

16 July 2018

Mr Philip Moss AM
Department of Agriculture and Water Resources
GPO Box 858
CANBERRA ACT 2601

By Email: lae.review@agriculture.gov.au

Dear Mr Moss AM,

Animals Australia Submission to Review into the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports

Animals Australia appreciates the opportunity to provide input to the Review into the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports ("**the Review**"). As you will be aware, we are a peak animal protection organisation in Australia.

Animals Australia has been involved in animal welfare issues relevant to Australia's live export industry for over 30 years. Animals Australia is recognised as a key stakeholder in matters relating to animal welfare issues in the live export trade. Animals Australia has monitored, investigated, and scrutinised the live animal export trade industry for more than 30 years.

Since 2003, Animals Australia has conducted over approximately 80 investigations into the live animal export trade (most in importing countries). During these investigations, Animals Australia documented the treatment of animals exported from Australia and monitored industry compliance with, and the effectiveness of, applicable Australian animal welfare laws and regulations. We have provided strong, first-hand evidence to the Department of Agriculture and Water Resources (formerly titled Department of Agriculture) (collectively, "**the Department**") of serious animal welfare issues during ship loading, unloading and after arrival in importing countries. In many cases the breaches have been repetitive – by the same exporters at the same facilities. Despite this, the regulatory responses of the Department have been ineffective and/or inadequate to address these serious concerns, and as such the inherent and significant welfare problems in the live animal export industry have remained.

Recently, Animals Australia was also provided with extensive video footage and information relating to the conditions endured by sheep aboard five different voyages of the vessel *MV Awassi Express* en route from Australia to the Middle East. This evidence was collected across the period May – November 2017 and was provided to Animals Australia by a whistle-blower on board the ship. Animals Australia provided the footage and information to the Department. On 8 April 2018, segments of the footage were aired in a news story on the Nine Network's *60 Minutes* program.

Although Animals Australia has long been concerned about the troubling mortality statistics that result from live export voyages,¹ this video evidence and data has, for the first time, provided a fundamentally important insight into the type of onboard conditions endured by millions of Australian

¹The Department publishes these mortality statistics, available [here](#).

sheep who are exported live to the Middle East each year.² This first-hand evidence not only explains the unacceptable mortality rates that we have known about for decades, but also illustrates the unacceptable level of animal suffering that takes place on these voyages, which has not been seen publicly until now. It is also clear from this insight into shipboard conditions that the Department has for many years (likely decades) failed to act on veterinary advice and indications from shipboard reports that Australian shipboard animal welfare standards were both intrinsically inadequate and being routinely breached.

In June 2018, we provided you with several documents to assist your Review, and we refer to and repeat them here:

- **ESCAS.** The Animals Australia submission to the 2014 review of the Exporter Supply Chain Assurance Scheme (**ESCAS**) which provides still relevant concerns related to inherent issues with ESCAS standards themselves (allowing cruel practices), and with the lack of adequate compliance/enforcement of those standards by the Department. These matters are further expanded on in this submission.
- **Livestock Global Assurance Program.** A summary of Animals Australia's concerns about this proposed program was provided to the ACCC in November 2016, and particularly the likely move back towards industry self-regulation.
- **Productivity Commission.** Inquiry into the Regulation of Agriculture (March 2017). Animals Australia's submissions to the inquiry (which covered live export regulation), and noting that the final Productivity Commission report made recommendations specifically about the need to look toward the establishment of an independent authority to oversee farm animal welfare standards in Australia (see Section 5 and Recommendations 5.1, 5.2 and 5.3).
- **Indonesian slaughter of Australian cattle background (2010 - 2011).** Several documents, including the 2010 MLA-commissioned Independent Report on Australian Cattle Slaughter in Indonesia, the RSPCA Australia critique of that report, and a timeline relevant to the installation of the Australian designed and provided Mark 1 Slaughter Box in Indonesia and industry research reports. As indicated, the Mark 1 Box was later judged non-compliant with minimum OIE standards but had been used for 10 years prior to the expose despite reports provided to the Department detailing the welfare issues and suffering caused.

The new evidence from the *Awassi Express* voyages of on-board suffering, coupled with that which we have collected over the past 30 years along the entire supply chain, has cemented Animals Australia's grave concerns for the welfare of any animal that is exported live.

Along with all other animal protection societies, we advocate that all animals should be slaughtered as close as possible to their farm of origin, in order to avoid the unnecessary and immense suffering that is caused by transport and handling. This is particularly pertinent in the live animal export trade, where our evidence has shown that animals are routinely subjected to unskilled and cruel handling methods, as well as long-haul transport in perilous conditions which results in suffering and death.

On behalf of our member societies and individual members and supporters, we provide this submission within the context of our total opposition to the live animal export trade.

We address each of the Terms of Reference ('**TOR**') for this review in turn.

² During 2017 alone, Departmental statistics provide that 1,741,314 sheep were exported from Australia to the Middle East (as feeder animals and for slaughter), to countries including Israel, Jordan, Kuwait, Oman, Qatar, Turkey, and the United Arab Emirates. Of these, 845,601 sheep were transported during the Northern summer months of May-October (known as the 'heat stress' period). The source of these figures is available [here](#).

Executive Summary

Animals Australia has contributed to government enquiries and policy development relevant to live export since 1980, and since 2003 has conducted investigations into the live export trade across 14 different countries. We have provided evidence of welfare and other breaches of law to the Department in the form of no less than 56 formal complaints. These complaints have typically included extensive evidentiary files, as well first-hand accounts that have been collected by our investigation team.

Throughout this time, the Department has consistently shown itself to be lacking in capability and vigilance in monitoring compliance with the Australian Standards for the Export of Livestock ("ASEL") and animal welfare standards, including those contained in the Exporter Supply Chain Assurance System ("ESCAS") since 2011. Moreover, the Department has routinely failed to use its available powers to adequately enforce the law, and to apply appropriate sanctions to those exporters that continue to breach the law. Indeed, in most instances no sanctions are applied. The result is that these breaches continue to occur with serious adverse consequences for animal welfare.

For example, despite the fact that Animals Australia has now lodged 12 formal complaints regarding repeat breaches and adverse animal welfare outcomes in the Kuwait supply chains, the Department has failed to take any substantive regulatory action to address these breaches and *continues* to grant export permits to 'repeat offenders'. We provide further information regarding this example at 1.3 below. Throughout this submission, we offer other similar examples of repeat ESCAS breaches in other supply chains which have caused serious animal suffering yet have been met with an inadequate regulatory response from the Department, as well as other instances in which the Department has failed to sanction exporters who have repeatedly breached ASEL standards on livestock vessels.

The Department itself has also acknowledged that it is bound by the Governmental policy to 'support the continuation of the live export trade'.³ However, it has become self-evident in recent months that true compliance with Australia's minimum livestock welfare standards may cause a significant reduction in economic viability of the trade. For example, reduced stocking densities on ships or tighter supply chain control in importing countries. This provides a clear conflict between stated policy and compliance with law; the latter is a key determinate of community expectations and thus social licence.

Animals Australia thus firmly believes that the Department is not an appropriate body to monitor animal welfare in the livestock industry. By its own admission, as a regulator the Department is driven by an imperative to maximise the interests of producers, in order to ensure the continued growth and financial success of the live export trade and other animal agriculture industries. As such, it is inappropriate for the same Department to also be charged with the responsibility for overseeing and regulating compliance of animal welfare in this Industry, since the Department has typically supported the continuation of the trade, now demonstrably at the expense of animal welfare.

Importantly, these conflicting interests are not merely *perceived* or *potential* conflicts. Rather, the numerous examples that we offer throughout this submission show that the Department genuinely engages in a pattern of behaviour that indicates bias in favour of industry interests, to the detriment of animal welfare. By way of example, the Department's recent failure to implement (in particular) recommendation 4 of the 2018 'McCarthy Review',⁴ is evidence of its unwillingness to act to promote animal welfare, where it may entail adverse economic consequences for industry.

³ This comment was most recently made during the Senate Estimates hearing on 24th May 2018. See page 84 of the Hansard [here](#).

⁴ Dr Michael McCarthy - *Review of conditions for the export of sheep to the Middle East during the northern summer* – 11 May 2018. Available [here](#).

Animals Australia is therefore of the view that responsibility for ensuring the welfare of livestock both generally and within the live export industry should be moved to a new body that is equipped with the necessary expertise to properly, independently and expertly monitor compliance with animal welfare regulations in the live export trade. Such a body – referred to in recent years by proponents including Animals Australia as an ‘Independent Office of Animal Welfare’⁵ – would operate with a single mandate to investigate and monitor animal welfare issues. This body could not only be appropriately staffed with persons holding animal welfare expertise, but it could also operate *solely* to maximise animal welfare.

It is our view that moving the responsibility for animal welfare to an independent body is the *only* way to ensure that animal welfare is properly monitored in the live animal export industry.

TOR 1.0 The regulatory powers available to the Department to ensure compliance with the Australian Standards for the Export of Livestock (ASEL) and animal welfare standards, how effective those powers are to ensure compliance by the live animal exports industry, and how effectively the department uses those powers.

For clarity, our submission with respect to this TOR is divided into three points below, in order to individually address each element separately.

1.1 The regulatory powers available to the Department to ensure compliance with the ASEL and animal welfare standards.

As you will be aware, the Department regulates the export of livestock under a complex range of Commonwealth legislation and legislative instruments, including:

- the *Export Control Act 1982* (Cth) (**‘EC Act’**);
- the *Australian Meat and Live-stock Industry Act 1997* (**‘AMLI Act’**);
- the *Export Control (Animals) Order 2004* (**‘the Animals Order’**); and
- associated regulations and standards including the ASEL and ESCAS.

Importantly, this commonwealth regulatory regime does not provide a *prima facie* legal right to export livestock from Australia. Rather, the export of livestock is expressly prohibited, unless certain legislative conditions are met.⁶

Both the ASEL and ESCAS contain animal welfare requirements. ESCAS does so by adopting the principles for humane handling and slaughter contained within the World Organisation for Animal Health (**‘OIE’**) *Terrestrial Animal Health Code*.⁷ The ASEL requires a number of animal welfare standards to be complied with and, in addition, the *Australian Position Statement on the Export of Livestock*, contained within the ASEL, states that:

*The OIE establishes international animal health guidelines, and has recently developed animal welfare guiding principles that are relevant to the export of livestock. The [ASEL] Standards developed in Australia take into account OIE animal welfare guidelines and in most instances exceed these.*⁸

⁵ Note that this is now policy of the Australian Labor Party. A similar body was proposed by the Productivity Commission in its report on Regulation of Agriculture released in March 2017, available [here](#). See Recommendation 5.1 for the establishment of a stand-alone statutory organisation, the Australian Commission for Animal Welfare.

⁶ *Export Control (Animals) Order 2004*, s1A.01.

⁷ The OIE *Terrestrial Animal Health Code* is available [here](#).

⁸ See page 11 of the *Australian Position Statement on the Export of Livestock*, available [here](#).

The ASEL therefore purports to take into account, and in many instances exceed, the OIE guidelines contained in relevant chapters such as 7.1: *Introduction to the Recommendations for Animal Welfare*,⁹ and 7.2: *Transport of Animals By Sea*.¹⁰

Compliance with both ESCAS and ASEL (and their associated animal welfare requirements) is a pre-condition for permission to export live animals from Australia.

Exporters must hold both an export licence and must be granted an export permit (issued on a per-consignment basis) in order to export live animals from Australia. At present, the Secretary (or a delegate) is responsible for granting a licence to export live animals under the AMLI Act. The Secretary must not grant a licence unless *inter alia* s/he is satisfied that the applicant 'is and is likely to continue to be, able to comply with the conditions to which the licence, if granted, would be subject'.¹¹ The Secretary also has the power to apply any licence conditions he/she considers appropriate, provided that they are not inconsistent with the regulations.¹² Further, the Secretary may also decide to cancel, suspend or not renew the licence in the event of non-compliance with conditions.¹³

The Secretary is also responsible for granting permits to licence holders for the export of individual consignments of animals.¹⁴ Under the Animals Order, the Secretary may grant an export permit for live-stock if *inter alia*:

- the Secretary is satisfied that the ASEL have been, and will continue to be, complied with in relation to the live-stock;¹⁵ and
- the Secretary is satisfied that the exporter has complied, and is in a position to comply, with the approved ESCAS that applies to the export (unless not applicable under s1A.19(4));¹⁶ and
- the travel arrangements for the livestock are adequate for their health and welfare.¹⁷

Where the Department receives a complaint alleging a breach of ESCAS or the ASEL requirements by an exporter, they have the power to conduct a formal investigation into the alleged breach. Following investigation, the Department may then elect to take no action, to take regulatory action, or to refer the matter to the Director of Public Prosecution to pursue possible criminal sanctions including fines or imprisonment (for a summary of these measures see **Attachment 3**). The variety of regulatory options available to the Department to address non-compliance include:

- Requesting further information from an exporter about an export consignment, with failure to comply with such a request constituting a separate offence;¹⁸
- Applying additional conditions to an approval to export;¹⁹
- Refusing to approve, or placing conditions on a Notice of Intention to Export ('NOI') or Consignment Risk Management Plan ('CRMP') approval;²⁰
- Refusing to approve an application to export;²¹
- Revoking an export permit;²²

⁹ Available [here](#).

¹⁰ Available [here](#). It must be noted ASEL 2.3 does not meet OIE standards in some key requirements - adequate space to freely access food, water and rest, and to abandon transport in extremes of weather.

¹¹ Australian Meat and Livestock Industry Act 1997 (Cth) s12(d).

¹² Australian Meat and Livestock Industry Act 1977 (Cth) s17.

¹³ Australian Meat and Livestock Industry Act 1977 (Cth) s24.

¹⁴ Export Control (Animal) Order 2004 1A.30.

¹⁵ Export Control (Animal) Order 2004 1A.30 (1)(f)(iv).

¹⁶ Export Control (Animal) Order 2004 1A.30 (1)(f)(v).

¹⁷ Export Control (Animal) Order 2004 1A.30 (1)(h).

¹⁸ Export Control Act 1982 (Cth) s11Q.

¹⁹ Export Control (Animals) Order 2004, s1A.40(7).

²⁰ Export Control (Animals) Order 2004, s3.07(4).

²¹ Export Control (Animals) Order 2004, s1A.31.

²² Export Control (Animals) Order 2004, s1A.32.

- Issuing directions to be complied with by an exporter;²³
- Issuing a notice to show cause;²⁴
- Revoking, suspending or cancelling a licence;²⁵
- Revoking or varying an ESCAS approval;²⁶
- Pursuing criminal sanctions under the EC Act or the *Criminal Code Act 1995* (Cth).

1.2 The effectiveness of these powers in ensuring compliance by the live animal export industry

The Department has a wide range of regulatory measures available to it to attempt to improve compliance with animal welfare requirements by the live animal export industry. However, as explained in 1.3 below, the Department rarely (if ever) makes adequate use of these powers.

The existing powers available to the Department and Secretary (or his/her delegate) with respect to the granting of licences and permits are too discretionary and unduly facilitate leniency, even towards 'repeat offenders'. Moreover, existing regulations fail to adequately address some aspects of the live animal export trade that are inherently cruel. We explain these two points further below.

Discretion of the Secretary is Too Broad

Although it is appropriate for a decision-maker to be afforded some discretion, the level of discretion afforded to the Secretary (or his/her delegate) under the Commonwealth live export licencing regime is too broad.

In determining whether or not s/he is satisfied that the requisite licence conditions are met, the Secretary *may* (but does not have to) have regard to whether the proposed applicant has complied with any requirements under the *Export Control Act 1982*, including the extent to which the applicant has complied with conditions and restrictions to which a licence or permission under that Act to export livestock was subject, or that otherwise relate to the export of livestock.²⁷ Furthermore, although the AMLI Act provides that the regulations *may* prescribe the matters to which the Secretary should have regard, they currently do not make any such prescription.

As we demonstrate throughout the remainder of this submission, there are *many* instances in which the Secretary (or his/her delegate) has continued to renew licences and to grant permits to exporters who have a history of *repeat* breaches in the same (and other) ESCAS supply chains. These licence renewals and permit approvals have typically had minimal (or no) substantive further conditions placed upon them to attempt to prevent those repeat breaches.

Animals Australia's view is thus that the excessively broad level of discretion currently afforded to the Secretary in his/her decision-making powers has facilitated an unacceptable level of 'leniency' towards exporters, even in the context of 'repeat offenders', which has generated and sustained a culture of non-compliance in the live animal export industry.

For as long as 'repeat offenders' continue to have licences renewed and permits granted, exporters are provided with little to no commercial or other incentive to actually meet legal requirements, as they have no reason to believe that their ability to export live animals will be withdrawn as a result of their ongoing breaches. This not only means that exporters are effectively 'encouraged' to continue to breach the law, but this also means that those exporters who *do* comply with legal requirements are effectively placed at a commercial disadvantage while competitors continue cutting costs by beaching legal obligations, with minimal repercussions.

²³ *Australian Meat and Live-stock Industry Act 1997* (Cth) s17.

²⁴ *Australian Meat and Live-stock Industry Act 1997* (Cth) s23.

²⁵ *Australian Meat and Live-stock Industry Act 1997* (Cth) s24.

²⁶ *Export Control (Animals) Order 2004*, s1A.23.

²⁷ *Australian Meat and Live-stock Industry Act 1977* (Cth) s12(3).

Our view is therefore that the discretion of the Secretary should be narrowed such that they *must* give proper weight to evidence of previous animal welfare breaches and licence/permit contraventions in determining whether or not to issue a permit or renew a licence to export. This is particularly important given that repeated instances of non-compliance with regulatory requirements may indicate that a particular exporter fails to give due regard to their licence/permit obligations and related animal welfare requirements, with which compliance is a *precondition* for the permission to export live animals from Australia under the existing regulatory system to be enlivened. This resultant current culture and record of leniency has allowed the pattern of unacceptable and unnecessary animal suffering to continue unabated.

Department's Inability to Control Many Aspects of the Live Export Industry

Although the Department has a variety of regulatory options available to it to address non-compliance in the live export industry, there are many aspects of the industry which the regulations do not (and arguably cannot) address.

For example, whilst ESCAS is supposed to operate to ensure that following disembarkation, animals are handled and slaughtered in accordance with OIE guidelines, the reality is that the Department has relatively little oversight or power over what happens to animals once they leave Australian shores. This problem is magnified by the fact that the Department conducts little to no '*in situ*' monitoring in importing countries, and consistently displays 'caution' with respect to how far they are willing to go in policing ESCAS in importing countries.

Ms Narelle Clegg (Assistant Secretary, Live Animal Exports Division), for example, recently acknowledged 'it's a very difficult thing for one country to be told by another that we need to impose higher standards than you might apply locally'.²⁸ In the same context, Mr Malcolm Thompson (Deputy Secretary for the Department) stated that the Department was now 'piloting' the 'in country' auditing of some areas of ESCAS, but made assurances they would be doing so *only* from within Australia. He reiterated: 'I don't want to leave the impression that we're reaching into country'.²⁹

The Department also has inadequate powers to monitor the welfare of breeder and dairy animals after disembarkation in importing countries, since they are excluded from the remit of ESCAS due to Government policy. As a result, the Department has no means to ensure that those animals (tens of thousands annually) are handled and/or slaughtered in accordance with animal welfare standards, and there is seemingly no implied or real responsibility on exporters to ensure the same.

It is also evident from the failure of the Department to adequately investigate substantive evidence of breaches of ESCAS since its introduction in 2011, that the **primary** method used by the Department in response to alleged breaches is to seek reports from the implicated exporters themselves. To our knowledge, there have only been two occasions (out of over 150 formal notifications of alleged breaches of ESCAS), in which the Department has sent investigators to the import country to gather evidence first-hand. Animals Australia has repeatedly documented the consequences of this 'hands-off approach', with many investigations (which we detail below, and summarise in **Attachments 1, 2 and 6**) showing that Australian animals are *consistently* being slaughtered and handled in breach of animal welfare standards in destination countries, even despite the introduction and operation of ESCAS.

Although in the past the Australian Government has attempted to use diplomatic pressure to further regulate the treatment of animals overseas,³⁰ this has also largely proven ineffective. For example, in January 2006, Animals Australia conducted an investigation in Egypt and documented the brutal

²⁸ Commonwealth, *Parliamentary Debates*, Senate (Standing Committee on Rural and Regional Affairs and Transport) 24 May 2018, 90 (Narelle Clegg). Hansard available here.

²⁹ Commonwealth, *Parliamentary Debates*, Senate (Standing Committee on Rural and Regional Affairs and Transport) 24 May 2018, 120, 122 (Malcolm Thompson).

³⁰ Laura Morfuni (2011) 'Pain for Profit: the Live Export Trade' 16(2) *Deakin Law Review* 497, 537.

treatment of Australian cattle in Cairo's *Bassateen Abattoir*. On 26 February 2006, the *60 Minutes* program aired Animals Australia's recordings.

In response, then Federal Agriculture Minister, the Hon. Peter McGauran, suspended the live cattle export trade with Egypt due to animal welfare concerns. In October 2006, two Memorandums of Understanding (MoUs) were negotiated between the Australian Government and the Egyptian Government, one of which included assurances that Egypt would commit to implementing the international OIE standards in the handling and slaughter of Australian animals. However, in December 2006, Animals Australia conducted an investigation in Cairo, Egypt and documented breaches of this MoU and the relevant OIE standards. In response, a Ministerial Order was made which suspended the live export of sheep to Egypt.

In 2013, Animals Australia again documented abhorrent cruelty to Australian cattle in Egyptian abattoirs, despite a new 'closed loop' supply chain system (similar to ESCAS), which was intended to ensure Australian animals were handled at only two audited abattoirs.

In addition, the Department does not receive, or seemingly automatically have the power to require, reports on feedlot deaths or illnesses in importing countries. Despite feedlots or quarantine areas being part of an exporter's supply chain and so including regular ESCAS audits, the Department has advised Animals Australia that it holds no records of mortality or other welfare indicators from these facilities.

This serious anomaly was revealed after Israeli animal advocates advised Animals Australia of Israeli Government documents indicating some 645 Australian sheep died in a quarantine feedlot soon after arrival in Israel in October 2016. Further interest was raised because the Master's Report stated 525 sheep had died on-board the MV *Ocean Drover*, being 1.98%, just under the trigger 2% mortality rate which requires a Department investigation. In response to a subsequent request under the FOI Act by Animals Australia for relevant documents, the Department advised it held no records of feedlot outcomes, nor could it request that information from the exporter. However, in this instance an ESCAS investigation (144³¹) is underway (since September 2017), but only due to the additional 'justification' for the Department to seek exporter co-operation because the voyage mortality was so close to the trigger mortality figure.

1.3 How effectively the Department uses these powers to ensure compliance by the live animal export industry

The Department's use of its existing powers has also proven to be wholly ineffective in assuring compliance in the live animal export industry. Although (as detailed above), the Department has a variety of regulatory powers available to it to address non-compliance, it rarely (if ever) makes adequate use of these powers, even when a single exporter has consistently breached animal welfare standards in the same supply chain.

As already explained, Animals Australia has travelled to 14 countries (some multiple times) for investigation of feedlots, markets and abattoirs processing Australian animals over the past 15 years.³² We have documented countless breaches of ESCAS resulting in no less than 56 formal complaints being made by Animals Australia to the Department since the introduction of ESCAS in 2011 (for a summary of these complaints, see **Attachment 2**).

Departmental investigations into the Animals Australia formal complaints and documented evidence have found numerous 'critical' breaches of ESCAS, and as a result have, in some instances, resulted in additional conditions being imposed on exporter's licences. On several occasions, they have also

³¹ ESCAS investigation 144 - Recorded as 'Investigation in Progress':
<http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-regulatory-compliance>.

³² These countries include Kuwait, Israel, Vietnam, Gaza, Jordan, Lebanon, Mauritius, Malaysia, Egypt, Qatar, Bahrain, UAE, Oman and Turkey.

led to the temporary suspension or prohibition of some supply chains (for example, in one area of Vietnam). However, despite clear evidence that many export supply chains continue to breach ESCAS requirements over and over again, the Department fails to take substantial action against the implicated exporters.

At present, the Department generally only enforces *minimal* and *temporary* changes to an exporter's licence conditions in order to address what are actually serious and systemic animal welfare issues. Typically, for example, the types of conditions placed on an exporter who has had a history of breaches of ASEL or ESCAS include:

- Slight reductions in stocking density during voyages, usually 10% for the following voyage (when it relates to ASEL and shipping issues);³³
- Increased reporting requirements, or the introduction of additional supply chain officers to monitor compliance with ESCAS. Problematically though, these changes are rarely enduring, and typically only exist for the duration of a Departmental investigation or apply only to a subsequent voyage following a high mortality incident;
- Requiring exporters to develop or amend 'supply chain management plans' (SCMPs) (to be reviewed by the Department) to report on existing management procedures and to explain what additional actions are to be implemented during high risk periods (such as Festivals of Sacrifice) to ensure ESCAS compliance; and
- Increasing the 'risk rating' attributed to 'approved' facilities involved in repeat animal welfare breaches, thereby requiring them to be audited more frequently.

Further, it should also be recognised that Animals Australia (a charity) is the *only* independent body monitoring activity in ESCAS supply chains in importing countries. It is not surprising therefore that when our investigators are known or believed to be in a particular importing country, there is an increase in 'self reports' by exporters to the Department with respect to breaches. These exporters believe any breaches will be viewed more sympathetically by the Department if they are self-reported at the same time as our formal complaints arrive.

Animals Australia views this disingenuous behaviour of pattern as a further indicator of the 'soft' approach that exporters have come to expect from the Department with regards to addressing breaches. It demonstrates that the culture is one whereby breaches are expected, and indeed are an 'accepted' part of the industry.

This is completely out of step with community views that unnecessary animal suffering is abhorrent, and with the reasonable expectation that the Department charged with overseeing animal welfare in the live animal export industry takes appropriate action to sanction breaches and attempt to prevent recurrence.

The Department provided a 'compliance pyramid' at the time that ESCAS was introduced in 2011 (see **Attachment 3**). This pyramid indicates the wide variety of compliance measures and sanctions that are available to the Department to address non-compliance and seems to indicate that the Department intended to legitimately use these measures. Yet, the fact that between 2012 and the present time, Animals Australia alone has provided the Department with reports of over 56³⁴ alleged breaches of ESCAS and/or ASEL involving evidence of tens of thousands of Australian animals, indicates that regulatory compliance measures and/or their application over these years has been ineffective.

³³ See the high mortality during shipment of livestock investigations here: <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-mortalities> Note – earlier unpublished investigation reports are also held by Animals Australia (including tabulated analysis tables if needed) and the Department.

³⁴ A full list of complaints related to ESCAS and ASEL and the investigation outcomes are found here.

Further, as a matter of necessity, Animals Australia can only engage in 'spot check' investigations. Our repeat findings therefore can also reasonably be seen to indicate that animals are suffering in far greater numbers than we alone can document. We are incredulous that industry and the Department use the number of animals for which evidence of ESCAS breaches has been gathered by Animals Australia investigations and (scant) industry self-reports as a percentage of the total number of animals exported to suggest a high 'success' rate of ESCAS. For example, former Agriculture Minister Joyce stated the following after a review of ESCAS performance in 2015:

The Exporter Supply Chain Assurance System (ESCAS) report released today contains data that indicates more than 99% of livestock exported have experienced a positive welfare outcome since comprehensive welfare standards spanning the entire supply chain were introduced in 2011.³⁵

The Department's approach, in our view, is similar to a police force chief declaring that the only drivers that speed are the ones his/her officers apprehend. Yet, alarmingly both the Department and Government adopt this approach, and in this example even suggest that the welfare of all other (unobserved) animals is 'positive'.

Repeat Breaches in Kuwait

In the context of the Kuwait supply chain, **for example**, Animals Australia has reported 12 ESCAS breaches to the Department since 2012, many of which have involved repeat breaches by the same group of exporters. Frustratingly, these exporters continue to hold their export licences, and continue to be granted permits to export to Kuwait³⁶.

Attachment 1 summarises the breaches that have been identified as a result of Animals Australia's investigations and complaints regarding the Kuwait supply chain since 2012. They include large numbers (thousands) of sheep being sold to individual buyers at a notorious market and either slaughtered onsite or bound and bundled into boots for home slaughter.

It is evident from this example that actions taken by the Department regarding the Kuwait supply chain have been wholly inadequate to encourage (let alone ensure) compliance by exporters. This example demonstrates that the Department has effectively taken no substantive regulatory action to either sanction exporters (or to revoke the licences of repeat offenders), or to effectively prevent repeated breaches in the same supply chains.

To summarise, in response to the 12 breaches that have taken place over the past 6 years, which have included reports of egregious cruelty, the only action taken by the Department is as follows:

- Require a Supply Chain Officer (employed by the exporter) to be present to conduct regular reconciliation of animals which has proven inadequate to actually address supply chain leakage in Kuwait;
- Require an Independent audit of the Supply Chain Officer's Actions;
- Require the creation (or revision) of 'Supply Chain Management Plans', which, even when complied with, have failed to actually prevent supply chain leakage and/or adverse animal welfare outcomes;
- Introduce additional reporting requirements;
- Increase the frequency at which facilities are audited to 4 times per year.

Even though these complaints all relate to a related group of exporters, the Department has not initiated any prosecutions, nor have they sought to pursue any sanctions that could actually deter the exporter from offending again.

³⁵ Media release available [here](#).

³⁶ At the time of writing, the exporters involved – Emanuel Exports and EMS Rural Exports (2 of the 3 related exporters implicated in Kuwait) – have had their licences suspended related to on-board and other integrity matters, and is unrelated to the ESCAS compliance issues discussed here.

Animals Australia's strong view is that where initial regulatory action has failed to ensure ongoing compliance, no further export permits should be granted to exporters until such issues have been demonstrably rectified. Until such time that the Department is willing to actually use its regulatory powers to the fullest extent, it is clear that many importers/exporters will not take ESCAS or their ASEL obligations seriously, as they have absolutely no commercial incentive to do so.

We provide further illustrative examples of the Department's regulatory failures below (at 6.0).

TOR 2.0 How the Department assesses and determines regulatory conditions appropriate to achieve ASEL and animal welfare standards, and how those conditions are communicated and enforcement of them verified and measured.

The Department does not act in a manner that is adequate to properly assess and determine appropriate regulatory conditions to achieve ASEL and animal welfare standards.

A relevant and substantive example is that, in 2013, the Department failed to progress an important review of the ASEL. The steering committee for this review could not reach consensus on a number of key issues, including (topically) the policy of exporting livestock from southern ports into the Middle East during the Northern summer, and advised that the issue should be considered further.³⁷

This recommendation was never acted upon or followed up.

Animals Australia's view is that if this review had progressed to public consultation of the draft new ASEL, as it should have been, then the issues relevant to animal welfare and heat stress of sheep (in particular), as well as stocking density, bedding, ventilation and other relevant issues that have only recently publicly aired due to the work of a whistle-blower, would have been on the agenda five years ago.

The Department's failure to progress this review (including a draft new ASEL with the controversial issues as 'options') to public consultation over the past 5 years demonstrates an unwillingness to address animal welfare issues that have been known to the Department for decades. We are aware this was a delay driven by the Minister at the time.

This delay has also meant that the Department has effectively ignored the fact that many animals have been and are being cruelly exported to the Middle East during the Northern summer, with the result that they have been consistently exposed to unacceptable levels of suffering (and death) caused by heat, humidity, toxic gases (ammonia) and hot and boggy faecal pads. Similarly, high sheep stocking densities on ships means that these animals have continued to be so crowded they have not been able to freely access food or water, nor have they had space to lie down without being trampled. These welfare issues are in breach of the ASEL and of international OIE obligations.

2.1 The Department's Unwillingness to Prioritise Animal Welfare

The Department's approach to assessing and determining regulatory standards in general also indicates that they are unwilling to prioritise animal welfare where it would compromise the viability and/or profitability of the live animal export industry. This again reflects our strong submission that the Department views its primary mandate as being the promotion of the live export industry, even at the expense of animal welfare.

Further, it is apparent that the Department sees live export companies and industry bodies as the primary stakeholders in any debate and decision-making process, to the detriment of community standards, animal welfare science, and ultimately to the animals that are negatively impacted by the Department's approach.

³⁷ Note that the 'divide' on the Steering committee was between the live export industry and the veterinary and animal welfare members who were advocating science-based changes and improvements.

By way of example, the clear need to prohibit or significantly modify the exports of live animals to the Middle East during the Northern summer on the basis of animal welfare has been known to the Department for *at least* a period of four decades. In the late 1970s, the former Bureau of Animal Health (within the Department) raised concerns regarding this trade, and in 1981 the first 'standards' were developed in reaction to poor animal welfare outcomes, with onboard sheep mortalities regularly exceeding 3%.³⁸

In 1985, the Senate Select Committee on Animal Welfare stated in their review of the *Export of Live Sheep from Australia*, that '[i]f Australian authorities receive evidence that sheep were undergoing severe hardship on a regular basis during these [Northern summer] months, they should consider the imposition of a ban'.³⁹ Again, in 2003, it was a recommendation contained in the Keniry Review that:

*[E]xports should be banned in circumstances where the available evidence indicates that the risks of adverse outcomes are predictably high; this would mean the closure of ports such as Portland and Adelaide during those periods of the year when the risks are greatest.*⁴⁰

Importantly, evidence that the risk posed to animal welfare by shipment to the Middle East region during this period of the year is unreasonably high has also been available to the Department for decades. There have been *numerous* industry-funded studies that have indicated that there is a substantially increased and *known* risk of heat stress suffering and death during on voyages to the Middle East during the Northern summer.⁴¹ Independent scientific reviews have reached similar conclusions,⁴² as have Government commissioned studies and reviews.⁴³

At **Attachment 4**,⁴⁴ we provide an overview of 36 studies, reports or reviews, dating back to the 1970s, that we are aware of that have taken place in relation to heat stress (and related issues), which indicate that the Department has long had knowledge of the known animal welfare risks associated with exporting to the Middle East during the Northern summer months.

In addition to this scientific evidence, the Government has also had voyage mortality rates available to it. These figures clearly indicate that those voyages conducted during the Northern summer months have mortality rates that *frequently double* those undertaken in other months of the year.

³⁸ Australian Bureau of Animal Health, 1981. Report – Sea Transport of Sheep (hard copy available from Animals Australia).

³⁹ Senate Select Committee on Animal Welfare, Parliament of Australia, *Export of Live Sheep from Australia* (1985) 187.

⁴⁰ John Keniry et al, *Livestock Export Review Final Report: A Report to the Minister for Agriculture, Fisheries and Forestry* (2003) 6 (Recommendation 6).

⁴¹ See for example: MAMIC Pty Ltd, *Investigation of the Ventilation Efficacy on Livestock Vessels* (Meat and Livestock Australia) Project Number SBMR.002 (2001); Anna Barnes et al, *Physiology of Heat Stress in Cattle and Sheep* (Meat and Livestock Australia & Livecorp) Project Number LIVE.0209 (2004); Darryl Savage et al, *Post Discharge Induction Procedures for Sheep in the Middle East* (Meat and Livestock Australia) Project Code B.LIV.0127 (2008) 3; Makin et al, *Investigating Mortality in Sheep and Lambs Exported through Adelaide and Portland* (Meat & Livestock Australia) Project Code B.LIVE.0123 (2010).

⁴² See for example: M Gardiner and J Craig (1970) 'Factors affecting survival in the transportation of sheep by sea in the tropics and subtropics' 46(2) *Australian Veterinary Journal* 65; DW Scharp (1992) 'Performance of Australian wethers in Arabian Gulf Feedlots after transport by sea', 69(2) *Australian Veterinary Journal* 42; Clive Phillips (2016) 'The welfare risks and impacts of heat stress on sheep shipped from Australia to the Middle East' 218 *The Veterinary Journal* 78; Carol Petherick and Clive Phillips (2009) 'Space allowances for confined livestock and their determination from allometric principles' 117 *Applied Animal Behaviour Science* 1.

⁴³ For example, in 1983, Temple Grandin was commissioned by the Bureau of Animal Health (of the then Department) to conduct a review of the live export industry. After a six-week tour of facilities and ships, as well as a literature review, she suggested 'serious consideration should be given to using refrigeration equipment to control heat build-up'. (File available if required from Animals Australia).

⁴⁴ Temple Grandin, 1983 'A Survey of Handling Practices and Facilities Used in the Export of Australian Livestock (for the Bureau of Animal Health).

Given that this information is provided directly to the Department in the form of official Master's Reports following every shipment, the Department has been absolutely aware of these trends for a number of decades.

In addition, the frequency at which 'high mortality' reportable incidents (over 2%⁴⁵ for sheep, 1% mortality trigger for cattle) are triggered during this Northern summer period, which the Department *directly* investigate, indicates that the Department has been well aware of the animal welfare risks posed by long-haul transport during the Northern summer months.⁴⁶

The following graph is extracted, by way of example, from the Australian Veterinary Association ('AVA') submission to the McCarthy (2018) Review, and shows the mortality increase during the hot Northern summer months (of May to October). Note that this table is based on material that is provided by the Department based on Master's Reports to the Parliament every 6 months:⁴⁷

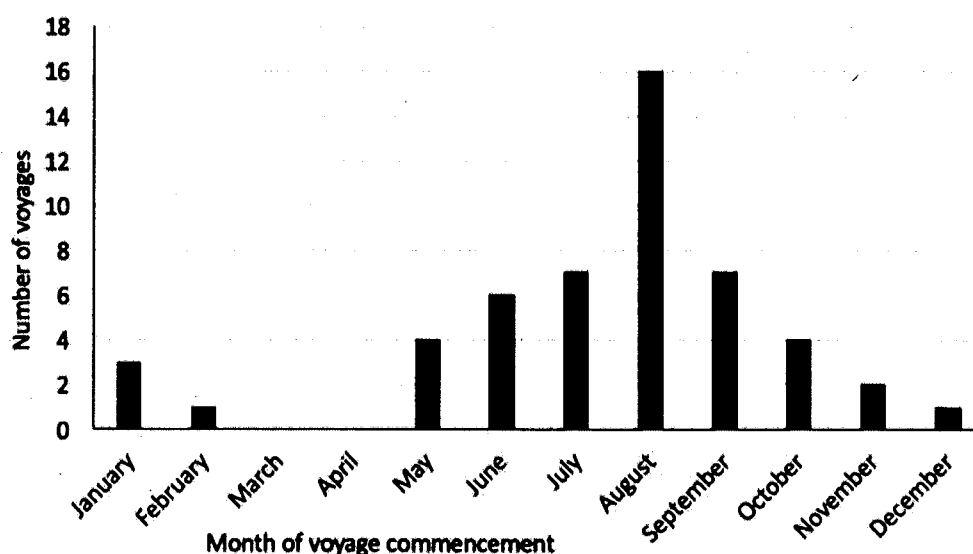


Figure 5. Number of voyages (n=51), by month of voyage commencement, when there were > 15,000 sheep on the ship from Australia to the Middle East between 2005 and 2017 and total sheep mortality rates were $\geq 1.5\%$.

The 'McCarthy' Review re Sheep Shipments During the Northern Summer Months

Despite the Department's long-term and detailed knowledge of the issue of heat stress on long-haul voyages to the Middle East during the Northern summer, it was only this year (2018) that Agriculture Minister, the Hon. David Littleproud, launched the *Review of Conditions for the Export of Sheep to the Middle East During the Northern Summer*. He did so in response to the publication of footage documented by a whistle-blower on board the *Awassi Express* in 2017, which he claimed left him 'shocked and gutted'.⁴⁸

The publicised images were extremely confronting and showed sheep essentially 'cooking' to death and with no proper access to food, water, veterinary treatment or the opportunity to lay down – in clear breach of the ASEL, across five different voyages.⁴⁹

⁴⁵ Note: the 'reportable incident' trigger for sheep is now 1% since the *Awassi Express* shipments exposé. The figure for cattle has not been reduced.

⁴⁶ Investigations into high mortality incidents are available [here](#).

⁴⁷ See the AVA submission [here](#).

⁴⁸ Brett Worthington, 'Federal Agriculture Minister David Littleproud slams live export sheep deaths' *ABC News* (6 April 2018, online). Available [here](#).

⁴⁹ The *60 Minutes* program is available to view [here](#).

Note that Minister Littleproud viewed a representative sample of the over 300 video files provided in the formal ASEL complaint lodged with the Department by Animals Australia. The resultant public outcry was colossal.

Dr Michael McCarthy was recommended to conduct the review by the Department and was appointed by the Minister. Whilst Dr McCarthy is undoubtedly an experienced veterinarian, he has also been employed in the live export trade for most of his career. His appointment thus created a perceived conflict of interest and raised concerns from animal welfare groups (including the RSPCA, Animals Australia and Vets Against Live Export).

Further, the Terms of Reference for the 'McCarthy' review were seemingly constructed so as to presuppose the ongoing legitimacy of the Northern summer trade. They were restricted to considering and 'advis[ing] on the conditions...any changes to the administration of ASEL and/or actions that would be required to assure health and welfare outcomes for sheep being transported to the Middle East during the Northern hemisphere summer'. This approach appeared to ignore the persistent and consistent calls of veterinarians, scientists and animal welfare groups who have been explaining for decades that the export of animals to the Middle East during this period poses an unacceptable, and *known* risk to animal welfare, which has and will continue to result in unacceptable levels of animal suffering and death.

When the McCarthy Report was subsequently released on 17 May 2018, it provided 23 recommendations. Specifically in regard to the conditions necessary to 'assure the health and welfare' of sheep exported to the Middle East during the Northern summer, recommendation 4 was that the heat stress model (called the HSRA or 'HotStuff') that is currently being used by exporters to purportedly avoid catastrophic sheep *mortality* events, have its risk settings instead set to avoid most sheep *suffering* from **severe heat stress** (i.e. from the scenes prevalent on the whistle-blower's footage across multiple journeys in 2017).

Dr McCarthy's report indicated that recalibrating HotStuff to avoid *suffering* due to heat stress as opposed to *death* could be done in time to be in place for the 2018 Northern summer (or at least by 1 July 2018). Dr McCarthy's report indicated that this change was deemed necessary for shipments to proceed during these months. Dr McCarthy said in his report that this recalibration of HotStuff could be done 'relatively quickly, and should be operational for this [2018] Northern summer or at a minimum by 1 July 2018'.⁵⁰

The implication of this recommendation, if adopted, was that stocking densities on ships travelling to the Middle East would have to be dramatically reduced, in order to reduce the likelihood that more than 5% of sheep would experience severe heat stress.⁵¹ Some ships with lower ventilation 'pen air turnover' ('PAT') scores would have to *more than halve* the number of sheep loaded in the months of June and July. By August, at the height of the high risk Northern summer, the number of sheep loaded on any ship would have to be reduced by between 70% and 92%. This indicates not only how dire the animal welfare consequences are when sheep are transported during these hottest months, but also means that the industry would effectively cease to be commercially viable during this period if dramatically reduced stocking densities were mandated in accordance with the McCarthy Review recommendation.

Minister Littleproud publicly indicated that the Government had accepted all 23 recommendations in the McCarthy Report. However, this statement was clearly not correct.

The Department advised in its formal response to recommendation 4 (regarding the recalibration of HotStuff) that any such change would require a 'consultation period', with the result that it will not be adopted for *at least* a further 3 months, and therefore will not be implemented in time for the 2018 Northern summer period.

⁵⁰ See page 4 of the report [here](#).

⁵¹ Severe heat stress is discussed in the McCarthy Report as occurring at 'level 3', and is indicated by extreme discomfort, open mouthed panting, and distress.

The Department's delay in adopting recommendation 4 on the basis of further testing and consultation is simply not warranted nor required, as the science regarding heat stress thresholds of merino sheep is very clear and has been for decades. In their key submission to the McCarthy Review, the AVA stated that their primary conclusion, based on substantive science, was that:

*Irrespective of stocking density, thermoregulatory physiology indicates that sheep on live export voyages to the Middle East during **May to October** will remain susceptible to heat stress and die due to the expected extreme climatic conditions during this time. **Accordingly, voyages carrying live sheep to the Middle East during May to October cannot be recommended.***

[emphasis added]

It is also not credible for the Department to assert that further consultation is required in regard to the adoption of Recommendation 4 within the recommended timeframe, given that the Department had already itself imposed an *immediate* 17.5% reduction in stocking densities in April in the wake of the exposé on *60 Minutes*. They had also then further moved to implement a reduction in stocking densities on ships by some 28% in accordance with Recommendation 2 of the McCarthy Report for all future sheep shipments (a figure which implements an allometric model of space required for some but not all necessary activities).

The Department's delay in adopting recommendation 4 of the McCarthy Report therefore demonstrates (yet again) that the Department's primary focus is protecting the continuance of the Northern summer trade at any cost to animal welfare. As already explained, if the Department had acted promptly to implement recommendation 4, which required stocking densities to be reduced by up to 92% during August for example, the trade during some months would cease to be economically viable. It is therefore evident that the Department's delay in implementing this recommendation serves to protect the interests of the live export industry who wish to continue to profit from the export of live sheep to the Middle East during the 2018 Northern summer months. Troublingly, this Departmental delay clearly conflicts with the intent and content of the animal welfare standards contained within the ASEL and relevant OIE guidelines, as well as their regulatory responsibility to ensure that all live export voyages take proper account of the health and welfare of exported animals.

The alarming nature of this move is compounded by the fact that the Department claims that they do not even know the determining content of the 'HotStuff' model, which was developed by the Industry to estimate and minimise the incidence of heat stress *mortality* on voyages to the Middle East. The Department receive the printed 'results' of the HotStuff assessment, but do not actually know the components or the algorithms that have produced that result, and seemingly accept the results on trust. When Dr Narelle Clegg (delegated by the Secretary to determine export permits) was recently questioned as to whether HotStuff was available for the Department to view, she explained: '[i]t's intellectual property owned by LiveCorp, but it contains data within it that is about individual ships and shipping companies...that's the commercial in-confidence information'.⁵² On the same day, Dr Clegg also admitted: '...the sheep are just not doing so well. That is my assessment of the way the [HotStuff] model is working'.⁵³ In the context of these remarks, Department Secretary, Mr Daryl Quinlivan, also stated, '[w]e have been asking ourselves whether the arrangements for access to the model and the public transparency of the use of the model and its products is sufficient'.⁵⁴

⁵² Commonwealth, *Parliamentary Debates*, Senate (Standing Committee on Rural and Regional Affairs and Transport) 24 May 2018, 115 (Narelle Clegg). Hansard available [here](#).

⁵³ Commonwealth, *Parliamentary Debates*, Senate (Standing Committee on Rural and Regional Affairs and Transport) 24 May 2018, 72 (Narelle Clegg). Hansard available [here](#).

⁵⁴ Commonwealth, *Parliamentary Debates*, Senate (Standing Committee on Rural and Regional Affairs and Transport) 24 May 2018, 115 (Daryl Quinlivan). Hansard available [here](#).

Even though it is wholly unacceptable that the Department accepts the 'risk assessment' results of a program which it does not know the content of, this would not have presented any impediment to the Department implementing recommendation 4 of the McCarthy Report. All that the Department needed to do was simply ensure the owners of the software (MLA/Livecorp) incorporate the recommended Heat Stress Threshold figures contained within the McCarthy Report, into the existing HotStuff model.

Departmental Approach to Previous Reviews

The Government's approach to reviewing regulatory conditions has also been similarly problematic in the past. For example, the 2011 Independent 'Farmer' Review – ordered after the exposure of the widespread cruel slaughter methods of Australian cattle in Indonesia – was shaped around the Department's unwillingness to consider a possible ban on live exports on animal welfare grounds. The review itself was 'commissioned in the context of the Australian Government's wish to see a sustainable trade' and therefore 'the Review did not examine in any detail considerations relating to a possible ban on live exports, since the Government has made clear that it is looking for advice on the conduct of a continuing trade...'.⁵⁵ To this extent, the ongoing and dire concerns of animal welfare groups, scientists and veterinarians were again effectively ignored.

This example, and the Department's approach to the aforementioned McCarthy Report, illustrate that when assessing and determining regulatory conditions, the Department's method is one that presupposes the continuation of the live export trade *in all circumstances*. The Department thus shows a clear lack of regard for animal welfare and displays a tendency to ignore animal welfare science whenever that science is contrary to the Departmental policy to continue to support the live export trade.

Whilst Animals Australia understands that the Department currently has conflicting responsibilities (to industry promotion and to animal welfare), the Department's unwillingness to even *consider* the possible benefits of a ban to the live export trade during the Northern summer period indicates that in developing and assessing regulatory conditions, the Department is simply unwilling to prioritise animal welfare over the interests of industry.

2.2 The Department's Failure to Properly Examine Animal Welfare Issues

The Department has also displayed a continual failure to properly examine animal welfare issues in the live export industry. For example, Animals Australia has obtained ship reporting documents under Freedom of Information (FOI) over many years that indicate that the Department is not addressing a number of on-board issues which indicate that the ASEL requirements are not being met. These reports include the daily on-board veterinary reports (provided electronically from the ship each day to the Department), the End of Voyage veterinary report, and the Master's Reports. Specifically, and by way of example from recently received FOI documents,⁵⁶ the Department has not addressed:

- The low number of euthanasia that is taking place on board (i.e. a small % of those that die), indicating that most sheep that are dying are not being identified and treated by the on-board veterinarian (in breach of the ASEL);
- The significant number of lambs being born on board, indicating that pregnant ewes are being loaded (also in breach of the ASEL); and
- Pertinently, on a shipment in September 2017 (not the ship the subject of the *60 Minutes* exposé), the fact that the daily and end of voyage reports provided by the Australian Accredited Veterinarian (AAV) to the Department (and exporter) were simply not credible, and yet have not been acted upon. On this shipment during the Northern summer, the Wet Bulb Temperature (WBT) (taken before midday) on 18 out of the 24 days of the voyage, was 28 or above, which causes heat stress in sheep. Yet, heat stress was never recorded (a line

⁵⁵ Bill Farmer, *Independent Review of Australia's Livestock Export Trade* (2011) pg xi.

⁵⁶ These documents can be provided by Animals Australia upon request.

on the form provides for it), and over 200 dead sheep were described as 'autolysed' (virtually breaking down, liquidised, unable to be examined). The main cause of death was recorded by the AAV as inanition (failure to eat), with no mention of heat stress contributing to those figures. This is not credible given all other indicators and climatic recordings. This was 'accepted' by the Department. It took for Animals Australia to lodge a formal complaint regarding these reports to enliven an investigation by the Department here.

Clearly, the daily and end-of-voyage reports that are submitted to the Department are either not being examined by the Department or are not being examined by somebody with sufficient expertise to ascertain the extent to which animal welfare requirements and the ASEL are being complied with.

We are also aware of on-board veterinarians who have noted issues on these reports, or advised the Department of issues, but have been ignored or the Department has failed to progress issues raised.

This continues to beg the question as to why the Department has failed to impose sanctions upon those exporters who consistently and clearly breach the ASEL and animal welfare requirements (including in response to formal complaints)?

The Department is not paying attention or consideration to the serious animal welfare issues that occur on board many live export voyages. On the evidence, the Department is not well placed to properly and appropriately assess and determine the regulatory conditions appropriate to achieve ASEL and animal welfare standards.

TOR 3.0 The process for investigating reportable mortality events and complaints received about industry compliance with the ASEL and animal welfare standards.

The process by which the Department purports to investigate reportable mortality events and complaints (and non-compliance with ASEL) is wholly inadequate. Animals Australia's position is that complaints alleging breaches of ESCAS and the ASEL should be investigated and completed in a robust and timely manner, by an independent investigation unit.

In regard to complaints or self-reports made with respect to breaches of both ESCAS and the ASEL, the investigations and enforcement function of the Department fails to undertake any 'hands-on' investigations. For example, in importing countries where Department approval to export has already been granted (in ESCAS approved facilities and supply chains), Departmental officers/investigators do not conduct in-country enquiries, and instead merely **seek information from the exporter**. Thus, ongoing breaches in some countries are almost 'encouraged' (but certainly given no priority to address) by the common knowledge that: Departmental investigators rarely travel to importing countries to gain first-hand insight into supply chain issues and local factors⁵⁷; nor test the integrity of the documentation provided to them by the exporters under investigation.

As a result of this inadequacy, Animals Australia's investigations, which gather and provide first-hand evidence of breaches, stand alone as the only direct, independent information provided to the Department. In a further abuse of 'good practice', the Department then invariably, and almost immediately, provides the Animals Australia complaint and evidence to the likely exporters of the animals that are the subject of the complaint. Our frequent objections to this abuse of process have been answered by way of a warning from the Departmental officers that a denial of permission will thwart the investigation. There is therefore no *true* investigation of our complaints, but only a desk-top analysis of the implicated live exporter's response.

Animals Australia is also troubled by the fact that the Live Animal Export division of the Department runs its own investigations alongside any relevant criminal investigation that may be undertaken in relation to the same incident (by the compliance section of the Department). As indicated above, the

⁵⁷ We are aware of only two occasions where the Department has despatched anyone to an overseas ESCAS investigation, once in Egypt, and another to Israel.

Departmental process for investigating incidents generally includes sharing all allegations and evidence of breaches with the implicated exporters, such that they may formulate a reply.

In one instance this flawed process was taken to the extreme when Animals Australia provided evidence to DAWR of repeated horrific sledgehammering of Australian cattle in Vietnam in mid-2016 (12 months after an earlier identical complaint). Instead of seeking information individually from each of the several possible exporters of those animals to determine whose supply chain they had come from, the Department immediately called a joint meeting of all the exporters. Animals Australia was invited to participate in a meeting by the Department, with the stated objective to:

...discuss possible options with livestock exporters to Vietnam to test their practicality. We are convening a meeting with these exporters to commence these discussions and invite you to provide an overview of the issues you believe are occurring in the market.

The original complaint and formal correspondence on this matter can be provided for examination.

Whilst Animals Australia appreciates the importance of communicating with exporters to gather information in relation to alleged breaches, it would be more appropriate for a preliminary questioning of individual exporters to take place prior to exporters being provided with the evidence put forward against them. This would not only mean that the Department could assess whether the exporter's version of events corresponds to the allegations being made against them, but also preserves the integrity of the evidence for any future criminal prosecutions – without first allowing the exporter's to effectively reverse-engineer their culpability without first explaining themselves.

In a recent example, Animals Australia lodged a formal complaint with the Department on Thursday, 5 April 2018, relating to the voyages of the *Awassi Express*, based on footage obtained by a whistleblower. In the days immediately following, the complaint and the full suite of evidence (including over 300 video files) were subsequently provided by that Division to the implicated exporter, Emanuel Exports. This occurred even despite Animals Australia's strong attempts to protect this evidence. Yet, the allegations and evidence was provided to the responsible exporter **before** the criminal investigations unit of the Department based in Perth was even provided with a copy.

This long-standing systemically flawed process within the Department renders it almost impossible for a criminal prosecution to be successfully initiated in response to a complaint alleging a breach of the ASEL or ESCAS. This is particularly so in light of the fact that the Department of Public Prosecutions ('DPP') will not, as a matter of policy, expend taxpayer dollars to pursue any prosecutions unless they can be relatively certain of securing a conviction. In the event that a possible defendant has been fully provided with all materials and evidence against them, it is practically impossible for the DPP to be genuinely confident that they could prove *any* of the allegations beyond reasonable doubt. Thus, until the process changes it is not foreseeable that any prosecutions will ever be able to take place in response to breaches of live export regulations.

Delays in Investigation reporting

There is a significant and unreasonable delay between the time complaints are made to the Department, and when subsequent Departmental ASEL or ESCAS investigation reports are published.⁵⁸ In some instances, this delay has been more than 1 year. The below table provides some representative examples:

⁵⁸ For the full list of regulatory compliance reports since 2012, see [here](#).

Table: Delays in ESCAS Reporting

ESCAS Report Number	Date of Complaint	Date of Published Report	Length of Delay
11(a)	May 2013	Feb 2014	9 months
21	October 2013	May 2014	7 months
39	October 2014	November 2015	13 Months
44	October 2014	November 2015	13 Months
45	October 2014	November 2015	13 Months
60	June 2015	May 2016	11 Months
79	September 2015	August 2016	11 months

Similarly, unacceptably long delays in investigations and reporting occur when there has been a 'high mortality' reportable incident onboard export ships.⁵⁹ The following table provides some representative examples:

Table: Delays in High Mortality Voyage Reporting

Consignment Report Number	Date of Incident	Date of Published Report	Length of delay
<u>43</u>	March 2012 (Cattle exported to Japan)	January 2014	20 Months
<u>45</u>	May 2013 (Cattle exported by sea to Japan)	February 2014	9 Months
<u>56</u>	January 2015 (Cattle exported by sea to Japan in January 2015)	October 2015	9 Months
63	April/May 2016 (details not yet available)	Not yet published	2 years to date
<u>65</u>	July 2016 (sheep exported by sea to Qatar, Kuwait, UAE and Oman)	September 2017 (and revised again in January 2018)	14 months (and 18 months in the context of the revision).
66	July 2016 (via FOI, known to be a sheep voyage on the Awassi Express, enteritis and heat stress)	Not yet published	2 years to date

Given that many of the allegations contained in these ESCAS/ASEL concern *serious* breaches or failures resulting in adverse animal welfare outcomes, it is problematic that the investigations and subsequent reports take such a lengthy period of time to be completed. All the while, the exporter responsible continues to operate unabated.

Whilst Animals Australia notes that in some cases the Department places additional temporary regulatory conditions on exports where there is a pending investigation underway, our strong view is that if the Department cannot conduct a review in an expedient manner, they should use their powers more strongly. That is, to restrict or suspend exports in certain supply chains or on certain ships where there are serious systemic and recurring adverse animal welfare issues being investigated.

As the example provided in our response to point 5.0 below (relating to Livestock Shipping Services) reveals, in many instances exporters who are under investigation for ESCAS/ASEL breaches are

⁵⁹ High mortality reports are available [here](#).

typically permitted to continue all exports as normal, and therefore are often implicated in further breaches even before the original breach has been investigated and/or addressed.

TOR 4.0 The effectiveness of reporting obligations under relevant legislation.

There can be no question that the animal welfare issues prevalent in the live animal export trade are a matter of considerable public interest.

This is particularly so in light of the fact that community interest and concern has been raised and sustained over the past 15 years after a string of disasters at sea and in importing countries. The need for transparency in reporting was acknowledged in the Keniry Review (2003) and again in the Farmer Review (2011) and some changes were made.

However, Animals Australia and other community organisations continue to have to undertake expensive and time-consuming FOI processes to obtain even basic documents (such as those described below) in order to hold the industry and the Department to account. Therefore, reporting obligations under relevant legislation should be broadened to provide much greater transparency.

The Australian public would be better informed in regard to the welfare of exported livestock if the following reports (redacted for strict commercial in confidence elements) were regularly published:

- Masters Report for each voyage;
- Daily reports of the onboard veterinarian (AAV);
- End of voyage veterinary (AAV) reports (which detail causes of death); and
- Independent Observer reports (and accompanying visual evidence) relevant to voyages.

In addition, once further electronic/auto recording of temperature/humidity/ noxious gases (etc) is being logged (as recommended by the McCarthy Report), this data should also be made available with final reports on each voyage.

TOR 5.0 Appropriate structures within the Department to ensure regulatory responsibilities are met, including whether an Inspector-General of Livestock Exports would provide superior oversight of the regulator.

Animals Australia's position (as discussed above) is that the Department is not a suitable body to ensure that regulatory responsibilities within the livestock export industry are met. For this reason, Animals Australia does not support the proposed introduction of an Inspector-General of Livestock Exports, but rather insists that the regulation of live export and animal welfare issues be moved to a neutral department to ensure that animal welfare needs are met.

The Department possesses conflicting interests as they are simultaneously charged with two contradictory responsibilities, namely, the maximisation of profits for the agricultural and live export industries, and the promotion of animal welfare.

A body that is charged with facilitating the continued growth of an inherently cruel trade should not simultaneously be charged with policing compliance with animal welfare requirements in that industry, as the two are often at odds. We again refer to the recent statement of Departmental Secretary, Mr Quinlivan, in which he explained that 'as public servants, we are required to take into account government policy, which is to support continuation of the live export trade'.⁶⁰

Furthermore, it is evident that animal welfare almost always 'loses out' when there are tensions between what is required for animal welfare, and what is advantageous for the profitability of industry.

⁶⁰ For example, see comments made during the Senate Estimates hearing on 24 May 2018 in Hansard (page 84) [here](#).

The fact that animal welfare and the profitability of Industry are routinely at odds was made evident over 30 years ago, in the 1985 inquiry into the export of sheep from Australia to the Middle East, which stated that:

*if a decision were to be made on the future of the trade purely on animal welfare grounds, there is enough evidence to stop the trade. The trade is, in many respects, inimical to good animal welfare, and it is not in the interests of the animal to be transported to the Middle East for slaughter.*⁶¹

Yet, the very same report concluded that 'economic and other considerations' required the trade to continue at that time, although it noted that a long-term solution to improving or replacing the trade should be sought. This indicates most clearly that what is deemed to be economically viable, is often not what is required for animal welfare.⁶²

The Department's routine conflation of animal welfare with mortality figures is also deficient and further demonstrates the Department's conflict of interest between maximising industry profitability and animal welfare.

The Department's focus has been on avoiding 'high mortality' incidents, but not on avoiding animal suffering. In other words, the Department has thus far been satisfied to accept mortality as indicative of 'welfare', with the result that it would be *prima facie* acceptable for all animals to suffer on a live export voyage, so long as the number of mortalities did not exceed the reportable limit (formerly 2% for sheep).

It should be noted that the comparative on-farm mortality for this class of sheep (wethers of 1 – 2 years of age) is in the order of 5 to 10 times less than is experienced (on average) on ships during the 2 to 3-week voyages. Given that animals may suffer harm that does not result in death, the Departmental focus on reducing mortalities is wholly inadequate to ensure animal welfare needs are being met.

We note in this regard that since the *Awassi Express* exposé and the McCarthy Report, the Departmental Secretary and officers have stated that they are now aware that mortality indicators are inadequate, and past reliance on them has been deficient.⁶³ We can have no confidence in these statements whilst the Department remains internally conflicted.

Previous incidents have also repeatedly shown that the Department is not equipped to handle ESCAS supply chains or to monitor compliance within them in order to prevent re-offending. As already addressed in point 2.0 (above) Animals Australia has complained of breaches in the Kuwait market on 12 occasions since 2012, and the Department has failed to take any substantive regulatory action to sanction or address those breaches.

We now provide **some further examples**, which indicate why the Department is demonstrably not equipped to monitor regulatory compliance within the export industry, and how the Department is failing to meet its regulatory responsibilities with respect to animal welfare.

Kuwait

As explained, Animals Australia has investigated and provided formal complaints of ESCAS breaches in the Kuwait market on 12 occasions since 2012. One particular example from within the

⁶¹ Senate Select Committee on Animal Welfare, Parliament of Australia, *Export of Live Sheep from Australia* (1985) 185.

⁶² It is worth noting however, that Animals Australia recently commissioned a review by Pegasus Economics which clearly indicates that banning the live export trade (and shifting to boxed meat exports) would not be detrimental to the Australian economy.

⁶³ See for example Hansard Senate Estimates of 24/5/18 of the Senate Committee on Rural and Regional Affairs and Transport Legislation Committee, available [here](#).

Kuwait supply chain is particularly revealing with respect to the Department's failure to monitor compliance and act to prevent animal welfare disasters.

In 2016, Animals Australia provided the Department with information that Australian sheep were being illegally held in the notoriously cruel *Al Rai market* (outside the approved supply chain, with individual traders selling for home slaughter). This notice was provided to the Department *eight weeks prior* to the commencement of the Festival of Sacrifice, a known 'high risk' period for ESCAS breaches, in order to provide the Department with time to act to *prevent* illegal practices and additional cruelty to Australian sheep.

Shockingly, despite being provided with this information and evidence, the Department *continued* to grant export permits for sheep to Kuwait and failed to take any effective action to address the supply chain breaches that were already taking place. Animals Australia investigators remained in Kuwait for the Festival of Sacrifice and documented egregious cruelty in breach of ESCAS. As a result of the Department's failure to address the illegal movement of Australian sheep outside approved supply chains, they documented Australian sheep being transported in car boots in temperatures exceeding 50 degrees Celsius, and sheep being manhandled and brutally slaughtered on the streets.⁶⁴

ESCAS Breaches in Gaza

In 2014, Animals Australia conducted a series of investigations in Gaza. Until **March 2014**, the only exporter who was authorised to export to Gaza was Livestock Shipping Services. Thereafter, exports to Gaza were essentially ceased by Government order.

However, between February 2014 and January 2015, Animals Australia submitted **15 complaints** related to the ESCAS supply chain in Gaza, including over 175 photographs and 25 videos. Our complaints alleged:

- Critical non-compliance with ESCAS animal welfare standards relating to handling and slaughter at an **approved** facility in Gaza – where breaches included:
 - The use of inversion slaughter boxes that were too small for the animals being slaughtered;
 - The stabbing and 'sawing' at the necks of conscious cattle, with multiple cuts being made (at least 14 in one case);
 - The use of a hose to interfere with open wounds;
 - The hoisting of animals prior to confirmation of death; and
 - The removal of visual ID ear tags.
- Critical non-compliances with ESCAS animal welfare standards relating to handling, transportation and slaughter at unapproved facilities – including in the streets during the Festival of Sacrifice in Gaza included:
 - The use of rope casting and tending cutting to immobilise animals for slaughter;
 - Animals being jumped over and leaned on, and being kicked and hit with sticks;
 - Cattle not restrained humanely or slaughter competently, with many being slaughtered using multiple cuts, stabs and 'sawing motions'. Multiple animals seen conscious several minutes after the first cut was made;
 - Cuts and stabs not being made exclusively to the throat;
 - Failure to confirm death post-slaughter, with wounds being interfered with by the slaughterman and/or hosed prior to the confirmation of death; and
 - The removal of visual ID ear tags.
- Losses of control and traceability within the supply chain; and

⁶⁴ View the footage [here](#).

- The unapproved movement of cattle across the border from Israel into Gaza and the West bank, which Animals Australia reported to the Department **4 times** across three consecutive months:
 - 59+ Australian cattle trucked from Israel into Gaza in June 2014;
 - 221+ Cattle trucked from Israel into Gaza in July 2014;
 - 1,000 Australian cattle illegally present in the importer's facility in Gaza in July 2014; and
 - Israeli government documents showing that 2,837 Australian cattle have been trucked from Israel into Gaza between March and July 2014 (reported in August 2014).

At **Attachment 5**, we offer a chronology which provides some further detail regarding the types of animal welfare breaches that Animals Australia documented in Gaza over this 13-month period.

In response to our 15 complaints, the Department concluded that the videos and photographs we had provided demonstrated 'numerous areas of non-compliance with ESCAS animal welfare standards and control and traceability requirements', and that corrective actions which had been taken by the exporter following a previous Gaza ESCAS report were 'not being maintained'.⁶⁵ In March 2014, the Department removed all Gaza facilities from the Livestock Shipping Services supply chains, effectively ceasing the live export of animals from Australia to Gaza. In addition, the Department concluded that there have been 'multiple, confirmed reports of serious animal welfare breaches in Gaza over a long period of time suggesting that ESCAS standards are unlikely to be maintained in that market'. A critical non-compliance was recorded against the Livestock Shipping Services supply chain in Gaza for failure to comply with ESCAS.

It is deeply troubling that despite the incredibly high number of breaches that Livestock Shipping Services were responsible for in the Gaza supply chain, the Department *continued* to issue export permits for them to export to Gaza (until March 2014) and failed to withdraw their export licence or take any substantive action to sanction their continued breaches before, during and after this period.

The cruelty that was documented in Gaza as a result of these breaches is among some of the worst that Animals Australia has ever investigated,⁶⁶ and is a result of a total failure by the Department to adequately use their powers to address serious breaches of ESCAS resulting in dire animal welfare consequences.

Moreover, this was far from the first instance in which Livestock Shipping Services had been implicated in serious animal welfare breaches which arguably should have led to the revocation of their export licence. Not only was this series of complaints the *second* substantive investigation that the Department had conducted in respect of breaches in Gaza by LSS,⁶⁷ but during a similar period in Jordan, Livestock Shipping Services had also consistently breached ESCAS requirements, as they were implicated in:

- The illegal sale and slaughter of Australian sheep at 26 roadside markets (June 2013);⁶⁸
- The illegal sale and slaughter of Australian sheep at over 32 roadside markets, and the brutal slaughter and handling of thousands of sheep during Eid 2013 (In December 2013); and ⁶⁹
- The illegal sale and slaughter of over 1,000 Australian sheep at roadside markets (October 2014).⁷⁰

Moreover, although the Department received 'multiple reports regarding the movement of Australian cattle from Israel to Gaza after the Gaza supply chain was closed', they were unable to confirm it

⁶⁵ See regulatory compliance investigation 28 [here](#). The previous report can be located [here](#).

⁶⁶ View the footage from the October 2013 Festival of Sacrifice in Gaza [here](#).

⁶⁷ The previous report can be located [here](#).

⁶⁸ See regulatory compliance report 14 [here](#).

⁶⁹ See regulatory compliance report 20 [here](#).

⁷⁰ See regulatory compliance reports 38 and 43 [here](#). Note: Wellard was also implicated in this incident.

had occurred, even though 'on balance it appears likely...'.⁷¹ The Department essentially therefore took *no* regulatory action to attempt to prevent or intervene in this unauthorised movement of Australian cattle into Gaza.

Vietnam

Animals Australia has also repeatedly documented the cruel use of sledgehammers to slaughter Australian cattle in Vietnam. The Vietnamese export market was opened in 2011, and the Department first became aware of Australian animals being killed with **sledgehammers in 2013** when a concerned member of the public provided video evidence to the Department.⁷²

In **May 2015**, Animals Australia provided the Department with further evidence of sledge-hammering, indicating that the regulatory system was failing to protect animals.⁷³ The supplied first-hand video evidence showed Australian cattle in unapproved facilities, where they were:

- tied to posts by ropes around the neck, visibly distressed;
- repeatedly struck with sledgehammers prior to being dragged by the head, leads and tail to the butchering area; and
- Not checked for unconsciousness prior to being butchered.

The ear tags of these cattle were linked to International Livestock Exports ('ILE'). ILE had previously reported the loss of 822 cattle from this same supply chain in March 2015, as a result of the deliberate actions of the director of the importing company.⁷⁴ ILE stated that the cattle documented in the video provided by Animals Australia were from this group of lost cattle. The Department report concluded that the video showed 'very poor animal welfare outcomes', and that practices 'did not comply with ESCAS animal welfare standards'. The Department removed the importer from all exporter supply chains and marked a critical non-compliance against ILE for breach of ESCAS.

In response to the public outcry following the Animals Australia investigation in 2015, on 17 April 2015, exporters pledged to commit to a '6-point plan' that they had devised to address sledge hammering in Vietnam. However, only one of these six 'points' (namely, the use of CCTV to monitor compliance) exceeded their existing legal obligations. The implication therefore appears to be that exporters and industry leaders had viewed their existing legal obligations in the Vietnamese market as merely voluntary, when they are in fact a precursor to obtaining the legal right to export live animals.

Given the weaknesses inherent in the Industry's '6-point plan' proposal, in May 2015, Animals Australia (in conjunction with RSPCA Australia) proposed a revised plan to accomplish an end to the disorder and sledge-hammering of Australian cattle in Vietnam.⁷⁵ It was presented to the Australian Live Exporters Council at a meeting in Canberra in 2015, however no response was ever received (despite numerous prompts).

Since then, the Department has been consistently provided with further information that reveals that the traceability systems in Vietnam (including the use of CCTV monitoring) have been corrupted, with thousands of Australian animals leaving approved supply chains.⁷⁶ Exporters have themselves reported many instances of supply chain leaks. Despite this, the Department has *continued* to issue export permits to this market and has done little to prevent the continued mistreatment of Australian animals.

⁷¹ See regulatory compliance investigation 28 [here](#).

⁷² See regulatory compliance report 12 [here](#).

⁷³ View the footage [here](#). See also regulatory compliance investigation 58 [here](#).

⁷⁴ See the regulatory compliance report [here](#).

⁷⁵ View the Animals Australia proposal [here](#).

⁷⁶ See for example regulatory compliance reports 98 and 99 [here](#).

When Animals Australia returned to investigate in Vietnam in 2016, we again documented further evidence of ongoing cruelty to Australian animals, with sledge-hammering still continuing.⁷⁷ Animals Australia then lodged a formal complaint with the Department on 9 June 2016,⁷⁸ and showed video footage to Departmental staff which depicted the abhorrent treatment of cattle at an abattoir **approved** to receive Australian cattle in Vietnam.

In response, the Department undertook a formal investigation. The Departmental investigation concluded that the animals in the photographs and video were exported from Australia and were present in unapproved facilities where animal welfare requirements were not met.

The footage provided by Animals Australia showed approximately 80 Australian animals, however Departmental investigation identified 'many more...with unknown animal welfare outcomes'.

We summarise the Departmental actions taken in response to this complaint in **Attachment 6** from June 2016 onwards. What is evident in this example is that the Department *again* heavily relied upon 'negotiation' with Industry to investigate and monitor compliance with ESCAS requirements in Vietnam. Although the Department placed suspensions of some supply chains, these were all ultimately lifted by October 2016, on the proviso that further reporting duties and auditing take place.

Malaysia

In 2016, Animals Australia provided evidence to the Department of ESCAS breaches in Malaysia in both unapproved and approved supply chain facilities.⁷⁹ The evidence showed Australian cattle, sheep and goats being illegally sold, trussed, dragged and slaughtered while fully conscious.⁸⁰ Animals Australia provided the Department with video and photographs taken at **14 facilities** between 11-12 September 2016. Over 130 ear tag numbers, along with four rump brands and 18 ear notches were also provided. The companies Halleen, ILE, Lembiru and P&D and Meat and Livestock Australia, all had representatives in Malaysia during this time period (which coincided with the Korban festival), however none reported any instances of non-compliance.

At the time the report was made, two out of three of the approved facilities had been given risk ratings of 'low' when they were audited in April 2015 and June 2016. The other had a risk rating of 'medium' based on an August 2016 audit. All initial and performance audits provided to the Department for the ESCAS approved facilities failed to identify any non-compliance.

In response to the report by Animals Australia, the Department suspended 17 facilities from all exporter supply chains, including the three approved facilities and associated feedlots and abattoirs. The Department also required all exporters to Malaysia to prepare a management plan in preparation for the 2017 Festival of Sacrifice in order to address the issue that had been identified.

Yet, in 2017, Animals Australia investigators returned to Malaysia, and *again* witnessed the illegal sale of terrified Australian animals from 'approved' facilities.⁸¹ **All facilities included in this 2017 complaint were also included in the 2016 complaint**, indicating repeat and systemic non-compliance by the same facilities and exporters, as well as the serious failure of the Department to take sufficient regulatory action to properly prevent a repeat of those 2016 breaches. Despite these repeated breaches, the Department reported that it had audited all supply chains in Malaysia between March and August 2017, with all audits returning 'satisfactory results'.

No corrective actions were implemented by the exporters in relation to the 2017 incident, as none of the exporters took responsibility for the animals in the video and photographic evidence provided by Animals Australia. These animals were again documented being thrown, trussed and dragged. They

⁷⁷ View the 7.30 report [here](#).

⁷⁸ See report 104 [here](#).

⁷⁹ See regulatory compliance report 118 [here](#).

⁸⁰ View the footage [here](#).

⁸¹ See regulatory compliance report 142 [here](#).

were also slaughtered by having their neck 'sawn' at by unskilled slaughterman. In one particularly confronting incident, an Australian sheep was shoved into a car, transported and dragged into an apartment building. She was slaughtered whilst fully conscious on the floor of the buyer's kitchen.⁸²

In response to this repeat incident, the Department *again* failed to take any substantial regulatory action and failed to issue any sanctions against exporters. The Department merely:

- Suspended the supply of livestock to one approved feedlot and one approved abattoir, for the duration of the investigation only;
- Required exporters to develop and implement a 'supply chain management plan' ('SCMP') to be reviewed prior to Korban 2018;
- Required increased exporter in-market oversight, presence and verification processes of supply chain control and traceability systems as part of the SCMPs; and
- Raised the risk rating of all sheep and goat facilities to 'medium' (requiring twice yearly audits).

Despite this 2017 incident being an almost identical 'repeat' incident of that which occurred in 2016, both of which involved *extremely* serious animal welfare breaches, the Department was unwilling to take any substantive corrective actions.

In effect, the Department has continued to leave it up to exporters, who have shown themselves to be repeat offenders in this market, to monitor and report on their own compliance with legal obligations.

The 2017 Awassi Express Voyage

In relation to compliance with the ASEL, the Department was made aware (by the AAV onboard) of a reportable mortality voyage on the *Awassi Express* in August 2017, in which 2,400 (3.76%) sheep died, and of which 195 sheep could not be accounted for. The Department failed to thoroughly investigate this incident, and simultaneously disregarded the gravity of the suffering involved and the attendant ASEL breaches. The Department merely concluded that 'the majority of the mortalities were caused by heat stress'.⁸³ Thus, even though the Department themselves has consistently used mortality as a (wholly deficient) measure of animal welfare, they simultaneously claimed in this instance that because the deaths were 'heat stress' related, there was *no breach* of the ASEL or related animal welfare standards. They also failed to appreciate the true failure of the current heat stress management model (HotStuff) and failed to recommend any systemic changes to avoid repeat disasters.

The Department maintained the position that there had been no ASEL breaches on the *Awassi Express* in September 2017 *even though* the temperatures encountered during this voyage were predictable and expected, and even though in the five years prior to this incident, there had been three similar high mortality voyages undertaken during the Northern summer in which heat stress contributed to reportable mortality levels.

It was not until the public release of shocking video footage (in April 2018) obtained by a whistleblower on board this voyage in 2017, that the Department, at the behest of the Minister, further addressed the suffering and death of these animals. Further, it was *only* following the airing of this public vision, that the Department has acknowledged that they have been relying upon an 'inadequate' and crude measure of animal welfare by assessing voyages based on mortality rates, and that the HotStuff heat risk assessment model needs to undergo a radical transformation to assess the risk of 5% of animals experiencing *heat stress*, as opposed to 5% of animals dying.⁸⁴

⁸² View the footage [here](#).

⁸³ See Mortality Investigation Report 69 [here](#).

⁸⁴ For example, see comments made during the Senate Estimates hearing on 24th May 2018 at pages See pages 69-73 of the Hansard [here](#).

Thus, if it were not for the courageous work of a whistle-blower on board this particular vessel, the reality of what happened to the animals on board (and the numerous breaches that took place as a result) would not have been uncovered by the Department's inadequate investigation. We provide a table summarising the breaches of both ASEL and OIE animal welfare standards that took place on this voyage at **Attachment 7**, which the Department effectively ignored.

It should reasonably be expected that the Department, as the responsible regulatory body, should be at the *forefront* of uncovering and identifying these breaches and related animal welfare issues. Yet, as the above examples (some of many) clearly indicate, the Department is simply unwilling and/or unable to take *any* regulatory actions which result in actual systemic change to the live export industry and which actually advance animal welfare. This reality sits awkwardly with repeated assertions by a procession of Agriculture Ministers that Australia has 'world's best' animal welfare standards.

Need for an independent and capable regulator

These examples further support Animals Australia's suggestion that the body that is responsible for animal welfare must be completely independent from any vested interests that may undermine that body's ability to monitor compliance with animal welfare requirements.

Animals Australia therefore envisages that a statutory authority, such as an Independent Office of Animal Welfare, with a CEO and staff with experience in animal welfare, policy development, legislation/enforcement, investigation and administration, be responsible for overseeing animal welfare in the live export industry (and indeed all national animal welfare matters).

This body could appropriately be charged with the responsibility for monitoring animal welfare compliance within the live export trade and would not be compromised by any conflicting interests in ensuring the ongoing promotion or profitability of the trade itself.

The reporting commitments of such a body would also not reside within the agriculture portfolio but could instead reside within (for example) the Attorney General's Department.

TOR 6.0 The development and maintenance within the Department of an effective regulatory culture that delivers on animal welfare standards and the ASEL and in doing so supports a sustainable live animal exports industry.

As indicated above, Animals Australia's view is that the Department is not the appropriate body to monitor animal welfare. Animals Australia does not believe that it is possible for the Department to develop or maintain an effective regulatory culture that delivers on animal welfare standards, because its primary conflicting mandate is to maximise the interests of exporters in the trade.

Animals Australia therefore firmly believes that responsibility for monitoring animal welfare in the live export trade must be moved to a neutral department. In this regard, we commend to you, recommendation (5.1) of the Productivity Commission, that there be established an Australian Commission for Animal Welfare, and the related section (5.3) which discusses the livestock export regulatory system and its current deficiencies. The full report can be viewed online,⁸⁵ and we also insert a copy of these particular recommendations at **Attachment 8**.

Animals Australia's comprehensive submissions to the Productivity Commission inquiry have previously been provided to you and include further detail specifically with regard to the past failings of the Department.

⁸⁵ Available [here](#).

TOR 7.0 The requisite skills, capabilities and systems for regulating the live animal export trade, as well as any improvements to support Departmental officers in their regulatory capacity.

Again, Animals Australia's position is that the Department is not the appropriate body to regulate the live export industry, because it is not clear that the Department has any imperative to actually improve animal welfare where those improvements may be at odds with the interests of Industry.

Animals Australia therefore does not believe that the Department possesses the relevant skills, capabilities, systems or culture to genuinely ensure that animal welfare needs within the trade are met.

Moreover, evidence shows that the Department will actively exclude animal welfare experts where they have provided information or advice that is contrary to the Department's need to see the live export trade continue in line with Government or Ministerial policy.⁸⁶

A relevant example of the Department actively seeking to exclude animal welfare experts occurred

Third-party information

Third-party information

88

This example again demonstrates an inherent, deep-seeded culture within the Department to appease the live animal export industry at the expense of desperately-needed animal welfare improvements.

TOR 8.0 The effectiveness of the Department's interaction with relevant State and Territory authorities (and applicable State and Territory legislation) as well as improvements to ensure the best level of Commonwealth/State and Territory cooperation can be achieved.

Formal arrangements must be in place to facilitate liaison between the Commonwealth and the States / Territories. Currently, it appears that there is inadequate communication between jurisdictions, with the result that dialogue between the two is ultimately stifled and there is no clear understanding of roles and powers.

By way of recent example, the Western Australian Agriculture Minister, the Hon. Alannah McTiernan, is currently also investigating the 2017 *Awassi Express* voyage to the Middle East, in which 2,400 sheep died from heat stress. In seeking to undertake this formal legal investigation under the *Animal*

⁸⁶ As explained, during the Senate Estimates hearing on 24th May 2018, Mr Daryl Quinlivan (Secretary for the Department) confirmed that it is Government policy to 'support the continuation of the live export trade'. See page 84 of the Hansard [here](#).

⁸⁷ This Report is available if needed.

⁸⁸ See media coverage of this incident [here](#).

Welfare Act 2002 (WA), Minister MacTiernan reportedly sought several documents from the Department, and was refused access to the documents. Minister MacTiernan was reportedly instructed to undergo a Freedom of Information process in order to obtain the requested materials. Animals Australia is of the view that this type of withholding of information (and delay) is contrary to the public interest and serves to do little more than frustrate due legal process in the hopes of securing proper penalties and sanctions for wrongdoing, and to promote and protect animal welfare.

It is fundamentally important that the role of state-based animal welfare legislation in the operation of the live export process be made clearer. The 'Introduction' to the *Australian Position Statement on the Export of Livestock* (contained in the ASEL) currently provides little clarification, and simply states:

Livestock sourced for export must also meet all requirements under relevant state and territory legislation, including animal welfare Acts. State and territory governments are responsible for ensuring these requirements are met. Areas of state and territory responsibilities include animal health and welfare, vehicle registration and operation, licensing and operation of facilities and equipment where appropriate, occupational health and safety, and environmental protection and operation of companies.

Thus, there exists little clarity surrounding the applicability of state and territory animal welfare legislation in the context of animal welfare breaches that take place under a licence and permit granted under Commonwealth legislation.

It is critical that state-based animal welfare legislation is operative in the live animal export process. Especially in light of the complacency and inadequacy of the Department, and the inherent conflict of interest in which the Department operates.

TOR 9.0 The ability of the Department to assess community expectations and its cultural capacity to respond, including the manner in which the Department engages with key stakeholders, including the live animal exports industry and supply chain, animal welfare organisations, other regulators, community stakeholders and international trading partners and governments.

The Department does not have the ability to assess community expectations, nor does it have the cultural capacity to respond. As has been demonstrated in this submission, Animals Australia's view is that the Department exists primarily to represent the interests of industry. They are therefore charged with the responsibility of maximising the interests of producers and exporters, at the same time as they purport to manage the animal welfare portfolio. They simply cannot, and have shown themselves to be incapable to, do both.

TOR 10.0 Any Related Matters

A matter that Animals Australia believes is relevant to the Inquiry, and which goes to the heart of the culture of the Department, is that animal welfare decisions and regulations are currently being made by the Department on a *reactionary* basis. In other words, the Department seeks to address animal welfare issues typically only *after* they have been publically exposed, with resultant widespread backlash.

Some examples illustrate this point. The development of ASEL and the requirement for public reporting of mortality was only introduced in 2004 after the public outcry over the *MV Corno Express* disaster, when that ship was rejected by Saudi Arabia and spent 10 weeks on the water without a port, and under the public spotlight.

Then ESCAS was similarly introduced in 2011 *only after* the widespread cruel mistreatment of Australian cattle in Indonesian abattoirs was publically exposed on the television program *Four Corners*. This is despite prior communication with the Department (months before the exposé) on

the matter (primarily with RSPCA Australia) which related to an industry-funded report on the welfare of Australian cattle in Indonesia which detailed egregious welfare issues (previously provided).

And now this inquiry and the McCarthy Review were prompted due to the work of a whistle-blower and television exposé regarding matters already known by the Department.

This reactive approach (to public exposés) demonstrates that it is the work of whistle-blowers and animal welfare organisations that are driving any improvements to animal welfare in the live export trade, and not the Department which actually possesses the responsibility for this portfolio.

There is an important need to, not just create an independent department (as explained in this submission) of animal welfare, but also a need for this independent department to act in a preventative manner when it comes to the regulation and enforcement of animal welfare matters.

Thank you for the opportunity to provide input to this important review. Please contact me if you require any further information or clarification in relation to our submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Glenys Oogjes', with a stylized flourish at the end.

Glenys Oogjes
Chief Executive Officer

P: 03 9329 6333

E: Googjes@AnimalsAustralia.org