

6 December 2022

Mr Ross Carter
Inspector-General of Live Animal Exports
18 Marcus Clarke Street
CANBERRA ACT 2601



By email: iglae@agriculture.gov.au

Dear Mr Carter

Communication and engagement in livestock export regulation

This submission concerns Review by the Inspector-General of Live Animal Exports of the performance of functions and exercise of powers by the Department of Agriculture, Fisheries and Forestry (**Department**) in regulating livestock exports under the *Export Control Act 2020* (Cth) and the *Export Control (Animals) Rules 2021* (Cth). It is made by the Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**). The Committee welcomes the opportunity to make a submission.

Given the existence of a live export trade, animal welfare groups are an important and legitimate stakeholder. This is acknowledged in the Department's policy, '*Stakeholder Communication and Engagement Policy—Live animal exports*' (**Policy**).¹ The Committee notes that the review will assess how effectively the Department engages with livestock export stakeholders. In the Committee's view, the Department's engagement with animal welfare stakeholders does not appropriately balance the interests of live exporters and animal welfare, and could be improved by:

1. recognition of independent veterinarians and animal welfare groups as primary stakeholders in relation to non-routine regulatory matters that affect animal welfare;
2. greater transparency regarding the consulted stakeholders and the inclusion of animal welfare input into 'Policy Guidelines and procedures development that affect export operations'; and
3. full publication of the reports of Independent Observers (**IOs**) and associated video footage.

Each of these matters is discussed further below.

1. Stakeholders in relation to non-routine regulatory matters

The Policy identifies the primary stakeholder audience for non-routine regulatory matters as 'affected parties where appropriate'.² It is not clear whether this expression is intended to encompass all of the stakeholders listed in the Policy.

¹ Department of Agriculture, Water and the Environment, *Stakeholder Communication and Engagement Policy – Live animal exports* (19 April 2022).

² *Ibid* 3.

The Committee submits that, at least in relation to a decision that may impact on the welfare of animals, independent veterinarian bodies and animal welfare bodies should be recognised as primary stakeholders. This would allow the Department to receive a range of expert views on non-routine regulatory matters, which should contribute to better decision-making by the Department and increase public confidence in its regulatory activity.

2. Stakeholders in relation to Policy Guidelines and procedures development that affect export operations

The primary stakeholder audience in relation to this category of consultation is listed in the Policy as including:

- live animal exporters;
- peak industry bodies;
- registered establishment occupiers; and
- accredited veterinarians.

There is no reference to animal welfare or community groups in this context. In the Committee's view, the identification of such groups as primary stakeholders would reflect their key role in ensuring appropriate community input into policy and procedure development, and contribute to greater public confidence that animal welfare issues and community expectations are being properly taken into account in that process.

Further, the consultation platforms in this context are stated to include 'stakeholder working group meetings'. The Committee has not been able to obtain any information regarding the composition of the 'stakeholder working group' from searching the Department's website, nor whether this includes the Live Export Animal Advisory Group the Committee has been told exists. In order to contribute to greater public understanding of, and confidence in, the stakeholder consultation process, there should be greater transparency regarding the composition of any stakeholder and advisory groups and the frequency of their meetings, as well as a balance between animal welfare (and community) and regulated entity participation in their membership.

3. Full publication of the reports of the Independent Observers

The Policy states that input from stakeholders other than the regulated entity is not solicited by the Department in relation to compliance and non-routine regulatory matters. This stance highlights the necessity for transparency regarding the IO reports. If there are shortfalls in animal welfare in the context of live export, the only way for animal welfare stakeholders to identify them is if the information is publicly available.

More generally, lack of transparency in the form of incomplete or biased disclosure can only undermine public confidence in the system. The Australian Government commissioned research on Australia's shifting mindset on farm animal welfare, shortly after the publication of footage from live export vessels on *60 Minutes*. That research indicated that public distrust in the live export system can also create distrust in Government regulation of farm animal welfare more generally.³ Such distrust can only be effectively mitigated by full transparency, and is only exacerbated by less than full disclosure, which breeds the suspicion of regulatory capture and bias. Similar concerns were also expressed earlier by the Productivity Commission in relation to farm animal welfare standard setting, which made

³ Futureye, *Australia's Shifting Mindset on Farm Animal Welfare* (Report, 2018) 4.

reference to concerns expressed about the disproportionate influence of industry and recommended transparency in decision-making:

*There needs to be more independence in the standards development process so that outcomes are not overly influenced by the views of any one group, either industry or animal welfare groups. Judgments made to balance conflicting views should be transparent and apply rigorous scientific principles. Surveys of community values for animal welfare should be statistically robust and transparent.*⁴

The implementation of IO reports was intended to provide transparency, reduce distrust and increase public confidence in the regulation of the live export industry.⁵ However, the Department has not made the full reports publicly available. Further, the Department has refused requests to provide the video footage, which is referred to in the full reports.⁶

Vets against Live Export (**VALE**) has obtained some full reports via freedom of information (**FOI**) applications and published them on its website.⁷ Even those reports are very heavily redacted, without proper explanation of why such redactions are required and the Committee query why this is the case. Concerningly, a comparison of three summary reports against the corresponding FOI documents obtained by VALE, shows significant omissions from the summaries as set out in the comparison table included in the **Appendix** to this submission. For example:

- summaries containing unqualified statements in relation to the measured temperatures when the full reports identify problems with the measuring equipment, and/or measurements being taken infrequently or at inappropriate times of day; and
- full reports containing observations of:
 - inability of 50 per cent of cattle to lie down at one time;
 - ventilation problems;
 - death of lambs; and
 - panting and open-mouthed breathing by livestock and heat-stress related deaths,

which were omitted from the relevant summaries.

⁴ Productivity Commission, *Regulation of Australian Agriculture* (Inquiry Report No 79, 15 November 2016) 228.

⁵ Hon David Littleproud MP, Minister for Agriculture and Water Resources, 'Live exports: first Independent Observer report released' (Media Release, 26 November 2018).

⁶ See the Appendix to this submission. See also Calla Wahlquist, 'Live exports: government refuses to release video showing heat stress', *The Guardian* (online, 31 January 2019); Latika Bourke, 'Department of Agriculture refuses to release live export footage', *The Sydney Morning Herald* (online, 31 August 2019).

⁷ Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>.

Further, in some cases, the use of ‘sanitised’ language has been employed, which masks what is really happening and is, at best, misleading. For example, in relation to sheep and cattle exported to Israel in May 2018 on *MV Bader III*, the summary report states in relation to discharge:

*Discharge took quite a lot longer than expected, however the process maintained the health and welfare of animals. The IO noted that normal crew routines are interrupted during discharge which appeared to let a few minor issues arise.*⁸

In contrast, the full report refers to excessive delays and resulting cattle mortality due to mismanagement at unloading.

The omissions from the summary reports have the effect of concealing serious animal welfare issues from public scrutiny and undermining the public confidence in regulation of the industry, which the IO reports were intended to enhance. Further, the failure to produce the video footage means that first-hand information of the condition of the animals is not available, notwithstanding that it is relied on for descriptive purposes in the IO reports. Moreover, not only do the summary reports appear to conceal serious animal welfare issues, in some cases they positively assert that there were no (or only minor) animal welfare issues when the opposite appears from the full report. The lamb deaths on *MV Bader III* are possibly the worst example. The summary report on this topic states ‘[t]he lambs left the vessel with their mothers in strong condition at the end of unloading to go to the feedlot with special care instructions.’⁹ However, the full report reveals that, before the lambs left the vessel, three of the six lambs had died, in one case by trampling.

In addition to undermining public confidence in the Department’s regulation of the industry, failing to be transparent about the serious animal welfare issues noted by IOs can only discourage and diminish stakeholder engagement, with the result that serious animal welfare problems are more likely to occur. The current approach to preparation of summaries undermines the purpose of stakeholder engagement, which is to strengthen protection for animal welfare and increase public confidence.

In the Committee’s submission, proper engagement with stakeholders requires that the full reports of the IOs (without redaction, other than in relation to the identity of the IOs), and any video footage, are made publicly available.

The Committee welcomes the Australian Government’s Budget announcement that it will establish an Inspector-General of Animal Welfare, expanding the office of the Inspector-General of Live Exports, to strengthen animal welfare assurance and increase accountability and transparency for animal welfare in livestock exports.¹⁰ The Committee hopes that this will be able to be complemented by implementation of the recommendations in this submission.

⁸ Independent Observer summary report on *MV Bader III*: Sheep and cattle exported to Israel in May 2018 (Report 3, January 2019) 3 (available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>).

⁹ *Ibid.*

¹⁰ Australian Government, *Budget October 2022-23* (Budget Measures, Budget Paper No 2, 25 October 2022) 44.

Conclusion and further contact

The Committee would be pleased to discuss any aspect of this submission. Please contact the chair of the Committee Robert Sultan at robert.sultan@nortonrosefulbright.com or Committee Member Alan Shaw at alanshaw@outlook.com, if you would like to do so.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Argy', with a long, sweeping flourish extending to the right.

Philip Argy
Chairman
Business Law Section

APPENDIX: COMPARISON TABLE

1. Sheep and cattle exported to Turkey in April 2018 on MV *Maysora*

Information on this topic in summary report ¹¹	Information in full report, omitted from summary ¹²
Food	
<p>The IO reported that there was a problem with the pellets tending to go to powder (fines), which lacked fibre and was unpalatable particularly to the sheep. The CO responded by discarding the powdered pellets if the sheep refused to eat it, incurring losses of 7 tons on one occasion. The livestock export company are aware of the problem, and they have followed up with the feed manufacturer. The issue was appropriately noted and managed by the CO and the corrective actions were appropriate.</p>	<p>The [redacted] was not ... provided a nutritional profile of the pellets or chaff provided. Altering or mixing the chaff and pellets is a significant tool for the [redacted] in managing heat stress related issues in particular.</p>
Temperature measurement	
<p>The IO described that temperature and humidity data indicated that the voyage from Fremantle to Tekirdag had three distinct stages. By Day 9, the wet bulb temperature (calculated from dry bulb temperature and humidity) was close to 28 WBT for both sheep and cattle. The ship zig zagged in the Gulf of Aden to capture some cross wind.</p>	<p>The accuracy of temperature and humidity readings is important because they drive decisions such as feeding regimes, installation of extra fans and zig zagging vessels to capture cross winds. The Dry and Wet bulb temperatures recorded at some stages in this voyage were questionable and led the [redacted] to clean each of the hygrometers. They need regular cleaning to maintain their accuracy and the [redacted] advised that they have ordered new and improved units. Four of the hygrometers were replaced during the voyage with spare new ones, but the new ones were worse than the old ones and clearly showed questionable readings and so the older versions were reinstalled after thorough cleaning.</p> <p>A Whirling Hygrometer was described to me by [redacted] as a portable and accurate measuring device for both wet and dry bulb temperatures. This would enable the fixed devices to be checked and also enable the</p>

¹¹ Independent Observer summary report on MV *Maysora*: Sheep and cattle exported to Turkey in April 2018 (Report 1, January 2019) (available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>).

¹² Veterinary Officer, Department of Agriculture and Water Resources, Report on Livestock Vessel *Maysora* V114: Fremantle to Tekirdag (available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>).

	temperatures and humidity to be measured at any location.
Welfare	
[Not mentioned]	In answer to the question “Can 50% of the animals lie down at any one time?” the response was: “Mostly, Refer to videos and ASEL calculation”.

2. Sheep and cattle exported to Kuwait in May 2018 on MV *Al Messilah*

Information on this topic in summary report ¹³	Information in full report, omitted from summary ¹⁴
Temperature measurement	
There was only one dry and wet bulb thermometer per deck. Temperatures were recorded once daily by the crew between 10:00 and 11:00 am and the reports were forwarded to the bosun, the CO and the Master.	... due to the reading of only the one fixed thermometer/deck, and the reading only once a day at the same time, it must be concluded that the official recordings for each deck are unlikely to be the hottest temperature experienced during any particular day.
Heat stress	
Although there was an increase in respiration rates when travelling north of the equator, no animal was observed panting or demonstrating any signs of respiratory distress.	<p>From day 3...there was a noticeable increase in the respiration rates, but not accompanied by open mouthed, tongue lolling behaviour ie progressing to Pant Score 2 and 3. Even though this increased respiration rate looked to be energy draining, most just sat or laid down and relaxed... I identified less than 30 animals that could have been given a Pant Score of 2.</p> <p>Humidity levels were higher in the lower decks 4,3 and 2 and this is there the increased respiratory rates were most obvious.</p>

¹³ Independent Observer summary report on MV *Al Messilah*: Sheep and cattle exported to Kuwait in April 2018 (Report 2, December 2018) (available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>).

¹⁴ Available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>.

3. Sheep and cattle exported to Israel in May 2018 on MV *Bader III*

Information on this topic in summary report ¹⁵	Information in full report, omitted from summary ¹⁶
Cause of death	
Most of the sheep deaths were due to diseases of healthy animals.	The sheep mortalities were a mixture of things but mostly due to Enterotoxaemia. This being a disease of healthy sheep is representative of the good condition the sheep arrived in. There were a few deaths due to Innanition [sic] but surprisingly few.
Ventilation	
Crew and animals encountered elevated temperatures and high humidity from the third day of the voyage out of Fremantle. There were no issues with the ventilation during the voyage.	<p>Daily checklist 8/5/2018</p> <p>Question: "Is the ventilation in the pens adequate?" Answer: "It was reduced today then ship began to zig zag to ↑ airflow which worked well"</p> <p>Daily checklist 9/5/2018</p> <p>Question: "Have there been any issues with the ventilation system?" Answer: "Y. Fan in Duct B24 broke down replaced and A32 having intermittent problems—fixed quickly when alarm goes off".</p> <p>Daily checklist 10/5/2018</p> <p>Question: "Is the ventilation in the pens adequate?" Answer: Y. Fans have been added to the big ram pens"</p>
Lambs born during voyage	
The lambs left the vessel with their mothers in strong condition at the end of unloading to go to the feedlot with special care instructions	There were 6 lambs born on the voyage and 3 left the ship in very good condition... There was one orphan where the mother could not be found and despite lots of care and treatment by the [redacted] this lamb died. There was another that was moved out of the main pen after birth and its mother tied close to it. By the time the crewman was ready to move it the lamb disappeared into the pen and was trampled. There was another that never did well even

¹⁵ Independent Observer summary report on MV Bader III: Sheep and cattle exported to Israel in May 2018 (Report 3, January 2019) (available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>).

¹⁶ Veterinary Officer, Department of Agriculture and Water Resources, Report on MV Bader III Voyage (LNC-010116 and LNC 010117) (available at Vets Against Live Export, *Independent Observer Reports* (Web Page) <<https://www.vale.org.au/io-reports.html>>).

	though its mother was with it in the nursery pen and died.
Pen problems	
[Not mentioned in summary report]	<p>There is a design fault with the Bader cattle pens that allows sleeping cattle to slide their heads under the bottom rail of the pens. [redacted passage] The other causes of cattle death ...</p> <p>...</p> <p>Too much room for cattle allows them to sleep totally on their side which with the mentioned lower rail issue on the ship can lead to stuck head problems. There were 20 or so cattle at least that got their heads caught and were freed.</p>
Heat stress	
The vessel's crew, AAV and Stock people managed the health and welfare of animals well. [No mention of heat stress]	<p>There were stress indicators in the Sheep. The voyage encountered Equatorial type conditions from the third day out of Fremantle with WBT's [sic] of 31 degrees for most days with 34 on the worst day. The sheep often were panting and at times there was open mouth breathing....There were</p> <p>4–5 levels of respiration seen on this voyage.</p> <p>1/ temp around 26 degrees wbt normal respiration</p> <p>2/ temp around 28–29 WBT there was some panting and increased respiration in a few sheep particularly the big merino rams</p> <p>3/ temp 30–32 degrees wbt. There was a general increase in panting to around 25% of sheep and there were a few sheep that started to open mouth breathe by CHOICE. The open mouth breathers would always stop this when you walked past making it more voluntary than not.</p> <p>4/ temp 32–34degrees WBT. Here like above there was an increase in panting and voluntary open mouth breathing. About 1% of the sheep max at 24 WBT were voluntary open mouth breathing. They were always able to stop</p> <p>5 / 35 degrees plus WBT we did not see. Also we at no time saw severe heat stress where may [sic] sheep together were open mouth breathing and where they continued</p>

	<p>to show this more severe behaviour without being able to control it.</p> <p>...</p> <p>There were 2 spikes of cattle deaths noted ... The first of these is after the severe heat spike and the cyclonic storm just before Jeddah. Here there appear to have been 2–3 deaths where no cause other than likely heat stress can be found. One of these was a small pastoral bull.</p> <p>...</p> <p>At no stage did I see definitive open mouth breathing in any of the cattle. Even at 34 WBT. The only obvious sign in the real heat in the cattle was they reduced their food intake and increased their water intake.</p> <p>...</p> <p>There were some very hot and humid conditions and the stock coped with them very well. Even when the WBT reached 34 degrees at 92% humidity there was no dramatic signs of heat stress</p> <p>There was an increase in panting and open mouth breathing but not to any severe level. The sheep</p> <p>coped very well in the conditions.</p> <p>...</p> <p>There was a small spike in cattle mortality after the heat spike and at unloading. This could be related to the heat for the first jump and the second was more mismanagement.</p>
Discharge	
<p>Discharge took quite a lot longer than expected, however the process maintained the health and welfare of animals. The IO noted that normal crew routines are interrupted during discharge which appeared to let a few minor issues arise.</p>	<p>The period of madan started toward the end of the journey and with a high level of the Islamic faith on the ship and especially the wharf there were issues with the unloading of the stock. On the ship they were fine but due to other factors the overall unloading took much longer than expected. 4 days more. [Note the reference to cattle mortality due to mismanagement at unloading in the previous section]</p>