

02 December 2022

Inspector-General of Live Animal Exports
Department of Agriculture
GPO Box 858
CANBERRA ACT 2601

Via: Have Your Say website

Dear Mr Carter

Submission to the review of communication and engagement in live animal export regulation

The RSPCA appreciates the opportunity to provide feedback to inform your review of communication and engagement in live animal export regulation.

As Australia's most trusted animal welfare charity, the RSPCA has engaged with regulators, governments and the community for more than 150 years to improve animal welfare. Several members of our Science and Policy team meet periodically with various branches within the Department of Agriculture, Fisheries and Forestry (the Department). We are appreciative of the availability and overall responsiveness provided by Departmental staff which enables a productive working relationship. Yet the RSPCA remains concerned that the Department continues to grapple with conflicting roles of trade facilitator and animal welfare regulator.

The RSPCA has recommended in past submissions that an independent statutory authority dedicated to animal welfare is required to mitigate the Department's conflicting roles and competing priorities. Understanding that this is out of scope of your review, our feedback and recommendations highlight opportunities for the regulator to foster improvements across three key areas in stakeholder engagement and communication on live export regulation - transparency, objectivity and timeliness.

The RSPCA opposes the export of live animals because the trade results in extensive suffering, poor welfare and unacceptable death rates for animals. While the trade continues, we are committed to productive engagement and effective two-way communication with regulators to identify areas of risk and improve the welfare of all animals that are exported.

Please do not hesitate to contact our Senior Policy Officer, Joanne Webb, at jwebb@rspca.org.au for further information or clarification on the matters addressed in this submission. We would be available to meet with you to progress discussions.

Yours sincerely

Dr Suzie Fowler
Chief Science Officer
RSPCA Australia

RSPCA Australia Inc.
ABN 99 668 654 249

P 02 6282 8300
F 02 6282 8311
E rspca@rspca.org.au
W rspca.org.au

PO Box 265
Deakin West ACT 2600



1. Transparency

Greater transparency is needed to improve stakeholder communication and engagement in Australia's live animal export regulation given the public sentiment against the trade, and the degree of animal suffering inherent to the trade. The RSPCA continues to be concerned by a lack of transparency on the regulation of live export. This lack of transparency spans access to data and voyage information, animal welfare science, as well as a lack of procedural transparency on how the severity of reported regulatory breaches are evaluated and enforced.

1.1 Limitations on the provision of information

The *Export Control Act 2020* restricts the disclosure of what is considered protected information. The term "protected information" is defined in section 12 of the Act to mean "information obtained under, or in accordance with" the *Export Control Act 2020*. Our experience is that this provision applies to industry data collected by the Department in its role as regulator of livestock exports.

The [Export Control Legislation Amendment \(2021 Measures No. 1\) Rules 2021](#) amended the [Export Control \(Miscellaneous\) Rules 2021](#) in December 2021 by including a new section 3-1. With effect from 8 December 2021, section 3-1 provides as follows:

- i. The Secretary may publish, or otherwise disclose, protected information if:
 - (a) it does not include personal information about any individual; or
 - (b) all personal information about an individual included in the protected information is de-identified.

Nevertheless, in our experience the Department continues to utilise issues of privacy and confidentiality to mask what we consider potential breaches of animal welfare regulations within live export. This feeds into our concerns about objectivity in Australia's live export regulatory settings, which are outlined in section 3 of this submission.

1.2 Lack of transparency on data and other information

There is a fundamental problem with access to information and visibility of data in Australia's live export regulations. The primary sources of data are live exporters and rural research and development corporations (RRDCs), which are largely protected, that come into play when stakeholders, such as animal welfare organisations, question information or request additional details. In our experience, the Department assumes an obligation of confidentiality in defence of the industry, as opposed to realising its obligation to disclose information and take regulatory action in the interest of the Australian public. For example, the Department's webpage titled "[ESCAS investigations](#)" states that:

We do not release footage or images of these investigations. This type of content may fall outside accepted community standards. We have a responsibility to everyone who may access this information, including children. We want to ensure they do not see images they might find upsetting or disturbing.

We acknowledge that much of the footage of animals in the live export trade is disturbing and agree that much of the footage would fall outside of community expectations on animal welfare. However, argue that transparency and objectivity is a responsibility of government and its departments, as well as in the public interest and vital to the trade's social licence. Selectively deciding which images and footage to share publicly lacks transparency and objectivity, and can be perceived as masking the reality of an inherently cruel trade. Disclosure of information to stakeholders is in the public interest. Not doing so demonstrates a selective release of information that favours industry interests at the expense of animal welfare and public interest, and inhibits regulatory improvements.

Further demonstration of this is that the RSPCA has a matter pending with the Information Commission which we initially applied for in March 2019 in accordance with s 29 under the *Freedom of Information Act*

1982. Our application was for access to footage taken onboard by an IO in 2018. rejected multiple times and access was refused on the grounds that information was commercial in confidence, and that releasing it would be “contrary to public interest (s.47G)”. This matter is pending a decision from the Information Commissioner as we challenged that the disclosure of this information was contrary to public interest. Our position is that this matter is of significant public interest as evidence of potential animal welfare breaches given community concern for the treatment of farm animals (FutureEye, 2018).

Greater transparency of data and the methodologies deployed to collect data is needed. Public trust in the industry cannot be persuaded without transparency of the results of such research and data collection, and data should be accessible to all relevant stakeholders. Impartiality and independence are vital, yet because the majority of animal welfare scientific research in Australia is controlled by the livestock industries, transparency and access is limited to a select group of stakeholders as opposed to being impartial and independent. Furthermore, the RSPCA notes the Australian Bureau of Statistics intention to stop collecting agricultural data, we are concerned that this lack of transparency and impartiality will deepen.

The RSPCA acknowledges that the Department of Agriculture, Fisheries and Forestry has a [data and analytics project underway](#) which focuses on building data capability through the development of a digital and integrated reporting model to connect data across the supply chain. However, we do not see that the outcomes of this project will result greater transparency on animal welfare matters while the issues of privacy and confidentiality prevail.

1.3 Management of non-compliance

Information provided by the Department on its “[Compliance investigations](#)” webpage clearly outlines how it investigates potential non-compliance reports. In addition, the provision of the *Guideline for Management of Non-compliance - Exporter supply chain assurance system (ESCAS) for feeder and slaughter livestock 2012* (the Guideline) clearly articulates how issues are classified. We note that the Guideline is currently under review and highlight that there has been no public consultation on this review which would be appropriate given its relevance to multiple stakeholders involved in live export regulation.

The RSPCA notes that information about freedom of information requests and outcomes were previously published on the Department’s website. This information is no longer publicly available. While we understand the website has been updated, this information should be archived and remain publicly available. For full transparency, such historical information should be available online so it easily accessible by stakeholders. Not publishing this detail demonstrates a lack of transparency.

It is vital that the Department communicates to stakeholders how it evaluates the severity of potential breaches against animal welfare science. This detail has very real consequences for animals. For example, animal welfare science shows that severe heat stress is demonstrated in sheep by open mouth panting. Heat stress was reported on 60% of the live sheep voyages to the Middle East during Northern Hemisphere Summers in the three-year period spanning 2019-2021, and 100% of those voyages accompanied by IOs were reported to have sheep open mouth panting (Department’s Draft Review Report, 2022).

There must be a transparent process by which the department independently assess all reports and data collected on ships, without sanitisation, to ensure a thorough assessment of the experience and welfare of the animals on board. Such assessments, and the methodology for how they are made and decisions on where breaches may have occurred must be made public to allow for appropriate scrutiny of poor welfare practices and ensure trust in the department.

1.4 Editing Independent Observer (IO) reports

Greater transparency is needed regarding IO reports. Currently, the Department's webpage titled "[Independent observer reports](#)" overstates the role and volume of IO reports within Australia's live export regulatory framework. It describes IOs as providing detailed reports from loading to completion of discharge, and that these reports assist with "the effective regulation" of the trade. This statement is misleading because it insinuates that IOs are a regular inclusion on live export voyages. In reality, very few IOs have been deployed on recent long-haul voyages, are no longer deployed on short-haul voyages and are only deployed based on a risk-based approach. This information should be articulated so as not to mislead the reader.

The RSPCA acknowledges the preference for consistency in report format and terminology, but not at the cost of accuracy. Greater detail on the review process of IO reports should be disclosed to stakeholders. The Department should publish the process or guideline it applies to editing IO reports, and specifically outline what can and cannot be edited from IO reports that are summarised and published on its site. Ideally the only information that should be modified is the redaction of any private information. No reason is provided as to why this is not the case. Evidence of important animal welfare details being edited out of IO reports has been substantiated publicly by Vets Against Live Export (VALE) in a suite of reports that review IO reports and information obtained under freedom of information laws to analyse voyage reports and highlight discrepancies between original IO reports and those that have been summarised and published by the Department.

The RSPCA notes that the website states that the Department applies "a rigorous quality assurance process" to each observer report. However, the RSPCA has not received an explanation and/or documentation to evidence this assurance process.

2. Objectivity

The RSPCA continues to be concerned that the Department has competing priorities and conflicting roles which are resulting in a lack of objectivity in the provision and assessment of information within live export regulations. We acknowledge that the Department has implemented several governance arrangements to address such conflicts since the Moss Review (2018). However, in our experience it is still grappling with its conflicting roles of trade facilitator and animal welfare regulator.

2.1 Lack of objectivity on public information

Overall, the Department's webpages that refer to live export provide a relatively sanitised perspective of live animal exports. There are multiple examples of this, such as the "[Exporting live animals page](#)" which articulates the objectives of the Australian Standards for the Export of Livestock (ASEL) and the Exporter Supply Chain Assurance System (ESCAS) under the section about standards and assurance systems for the export of livestock. Yet the information does not clearly articulate the limitations of either, such as the ESCAS only covering production animals, or that all animals live exported are outside the jurisdiction of Australian standards and laws at international destinations despite the existence of ESCAS. Similarly, the pages about other animals that can be exported, such as horses, native animals and companion animals should also articulate that there are no Australian standards for the export of these animals and that Australia's animal welfare laws do not apply to animals at international destinations.

The provision of factual information on the department's website is vital as an initial point of information for multiple stakeholders. Greater objectivity is needed to improve transparency and inform stakeholders with factual information.

2.2 Greater responsiveness to stakeholder feedback

The RSPCA acknowledges that the Department of Agriculture, Water and the Environment published the *2022-08 Stakeholder Communication and Engagement Policy* in April this year. This document clearly describes the circumstances, practices and platforms that the Department applies to engage with live export stakeholders. In addition to this, there are opportunities to improve routine and non-routine feedback loops from stakeholders in live export regulation.

The RSPCA meets periodically with several branches within the Department and appreciates the availability and exchange of information. Given the RSPCA's heritage and public sentiment as Australia's most trusted animal welfare organisation, we are relatively satisfied with the level of direct engagement with the Department.

There is also an opportunity for the Department to foster greater inclusion for a more diverse range of stakeholders. An example of where the Department has demonstrated greater engagement with a broader range of stakeholders included the second round of its public engagement on the Draft Report on the Review of Live Sheep Export to and through the Middle East during the Northern Hemisphere Summer (2022). In February 2022, a delegation of Department staff visited Western Australia (WA) to consult with local exporters, farmers and animal welfare organisations. The RSPCA Australia provided the contact details of WA-based animal welfare charities, which the Department invited to an informal round table discussion. The round table was cut short due to time limitations and the subsequent final report did not incorporate any of the additional feedback provided by those stakeholders. However, this example highlights an opportunity to improve stakeholder engagement and foster a more diverse range of feedback.

The provision of a formal stakeholder register for stakeholders would foster greater objectivity regarding the stakeholders consulted. A stakeholder interest register would enable stakeholders to lodge their interest in engaging in more formal consultation initiatives and equip the Department with contact details and stakeholder profiles to help inform its consultations. An initiative like this would improve communication and mitigate the prevalence that industry has traditionally had as a Departmental stakeholder. This could also better equip the regulator with a list of stakeholders to draw on for feedback on live export regulations, and increase objectivity.

Regarding non-routine interactions with stakeholders, we note that the *2022-08 Stakeholder Communication and Engagement Policy* outlines in Appendix A, the Stakeholder Engagement Circumstances and Platforms, states that (page 3):

Third parties and other stakeholders may provide a submission to the department for consideration on any regulatory matter. However the department will use its discretion when deciding to respond to, or action, any submission it receives as it deems necessary.

In addition, the *Guideline for Management of Non-compliance - Exporter supply chain assurance system (ESCAS) for feeder and slaughter livestock 2012* (the Guideline) which is under review states that (page 2):

...Substantiated information provided from other sources such as... animal welfare organisations... may also be considered...

Given the inherent risks to animal welfare and the level of public interest in live export, the RSPCA recommends that information provided by animal welfare organisations should be considered, addressed and responded to in a formal, efficient and timely manner. Information about breaches from any source should be responded to with priority and investigated as a rule, not as a discretionary consideration.

2.3 Lack of objectivity on non-compliance

The [Compliance statement for the export of livestock](#) (December, 2021) provides clear purpose for the Department's role in regulatory compliance as articulated in four key points, to: help regulated entities understand their obligations; help regulated entities meet their regulatory obligations; support regulated entities who comply with requirements; and provide clarity on the actions it takes to address non-compliance (page 6). However, it is missing a vital component required to foster objectivity across different stakeholder groups. The Department should also find purpose in helping stakeholders report regulatory non-compliance. While the Statement acknowledges that compliance information comes from a variety of sources including reports from third parties such as animal welfare organisations, our experience has overwhelmingly been that reports and requests for information to substantiate breaches is met with refusal.

3. Timeliness

The RSPCA is concerned by a lack of timeliness on the provision of information regarding the regulation of live export. A significant lack of timeliness on the provision of information to stakeholders spans industry data, Parliamentary reports, independent observer (IO) reports, voyage reports, response times on complaints or reports of regulatory breaches, and published regulatory decisions. We outline multiple examples of these issues which magnify the lack of transparency on data about the trade and highlight a lack of accountability in communicating vital information to stakeholders in a timely manner. These examples support our concerns about the regulator's objectivity as discussed above, with information being withheld from the community.

3.1 Lack of industry data and published Parliamentary reports

No animal welfare, voyage or industry data has been published for the past year. As at 30 November 2022, the last reports on the number of animals exported from Australia, the number of animal mortalities recorded for exports at sea, and any subsequent actions taken by the Secretary are dated 31 December 2021. Despite sustained community concern about live export (DigitalEdge Poll, 2022) and the requirement under the *Export Control Act 2020* for data on the live export of livestock to be reported to Parliament every six months, no data has been published in 2022.

3.2 Lack of IO reports and voyage reports

No IO reports have been published for the past two years. Understanding that IOs were excluded from live export voyages in 2021 due to COVID-19, an Export Advisory Notice was issued in May 2022 indicating that Australia's IO program had re-commenced. However, the last report published on the Department's website is dated 20 June 2020.

The IO program and subsequent reports are crucial to providing community assurance. The RSPCA calls for more timely reporting and is concerned that the review process of these reports is contributing to the lack of transparency as discussed earlier. We are also concerned that the lack of IO reports may be masking animal welfare issues that would otherwise generate community backlash if reported on. Timely information is vital to expose the animal welfare issues onboard live export vessels, enable regulatory controls and inform stakeholders.

3.3 Unacceptable response times

Over the past few decades, the RSPCA has made multiple requests for information and reported multiple issues regarding animal welfare concerns and regulatory breaches within live export. Our experience has consistently been that response times are slow given the potential, relative risk to the animals involved.

Moreover, the majority of responses have been met with questionable reasoning not to disclose information and further barriers to enforcing regulations regarding animal welfare.

For example, in March 2019 the RSPCA applied for the release of information that was recorded on a live export vessel to the Middle East. Our application was rejected multiple times and after each rejection, we refined the request. After three attempts, we then received a notice estimating the charges that the RSPCA would incur to access the information in accordance with s 29 under the Freedom of Information Act. Following that, we were refused access in September 2019 on the grounds that the footage was “business information” and that releasing it would be contrary to public interest (s.47G).

These examples highlight the lack of timeliness, exacerbate the lack of transparency and point to a lack of objectivity in how information is released and stakeholders are engaged. Specifically, the RSPCA is concerned that stakeholders who wish to substantiate animal welfare issues in live export face multiple barriers to receiving that information including the timeliness, potential expense and bureaucratic red tape. These issues subordinate the informational preferences of some stakeholders over others.

3.4 Lack of timely outcomes on ESCAS investigations

Fifteen ESCAS-related complaints or reports have been raised since 2020, with ten of these still under investigation ([DAFF website](#) 2022). Furthermore, no ESCAS non-compliance assessments were completed between 1 April to 30 June 2021 ([ESCAS regulatory performance report](#), 2021). No rationale nor reason has been provided. The RSPCA believes greater priority, accountability and proactive communication is required to progress ESCAS investigations because of the inherent risks to animal welfare and the opportunities for regulatory improvements.

3.5 Greater disclosure on regulatory decisions

The RSPCA commends the Department’s disclosure of reasons for “significant regulatory decisions” on its website. Publishing this information will provide greater transparency on the regulatory approach applied to live export in Australia and will help inform stakeholders.

We note however, that no regulatory decisions have been published since June 2020. No rationale nor reason has been provided for this lack of timeliness on publishing regulatory decisions. The RSPCA is concerned that the lack of information on regulatory decisions may be masking regulatory failures resulting in animal welfare issues that would otherwise highlight regulatory failures and opportunities for regulatory improvements to better protect animal welfare in the live export trade.