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24 June 2018

Mr Philip Moss AM
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GPO Box 858
CANBERRA, ACT 2601

Independent Review into the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports

Dear Mr Moss,

Thank you for the opportunity to provide input into the *Independent Review into the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports* commissioned by the Minister for Agriculture and Water Resources, the Hon. David Littleproud MP.

The Australian Livestock Export Corporation (LiveCorp) is the research and development corporation (RDC) for the Australian livestock export industry. It is a not-for-profit industry body funded through levies on the export of beef cattle, sheep and goats from Australia, and a voluntary levy collected on live dairy cattle exports.

LiveCorp does not engage in agri-political activities. The responsibility for policy and advocacy lies with the Australian Livestock Exporter's Council (ALEC). This demarcation is important as it reinforces LiveCorp's focus on service delivery within the Australian livestock export industry. As such, LiveCorp's role is to market Australian livestock overseas and invest in RD&E to enhance the productivity, sustainability and competitiveness of the livestock export industry. A key aspect of this is to provide support to exporters in the implementation of new and existing regulation to meet their regulatory requirements. Details on the activities and objectives of LiveCorp are available in its Strategic Plan and Annual Report available on its website, www.livecorp.com.au.

The Livestock Export Program (LEP)

LiveCorp works in partnership with other Research Development Corporations, industry bodies and research providers to achieve strategic outcomes for the industry and leverage higher returns for investments that demonstrate value for money for livestock exporters. In recognition of the benefit of livestock exports to businesses throughout the entire supply chain, including producers, much of LiveCorp's investment occurs in partnership with Meat and Livestock Australia (MLA), through the joint Livestock Export Program (LEP). The partnership with MLA to deliver the LEP is widely recognised as the most efficient mechanism for delivering RD&E and in-market technical support. The most significant area of investment for the RD&E Program within the LEP is the delivery of animal health and welfare improvements, which receives 71% of the annual RD&E Program budget. The remaining RD&E budget is allocated to supply chain efficiency and regulatory performance, as well as market access related research.

Key projects that have been completed or underway within the LEP include RD&E to develop and implement the Livestock Global Assurance Program (a quality assurance framework for livestock exports), new animal welfare indicators for the live export supply chain that expand beyond mortality, and a salmonella vaccine.

Interaction with the regulator

LiveCorp has a strong, constructive working relationship with the Department of Agriculture and Water Resources (the department), providing technical advice and research and development where required and requested, particularly by the Live Animal Exports Division and its reform team.

It is also important to note that LiveCorp works closely with the Animal Biosecurity Division of the Department of Agriculture and Water Resources through the Livestock Export Industry Protocol Committee for the negotiation of health protocols and improvement of market access. This process has been very effective at achieving workable protocols that deliver against the biosecurity needs of the importing countries and the need for practical, efficient pathways to export.

Productivity Commission

In 2016, LiveCorp provided a submission and a supplementary submission to the *Productivity Commission Inquiry into the Regulation of Australian Agriculture*. The main submission provided comprehensive, detailed analysis and evidence of best practice regulation and regulatory reform opportunities to support improvements in the regulation of the Australian livestock export industry, particularly in relation to the Exporter Supply Chain Assurance System (ESCAS).

The submission addressed key issues including:

- Fundamental features affecting good regulation
- Importance of risk appetite
- Enabling the regulator: recognising quality assurance and equivalence
- Non-compliance and enforcement
- Self-reporting
- Enforcement: the narrow scope of secondary liability
- Impacts on industry: cost inefficiencies and implications
- Estimates of potential reform savings

Best practice regulation

As was outlined in the submission, effective regulatory regimes require clear legislation to guide and support the regulator and to provide certainty and clarity for the regulated parties. In particular, clear legislation should define the objective of the regulator – its role, expectations and scope of operation – as well as providing clarity on how to effectively exercise discretionary powers to balance social policy and economic goals. This was clearly articulated in the Australian Government's *Rethinking Regulation 2006* report, which stated:

"Where tradeoffs are involved, object clauses in legislation should make clear what balance is sought – for example, the need to pursue identified social or environmental objectives cost-effectively taking into account wider economic interests – and how such a balance is to be achieved."

As with many socially sensitive industries, the department is challenged with regulating the livestock export industry by balancing several multifaceted, and often competing, social and economic objectives. The challenge in providing a stable, effective regulatory environment while balancing these objectives,

particularly where there can be significant, rapid changes in political scrutiny and volatility, should not be underestimated. This is further complicated given the ever evolving and complex network of regulation at the Commonwealth level, coupled with obligations to the laws of the various jurisdictions within Australia and overseas that the industry operates under. This is a balance which LiveCorp considers the department has generally navigated well. Nevertheless, LiveCorp believes the department would benefit from increased regulatory clarity of its objective(s) and guidance or principles for decision making, as well as an overt recognition of its need to balance legitimate social and economic factors and operate in an environment where there is likely to perpetually be some level of dissatisfaction or challenge from some sectors of the community.

An example that LiveCorp highlighted in its submission to the Productivity Commission was the *Fisheries Management Act 1991* (Cth). It includes clear guiding objectives in the legislation which help to insulate the fisheries regulatory process from the pressures of activism, politics, differing personalities / philosophies within the regulator and government and corporate lobbying. Similarly detailed and clear objectives and associated principles clauses would be invaluable for the department and exporters to clearly define why the regulation exists and provide clarity on what balance is sought, and how that balance is to be achieved. For example, ESCAS has multiple legitimate goals that need to be overtly acknowledged and balanced, including achieving acceptable animal welfare outcomes in overseas supply chains, facilitating trade, minimising the impacts on the ongoing profitability and competitiveness of export businesses (and Australian exports) and supporting international relationships / food security. Similar objectives apply under the Australian Standards for the Export of Livestock (ASEL) within Australia and during transport. In this sense, best practice regulation does not necessarily mean more regulation, but more effective and clearly defined regulation.

Striking an appropriate balance between social and economic objectives requires a strong regulator with a clear remit, so that there is clarity for the regulated parties, the regulator and the community. Clearly defining the legislative / regulatory objectives of the department and providing guidance on how the competing social and economic objectives should be balanced would support an improved regulatory framework.

Regulator versus regulation

LiveCorp also believes that there is an important distinction between the effectiveness of the regulator and the regulation itself. Regulators need to predominantly operate within the legal boundaries of the powers and discretions conferred to them in legislation, regulation and associated instruments. In exercising these powers and discretions, standards and codes are common ways that governments can define how these should be used and give clarity on the outcomes that need to be achieved.

ASEL and ESCAS are the primary regulatory frameworks for the livestock export industry, and are key to defining the performance expectations that regulated parties must meet to satisfy the legislative objectives. However, increasingly governments face challenges with ensuring regulations balance community expectations and legitimate business activities on an ongoing stable basis. Where disconnect develops or occurs between community expectations and the standards / regulations applied, both the regulator and the regulated parties can face significant scrutiny. Such situations demonstrate the importance of having structured, regular review processes for codes and standards to ensure they are at the right level to achieve regulatory compliance, as well as adequately reflecting community expectations and legitimate trade objectives.

The regulator can only be as strong / effective as its regulation allows and hence the capability of the regulator should not be confused with the effectiveness of the regulation itself.

Community expectations

The regulator must not only balance the regulatory objectives, as discussed above, but also ensure that the regulation sufficiently meets the expectations of the Australian community. The key to achieving this is utilising a regular, objective and formal review process to ensure all relevant views are considered in the regulatory instruments and minimising the risks that regulatory expectations be affected by short term risk appetite influences.

It is the remit of Government to set the legislative approach to reflect community standards, taking into account broader or wider policy considerations that affect and determine an appropriate balance of the various competing interests. Any major shift in community expectations ought to be implemented and felt by that industry through the Parliament, not by changes in how the regulator interprets the legislation. For example, this should be (and is typically) the case for many highly regulated industries subject to strong community scrutiny and expectations; be it mining, uranium, fisheries, forestry, dangerous goods, domestic animal welfare – or livestock exports. As mentioned earlier, clearly defined objectives and guidance on balancing the objectives is fundamental to protecting the regulator from external pressures.

Ensuring that community expectations are met is a key responsibility for the regulator / Government, however effective structures must be in place to ensure that regulation reflects a clearly defined community and that legitimate interests of business are considered.

Review processes and consultation

The reform and review processes undertaken by the department that LiveCorp has had the opportunity to contribute to, have been well managed, engaged with interested stakeholders, and have continued to improve the operations of the regulator.

A significant change from these reforms in the last two years has been the introduction of Approved Arrangements. The introduction of Approved Arrangements aligned regulation of the livestock export certification / approval processes with the other agricultural commodity sectors and introduced improved efficiencies and effectiveness in the regulatory structures. This change represented a significant modernisation and improvement in the regulatory approach and in particular required exporters to develop assurance systems / frameworks for their business activities. It also established an audit and inspection system that had incentives and disincentives based on exporter performance. Under the export legislation, the department has a suite of regulatory powers at its disposal and the introduction of Approved Arrangements has diversified and strengthened its ability to use these powers and take action.

The ASEL Review currently underway is a critical activity to ensure that the standards against which the regulator and exporters operate are up to date, fit for purpose, based on science and practical outcomes, and deliver good animal welfare outcomes that meet community and government expectations. The review is particularly important given – for a number of reasons separate to the regulator itself – ASEL has not been reviewed substantially for over five years. This review commenced prior to the recent incident and LiveCorp would like to recognise and welcome the revised approach adopted by the department for the 2018 ASEL review, which uses structures and governance that emphasise careful consideration of issues by technical experts, with the support of a representative reference group.

Regulatory culture and capability

It is important that the decision makers within the regulator have a sufficient understanding of livestock and the livestock export industry, and there are many people with such skills and experience within the department. Whether further skills or expertise are required is something that LiveCorp cannot comment on, but certainly the department should have processes in place to assess any resource or skills shortages and address these. In recent years, the department has also increased the opportunities for its officials to

experience and engage with the livestock export supply chain and the key regulated entities (veterinarians, exporters, registered premise operators). This has significant benefits in supporting the understanding and knowledge that department officials have of the industry and such initiatives should continue / be expanded.

Transparency and independent data collection and reporting

Commentary following the recent incident involving the *Awassi Express* has raised questions about the reporting that the department receives from on-board livestock export vessels (including what is collected, who collects it and their independence), the checks or audits that the department performs to validate the accuracy of those reports and ultimately how that data is then used.

LiveCorp recognises that there is a need in the current regulatory environment for changes to enhance the line of sight of the regulator onto vessels. In the first instance, this has been implemented by the Minister for Agriculture and Water Resources' introduction of Independent Observers. However, longer term reforms must consider and define the different information, evidences or assurances that the regulator requires from a vessel and the respective roles and responsibilities of the different parties (independent observers, AAVs, stockpersons) / technologies (e.g. automated data collection) and the relationships between them. Such consideration needs to take into account the logistical challenges and identify arrangements that support the best possible animal welfare outcomes, as well as the regulatory framework.

Independent Observers

Following the recent poor footage on-board a live sheep vessel, the Minister for Agriculture and Water Resources acted to increase transparency and independence in the assurances / reporting provided on on-board conditions by requiring the regulator to place Independent Observers on all voyages. The Independent Observers are likely to play a critical part in rebuilding industry trust and demonstrating what 'normal' shipments are like.

The announcement of the Independent Observer Program was also noted by the *McCarthy Review*, which identified the critical need to define the prospective roles of the Independent Observers, AAVs and stockpersons.

The technical challenges for the department in rolling out this program will be significant and, while much of the detail is still under development / refinement, feedback has already been received of potential confusion / dissonance in the overlapping roles and expertise on-board between the Independent Observers and the AAVs. It will be important that key elements of the program are soon clarified – including the function of Independent Observers (i.e. auditor / observer or data gatherer), the skills required (auditor, veterinarian) and how they interrelate / integrate with the existing on-board personnel. Further, logistical challenges are likely to be experienced when these arrangements are applied to ALL shipments, particularly on smaller vessels. This raises the question or opportunity for identifying equivalent approaches through the application of technology or other arrangements.

Within the current framework, LiveCorp believes that the Independent Observers are best suited to performing an auditing / verification function. Their core function would appear to be confirming / verifying and building confidence in the systems / structures through which the department receives reports from AAVs and / or stockpersons, and obtaining first hand observations to support standard setting / confirmation of reporting. If the observers were used for primarily an auditing / inspector role, best practice auditing principles could be applied – for example, rather than a continued presence on vessels their use could be determined to reflect a strategic risk based schedule, including random

placements. A risk based approach would be consistent with best practice regulation and enable both logistical efficiency and effectiveness in the use of limited resources.

Technology

As mentioned previously, the livestock export industry is undertaking research and development into animal welfare indicators to investigate improved methods of measuring and collecting welfare performance data using technology and automation. Achieving the right balance in data collection and technology will improve the integrity and breadth of data collected. Aspects of this research have been fast tracked in response to recent evidence of poor animal welfare outcomes of sheep exported to the Middle East and are currently being rolled out across industry through the industry welfare data collection program. This will increase the industry's ability to collect meaningful animal welfare data through the supply chain to identify trends and opportunities for continuous improvement and further research and development.

In addition, the livestock export industry has commenced research looking at the use of different technologies that may play a role in supporting reporting and transparency in the future. LiveCorp, with the LEP, is also looking to commence research into technological solutions and opportunities to collect data on different measures to enhance transparency and independence.

AAV independence

LiveCorp is aware of suggestions proposing greater independence in the allocation of AAVs and their relationship with exporters. Clarity is needed in such discussions on whether any proposed changes are to address a failing in the existing structures (and if so, what?) or primarily to overcome perceptions of conflict. This is important to avoid such discussions implying that AAVs have not acted appropriately in discharging their duties under the export legislation and professional codes.

LiveCorp's experience also suggests that the concept of introducing independence for AAVs is a more complicated discussion than may be first realised, with potential implications for exporters, AAVs and animal welfare.

AAVs are crucial members of the on-board management and decision making processes and play a critical role towards the success of a voyage and providing for the welfare of livestock. These roles extend off the ship into the land based supply chains and the preparation and inspection of livestock. AAVs that attended a consultative workshop in 2016 held by LiveCorp identified that where possible, a shipboard AAV should be part of the exporter's management team. There was a view from that workshop that AAVs can more positively influence the outcomes of a shipment when they have built consignment preparation knowledge / relationships and are part of the exporter's team rather than being employed as an independent contractor that is tasked with managing a component of the exporters supply chain.

LiveCorp also noted there are different levels of experience, skills and work ethic approaches in every profession – including for AAVs. Allowing exporters to select the AAV that is best suited to the voyage and reward performance is an important consideration in any structure that would change the current role or engagement of the AAV.

In presenting the above, LiveCorp primarily notes that changes to the independence of AAVs is a complicated discussion and something that before being pursued must be carefully worked through in consultation with the AAVs themselves, so as to ensure that the best animal welfare outcomes can be achieved.

Providing appropriate regulatory transparency on vessels is critical and can be delivered by an appropriate combination of personnel and technology. The right people collecting the right information.

Independent Observers have an important role and function which aligns most closely with an auditor or inspector. A better regulatory approach focused on risk based, randomised sampling / audits would provide equivalent regulatory benefits while minimising logistical, cost and resource challenges.

LiveCorp, through the LEP, is investing in the development of technologies that will support future data collection and information transfer.

Automation can play an important role in providing independence over collection of key data, increasing transparency.

On-board personnel – particularly AAVs – play a vital role in the success of livestock voyages and there is value in balancing independence with the ability for professional relationships to create improved performance.

Compliance investigations

Industry bodies such as LiveCorp and ALEC also have an important role to build capacity and provide technical advice and support for their members, to improve performance and compliance. Recently, a number of measures have been announced by ALEC including a review of its structures and governance, which it has identified will lead to an Ethics, Integrity and Review Committee and Code of Conduct.

A further related commitment that it made was to direct LiveCorp to establish an investigative panel to investigate mortality events. It will take some time to define the scope of the panel, although consideration must be given to avoiding duplication with the regulator's role of investigating mortality events. The proposed investigative panel and other structural and governance reforms highlight the importance of industry bodies building strong internal structures to support industry performance and regulatory compliance.

Industry bodies have an important role to support the regulator and conduct activities beyond the codes and standards required.

Livestock Global Assurance Program (LGAP)

In April 2018, the Livestock Export Industry unanimously endorsed the implementation of the Livestock Global Assurance Program (LGAP) and the roll out across all Australian export markets, supply chains and facilities.

While ESCAS has served the industry well since its establishment in 2011, there are a number of improvements that can be made to improve animal welfare outcomes in-market which are unable to be delivered through ESCAS, while enabling the growth and sustainability of the livestock export sector. This was a key recommendation from the *Farmer Review* which recommended that:

“industry develop a through-chain quality assurance system to complement the government’s regulatory compliance programs. This could help reduce the regulatory burden imposed by the government upon industry. An industry-managed assurance system may also facilitate more efficient and effective management of off-shore supply chain participants that are outside of Australia’s regulatory reach. If developed, such a system could provide an alternative way for exporters to meet ESCAS principles, provided it was underpinned by an appropriate statutory framework. Such a framework would allow the regulator to audit and verify the operation of the assurance system and step in should the industry managed system fail.”

LGAP is a facility based quality assurance framework that represents the result of over four years of research into a more efficient and effective way to meet the Australian Government’s ESCAS regulations.

As a global program, LGAP will be independent of the Australian livestock export industry and Government, and therefore will enable exporters to provide greater assurances to the regulator and Australian community that ESCAS requirements are being met. Importantly, as LGAP will be a non-government entity it will have a greater capacity to take actions without impacting on sovereignty and help overcome the logistical challenges putting the regulator in a position to regulate more effectively and with better information. While initially focused overseas, LGAP also has the potential to expand its role to underpinning compliance with other parts of the supply chain.

As LiveCorp outlined in its supplementary submission to the *Productivity Commission Inquiry into the Regulation of Australian Agriculture*:

- *"A well-designed Quality Assurance (QA) program, which meets key criteria specified in legislation, will strengthen the department's oversight and reduce the burden on government through a number of means including providing more reliable, transparent and independent evidence demonstrating ESCAS compliance and allowing the regulator to focus on substantive, rather than operational, issues.*
- *The quality and scope for a suitable QA program must meet minimum standards as defined in established threshold criteria in the legislation.*
- *Legislating to allow QA provides a mechanism to vastly reduce the regulatory burden and improve the effectiveness of ESCAS beyond administrative issues such as audit duplication."*

Further information and detail about LGAP and its structures can be provided if it would be of value to this review.

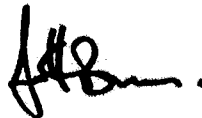
LGAP is a key initiative of industry that will bring increased independence and assurance across a range of areas to support improved regulatory compliance of the livestock export industry.

It is important for the livestock export industry to have a strong, effective and efficient regulator and regulatory framework that reflects and is able to meet community expectations, while at the same time supporting the long term sustainability of the trade.

LiveCorp is committed to providing the Australian livestock export industry, as well as the regulator, with technical advice and valuable research in order to support the regulatory compliance of the industry and to inform the effectiveness of the regulator.

LiveCorp would welcome the opportunity to discuss this submission further with you if required.

Yours sincerely,



Sam Brown

Chief Executive Officer

Australian Livestock Export Corporation Limited (LiveCorp)