**PUBLIC STATEMENT OF REASONS**

On 26 January 2024, the Department of Agriculture, Fisheries and Forestry (**department**) received a Notice of Intention (**NOI**) to export given by the **exporter** in relation to a consignment of sheep and cattle onboard MV Bahijah under paragraph 8-6(2)(b) of the *Export Control (Animals) Rules 2021* (the **Rules**).

I am a delegate of the Secretary for the purpose of paragraph 8-6(2) of the Rules.

On 5 February 2024, I decided to refuse to approve the NOI to export.

I gave careful consideration to the NOI and all of the supporting information including responses received from the exporter to the department’s invitations to comment. I also took into account all of the information and submissions received from third parties, to the extent they were relevant, and whilst those third parties did not have any legal or financial interest in the NOI, I considered those submissions to the extent they were relevant.

On balance, I was unable to be satisfied that all of the requirements in paragraph 8-6(3) of the Rules were met. I was therefore unable to approve the NOI to export the consignment under paragraph 8-6(2)(a) of the Rules.

I understand the strong interest in the matter – both from the agriculture sector at large and from an animal health and welfare perspective. Below, I provide a public statement of reasons for my decision.

**The initial consignment & subsequent Notice of Direction**

On 5 January 2024, the department granted an export permit and health certificates to the exporter for approximately 2,000 cattle and 14,000 sheep. The initial consignment was loaded and departed from Fremantle intending to travel directly to Israel through the Red Sea.

On 12 January 2024, the exporter informed the department that the MV Bahijah would be diverted from entering and travelling through the Red Sea due to the region’s deteriorating security situation. The exporter’s preferred option was to re-route the vessel and go around the Cape of Good Hope. However, this was dependent on obtaining approval to load foreign fodder, safety considerations and obtaining new import permits. Alternatively, the exporter would need to consider other potential contingency markets.

Later, also on 12 January 2024, the exporter requested approval to load foreign fodder and veterinary medication enroute around the Cape of Good Hope. The department requested further information about the remaining provisions onboard the vessel and the nature and source of the foreign fodder to assess the request in accordance with the department’s “Loading foreign sourced fodder onto a vessel carrying Australian livestock policy”. According to that policy, feeding foreign fodder to Australian livestock immediately changes an animal’s health status.

On 13 January 2024, the exporter provided most of the requested information sought the previous day. On the same day, the department requested the outstanding information. In response, the exporter provided some further information, including an updated contingency plan, and information about the vessel’s movements.

On 15 January 2024, the department followed up on some further outstanding requested information it had sought and enquired as to why the exporter’s agreed contingency plan to access alternative markets in the Middle East could not be enacted. The department also noted that it had not approved the vessel to load foreign fodder. The exporter replied to the department the same day with most of the information that was requested.

On 16 January 2024, the exporter confirmed that the Israeli competent authority would not accept the proposed plan to source foreign fodder from certain markets and that it was looking at potential options to load fodder from alternative foreign markets or utilise other contingency markets to discharge the livestock.

On 17 January 2024, in accordance with its obligation to give procedural fairness, and after considering the uncertainties, the department issued a notice of intention to the exporter that it was considering issuing a direction that the initial consignment be returned to Australia. This was due to the difficulties the vessel was having with the ongoing conflict in the Red Sea and because of animal health, welfare and contingency concerns held by the department. On 18 January 2024 AWST / 19 January 2024 AEDT, the exporter provided a response to the notice of intention to issue the direction, including supporting evidence in relation to import permits, written permission from the Israeli competent authority to load foreign provisions from a southern European nation, a contingency plan, details about fodder, chaff, bedding and veterinary medication remaining onboard, and details about what was proposed to be loaded for the remainder of the voyage.

On 19 January 2024, the department finalised its consideration and issued a direction to the exporter pursuant to section 222 of the *Export Control Act 2020* (Cth) (**Act**) to return the consignment to Australia. The direction was issued because the department had assessed that there was insufficient information to enable the department to issue approvals for alternative contingency markets, especially given the risks the delegate identified in respect of the nature and timing of the route, the need to access foreign fodder and supplies from a southern European nation, and potential voyage conditions. The delegate found that requiring the consignment to return to Australia presented, based on the information available to the department at the time, a comparatively lower risk to the health and welfare of the livestock.

On 21 and 22 January 2024, the exporter requested departmental approval, upon arrival back to Australia, to load fodder, chaff, bedding and additional veterinary medication to the MV Bahijah and that the vessel be permitted to immediately recommence the voyage to Israel travelling via the Cape of Good Hope. On 23 January 2024, the exporter met with the department to discuss the exporter’s request and the expected arrival of the vessel in Fremantle, Western Australia. On 24 January 2024, the exporter emailed the department in relation to its request for approval and providing a proposed export plan.

**The new NOI**

On 26 January 2024, the department informed the exporter that if it wished to re-export the initial consignment, it would need to submit a new NOI to export and export permit application. On the same day, the exporter submitted a varied NOI (the **new NOI**) with a 60-day voyage length. It also provided information suggesting that it may not be possible to secure a registered establishment to hold the livestock if they needed to be unloaded in Australia.

On 27 January 2024, the department’s Animal Welfare Branch (**AWB**) prepared an analysis to assist me with making my decision. The AWB assessed that there was insufficient information to be satisfied that the exporter had adequate arrangements for the animals to ensure their health and welfare for a 60-day voyage. The AWB indicated that while additional information had been provided which met some of the criteria of an “extended long-haul management plan” (as detailed in the department’s Approved Arrangement Guidelines), the AWB considered that additional information was required, and further assurance so that, in AWB’s assessment, the health and welfare of the animals would be ensured. The AWB recommended that the animals be held in a registered establishment for a minimum of 5 clear days to provide adequate time for recovery and to identify and remove animals unfit to continue to travel.

On 28 January 2024, in accordance with my obligation to give procedural fairness, and after considering the information before me, I issued the exporter with a notice of intention to refuse to approve the new NOI. The exporter was given an opportunity to provide the department with a written statement by 30 January 2024 showing cause as to why the NOI should not be refused.

On 29 January 2024, the department met with the exporter and discussed the department’s view that the exporter needed to provide additional information, in particular a detailed extended long-haul management plan specifically addressing measures it would put in place, over and above the requirements detailed in the Australian Standards for the Export of Livestock 3.3 (**ASEL**), to provide a level of additional protection for the livestock’s health and welfare. At the exporter’s request, the department extended the deadline to 31 January 2024.

On 29 January 2024, the exporter updated its new NOI to change the intended port of disembarkation.

On 30 January 2024, the exporter provided an extended long-haul management plan and other supporting documents.

On the same day, the department received confirmation from the Australian Consulate in Dubai that:

* 1. The Israeli competent authority was not opposed to receiving the livestock consignment without animals being off-loaded prior to re-export, provided animal welfare was prioritised.
	2. Israel trusted the Australian competent authority’s judgement and decisions for this consignment to be re-exported or have the animals off-loaded first for a period of rest.
	3. If animals were off-loaded and taken to a registered establishment then Israel requires that it be consulted about the length of time in the premises before testing may be required.
	4. Israel only issues import permits after quarantine was booked. It was aware that there was quarantine space available from 5 March 2024.

On 31 January 2024, the exporter emailed the department proposing that:

* 1. cattle identified as ASEL rejects but which were fit to load onto trucks would be discharged from the MV Bahijah and transported to a registered establishment.
	2. Specific categories of sheep identified as ASEL rejects would be removed from pens and isolated, clearly marked for the department’s regional veterinary officer (**RVO**) to confirm as being omitted from the consignment. Any such animals would be euthanised and disposed of in line with MARPOL standards post-departure.
	3. ASEL rejects would take priority for discharge.
	4. Additional reporting would occur, and records kept, including photos or videos.

The exporter also provided: a revised extended long-haul management plan; risk assessment (long haul); ASEL standard 5 register; heat stress management plan; updated load & welfare plan; additional supportive information; and Heat Stress Risk Assessment.

On 31 January 2024, I met with the exporter to seek its consent to having a Perth-based veterinarian board the vessel to verify and provide third-party confirmation of the conditions and welfare of the livestock onboard. I also discussed that the department had engaged with the Israeli competent authority which had confirmed, in broad terms, that it would accept the proposed export plans subject to certain assurances. The exporter also indicated it would explore options to bring the sheep identified as unfit for the proposed onward journey to an appropriate facility.

On 31 January 2024, the department received a submission from RSPCA expressing concern for the health and welfare of the livestock in the consignment.

Also on 31 January 2024, two third-party veterinarians engaged by the department boarded the vessel, with the exporter’s consent, to verify the daily assessments of animal health and welfare by the onboard registered veterinarian (**AAV**). The veterinarians provided a report on the inspection later that night (**veterinarian report**). They reported that they could “*verify that the welfare of the animals as observed this afternoon was not compromised. The livestock appeared in very good condition. Our only welfare concern would be possible impending issues should cattle pens in particular not be able to [be] washed in the coming days”*. They confirmed there were no signs of significant disease except for some mild signs observed by the veterinarians, no heat stress was observed, and animals were displaying normal behaviour.

On 31 January 2024, the Israeli competent authority requested a copy of the veterinarian report, which was provided with the exporter’s consent on 1 February 2024.

On 1 February 2024, Animals Australia wrote to the department submitting it was not open to grant an NOI or export permit and providing: an independent expert report dated 31 January 2024; a summary of biosecurity and health considerations for cattle during the prolonged voyage; and a European Food Safety Authority paper on the welfare of small ruminants during transport. On the same day, Animals Australia again wrote to the department about the consignment and attaching correspondence from two Israeli animal welfare organisations to the Israeli Minister requesting that they refuse any import permits for the animals onboard the MV Bahijah. Animals Australia submitted that it was reasonably foreseeable that any import permits would be legally challenged and that this would raise the risk that the animals would not be accepted into Israel.

On 1 February 2024, the exporter provided an updated extended long-haul management plan, heat stress management plan and additional supporting information.

On 2 February 2024, the exporter varied the NOI to change the date of departure and provided an amended extended long-haul management plan.

On 2 February 2024, Animals Australia wrote to the department advising that it had received a letter from the legal advocate of two Israeli animal welfare organisations earlier that day, which stated that legal proceedings had been filed in the District Court of Israel seeking an injunction in relation to import permits for the animals onboard the MV Bahijah. It provided a copy of the letter and court documents. It confirmed its expectation that the Court would not bring the matter on for directions (or otherwise) before 5 February 2024.

On 2 February 2024, I issued a further notice of intention to refuse to approve the NOI to the exporter. I indicated that prior to 2 February 2024, I had formed the preliminary view that, subject to the approval of an extended long-haul management plan (which the department was considering), the consignment met the requirements in subsection 8-6(3) of the Rules. However, the further evidence about the injunction application meant that I could not be satisfied, at that time, that import permits would be issued before the livestock were imported into Israel if an injunction was successful. I invited the exporter to comment by 6.00pm AEDT the same day. I subsequently granted an extension to 10.00am AWST/1.00pm AEDT on 3 February 2024.

On 2 February 2024, the department received further information from the Australian Consulate in Dubai following a discussion with the Israeli competent authority that: the injunction application was lodged the previous night; they were preparing a reply that was due on 4 February 2024; and the hearing was expected to be on 6 February 2024. In order to grant a new import permit, the Israeli competent authority was waiting for further information from the department confirming whether: it approved the 60-day voyage, the animals had been inspected and deemed fit for extended transportation, and there was sufficient fodder and supplies for the extended voyage. The Israeli competent authority also confirmed that an animal welfare assessment would be conducted for the arriving livestock.

On 3 February 2024, the AWB provided further analysis as part of the department’s assessment of the exporter’s amended extended long-haul management plan. The AWB continued to recommend that all livestock onboard the MV Bahijah be unloaded and rested in Australia at a premises where biosecurity could be managed, and that a minimum of 10% additional space be provided for the animals on the vessel if the voyage was to proceed. If that could not be achieved, the AWB identified alternative strategies for mitigating the risks.

On 3 February 2024, the exporter provided a response to the notice of intention to refuse to approve the NOI. In summary, the exporter submitted:

* 1. It was committed to ensuring compliance with all relevant legislative requirements, including the need to satisfy importing country requirements. The veterinarians’ reports that the animals were in excellent health, was evidence of this.
	2. The exporter had exceeded ASEL standards in relation to bedding and chaff.
	3. Arrangements had been made to ensure the adequacy of transport and to minimise disruptions.
	4. The consignment was intended for the Israeli fresh-meat market, meaning that it may play a role in Israel’s food security.

Also on 3 February 2024, the department received information from a third party that the Israeli court would hear and determine the injunction application by 12:00pm Israel time/9:00pm AEDT on 4 February 2024. On the same day, the department received a further letter from Animals Australia, in which it made various submissions and provided a translation of the injunction application prepared by its lawyers.

On 3 February 2024, the department approved the exporter’s amended extended long-haul management plan (**approved extended long-haul management plan**). The approved plan included detailed mitigation strategies for the extended voyage, including that a number of cattle were discharged on the evening of 2 February 2024, to provide additional pen space above ASEL requirements. It also provided that the livestock would be inspected. Any livestock that did not meet the ASEL rejection criteria but could be appropriately treated would be isolated and treated for a period of time. Any ASEL rejects that could not be appropriately treated would be euthanised and removed.

On 4 February 2024 at 6:00pm AEDT, the department attended a meeting with the Israeli competent authority. During that meeting, the Israeli competent authority expressed concerns for the health and welfare of the livestock on the MV Bahijah given the passage of time and indicated its preference for the livestock to be offloaded and spelled before re-export. It otherwise noted its understanding that the injunction hearing was expected to be on 6 February 2024 (Israel time).

On 4 February 2024 at 7:39pm AWST/10:39pm AEDT, in accordance with its procedural fairness obligations, the department sent a letter to the exporter with this further information and invited it to comment by 10:00am AWST/1:00pm AEDT on 5 February 2024.

On 5 February 2024, the department received further information from the Australian Consulate in Dubai providing an update on the expected timing of the court proceedings and asking whether the department could send a statement about the extended voyage.

Later that same day, the exporter provided a response to the department’s letter of 4 February 2024, including that the exporter continued to appropriately manage the health and welfare of the animals onboard the vessel and the animals would have significantly more space now that some of the livestock had been discharged.

Throughout this period, there was ongoing engagement between the exporter and the department, including meetings, emails and phone calls.

**Relevant Legislation**

The export of prescribed livestock by sea is prohibited unless certain prescribed conditions are complied with, including that the exporter has an NOI to export and an export permit.

Under subsection 8-6(3) of the Rules, the Secretary (or their delegate) may approve a notice of intention to export the consignment if the Secretary is satisfied that:

1. the requirements of the Act in relation to the export of the livestock have been or will be complied with before the livestock are imported into the importing country; and
2. the importing country requirements relating to the livestock have been or will be met before the livestock are imported into the importing country; and
3. the proposed export of the livestock would not contravene any directions given to the holder of the livestock export licence under section 222 of the Act or the conditions of the livestock export licence; and
4. the arrangements for the transport of the livestock to their final overseas destination are appropriate to ensure their health and welfare.

Under subsection 6-6(1) of the Rules, it is a condition of a livestock export licence that export operations covered by a livestock export licence must be carried out in accordance with the ASEL.

In considering an application for an export permit under section 224 of the Act, the Secretary (or their delegate) may have regard to any matter the Secretary (or their delegate) considers relevant in relation to the application, including:

1. whether the requirements of the Act have been or will be complied with before the goods are imported into the importing country;
2. whether the importing country requirements have been or will be met before the goods are imported into the importing country;
3. whether any other requirement prescribed by the Rules has been or will be met before the goods to which the application relates are imported into the importing country.

Section 7-1(2) of the Rules prescribes various requirements to which the Secretary (or their delegate) may have regard in relation to an export permit application for prescribed livestock, which relevantly include that:

1. a NOI to export a consignment including the livestock has been approved and the approval is currently in force;
2. there are no reasonable grounds to believe that the livestock will not be permitted to enter the intended overseas destination.

**Reasons for decision**

On the basis of all of the information and evidence before me, and for the reasons that follow, I made the following findings:

1. I was unable to be satisfied that all requirements of the Act in relation to the export of the livestock would be complied with before being imported into the importing country;
2. I was unable to be satisfied that the importing country requirements would be met before being imported into the importing country;
3. I was satisfied that the proposed export of the livestock would not contravene any directions given to the exporter under section 222 of the Act or the conditions of its export licence; and
4. I was unable to be satisfied that the arrangements for the transport of the livestock to their final overseas destination were appropriate to ensure their health and welfare.

I set out my reasons in respect of the importing country requirements first.

*Paragraph 8-6(3)(b): importing country requirements*

In order to approve a NOI to export the livestock, I was required to be satisfied that the importing country requirements relating to the livestock had been met, or would be met before the livestock were imported into the importing country (see paragraph 8-6(3)(b) of the Rules). It is an importing country requirement of Israel that the exporter be issued a licence to import cattle or sheep (**import permit**).

I had regard to a submission from Animals Australia that the animals could feasibly be rejected by Israel, which may result in an incident like the MV Cormo Express in 2003. In that incident, the sheep in the consignment were rejected by the importing country and were left at sea for a further two months before being accepted by a new market. I accepted that the consequences for animal welfare of such an incident would be significant.

I considered the advice that the Israeli competent authority was not opposed to the livestock consignment being sent to Israel without off-loading the animals, provided that animal welfare was prioritised and that the Israeli competent authority trusted the department’s judgement and decisions in this regard. I also had regard to the advice that Israel issued import permits after quarantine had been booked and that it was aware that there was quarantine space available. I gave weight to that advice as well as the advice from the Israeli authority that the three potential ports were open and operating.

I considered the letter from two Israeli animal welfare organisations to an Israeli Minister. The letter raised animal welfare and public health concerns, and requested that the Israeli Minister refuse to grant import permits for the animals onboard the MV Bahijah. I noted that these organisations had a recent history of challenging Israeli government decisions and it was therefore foreseeable that they may legally challenge any import permits, should they be issued, which would cast further doubt as to whether the animals would be permitted to enter Israel.

Prior to 2 February 2024, I had formed the preliminary view that, subject to an extended long-haul management plan being settled and approved, the requirements in paragraph 8-6(3)(b) of the Rules would be met (and consequently paragraphs (a) and (d)). This was because I had formed the preliminary view that the extended long-haul management plan, if considered adequate and then approved by the department, would address my initial concerns about the health and welfare risks and the matters identified during discussions with the Israeli competent authority. I had formed a preliminary view that while Animals Australia had submitted that the import permits might be legally challenged by animal welfare groups in that jurisdiction, it was unclear whether (i) those parties would in fact pursue such a challenge; and (ii) there would be any legal basis if it were pursued.

However, on 2 February 2024, I received evidence that legal proceedings had been filed in Israel seeking an injunction in relation to import permits for the animals onboard the MV Bahijah and information that the court might not bring the matter on before 5 February 2024. In light of this significant new information, I formed the preliminary view that I could no longer be satisfied that the importing country requirements would be met by the time the livestock reached Israel. I provided procedural fairness to the exporter on the same day.

As outlined above, the department subsequently received further information from: the Australian Consulate in Dubai following discussions with the Israeli competent authority; the exporter responding to the notice of intention to refuse the NOI; and further information about the expected timing of the court proceedings in Israel.

I gave more weight to the further information I obtained from the Australian Consulate, including that the Israeli competent authority: was resisting the injunction application; expected the hearing to be on 6 February 2024; and confirmed it would issue the import permits once the department provided further information. I gave significant weight to the approved extended long-haul management plan, which involved considerable engagement with the department’s AWB, and confirmed that the livestock would be inspected and that any livestock that met the ASEL rejection criteria that could not be appropriately treated would be euthanised and removed. I found that this plan identified strategies for mitigating potential risks to animal health and welfare including in relation to softened/weakened feet/hooves and lameness due to the proposed extended long-haul voyage; poor pad condition; heat stress; and stocking density.

I considered that the approved plan would mitigate the risks to animal welfare from the proposed extended long-haul voyage and aligned with the types of animal welfare issues that the Israeli competent authority would check for when conducting its animal welfare assessment on the livestock’s arrival in Israel. I gave weight to the exporter’s submissions that an experienced AAV would be onboard for the entirety of the journey, that the AAV would have additional expert support, and that the exporter had exceeded relevant ASEL standards.

While I was satisfied that the approved plan provided sufficient risk mitigation strategies for an extended long-haul voyage, I gave more weight to the concerns raised by the Israeli competent authority about the passage of time and its preference for the livestock to be offloaded and spelled before re-export. Further, while the livestock onboard the vessel were recently assessed by two veterinarians, would be further assessed by the onboard AAV against ASEL rejection criteria, and would be finally assessed by an RVO before departure, I considered there remained a risk that the livestock would not show signs of animal welfare concerns until they were offloaded and transported to the relevant quarantine facility in Israel. I noted that the department had never previously approved a 60-day duration journey, for either cattle or sheep. While I considered that this risk was mitigated by the approved extended long-haul management plan, the estimated voyage length was, at the time, estimated to be at least 65 days. This would not account for any further unanticipated delays during the voyage, which could increase the total voyage length to 70 days or more.

On balance and weighing everything before me, I considered that the risk that the Israeli competent authority may not be able to grant the import permits or otherwise accept the livestock upon arrival, outweighed the detailed mitigation strategies that had been identified by the approved extended long-haul management plan. I found that this updated information, coupled with the uncertainty of the injunction proceedings in Israel, meant that I was unable to be satisfied that import permits were likely to be issued before the livestock were imported into Israel.

*Paragraph 8-6(3)(a): the requirements of the Act*
In order to approve an NOI to export the livestock, I was required to be satisfied that the requirements of the Act had been or would be complied with before the livestock were imported into the importing country. Section 2-3 of the Rules sets out the prescribed conditions for the export of prescribed livestock.

I gave weight to the department’s assessment that the NOI met the conditions except for the requirements relating to an NOI to export and export permit. However, given my findings in relation to the importing country requirements in paragraph 8-6(3)(b), I was unable to be satisfied that this requirement would be met. For the same reason, I was unable to be satisfied that an export permit would be granted for the livestock. It followed that I was unable to be satisfied that the requirements of the Act in relation to the export of the livestock in the consignment would be complied with before the livestock are imported into the importing country.

*Paragraph 8-6(3)(c): would not contravene any directions or conditions of livestock export licence*

To approve the NOI, I was required to be satisfied that the proposed export of the livestock would not contravene any directions given to the exporter under section 222 of the Act or the conditions of its livestock export licence.

On 19 January 2024, the department issued a direction to the exporter pursuant to section 222 of the Act to return the consignment to Australia, which the exporter complied with. There were no other directions under section 222 of the Act that had been given to the exporter.

Under subsection 6-6(1) of the Rules, it is a condition of the exporter’s livestock export licence that export operations must be carried out in accordance with the ASEL. Under ASEL, “extended long-haul” is defined as a voyage that is 31 voyage days or more in duration. At the time I made my decision, the estimated total voyage was at least 65 days, which meant the exporter needed to comply with the requirements in ASEL for extended long-haul voyages. ASEL Standard 5.1.17 requires that any consignment that will travel around the Cape of Good Hope must not be exported unless otherwise provided in an extended long-haul management plan approved in writing by the department. Section 7.1.2 of the *Approved arrangement guidelines for the export of livestock* sets out the department’s policy on what should be included in an extended long-haul management plan. The plan must identify the risks associated with a prolonged voyage and outline the ways in which the exporter intends to manage and mitigate these risks.

The exporter submitted various versions of, and amendments to, its extended long-haul management plan, including engaging with the department and providing updated information as requested by the department, for approval as part of the NOI assessment process*.* As noted above, on 3 February 2024, the department approved the amended extended long-haul management plan which had been submitted on 2 February 2024.

I had regard to the AWB advice and gave weight to its very strong recommendation that all of the animals be removed from the vessel and spelled on land for 5 clear days and additional pen space be provided. However, I also gave weight to its further advice that if this was not achievable, it recommended additional monitoring of hazards to facilitate early identification of potential animal health and welfare issues and implementation of immediate mitigation measures. As outlined above, the exporter’s approved extended long-haul management plan provided for additional space for the livestock and, on 2 and 3 February 2024, in compliance with that plan, it confirmed that it offloaded the required number of cattle. I noted that veterinary examinations of individual animals would be undertaken by the AAV and a departmental RVO prior to departure to identify livestock that met ASEL rejection criteria, which would create more pen space for the remaining livestock onboard. I was satisfied that the exporter’s approved long-haul management plan incorporated the AWB’s risk mitigation strategies. I gave significant weight to the approval of this plan and the exporter’s assurance that it would conduct a final check to ensure there were no pens or areas where livestock appeared to have insufficient space to ensure their health and welfare, including the ability for the livestock to rest comfortably.

Overall, I was satisfied that the extended long-haul management plan had been approved as required by ASEL, which addressed the concerns I raised in the first notice of intention to refuse to approve the NOI to export.

I noted that when the livestock were first sourced and prepared for export by sea, they met the requirements in ASEL. While the exporter complied with ASEL inspection requirements when the livestock were first exported from Australia, I noted the risks of injury and disease common on long-haul voyages and current reporting. On balance I found that, based on the procedures outlined in the approved extended long-haul management plan, ASEL would be met, including that the livestock would be inspected for health and welfare and fitness to travel and that only livestock deemed healthy and fit to travel (including those that may be recoverable with treatment) would remain onboard the vessel for re-export.

I was therefore satisfied that the proposed export of the livestock would not contravene any directions given to the exporter under section 222 of the Act or the conditions of its export licence.

*Paragraph 8-6(3)(d): arrangements for the transport of the livestock*

In order to approve an NOI to export the livestock, I was required to be satisfied that the arrangements for the transport of the livestock to their final overseas destination were appropriate to ensure their health and welfare.

In considering the travel arrangements proposed by the exporter, I had regard to the AWB advice, and the third-party submissions from the RSPCA and Animals Australia, in relation to the potential risks to animal health and welfare. In summary, these related to fitness for voyage, risks of disease, lameness and mortalities, heat stress, motion stress, poor appetite, heatwave conditions off the coast of Fremantle, and the risk that Israel would not accept the consignment. I considered each of these main risks in turn, having regard to all of the available information, including the detailed information the exporter had provided in relation to how it planned to manage animal health and welfare.

In particular, I had regard to the veterinarian report following the inspection of the livestock onboard the vessel which verified that the welfare of the livestock as observed that afternoon was not compromised, and that the livestock appeared in very good condition. I noted that the exporter had undertaken two further washdowns on 1 and 3 February 2024. Critically, the veterinarians did not raise any concerns about being unable to adequately inspect the livestock while they remained onboard the vessel. I gave more weight to the veterinarian report findings and was satisfied that the livestock could be adequately inspected onboard the vessel.

I noted the concerns raised in the independent expert’s report provided by Animals Australia that there could be an increased risk of diseases and mortalities as a result of the long-haul voyage. However, I gave less weight to those views because the expert was not apprised of all relevant information in respect of the animal health and welfare issues particular to this consignment. In particular, the expert’s views did not reflect the mitigation measures implemented by the exporter in its approved extended long-haul management plan. I gave greater weight to the approved extended long-haul management plan and additional mitigation strategies and found that it mitigated the concerns for ensuring that the travel arrangements were adequate for the livestock’s health and welfare. Further, I found that the exporter’s approved extended long-haul management plan included measures to promote better animal health outcomes, which would go some way to addressing the AWB’s concerns in respect of the prospect of increased mortalities.

I gave significant weight to the recent inspection of the livestock conducted by the third-party veterinarians, which was the most recent information on the health and welfare of the livestock remaining onboard. Relevantly, they observed no signs of disease or ill health in the animals. Their report indicated that the livestock’s health was being sufficiently managed, animals were being treated appropriately and there were otherwise no signs of disease except for some mild signs observed. In addition, the exporter’s approved extended long-haul management plan identified that it had sought veterinary advice on the additional veterinary supplies that would be needed to manage the voyage, and that its supplies would exceed the ASEL standards. The exporter had also engaged an experienced shipboard AAV and stockman to accompany the consignment. On the basis of this information, I was satisfied that the exporter had sufficient veterinary supplies and staff to manage any diseases or other injuries that might arise during the extended voyage, and that its arrangements as to the condition of the vessel were appropriate to mitigate risks in that regard.

I had regard to the risk of heat stress, including due to wool growth. I noted that ASEL ordinarily required that sheep have wool no longer than 25mm at the time of loading for transport, and that the sheep met this requirement at the time of loading. I accepted that wool growth during the extended voyage was a risk. However, I noted that the voyage would occur during the Northern Hemisphere winter which meant that the risk of heat stress would be significantly lower than would be experienced during the Northern Hemisphere summer. Further, the exporter provided a heat stress management plan to deal with the additional risks of heat stress, which I found would mitigate that risk. I also gave significant weight to the veterinarian report that no heat stress was observed, and animals were displaying normal behaviour. I had regard to the fact that a number of cattle were unloaded, which reduced stocking density and mitigated heat stress issues.

On balance, based on the information in the exporter’s heat stress management plan and the observations in the veterinarian report, I was satisfied that the heat stress of the animals could be appropriately managed, despite continued growth of the sheep’s wool. I was satisfied that the stress caused to animals by potential adverse weather events would be minimised to the extent possible and that animals would be closely monitored to ensure that feed and water intake was sufficient.

I then turned to the concerns raised about the risks that Israel would reject the livestock. I found that the recent meeting with the Israeli competent authority and the fact that the livestock would be on board for what would now be at least a 65-day voyage meant that I was unable to be satisfied that import permits would definitively be issued before the livestock reached Israel. I also noted the uncertainty of the injunction proceedings in Israel. Further, I did not consider the exporter’s contingency plan of redirecting the livestock to its nominated contingency market was feasible in the circumstances, particularly given the estimated additional voyage of 3 days and noting that the exporter did not currently have an approved ESCAS for that market. In the absence of a contingency plan that I considered to be adequate and feasible, and noting that the livestock had already been onboard the vessel for 32 days, I was unable to be satisfied that the arrangements for the transport of the livestock to their final overseas destination were appropriate to ensure their health and welfare.

For completeness, I noted that the conflict in Gaza between Israel and Hamas commencing on 8 October 2023 was ongoing at the time of my decision. There had been media reports that Houthi rebels had attacked commercial ships sailing through the Red Sea. However, there had since been a significant military presence in the area protecting commercial ships from attack. I noted that on 12 January 2024, the Combined Maritime Forces had advised merchant ships to stay away from the danger zone, but that Operation Prosperity Guardian was ongoing and assisting commercial ships.

In the particular circumstances of this proposed export, and particularly in the absence of a contingency plan I considered to be feasible, I considered that the nature of the security situation near Israel could affect the safe and timely passage of the vessel carrying the consignment. The risks to the health and welfare of the livestock could include: harm to animals from an attack on the vessel; insufficient fodder, water and veterinary equipment if the passage of the vessel were delayed or significantly lengthened; and issues with the discharge of the animals at the destination port. I gave weight to the risk that if the vessel were diverted to a different port in Israel it would further extend the voyage duration. However, I gave more weight to the information from the Israeli authorities confirming that all three potential ports were open and operating.

Having regard to all of the information and evidence before me, and notwithstanding the matters I considered above, I remained unable to be satisfied that the requirements in paragraphs 8-6(3)(a), (b) and (d) of the Rules were met. I was therefore unable to approve the NOI to export notwithstanding that there were limited options available to the exporter.

*Other potential options*

I noted that if I refused to approve the NOI to export the consignment, there would be limited options available to the exporter. It seemed to me that the options might include:

1. Discharging the livestock in Fremantle or at another port in Australia, transporting them to a registered establishment or appropriate premises for a period of time, and seeking to re-export at a later date;
2. Discharging the livestock in Fremantle or at another port in Australia and transporting them to an abattoir for slaughter and distribution in the Australian food system, which I note was an option that the exporter had asked the department about; or
3. Euthanising the livestock onboard the vessel and disposing of them at sea.

From a biosecurity perspective, if the livestock were offloaded, they would need to be transferred to premises where they were secure and separated from other animals for the purposes of assessing biosecurity risk. Notwithstanding, the information before me indicated there might not be enough registered establishments willing or able to take the livestock in Western Australia. I noted that it appeared that the registered establishment which took the cattle unloaded on 3 February 2024 was already close to capacity.

I noted that there was some suggestion that a registered establishment in South Australia might have at least some capacity. However, there was no definitive information on whether that was a realistic option. I also noted the estimated voyage time from Fremantle to South Australia and the potential unloading time, could take up to 6 days and, taking into account rest time, I estimated that it could result in at least 17 more voyage days. I noted the potential benefit of this option might therefore be outweighed or undermined by the total number of days at sea.

I considered whether the animals could be unloaded and managed in Australia without re-export. In terms of processing capacity, the information before me indicated that there was a six-week wait for capacity at WA, SA and VIC abattoirs. Abattoirs were running overtime due to the large amount of stock available. There was therefore a real risk that the livestock would not be able to be slaughtered onshore and enter the Australian food system in a timely manner.

I found that if I were to decide to refuse to approve the NOI, and if transfer to a registered establishment or appropriate premises was not a realistic option, then the only other option would be for all of the livestock to be euthanised onboard and disposed of at sea. I considered this to be an extreme outcome and clearly not a preferred outcome.

*Subsection 8-6(4): ESCAS in force*

As the prescribed livestock in the consignment were feeder livestock or slaughter livestock, subsection 8-6(4) of the Rules provided that I must not approve the NOI to export the consignment unless I was satisfied that an approved ESCAS was in force in relation to the livestock. I found that the exporter holds two relevant approved ESCASs for the consignment, one for cattle and one for sheep, neither of which had been revoked.

*Implications on stakeholders*

I acknowledged that refusing to approve the exporter’s NOI to export would have significant implications for the company because it would not be able to satisfy its commercial arrangements, which may in turn have significant commercial and financial repercussions. Further, the consignment was intended for the Israeli fresh-meat market, meaning that it may play a role in Israel’s food security. I noted that there might be limited other options for the exporter if the NOI to export were refused and gave weight to the impact on the exporter.

I also noted the media attention and that various animal welfare organisations had made submissions opposing the re-export of the livestock. I gave some weight to these submissions to the extent that they represented the opinions of a part of the community.

**Conclusion**

I considered each of the relevant considerations and all of the evidence put before me

individually and cumulatively. I gave weight to the Israeli competent authority’s earlier indication that it would grant the import permits and its query as to whether the department could provide further information assuring animal welfare. However, I gave more weight to the concerns it expressed about the passage of time and its preference for the livestock to be offloaded and spelled before re-export. I found that there remained a risk that animal welfare incidents might appear when the livestock were moved to quarantine upon arrival in Israel, despite having been deemed fit for extended transportation.

While I thought that this risk could be managed by the approved extended long-haul management plan, on balance and weighing everything before me, I considered that the risk that the Israeli competent authority may not be able to grant the import permits or otherwise accept the livestock upon arrival, outweighed the mitigation strategies that had been identified. I found that this updated information, coupled with the uncertainty of the injunction proceedings in Israel, meant that I was unable to be satisfied that import permits were likely to be issued before the livestock reached Israel.

As outlined in detail above, I considered this matter over 8 days since I sent the first notice of intention to refuse to approve the new NOI to export. This was in the face of ongoing developments and in particular the need for the exporter to develop a sound extended long-haul management plan. In my mind, the extended long-haul management plan was critical to ensuring that the livestock’s health and welfare could be adequately managed during what would have been the longest voyage the department had approved. There was also a stream of information received from the Israeli competent authority and animal welfare organisations, including developments in relation to the court proceedings in Israel.

It is regrettable that this has meant that despite my and the department’s best efforts, it was not possible to make a decision earlier. The expediency and manner of interactions with the department and other authorities can have a real and detrimental impact on a decision maker’s ability to make a timely decision in the interests of best achieving the objects of the Act. Be that as it may, on balance and weighing all of the information and evidence before me, I was unable to be satisfied that the consignment met all the requirements in subsection 8-6(3) of the Rules. I was therefore unable to approve the NOI to export.

Andrew McDonald

Acting First Assistant Secretary

Plant and Live Animal Exports, Welfare and Regulation Division

8 February 2024