exporters to participate. The trial ran from July 2015 to 31 March 2016. During the trial participants exported approximately 180,000 head of livestock over 49 consignments to China, Indonesia, Malaysia and Vietnam. The trial found that AAs reduced average departmental time charged to exporters by 40%, which was more than the projected 30% saving. However, reductions in the time spent on servicing the different exporters varied between 9 and 61%. The department noted that this was due to the small sample size and several complex consignments which skewed the results (DAWR 2016b).

The Export Control (Animals) Order 2004 was amended to provide for AAs on 6 November 2015. Approved arrangements were given effect in a way that exporter compliance with their AA would be a condition of their export licence. This was designed to ensure that the existing sanctions and penalties were available in the event of non-compliance.

1.3 Implementation

Approved arrangements became available to livestock exporters from 1 April 2016. The department used a phased implementation approach to build capacity for exporters and the department. All exporters were required to have an AA by 1 January 2017. Small or infrequent exporters were exempt but were still required to have an operations and governance manual. This aligned livestock exports with other export commodities which were already operating under AA frameworks (DAWR 2016a).

To assist exporters to transition to AAs the department developed a range of guidance material, conducted workshops with industry, published webinars on each component of an AA, and provided one-on-one support to exporters where requested. The department also published its 'Performance management and compliance guidelines, approved arrangements for livestock exports' (DAWE 2017). Approved arrangements were scheduled to be reviewed in January 2018. The inspector-general understands that in 2022 and 2023 the department will be reviewing its livestock export performance and compliance framework.

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%, which was above the reportable 2% rate. Television footage aired from this, and other Awassi voyages, undermined public confidence in the treatment of animals in the livestock export trade.

The Australian Government responded by conducting 2 independent reviews. The first was Dr Michael McCarthy's *Independent review of conditions for the export of sheep to the Middle East during the northern hemisphere summer* (McCarthy 2018). The second was Mr Philip Moss's *Review of the regulatory capability and culture of the Department of Agriculture and Water Resources in the regulation of live animal exports* (Moss 2018). Following recommendations from these reviews, and Australian Government policy announcements, changes were made to AAs and other requirements for the export of livestock and included:

- exporters providing their own approved export programs
- independent observers deployed on all vessels, where practical

- new declarations for applications for export permits and health certificates for all livestock consignments
- new conditions for sheep exports to the Middle East between May and October
- increased inspection of sheep (100% mob-based) by regional veterinary officers
- notice of intention applications be assessed and approved by departmental officers for every consignment
- increased reporting requirements for sheep by sea.

1.4 Observations and findings

Livestock export AAs have undergone many changes since implemented in 2016. The initial intention when implemented in 2016 was to reduce red-tape, streamline the approval process and increase the responsibility of exporters for managing their risks. The regulatory impact statement and policy documentation indicated reasonable principles (Table 1) and approaches that aligned with improved regulatory practice. If livestock export AAs were implemented in accordance with these principles and approaches, there should have been departmental and industry efficiency gains. Performance and compliance levels should also have been maintained or increased.

However, several of the elements of the original reform proposal were not implemented or were only partially implemented. These were to:

- invest in an IT system that would enable an automated verification of a notice of intention for export
- amend the legislation to include sanction provisions to address low to medium non-compliance
- implement regulatory response measures proportionate to the degree of non-compliance and risk by applying effective sanctions to non-compliance
- improve data analysis to inform areas of highest risk.

The reform was also supported by a 'Risk analysis on the key preventative and detective controls within the export supply chain' that was fundamentally flawed:

- It lacked clarity on the overall processes associated with a livestock export consignment.
- The description of control points within the overall process, and the controls themselves, lacked detail and did not appear to incorporate input from operational areas.
- The assessment of the adequacy of controls was unclear and 6 of the 15 control points included the caveat of 'Failure could occur at these control points through human error or deliberate intervention to bypass the control point objective', which seems to be a strong indication that the control is inadequate.

The reporting from the AA trial was largely focused on efficiency gains with little reference to performance and showed no metrics on livestock export outcomes or compliance levels. The inspector-general heard that this focus on efficiency continued with an emphasis on reducing departmental staff and the amount of time spent on oversight by staff who remained.

The department had significantly reduced the resources and skills available to the Live Animal Exports (LAE) Branch. The Moss Review noted:

The departure of knowledgeable and experienced staff from LAE Branch has reduced the department's capacity to investigate non-compliances with the regulatory framework, including the investigation of reportable mortality incidents (Moss 2018).

Some of the intended reform efficiencies were realised. Every document for every consignment was no longer assessed and RVOs no longer inspected 100% of livestock. However, some of the intentions of the original reform proposals were never fully realised.

The intended upgrade to the AAs supporting IT system (TRACE) was never fully implemented. The upgrade would have provided the department with the ability to enable digital verification of export conditions applying to consignments. This would have increased the system's efficiency and provided a level of assurance. The upgrade would have assisted with centralising program data, increasing reporting capabilities and providing more accurate data on all live animal export commodities (1st Principle, Table 1). This would also have increased the department's ability to gather intelligence, analyse risk, and identify poor performance along an exporter's supply chain. Without this capability, a risk-based approach is difficult to operationalise as it is dependent on data and analysis. The inspector-general notes that there have been recent IT upgrades, but these capabilities are still not a function of TRACE.

The department's intention to manage non-compliance by implementing regulatory response measures proportionate to the degree of non-compliance and risk was also never fully realised (4th Principle, Table 1). The inspector-general notes that the performance management and compliance framework (DAWR 2017) developed during the reform is still being used by the department. The framework was designed around an audit regime that attempts to influence exporter behaviour by the frequency, and costs, of audits. As discussed in the inspector-general's report [Livestock export permit systems and processes](#), audit is one of several important compliance monitoring tools the department could utilise. It is not generally considered to be a sanction and its use as one is likely to be ineffective in driving improvement in exporter performance. It is an inefficient use of departmental audit resources, and an additional red-tape burden for exporters. It may also have the unintended consequence of driving exporter behaviour in relation to documentation and systems to be audit ready post consignment, rather than for these documents and systems to be fit for the purpose of governing the operational execution of a consignment in real time.

Consequently, implementation that failed to deliver on all elements of the reform proposal and that relied on a flawed risk analysis was unlikely to maintain or improve compliance and performance levels.

Shortly after AAs were implemented, a major heat stress incident occurred with a consignment of sheep on board the *MV Awassi Express* to the Middle East. There were 2 significant and related issues that, if they had been identified and controlled as potential key risks, may have prevented the incident.

Firstly, pen air turnover (PAT) values were doubled by the exporter. This resulted in the vessel's heat stress risk assessment incorrectly demonstrating an acceptable mortality risk.

This action significantly increased the risk of mortality at the hottest times of the voyage (AAT 2021). The vessel was effectively overcrowded. If the department had considered verifying key calculations as part of its risk controls this deliberate alteration to a key variable may have been identified.

Secondly, during this review the inspector-general heard that, prior to the reform, RVOs would conduct a physical check of the vessel when it was 80% loaded to ensure there was enough space for the remaining 20% of animals. In this way the RVO would be able to observe if the load plans and densities aligned with the attributes of the livestock and the heat stress risk assessments and other information.

In this example the exporter had submitted 9 heat risk assessment plans with incorrect PAT scores in connection with an export permit for the Awassi Express. Each of those applications for an export permit were granted (AAT 2021). Heat stress risk assessment output was not a core document under AAs and RVO physical inspections were reduced.

Additionally, video evidence provided by an animal rights organisation showed that breaches of ASEL occurred during 5 separate sea voyages (AAT 2021). The Awassi Express incident highlighted that the department did not have the capacity to directly monitor compliance with animal welfare requirements on-board vessels. The department was also not able to identify a pattern of poor performance that might have alerted an effective risk-based regulator to target this exporter earlier to ensure compliance. The inspector-general made observations and recommendations in this regard in the review [Monitoring and reporting during livestock export voyages](#).

In response to the incident the department changed the way they administered AAs and reintroduced more regulatory oversight in the export certification process, swinging the regulatory pendulum back to increased regulatory oversight. Often when a response to regulatory failure occurs, the increase in regulatory oversight can be broad brush and not target the improvement in effectiveness well. This can result in a potentially burdensome approach which, while it may improve effectiveness, may also be inefficient in targeting and controlling risks. This is discussed further in [chapter 2](#).

The AA model was designed to support a risk-based approach to regulation. Unfortunately, the efficiency elements of the reform dominated its implementation. This can be described as a regulatory pendulum swing to less effective regulatory oversight because the essential elements of risk-based regulation were not paid sufficient attention, and risk control was not the focus of the regulator in the reform.

The livestock export framework would benefit from a holistic risk analysis to identify key risks. The critical control points for these risks should also be identified within the detailed business process mapping that the inspector-general previously recommended (recommendation 3 of [Implementation of Moss Review recommendations](#)). The effectiveness of the controls in place should be examined and any shortcomings treated. This should provide a blueprint for ensuring that the department's resources are focused on the most important (effective) elements of the framework.

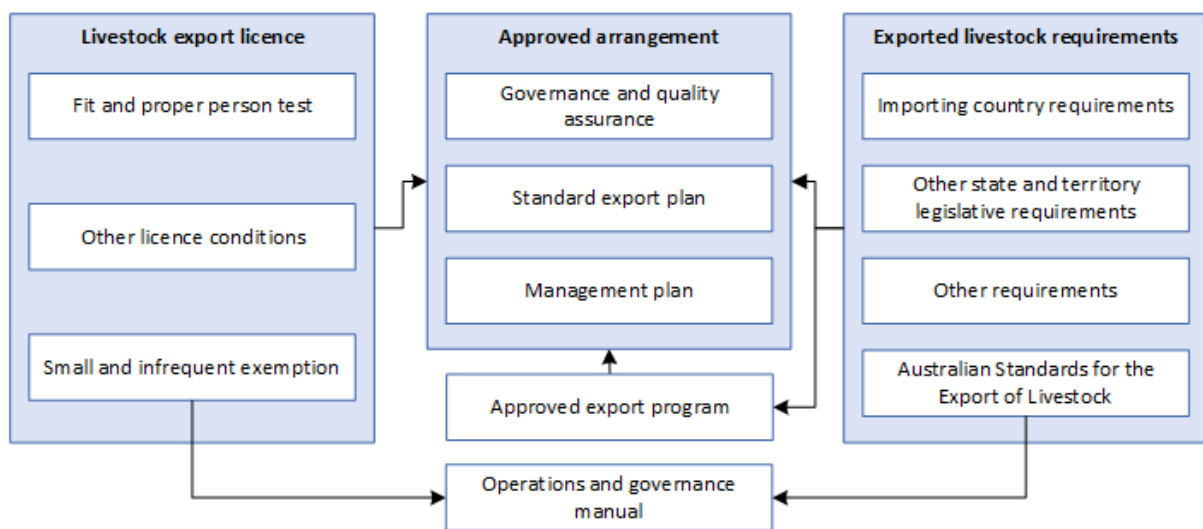
Recommendation 1

The department should conduct a holistic risk analysis of the livestock export framework to identify risks, and the critical control points for these risks in the department's business processes. Once identified the department should examine the effectiveness of the controls in place and undertake treatments to address any shortcomings.

2 Approved arrangements and export licences

To export livestock an exporter must hold a livestock export licence, an AA and an approved export program (AEP). Amongst other licence application requirements, applicants must also prepare and submit their AA for assessment, unless exempt as a small and infrequent exporter. Approved arrangements describe the processes and practices that will be undertaken by an exporter to meet relevant importing country, legislative, ASEL and departmental requirements (DAWE 2021) (Figure 1).

Figure 1 Livestock export licence and approved arrangement requirements



2.1 Livestock export licence

The department is responsible for livestock export policy and regulation including assessing and approving licence applications. An exporter must hold a licence under the *Export Control Act 2020* to export livestock. An export licence is valid from 1 to 5 years as determined by the department. An application for an export licence must include:

- a criminal history check for each person in management or control of the export business
- a financial statement to prove financial standing of the applicant
- a signed statement advising whether the applicant, including the business, has ever been charged with an offence as described in section 372 of the *Export Control Act 2020*
- an AA or an operations and governance manual if exempt as a small and infrequent exporter.

Livestock exporters must meet certain criteria to obtain a licence under section 191(2) of the *Export Control Act 2020*:

- a) if the applicant is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter – the applicant is a fit and proper person;

- b) either:
 - i) all relevant Commonwealth liabilities of the applicant have been paid or are taken to have been paid; or
 - ii) if one or more relevant Commonwealth liabilities of the applicant have not been paid or are not taken to have been paid – the non-payment is due to exceptional circumstances;
- c) the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if granted, would be subject;
- d) any other requirement prescribed by the rules.

2.1.1 Fit and proper person

The fit and proper person (FPP) test is relevant to decisions to grant or renew an export licence and registered establishment. It is also used for appointment as an authorised officer, approved assessor or auditor. In applying the test, the secretary (or delegate) ‘determines whether a person, or a company, is of a trustworthy nature and demonstrates the personal integrity to export agricultural goods from Australia’ (DAFF 2022). The test is applied to the applicant, company directors, key people in management or control, or associates of those people.

The introduction of the *Export Control Act 2020* expanded the definition of an associate. An associate is anyone directly or indirectly concerned in, or in a position to control or influence the applicant’s export activities. This can include people who are partners, advisors, consultants, employers and employees. It can also include any corporation in which the person is an officer or employee or in which the person owns shares. All family members are defined as associates.

Once an application is received the department’s FPP team undertakes research into the applicant and provides an FPP report to the decision maker. The report includes information on:

- any debts owed to the government
- any criminal records – such as convictions, contraventions or penalties of State, Territory or Commonwealth laws
- false or misleading statements made or inaccurate information given in applications
- previous failures to comply with regulatory directions
- refused, suspended or revoked licences, registrations, export arrangements, or appointments
- findings about associates (using the same criteria as applied to the applicant)
- industry issues and any other relevant matter relating to the person’s export business.

2.1.2 Licence conditions

In granting an export licence the department can include a range of conditions under section 192 of the *Export Control Act 2020*. General conditions include complying with reasonable requests by an auditor and carrying out operations in accordance with the Australian Standards for the Export of Livestock (ASEL). ASEL also requires the exporter to provide the department with end of voyage reports. An exporter must also have an approved exporter supply chain assurance system (ESCAS) if the exporter’s operations include feeder and slaughter livestock.

There are licence conditions placed on exporters sending livestock to specific markets, including:

- cattle to the Republic of Korea
- sheep to the Middle East during certain time periods
- sheep, goats and cattle to the Kingdom of Saudi Arabia.

Apart from these conditions the department has not relied on the licence as a primary instrument for prescribing specific outcome requirements.

2.1.3 Compliance and enforcement

The department has a range of compliance and regulatory powers available under the legislation. Compliance and regulatory powers allow the department's secretary (or delegate) to:

- seek additional information for a notice of intention to export
- seek additional information for non-compliance with ESCAS
- refuse to approve a notice of intention to export or ESCAS
- refuse or grant an export permit or revoke an export permit
- give written directions to the holder of the export licence
- refuse or grant, apply conditions to, renew, vary, suspend, revoke, or give directions for an export licence, approved arrangement or registered establishment
- audit an export operation
- issue infringement notices
- enter into enforceable undertakings
- apply to the court for a civil penalty order
- refer criminal matters for prosecution by the Commonwealth Director of Public Prosecutions.

The *Regulatory Powers (Standard Provisions) Act 2014* delivers a standard suite of provisions for monitoring and investigation powers, civil penalties, infringement notices, enforceable undertakings and injunctions, Part 5 of this Act provides for the use of infringement notices.

Unless another Act expressly provides otherwise, the amount to be stated in an infringement notice must be the lesser of one-fifth of the maximum penalty that a court could impose on the person for that contravention, and 12 penalty units (\$2,664) where the person is an individual, or 60 penalty units (\$13,320) where the person is a body corporate. Infringement notices are only available for limited provisions.

There are fault-based criminal offences and civil penalty provisions that apply to contraventions of licence conditions. The civil penalties that apply for contravention of a licence condition are 3,000 penalty units (\$888,000) for an individual and 20,000 penalty units (\$4,440,000) for a corporation. For criminal offences, penalties include imprisonment for up to 10 years and/or large fines (\$444,000 for an individual or \$4,440,000 for a corporation).

For contravening the conditions of an approved arrangement, a person may be liable for a civil penalty of up to 960 penalty units (\$213,000). If convicted of the fault-based offence, a person may be subject to imprisonment for up to 8 years and/or fines of up to 480 penalty units (\$106,560).

Infringement notices are not available for these contraventions.

In addition to this the department has developed and utilises a range of administrative approaches. Administrative measures include the department to:

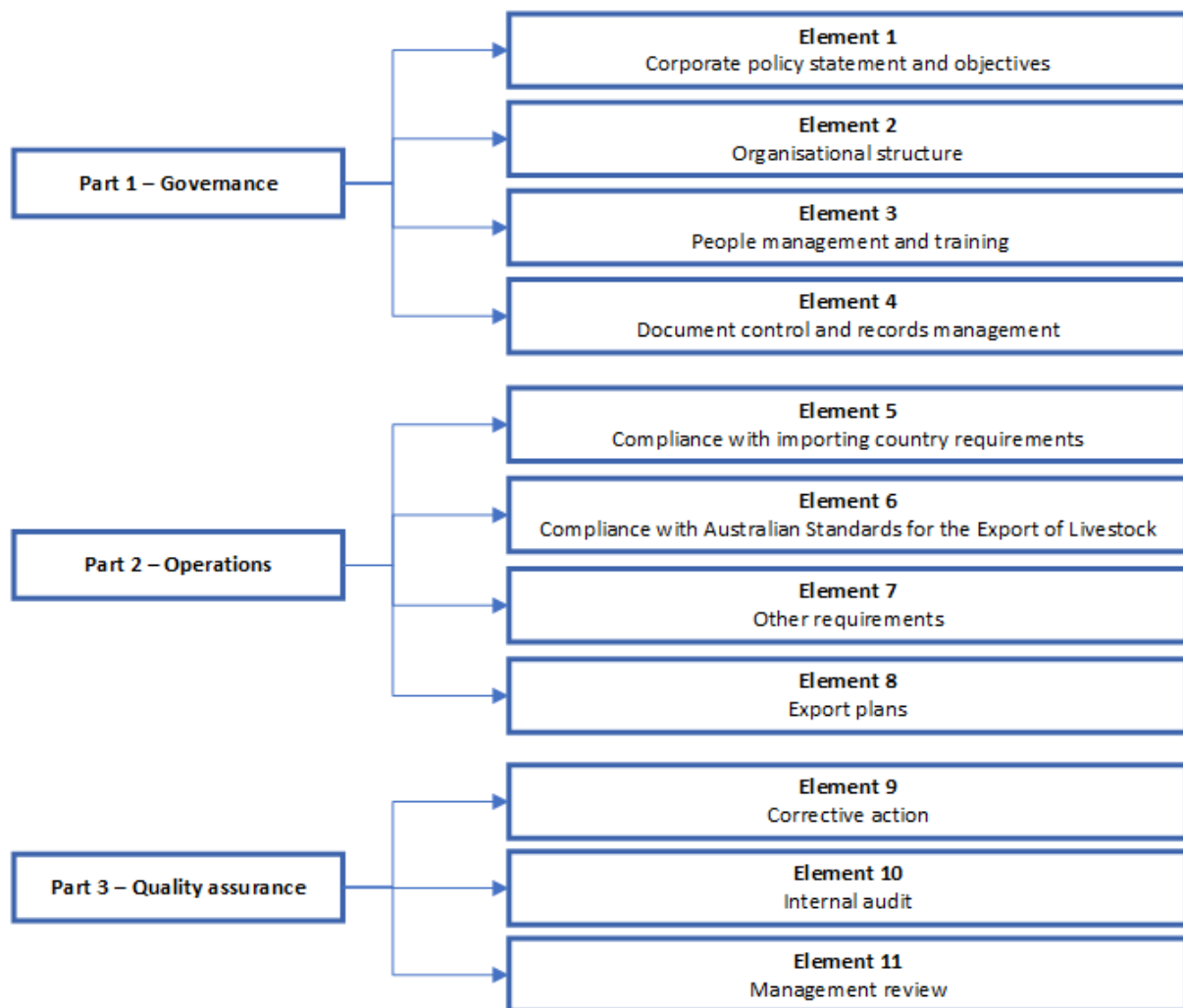
- educate and provide guidance of non-compliant exporters
- apply performance levels
- send warning letters
- apply corrective action to part of an approved arrangement
- reprimand the licence holder.

2.2 Approved arrangement

The exporter must have an AA, or an exemption as a small and infrequent exporter. An AA sets out the exporter's operations to manage the sourcing and preparation of livestock to be exported. An AA allows the export of an unlimited number of consignments and unlimited head of livestock over the licence period. Exporters granted a small and infrequent exporter exemption may only export 400 or fewer livestock in 4 or fewer consignments over a 12-month period.

The department provides guidelines for AAs for the export of livestock. The guidelines have 3 main components that are made up of different elements which an exporter must consider and address when writing their AA (Figure 2). The guidelines are designed to provide a format to assist exporters in developing an AA. They also provide guidance for exporters on internal verification and audits (DAWE 2021).

Figure 2 Approved arrangement guidelines structure



Source: Adapted from the *Approved arrangement guidelines for the export of livestock* (DAWE 2021)

2.2.1 Part 1 Governance

The intended outcome of the governance component of an exporter's AA is that the governance systems of the livestock export business support the effective implementation and ongoing management of the AA.

This part requires the exporter to:

- demonstrate their commitment to the AA
- describe the organisational structure and responsibilities of those in positions of management or control
- ensure employees are competent persons and can perform the tasks they are required to perform
- record and maintain all documentation required to demonstrate compliance with the AA for a period of 5 years, or as required by ASEL and Australian Government legislation.

2.2.2 Part 2 Operations

The intended outcomes of the operations component of an AA are that livestock are sourced, transported, prepared and exported in accordance with importing country requirements, ASEL, the AA and relevant Australian Government and state and territory legislation and other requirements. A number of these requirements may be related and can be addressed collectively.

Standard export plan

The exporter's AA must have a standard export plan (SEP) for each respective market, species, class and mode of transport for which the exporter intends to export – for example, 'slaughter cattle to Vietnam by sea'. A SEP demonstrates how the exporter will meet all relevant Australian Government and state and territory legislation, standards and importing country requirements (DAWE 2021). Where market requirements are similar, the SEPs can be combined into a single SEP for 2 or more markets.

The intention of the SEP is that it is approved once by the department and is used by the exporter to develop consignment specific export plans (CSEPs) that do not require subsequent approvals for individual consignments.

The SEP references supporting documents that an exporter must have to demonstrate that requirements will be met. For example:

- if an importing country required a consignment of sheep to be inspected by an Australian Government accredited veterinarian (AAV) 48 hours before loading, the exporter would need to obtain an AAV inspection declaration as proof of inspection
- if a consignment includes heavy cattle or buffalo, the respective management plans for this must be invoked and operationally executed.
- Exporters are responsible for developing their own SEPs. The department provides a SEP template as a suggestion. Exporters can use the department's template or develop their own.
- Exporters are required to populate their SEP with relevant information relating to importing country requirements from the department's manual of importing country requirements (MICOR) website. They are also required to incorporate the relevant information from ASEL and use it to populate their SEP. The department spends considerable time during the assessment process ensuring that the information has been incorporated correctly.

Approved export program

- The exporter must have an approved export program (AEP). Under section 311 of the *Export Control Act 2020*, an AEP is separate from an AA but is a requirement to ensure the health and welfare of livestock for export. An AEP contains a program of activities (or instructions) that the exporter uses to direct a land-based accredited veterinarian to undertake when preparing a consignment for export, and where relevant, activities for the shipboard accredited veterinarian accompanying a consignment exported by sea. These activities ensure the livestock meet importing country requirements and the health and welfare outcomes required by ASEL.

- Exporters are responsible for developing their own AEPs. The AEP must include accredited veterinarian land-based instructions which correspond to the SEP and operates in a similar fashion – that is, providing a template for inclusion in the CSEP.

The AEP must include how an accredited veterinarian should demonstrate compliance with their instructions and reference supporting documents. An AEP may contain different programs of activities for different importing countries, livestock, and methods of transport (air or sea).

Activities may include:

- examining, testing or treating the livestock
- monitoring the health and welfare of the livestock
- identifying or removing livestock unfit for export
- keeping records of the health declaration.

Any relevant land-based instructions are added to the CSEP and provided to the accredited veterinarian for each consignment.

Consignment specific export plan

The CSEP provides details of a particular consignment of livestock for export. A separate CSEP must be prepared for each consignment. The CSEP is intended to be developed from the exporter's approved SEP and accredited veterinarian land-based templates.

The CSEP details the measures that will be taken that are specific to that consignment. This may include:

- dispensations from the importing country
- specifying date ranges and scheduling for treatments to occur
- noting whether discretionary requirements under ASEL will be invoked
- nominating the AAVs, premises to be used, and transport operators
- naming the vessel and proposed route
- references to the travel and load plans developed for the consignment
- nominating whether any management plans will be invoked for the consignment.

If the exporter is on the provisional performance level or full document inspection, the CSEP becomes part of the document requirements for each consignment. All other exporters may be required to produce these plans during an audit of their approved arrangement, and it is expected to be the document governing the exporter's operations during the preparation and delivery of a consignment.

Management plan

An exporter must have a management plan to export a particular type of consignment or class of livestock. The department may require an issue specific management plan from an exporter whose previous consignments had a notifiable mortality incident.

The management plan must include details of how the exporter will manage the sourcing, preparation and transport (land and sea/air) of a particular class of livestock, and includes:

- details such as the age, breed, species or weight of the livestock covered by the plan
- inspection and segregation
- livestock health and treatments
- feeding and water requirements
- loading and penning arrangements
- livestock monitoring and inspections during the voyage or air export journey.

Exporters are responsible for developing their own management plans. Requirements for management plans are subjective, vary between exporters and not set to any standard. The review heard that this poses problems for stockmen when managing multiple exporter management plans for the same class of livestock on the same shipment. It is also inefficient for RVOs as they must check each exporters' individual management plan to determine how an exporter is obligated to manage a particular class of livestock.

2.2.3 Part 3 Quality assurance

The intended outcome of the quality assurance component of an exporter's AA is that procedures are in place to ensure the business systems used by the exporter are effective and manage risks. This part requires the exporter to have procedures to:

- ensure the AA is fit for purpose through management reviews
- conduct internal audits of procedures to verify compliance with the AA
- identify, assess and manage risks of non-conformance with the AA
- proactively resolve non-conformance with the AA and take timely corrective action.

2.2.4 Assessment and approval

The department assesses the exporter's AA against performance criteria indicators set for each element. Most of the assessment time is spent on the operations portion of the AA. Where the exporter's AA does not meet requirements, the department provides comments which alert the exporter to issues that must be rectified before approval can occur. This process continues iteratively until the department is satisfied that the exporter has met requirements.

2.3 Compliance assurance

Compliance with approved arrangements is assessed by audit. The department audits AAs at a minimum of every 6 months. Audits are conducted in line with international standards ISO/IEC 17021:2011 and A/NZS ISO 19011:2003 by departmental auditors. The audit may result in an adjustment to the exporter's performance level and audit frequency.

The audit covers all or some of the elements of an exporter's approved arrangement. All aspects of the AA are audited during a 12-month period. Non-compliance can be identified in several ways. For example, the audit may include an assessment of non-compliances identified during previous audits and any consignments where non-compliances were identified by RVO inspections. The department may conduct ad-hoc audits in response to identified issues such as importing country complaints, reportable mortalities, continued poor performance or other incidents as appropriate (DAWR 2017).

An exporter may progress through the performance management framework based on compliant outcomes of audits, livestock inspections and documentation verification. However, if issues are picked up during these processes, an exporter may remain at a particular performance level or may regress through the framework and require additional departmental regulatory oversight (DAWR 2017).

The department has begun a full consignment audit pilot program (DAWE 2022b). The program is in response to recommendations from the inspector-general's recommendation 4(d) of the review *Monitoring and reporting during livestock export voyages*, and Moss Review recommendation 7 (Moss 2018).

The pilot program audit occurs during export operations to assess compliance with applicable legislation, importing country requirements and ASEL.

2.4 Observations and findings

A livestock export licence and AA are prescribed export conditions under sections 2 to 3 of the Export Control (Animals) Rules 2021. An exporter needs both an AA and a licence in order to carry out export operations. The AA is not ancillary to the export licence, they are separate regulatory tools. Both have associated conditions under the Export Control (Animals) Rules 2021.

A livestock export licence is the primary instrument that allows an exporter to operate and provides a few conditions that an exporter must comply with.

In practice the purpose of the AA in the context of an export licence application or renewal is to give the department confidence that the applicant for a licence has the capability, capacity, systems and processes in place to be able to be a compliant exporter. However, the approval of a proposed arrangement is separate to the granting of a livestock export licence.

As outlined in section 2.1.1 the department must also apply a fit and proper person test when considering an application for an export licence or renewal. The *Export Control Act 2020* broadened the factors which can be considered as part of determining an application. The test is applied when considering a licence renewal application and, in this context, it provides a useful regulatory tool. For example, if the department moves to a genuine proportionate response model and maintains a comprehensive record of each exporter's compliance performance, the licence renewal could provide a useful mechanism for guiding improved performance if an exporter had not been achieving good compliance levels. This could be achieved by the department setting clear expectations of performance improvements that would need to be demonstrated to support a renewal application. In cases where an exporter was unwilling or unable to make essential improvements, their track record and lack of response could be considered as part of the FPP test. In this circumstance the decision maker could, for example, refuse or more prescriptively condition a licence to address shortcomings.

The broadening of the test to include associates may also provide an opportunity for the department to consider the utility of the test as a mechanism to drive improved performance in complex supply chain corporate structures. This may be useful in circumstances where vertically integrated corporations operate across the supply chain, including as importers and facility operators within the ESCAS. The inspector-general suggests that the department examine this in the context of their review of ESCAS.

Once the licence is granted, the AA is also approved and then becomes part of the operational requirements for the exporter in undertaking their activities. This is intended to ensure that the exporter complies with legislation, ASEL and importing country requirements. A common approach in contemporary regulatory practice is for outcomes-based approaches that allow those being regulated to determine how they might best achieve the outcome required. This was one of the original intents of the reform. In this regard it is useful for the department to be clear on the regulatory purpose, or purposes, of an AA. As outlined, one purpose is to support the considerations of a decision maker in determining whether to issue or renew a licence, the other is to provide an ongoing set of operational requirements that an exporter must follow in undertaking their activities. A lack of clarity on these dual purposes at a given point in time has the potential to result in unnecessary process and effort.

The inspector-general suggests that the department consider a fundamental change in the way export licences and approved arrangements are used as part of the regulatory framework to more clearly identify required outcomes. This would assist in differentiating between required outcomes and the approaches and means by which an individual exporter chooses to deliver those outcomes.

This approach is broadly favoured by the livestock industry. In their submission to this review ALEC noted:

The intention of Approved Arrangements was to allow the focus of DAWE's role to shift to one of risk management, informed by exporter performance, audit and verification. Approved arrangements also allow DAWE's officers to step away from the hands-on management of each consignment to a role assessing an exporter's business operations to compliantly export livestock (ALEC 2022).

Less than 1 year after AAs were mandated, significant changes to the administration of AAs occurred in response to the Awassi Express incident. The notice of intention to export approval process increased with the addition of more requirements and assessments. The inspector-general has heard that the AA application and variation process has become arduous involving detailed assessments and multiple iterations between the department and exporters.

Some applications have been returned to exporters with track changed comments from multiple departmental sources, rather than a single coordinated response. Additionally, new and different issues are understood to have been raised during different iterations, sometimes from different officers in the department. The inspector-general heard of instances where comments appeared to be immaterial to the purpose of the AA, descending into typographical errors and matters of style. The inspector-general considers this to be an inefficient use of departmental and exporter's resources. The department should aim to provide a coordinated and single set of issues to be addressed by an applicant, and not subsequently raise new issues. Tighter guidance and operating procedures should direct officers to important and material matters to consider in their assessments. The department should also consider whether the extensive assessment period (120 days) is appropriate, particularly in light of this review (noting that the department has a client service standard of 40 business days for new arrangements and 20 business days for variations).

The export industry was also critical of the department's change in how AAs were administered:

DAWE effectively returned to a consignment-by-consignment assessment and a culture developed that deterred the identification of issues by exporters as identified problems would more likely result in punitive action being taken by DAWE, rather than reflecting positively against the effectiveness of the system. This resulted in a more time consuming and onerous regulatory model that focused on micro-managing individual consignments rather than regulating at the systems level. Approved Arrangements were originally developed for (ALEC 2022).

The inspector-general heard that there was a significant iteration between applicants for an AA and the department in relation to draft SEPs with a high level of prescription of requirements. Ultimately this means that the core requirements for SEPs are largely the same for a given market.

Accordingly, one element of the department's reconsideration of the export licence and AA framework that the inspector-general recommends is that a range of documents which currently form part of AAs, should be prescribed by the department. This includes SEPs, and the authorised veterinarian's health and welfare declarations. Although other documents such as AEPs are regulated separately from AA, the value in prescribing all, or some elements, of these documents should also be considered. Developing these documents should be done in consultation with stakeholders and may also benefit from industry co-design.

The inspector-general understands that LiveCorp has been working with industry and the department to standardise vendor, spay and pregnancy declarations. The department should adopt and prescribe these standardised declarations. Consideration could also be made to produce a standardised and prescribed package of documents. For example, an SEP, AEP and health declaration could be bundled for feeder cattle to Indonesia. Advantages include:

- Increased efficiency in the AA assessment process for both exporters, in making applications, and the department in assessing them.
- Facilitating high levels of voluntary compliance by having consistent, clear requirements in enforceable language.
- Providing a basis for future increased digitisation of application, assessment, and verification processes (which can support compliance, compliance assurance and efficiency).
- Standardisation is likely to reduce the risk of misinterpretation by industry participants such as stockpersons and AAVs that may work for multiple exporters.
- Allowing exporters to use an off-the-shelf package may enable them to quickly access new markets where there is an agreed protocol with an importing country, and reduce document development and assessment costs.
- Facilitate the department's compliance monitoring efforts.
- The department would need to ensure that MICOR is actively managed to remain up-to-date and accurate.

Clearly for a specific consignment, exporters would still need to ensure that their CSEP was consistent with importing country requirements as import permits are sometimes varied without prior engagement with the department.

Recommendation 2

The department should prescribe a range of documents that are currently part of approved arrangements, such as standard export plans, vendor, spay and pregnancy declarations, health declarations, and elements of management plans.

If recommendation 2 is implemented the importance of the AA as a regulatory instrument for the operational execution of a consignment will change as many of the elements of this would now be prescribed. The primary purpose of the AAs would continue to have 2 facets, though different to current practices. Firstly, to be a point in time assessment as part of an export licence application (noting the small and infrequent exporter exemption) to determine if an applicant satisfactorily demonstrates that it has appropriate governance, systems and processes in place. Secondly, to describe how the exporter intends to ensure that their governance, systems and processes will be managed and quality assured.

In this regard the inspector-general considers that the approach taken with meat export AAs provides a useful model. The meat export AAs are developed in accordance with a guideline that clearly states the outcome sought, performance indicators and, importantly, performance tests. These will be assessed by the department at approval, and by departmental auditors over time. Each performance indicator and test have a targeted element with a reference to the relevant legislation or standard. In this model the exporter would be responsible for maintaining the currency of the AA documentation, including any departmental approved variations and document control. Version control of documents has been a ubiquitous issue identified by both industry and departmental officers.

Departmental auditors would periodically examine compliance against performance tests. This approach should reduce up front assessment time and effort, allow greater flexibility for exporters to determine how they operate their businesses, and use the department's audit capability as the primary mechanism of compliance monitoring and continuous improvement for this element of the framework.

For example, as part of this review the inspector-general was advised of a recent instance where the department examined the documents required for a specific livestock market. The department requested exporters to provide all necessary documentation for several consignments. Some exporters took a long time to assemble and provide documents, while others could not provide all the requested documents. This would indicate that some exporters are failing in their obligation to achieve document control and records management (element 4) of the current livestock export AA guideline's structure (Figure 2), despite the department's extensive assessment and approval process.

Adopting a model in line with the meat export AA is likely to be a better way of ensuring appropriate document and records management. It is an example of a risk that may be more effectively controlled through audit examination against performance indicators of actual exporter practice, rather than focusing on detailed assessment as part of an upfront approval process.

- While there would be occasions when departmental technical officers and RVOs would need to consider how elements of an exporter's AA applied to a specific consignment, their

compliance assurance and risk control would primarily focus on the consignment specific documents, export licence conditions and ASEL.

Recommendation 3

The department should change the approach to livestock export approved arrangements to one that is more aligned to the approach taken with meat export approved arrangements. This includes reviewing the performance indicators to improve clarity and including performance tests and targets that are directly linked to legislation and standards.

The role that the export licence plays in the framework also warrants consideration. It is important as it can provide clarity to licensees on key outcomes to guide their efforts in seeking to comply, and can play a major role in supporting the shift to a genuine proportionate regulatory response model.

In his 2018 review Mr Moss recommended (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).

In the review [Implementation of Moss Review recommendations](#) the inspector-general discussed this recommendation and the department's progress in response noting that the department's response to the Moss recommendation should be considered as 'ongoing' and that:

Accordingly, the department should continue to review the clarity and enforceability of conditions in instruments intended to give effect to ASEL.

The inspector-general considers that the department can make greater use of the export licence (and AA framework as previously discussed) to address this issue. In this regard, and as part of considering options for improving the accessibility of regulatory sanctions, the department should examine whether elements of ASEL should be directly 'called up' through export licence conditions or framed and incorporated as specific, enforceable conditions. The inspector-general suggests that the export licence be the primary instrument for setting outcomes that can be framed as enforceable conditions.

The final element of the department considering the inspector-general's recommendations on changes to the AA and export licence framework is an accessible and proportionate regulatory response regime. The inspector-general is encouraged that the department is working on streamlining the administration of AAs by adopting a risk-based approach to assessments and audits, reducing oversight on areas of lower risk and focusing oversight on areas of higher risk. Recommendations 1 to 4 of this review provides a path forward for achieving increased effectiveness and efficiency in this regard. A critical element of a risk-based approach is the ability to respond effectively when non-compliance is detected.

The inspector-general is aware of encouraging work that the department is undertaking to move towards a proportionate regulatory response model, including the review of the livestock export consignment report (LECR) model that was the subject of a previous review's observations

(IGLAE 2021). However, the inspector-general is concerned that there are several structural barriers to making this transition.

The *Export Control Act 2020* provided a wider range of potential sanctions to the department to utilise. However, these are set at a very high level and are not available to address low level, chronic or systemic non-compliance. For example, under section 184 of the Export Control Act, the contravention of conditions of an AA has a penalty of up to 8 years imprisonment and/or 480 penalty units (\$106,560). There is also a civil penalty of up to 960 penalty units (\$213,120). While infringement notices are available under the legislation, they are not available for the provisions where they would be most useful in supporting a proportionate response model.

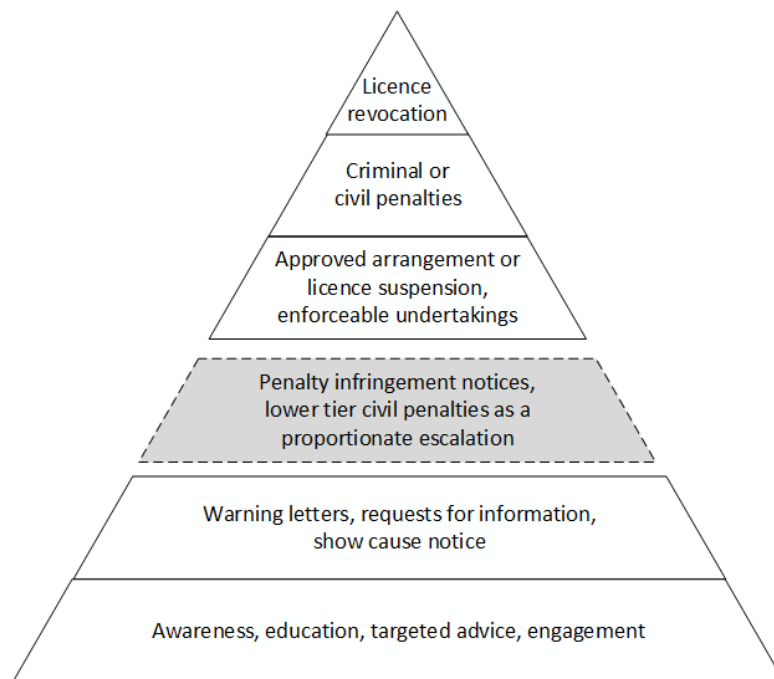
As the RSPCA stated in their submission to the inspector-general's review into *Implementation of Moss Review recommendations*:

Penalties are restricted to either the heavy sanctions of licence suspension or cancellation, or simply the imposition of further conditions on the exporter's next consignment, which exporters treat as the cost of doing business. There are no penalties in between these extremes. Infringement notices, administrative sanctions, or prosecution (for breaches that do not reach the high standards of criminality set out in the Criminal Code, AMLI Act, and Export Control Act) are not available to the regulator (RSPCA 2020).

Unfortunately, the provision of accessible regulatory tools suited to the live animal exports context did not occur with the introduction of the *Export Control Act 2020* or the Export Control (Animals) Rules 2021 and the linkage to the *Regulatory Powers (Standard Provisions) Act 2014*. The primary omission is the capacity to utilise infringement notices and civil penalties proportionate to low level, chronic or systemic non-compliance. The penalties that are in place are appropriate for more egregious non-compliance. The provisions for infringement notices are not linked to likely operational contraventions where they would be most effective. Figure 3 shows where infringement notices would sit within the livestock exports regulatory framework pyramid. The inspector-general considers that this would be most effective if available for breaches of export licence and AA conditions, provided that the department implemented recommendation 4 of this review and ensured that the key outcomes it required of exporters was articulated in enforceable conditions.

In the absence of these regulatory tools the department has been left with little choice but to use administrative mechanisms to respond to low level non-compliances. For example, increased audit frequencies and performance levels. Some of these administrative mechanisms are of limited effectiveness and a burden for both the department and industry in red tape processes.

Figure 3 Livestock exports regulatory framework pyramid



For the more egregious and less frequent non-compliances the department has not utilised the sanctions that are available. The inspector-general is not aware of any examples of where the department has used the sanctions available to it under the *Export Control Act 2020*.

There may be regulatory maturity or other structural impediments to the department seeking to impose stronger sanctions in the face of egregious non-compliance. In the absence of such action stakeholders have reduced confidence in the department as a regulator.

One of the impediments that may exist is a low level of capability and capacity in the use of regulatory powers and sanctions outside of specialist areas in the department. The active consideration of a range of potential sanctions in response to non-compliance is an important factor in developing this capability and capacity with all staff involved in regulation.

There are a range of legislative and regulatory instrument changes that could be made to provide the department with a sanctions and powers regime that would allow it to move towards a genuine proportionate regulatory response regime. This would complement the changes to the AA and export licence framework that the inspector-general has recommended, and would, in combination with the inspector-general's earlier review and recommendations, provide a comprehensive blueprint for the department to improve Live Animal Export's regulatory practice.

Recommendation 4

The department should develop options to provide a more accessible regulatory powers and sanctions regime, linked to clear and enforceable requirements in export licences and approved arrangements. If there are options that are within the power of the secretary, they should be implemented. If there are options that require legislative change, these should be provided to the minister for consideration.

Appendix A: Department's response



Australian Government
Department of Agriculture,
Fisheries and Forestry

25 September 2022

CINDY BRISCOE
ACTING SECRETARY

Mr Ross Carter
Inspector-General of Live Animal Exports
GPO Box 858
CANBERRA ACT 2601

Via email: iglae@agriculture.gov.au

Dear Mr Carter

Thank you for providing your draft report on *Livestock export licenses and approved arrangements* to the department on 24 August 2022, and for providing the opportunity to respond to your findings.

Independent reviews assist us to be a trusted and effective regulator. The department has a significant focus on being a sound regulatory steward and ensuring regulatory arrangements are kept up to date and fit for purpose, an aim that is achieved through external reviews such as yours.

The department is committed to continuously improving regulation of live animal exports and agrees there are more opportunities to improve the administration of livestock export licenses and approved arrangements. The department is progressing several reform projects including through the Live Animal Exports Roundtable Working Group and the government's Busting Congestion for Agricultural Exporters reform package. These include a project that is improving our livestock export performance and compliance framework which will be supported by new digital tools that capture and analyse compliance data. The project aims to ensure our administration of approved arrangements is focused on areas of highest risk.

The department also recognises the importance of uplifting the regulatory culture and capability of its staff. Recently, an inaugural regulatory symposium was held in which 460 staff participated. The export regulatory knowledge hub was also launched at the symposium as a single point of access to knowledge products that support export regulation.

In relation to your observation that the department has not used the sanctions available to it under the *Export Control Act 2020*, I note that the new Act has been in operation for less than 18 months. The department has demonstrated its willingness to take strong action in response to serious non-compliance including cancelling the export licences of three exporters and issuing a reprimand to another exporter within the last seven years. In addition, the department notes that its use of administrative sanctions to address less serious non-compliance can have significant economic impact for exporters, so improved compliance can be achieved without the use of the strongest mechanisms available in the Act. However, to be clear, the department will not hesitate to take appropriate action, including the use of criminal and civil penalties available under the Act, where serious non-compliance occurs.

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In relation to your recommendations, the department agrees or agrees in principle with all recommendations as described in the enclosure.

Thank you again for your information on improving the department's administration of livestock export licenses and approved arrangements.

Best wishes

A handwritten signature in blue ink, appearing to read 'Cindy Briscoe', with a stylized flourish at the end.

Cindy Briscoe

Enc

Enclosed response

Recommendation 1

The department should conduct a holistic risk analysis of the livestock export framework to identify risks, and the critical control points for these risks in the department's business processes. Once identified the department should examine the effectiveness of the controls in place and undertake treatments to address any shortcomings.

Department's response: Agreed

Recommendation 2

The department should prescribe a range of documents that are currently part of approved arrangements such as standard export plans, vendor, spay and pregnancy declarations, health declarations, and elements of management plans.

Department's response: Agreed in principle

The department agrees there would be benefits in standardising many of the required documents used by exporters. The department will consider how the recommendation can be practically implemented.

Recommendation 3

The department should change the approach to livestock export approved arrangements to one that is more aligned to the approach taken with meat export approved arrangements. This includes reviewing the performance indicators to improve clarity and including performance tests and targets that are directly linked to legislation and standards.

Department's response: Agreed in principle

The department agrees with the principle of having clear performance indicators, tests and targets that are linked to legislation and standards.

Recommendation 4

The department should develop options to provide a more accessible regulatory powers and sanctions regime, linked to clear and enforceable requirements in export licences and approved arrangements. If there are options that are within the power of the secretary, they should be implemented. If there are options that require legislative change, these should be provided to the minister for consideration.

Department's response: Agreed

Glossary

Term	Definition
animal welfare	The ability of an animal to cope with the conditions in which it lives and dies as described in the World Organisation for Animal Health (OIE) Terrestrial Animal Health Code.
approved arrangement (AA)	An agreement between the department and an exporter which sets out the operations to manage the preparation and certification of livestock to be exported from Australia.
approved export program (AEP)	A program of activities that an exporter uses to direct an accredited veterinarian to undertake to ensure the health and welfare of the livestock during export activities.
Australian Government accredited veterinarian (AAV)	A veterinarian who is accredited by the department to carry out export operations in approved export programs. Also referred to as an accredited veterinarian.
Australian Standards for the Export of Livestock Version 3.1 (ASEL)	The minimum animal health and welfare requirements the Australian Government expects the livestock export industry to meet throughout the supply chain from sourcing to disembarkation overseas.
authorised officer	An Australian Government official authorised to perform functions in accordance with Australian livestock export legislation.
consignment	A group of livestock that are under export preparation by one exporter and are destined for export, or have been exported, from a single seaport or airport.
consignment specific export plan (CSEP)	A plan that provides details of a particular consignment of livestock for export and needs to be prepared for each consignment.
element	A component of approved arrangements that establishes an outcome and performance criteria indicators.
export permit	A permit issued by the department to enable the export of live animals from Australia.
health certificate	A certificate which states that the livestock meet the health requirements specified by the importing country. Also referred to as a certificate of health and a government certificate.
importing country requirements	Conditions required by an importing country including protocols, import permits, dispensations, or other approved equivalency agreements relating to the health requirements and certification of exported livestock.
livestock	Cattle, sheep, goats, deer, buffalo and camelids, including the young of these animals.
livestock export consignment report (LECR)	A report recording any issues and potential or actual noncompliance identified during livestock inspection and document verification.
management plan	A plan that sets out how an exporter will manage the sourcing, preparation and transport (land and sea/air) of a particular type of consignment or class of livestock.
notice of intention (NOI)	An application made to the department by an exporter to export livestock Australia.
regional veterinary officer (RVO)	A departmental veterinary officer authorised to inspect livestock for export and issue export permits and health certificates.
standard export plan (SEP)	A plan that sets out how an exporter will meet all relevant Australian Government and state and territory legislation, standards and importing country requirements for the market, species, class and mode of transport for which it intends to export.
the department	The Department of Agriculture, Fisheries and Forestry (and its predecessors).
Tracking Animal Certification for Export (TRACE)	An online departmental system that manages the application and approval processes for consignments of all live animals exported from Australia.

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