

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

Mr Philip Moss AM

Independent Reviewer

27 September 2018

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources
Parliament House
Canberra ACT 2600

Dear Minister

I am pleased to provide my report of the independent review I have conducted into the regulatory capability and culture of the Department of Agriculture and Water Resources in the regulation of live animal exports.

You announced the review in April 2018. Since commencing the review in May, I have travelled to Western Australia, South Australia, Victoria and the Northern Territory to observe various aspects of the live animal export industry, including visits to facilities, ports and vessels. I also met with the Western Australian Minister for Regional Development, Agriculture and Food, the Hon. Alannah MacTiernan MLC, the Northern Territory Minister for Primary Industry and Resources, the Hon. Ken Vowles MLA, and representatives from Commonwealth, state and territory government agencies.

I acknowledge the input which the review has received from individuals and organisations representing the live animal export industry, producers, veterinary associations and animal welfare organisations. I acknowledge also the preparedness of the department to make information available to the review and to encourage its staff members to submit ideas on regulatory and investigative improvements.

Finally, for their excellent work, I thank the members of the review team, Ms Claudia Cooney and Ms Ruby Faithfull, from the Department of Agriculture and Water Resources.

Yours sincerely

A handwritten signature in black ink that reads "Philip Moss". The script is cursive and fluid, with the first letters of "Philip" and "Moss" being capitalized and prominent.

Philip Moss AM
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Executive summary

Background

1. The live animal export industry is important to the Australian economy, especially to producers and rural communities. However, the welfare of exported animals is also a priority to the Australian community. Members of the public provide Australian agriculture with the social licence¹ to operate and want good animal welfare outcomes. Furthermore, trading partners will continue to require high standards for exports in terms of environmental sustainability and animal welfare practices.²
2. By its nature, live animal exports present a high risk to animal health and welfare. There have been instances of non-compliance with animal welfare standards and instances of animal cruelty that have not been anticipated by the regulatory framework or evoked an appropriate regulatory response.
3. Exporters are individual businesses, some of which may have behaved in a non-compliant way that has adversely affected the reputation of the industry as a whole. The regulatory framework needs to ensure appropriate responses for non-compliance. The department as the regulator needs to respond appropriately to non-compliance. The industry overall needs to comply with the required standards and support the regulator to ensure long-term sustainability of the industry.
4. Several submissions to the review suggested that a statutory authority should perform the role of regulator of live animal exports. The approach taken by the review is to recommend improvements to the current regulatory framework and the Department of Agriculture and Water Resource's regulatory practice. These measures include the establishment of an Inspector-General of Live Animal Exports to provide independent oversight of the department's regulatory performance.

Department's statement at Senate Estimates

5. The starting point of and background to this review is the statement by a deputy secretary of the department at a Senate Estimates Committee hearing on 24 May 2018.³ In that statement, reference was made to the shortcomings of department's regulatory approach. The shortcomings outlined by the department include:
 - the department's reliance on key performance indicators

¹ The social licence is the level of acceptance or approval continually granted to an organisation's operations or project by local community and other stakeholders. It has four levels from lowest to highest: withdrawal, acceptance, approval and psychological identification. Most companies or projects are in the acceptance or approval range most of the time. It can vary across time or between stakeholder groups in response to actions by the company and/or its stakeholders. Australian Centre for Corporate Social Responsibility (ACCSR), *Defining the elusive and essential social licence to operate*, June 2018, <http://accsr.com.au/defining-the-elusive-and-essential-social-licence-to-operate/>

² European Food Safety Authority, *Animal welfare*, June 2018, <https://www.efsa.europa.eu/en/topics/topic/animal-welfare>.

³ *Hansard*, Rural and Regional Affairs and Transport Legislation Committee, Estimates, 24 May 2018.

- reliance on exporters and accredited vets reporting on conditions and outcomes of voyages, including information that did not indicate animal welfare conditions which warranted further regulatory action
 - inadequate reporting that did not convey the extent of the problems on the *MV Awassi Express* in August 2017 and other voyages between May and November 2017
 - inadequacy of mortality as the predominant measure of animal welfare in the regulatory approach, in the Heat Stress Risk Assessment (HSRA) model used by industry and as a trigger for the department to investigate
 - insufficient means of assuring exporter compliance with regulatory obligations while consignments of livestock were at sea.
6. Reference was also made to limitations in the regulatory framework, including a lack of compliance tools available to the department as the regulator.⁴
 7. These observations indicate the significant challenges that the department faces as the regulator of live animal exports.
 8. Through the review's terms of reference, this report examines the regulatory capability and culture of the department as the regulator of live animal exports. It also makes recommendations which aim to ensure adherence to animal welfare standards, compliance with the regulatory framework and an enhanced regulatory model.

Legislative framework

9. The present legislative framework provides powers for the department to regulate the live animal export industry. These powers are effective in some respects, but not all. The department has used the power recently to suspend and cancel export licences but overall has rarely used those powers.
10. Recently, the Minister for Agriculture and Water Resources introduced the *Export Legislation Amendment (Live-stock) Bill 2018* to strengthen the provisions relating to penalties and sanctions in order to protect the welfare of livestock on export voyages.
11. As a further measure to strengthen the framework, the possibility also exists to prescribe the Australian Standards for the Export of Livestock (ASEL) as regulated standards with appropriate penalties for non-compliance. The review recommends this option.

Regulatory framework

12. The regulatory framework for live animal exports places the responsibility on exporters to ensure the health and welfare of animals throughout the export supply chain. Accordingly, the department as the regulator relies significantly on industry compliance and reporting. Yet some parts of the industry may have breached the trust which the regulatory framework vests in it.
13. The role of Australian Government Accredited Veterinarians (AAVs) is to ensure the health and welfare of livestock before and during export voyages. Although on-board AAVs are accredited by and report to the department they are employed by the exporter. This role appears to be inherently conflicted because AAVs are required to report on the condition of

⁴ *Hansard*, Rural and Regional Affairs and Transport Legislation Committee, Estimates, 24 May 2018, p. 72.

live export consignments for which their employer is responsible. Reporting of adverse conditions to the department will have an impact on the exporter.

14. Since April 2018, departmental independent observers (IOs) have accompanied voyages for the purpose assessing whether the management procedures required under ASEL are followed. IOs provide the department with an alternate source of information on consignments. The department is currently considering how this additional regulatory measure can be sustained.
15. One exporter expressed the view that the placement of IOs on voyages should be assigned using a risk based approach with random placements rather than a blanket imposition. According to this submission, the risk assessment should have regard to destination, species, voyage duration, prior exporter performance, prior vessel performance and seasonal outlook.⁵
16. It is noted that as a key measure the department should continue to receive reporting independently of exporters about the health and welfare of live animal export, especially for high risk consignments. Such reporting provides improved oversight and helps to ensure exporter compliance.

Regulatory capability

17. For live animal exports, the department's regulatory capability is dispersed across a number of groups, divisions and branches. This arrangement detracts from effective regulation. The separation of staff and skills is problematic particularly in a context of the department's other focus on trade facilitation. The need is for those regulatory elements of the department relating to live animal exports to develop common sense of purpose, identity and alignment.
18. At present, the characteristics necessary for effective regulation including skills, resources and technology are lacking to the required extent.
19. The department needs to regulate live animal exports in accordance with the required standards, community expectations and trading partner requirements. To achieve this aim the department needs technical capacity and expertise. The skills specifically required to regulate live animal exports effectively include expertise in production animal health and the science of animal welfare. Development of the department's animal welfare technical capacity and scientific expertise would enable it to respond effectively to current and emerging animal welfare concerns.
20. The department uses multiple information technology systems which do not facilitate efficient regulation. These systems do not relate to each other, the information they contain is not easily compared, and the capacity for analysis is reduced.
21. The use of enhanced on-board technology would assist in monitoring the health and welfare of livestock consignments. Investment in technology solutions would also increase the level of transparency as sought by stakeholders.
22. The department's capacity to conduct effective investigations is an important aspect of its regulatory capability. Currently, investigations are conducted by different branches in the department. It is an arrangement which can lead to poor investigative outcomes. Furthermore, the department's investigative arrangements are unable to report the

⁵ In-confidence submission to the review p. 3.

outcomes of investigations in a timely manner. There is a need for the department to establish either a coordinated or consolidated investigative capability.

23. The departure of experienced staff members has reduced the department's capacity to regulate and investigate non-compliance. The industry has commented consistently that the department needs to have greater depth of knowledge about the live animal export industry.

Regulatory culture

24. The department's focus on trade facilitation means that it is balancing competing factors in its role as the regulator of live animal exports. Some stakeholders and department staff members told the review that the department's trade facilitation and regulatory functions are contradictory. The focus on trade facilitation and industry deregulation appears to have had a negative impact the department's culture as a regulator.
25. A strategy is needed to develop and maintain an effective regulatory culture that will deliver on ASEL and animal welfare standards. Departmental staff members need to become professional regulators. For this transformation to occur, the recommendation is that the department establish the role of Principal Regulatory Officer, who would advise staff members, develop training and contribute to the achievement of best regulatory practice.
26. The department does not have a single regulatory mindset. There is a sense of disconnection between the policy areas of the department and the regional staff members who engage directly with the industry. Exporters are generally supportive of the department's regional officers, but regard policy staff as having insufficient experience and background in relation to live animal exports.
27. Other factors are having adverse impacts on the department's regulatory culture. Currently there is a lack of focus on and expertise in animal welfare. The re-establishment of an Animal Welfare Branch is recommended to bring greater focus to this topic and introduce relevant expertise to the department. This capacity would improve policy development and contribute to an effective regulatory culture.
28. Animal welfare organisations play a significant role in the regulatory framework because, through the resourcing they dedicate to monitoring, they are a significant source of information about animal health and welfare in the context of live animal exports. Consistent with good regulatory practice, the department needs to improve its connection with this sector. The re-establishment of an animal welfare branch in the department would help to address this issue.
29. The regulation of live animal exports operates under a cost-recovered model. Some parts of the industry appear to think they are paying for a service. This attitude is a risk to the relationship between the department and the industry. It must be clear in the mind of the party paying for a regulatory function and the regulator itself that the former is covering the cost of regulation, not paying for a service.⁶ Full cost recovery relating to regulation is recommended.
30. From a cultural perspective, the department as the regulator needs to be dynamic to detect operational trends and breaches of the required standards and be ready to adjust its regulatory response accordingly.

⁶ In-confidence submission to the review, pp. 23–24.

Inspector-General of Live Animal Exports

31. The inherent risk to animal health and welfare and the special challenges associated with the regulation of live animal exports necessitate the need for additional oversight measures, not necessarily applicable to other agricultural products.
32. It is recommended that an external entity be established to oversee the department as the regulator of live animal exports.
33. The proposed Inspector-General of Live Animal Exports would be independent of the department, be appointed by the Minister and would review the performance of functions or exercise of powers by department staff members in the regulation of live animal exports.

Animal welfare standards

34. The Australian Standards for the Export of Livestock (ASEL) indicate what is required of exporters engaged in live animal exports. It is concerning that ASEL have not been reviewed since 2011 when a review was due in 2013. Following the McCarthy review, which recommended that a change of focus from animal mortality to animal welfare indicators, it is now time for the department and the industry to work to develop animal welfare indicators.
35. Greater transparency is needed in the live animal export industry, which has to demonstrate its commitment to animal health and welfare to the Australian community to maintain its social licence.

Recommendations

The recommendations made in this report are listed under each of the terms of references.

- 1. 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 are those powers to ensure compliance by the live animal exports industry, and how effectively the Department uses those powers.**

Recommendation 1: That the department ensure the Australian Standards for the Export of Livestock are reviewed on a regular basis to reflect industry, scientific and regulatory developments and community expectations concerning live animal exports.

Recommendation 2: That the department undertake to clarify the interaction between the *Export Control Act 1982* and the Australian Standards for the Export of Livestock and the operation of state and territory animal welfare laws regarding live animal exports.

Recommendation 3: That the department work with the live animal export industry to develop comprehensive animal welfare indicators relating to every point of the export supply chain and for those indicators to become part of the regulatory framework.

Recommendation 4: That the department take steps to have the Australian Standards for the Export of Livestock prescribed as regulated standards, with appropriate penalties, for the purpose of strengthening the regulatory framework and encouraging compliance.

Recommendation 5: That the department as the regulator of live animal exports adopt a dynamic, forward looking posture to its regulatory responsibilities.

- 2. 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.**

Recommendation 6: That the department develop a regulatory approach which fosters and incorporates scientific best practice to ensure continual improvements in animal welfare outcomes for live animal exports.

Recommendation 7: That the department strengthen the approved arrangements model for live animal exports by introducing full inspections of consignments on a random unannounced basis.

Recommendation 8: That the department adopt a regulatory approach that recognises the contribution of animal welfare organisations in identifying non-compliance with the Australian Standards for the Export of Livestock, the Exporter Supply Chain Assurance System and animal welfare standards.

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

Recommendation 9: That the department ensure reportable mortality events and other non-compliance relating to live animal exports, are investigated by staff members with appropriate skills and training who are sufficiently resourced to delivery timely outcomes.

Recommendation 10: That a consolidated investigative capacity or a joint triage system be developed between the department's Live Animal Exports Branch and Enforcement and Sanctions Branch to investigate issues concerning industry non-compliance with the Australian Standards for the Export of Livestock, the Exporter Supply Chain Assurance System and animal welfare standards.

4. The effectiveness of reporting obligations under relevant legislation.

Recommendation 11: That the department ensure it receives the reporting necessary to assess the health and welfare of livestock during the export process.

Recommendation 12: That the department make arrangements to enable on-board Australian Government Accredited Veterinarians and independent observers to contact the department at all times, including, when necessary, through the Australian Maritime Safety Authority response centre.

5. 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.

Recommendation 13: That the roles and responsibilities within the department performed by Exports Division, Compliance Division and Biosecurity Operations Division be clarified to develop a common sense of purpose, identity and alignment in relation to the regulation of live animal exports.

Recommendation 14: That the department re-establish an Animal Welfare Branch and place animal welfare at the centre of its regulatory activities in relation to live animal exports.

Recommendation 15: That an independent external entity, known as the Inspector-General of Live Animal Exports, oversee the department in its role as the regulator of live animal exports.

6. 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.

Recommendation 16: That full cost recovery be accepted by the live animal export industry as underpinning the model of regulation and that the department ensure that the model operates effectively.

Recommendation 17: That the department implement fully integrated information sharing between the divisions and branches that regulate live animal exports when developing its client relationship management system and other information technology.

Recommendation 18: That the department develop a system to ensure that any issues and concerns raised by staff members in the context of live animal exports are addressed in a transparent and timely manner.

Recommendation 19: That the department require Australian Government Accredited Veterinarians and authorised officers to make a declaration each year of any personal conflict of interest.

Recommendation 20: That the department establish the position of Principal Regulatory Officer to enable its staff members engaged in the regulation of live animal exports to develop a culture of being professional regulators, an approach which would also apply to the department's other regulatory activities.

Recommendation 21: That the department engage in a cultural shift in its role as the regulator of live animal exports and ensure that its staff members understand the need for and implications of this change.

7. 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.

Recommendation 22: That the department identify the skills and experience necessary to enhance its regulatory capability in relation to live animal exports and employ people with relevant skills and experience.

Recommendation 23: That the department invest in information technology systems to achieve enhanced information management in relation to live animal exports.

Recommendation 24: That the department work with the live animal export industry and the Australian Maritime Safety Authority to develop automated monitoring of animal welfare indicators on-board vessels.

Recommendation 25: That instructional material relating to live animal exports be updated in consultation with operational areas in order to reflect current policy and operational requirements.

8. 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.

Recommendation 26: That the department work with the states and territories to review jurisdictional and operational arrangements between the department and relevant state and territory authorities.

Recommendation 27: That the department engage with the states and territories and other stakeholders to develop national animal welfare coordination to improve animal welfare outcomes in relation to live animal exports.

9. 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.

Recommendation 28: That the department engage with the live animal export industry to demonstrate joint unequivocal commitment to animal welfare.

Recommendation 29: That the department and the Australian Maritime Safety Authority, in their respective regulatory roles, develop and maintain a collaborative relationship for the effective regulation of live animal exports.

Recommendation 30: That the department establish appropriate forums to consult with stakeholders and assess community expectations.

10. Any related matter.

Recommendation 31: That the department strengthen its regulatory capability and culture, including in relation to live animal exports, by developing its whole-of-department integrity measures.

Introduction

1. The report of the Department of the Environment's Regulatory Maturity Project states:

Regulatory maturity is an ongoing objective that is reliant on a complex mix of knowledge, experience, human resources, business and IT systems, new information, feedback loops, risk management, good judgement, and continuous improvement. Balancing these elements with reduced budgets, increasing complexity, and Government and community expectations is a difficult task. As such, regulatory maturity should be seen as an ongoing pursuit that involves continuous evolution and improvement, rather than a specific end-point.⁷

Announcement of the review

2. On 9 April 2018, the Minister for Agriculture and Water Resources announced, together with other initiatives,⁸ a review into the regulatory capability and culture of the Department of Agriculture and Water Resources (the department) as the regulator of live animal exports. The review was announced soon after the airing of distressing vision of dead, dying and suffering sheep during voyages from Australia to the Middle East in 2017.
3. On 19 April 2018, the Minister published the terms of reference for the review and the engagement of Mr Philip Moss AM as the independent external reviewer. The review's terms of reference are at Appendix A.
4. The terms of reference require the review to assess the capability, powers, practices and culture of the department as the regulator of live animal exports. The review is also to make recommendations on any improvements to regulatory and investigative performance to ensure that persons involved in the live animal export trade comply with regulations and maintain high standards of animal welfare, and that the department is a trusted regulator of the live animal export trade.⁹
5. Mr Moss commenced the review on Wednesday, 16 May 2018. A secretariat of two departmental officers, Ms Claudia Cooney and Ms Ruby Faithfull, were selected to support the review.

⁷ In April 2016, the Regulatory Maturity Project, led by Joe Woodward, assessed the maturity, capability and capacity of Environment Protection Group. Department of the Environment *Regulatory Maturity Project Final Report*, <http://www.environment.gov.au/epbc/publications/regulatory-maturity-project-final-report>

⁸ These initiatives included the establishment of a telephone number to allow whistleblowers to call and provide information anonymously, as well as the introduction of a legislative amendment to increase the penalties for wrongdoing in the live animal exports industry.

⁹ Department of Agriculture and Water Resources website, *Review into our regulatory capability and culture*, May 2018, <http://agriculture.gov.au/animal/welfare/export-trade/independent-review-of-regulation>

Scope of the review

6. On 5 and 8 April 2018, the Minister released media statements in which he said: “The live export trade is important for our farmers”¹⁰ and “[we] need this trade to be conducted properly and sustainably for our farmers, for whom the live trade provides a vital market, as well as for the animals themselves”.¹¹
7. The Commonwealth Government’s policy is to support live animal exports including the continuation of the live sheep trade to the Middle East, during the northern summer. The issue of whether the live animal export trade should continue or cease is outside the scope of the review and therefore not considered in this report.

Conduct of the review

8. The review sent invitations to a wide range of stakeholders, including industry associations and animal welfare organisations, inviting written submissions. Stakeholders were asked to pass on the invitation to other relevant persons. Details of the Minister’s announcement and the review’s terms of reference were made available on the department’s website.¹² Every submission which the review received was considered.
9. In May, June and July, the Secretary and a deputy secretary of the department issued statements to all departmental staff members to inform them that they could contribute to the review, either by written submission or face to face meeting, and submit ideas for regulatory and investigative improvements.
10. The review received a total of 43 written submissions of which 23 were provided on an in-confidence basis.
11. The Review team spoke with a wide range of persons and organisations, including:
 - two state and territory ministers
 - departmental staff members
 - state and territory departments and agencies
 - Commonwealth and state and territory oversight and regulatory agencies
 - livestock producer associations
 - exporters and exporter associations
 - animal welfare organisations
 - former and current veterinary officers

¹⁰ The Hon. David Littleproud MP, Minister for Agriculture and Water Resources, *Media statement on live animal exports*, <http://minister.agriculture.gov.au/littleproud/Pages/Media-Releases/media-statement-live-animal-exports-2.aspx>

¹¹ The Hon. David Littleproud MP, Minister for Agriculture and Water Resources, *Media statement live animal exports*, <http://minister.agriculture.gov.au/littleproud/Pages/Media-Releases/Media-statement-live-animal-exports.aspx>

¹² Department of Agriculture and Water Resources website, *Review into our regulatory capability and culture*, May 2018, <http://agriculture.gov.au/animal/welfare/export-trade/independent-review-of-regulation>

- veterinary associations.
12. The review team travelled to Western Australia, South Australia, Victoria and the Northern Territory.

The department's statement to Senate Estimates

13. On 24 May 2018, the Department of Agriculture and Water Resources (the department) made a statement at a Senate Estimates Committee hearing¹³ that outlined its approach to the regulation of live animal exports.

Regulatory approach

14. The department described its regulatory approach as being based, until that point, on the following elements:
- a regulatory framework that clearly requires exporters to ensure the health and welfare of animals in their care at every stage of the export chain
 - approved arrangements whereby exporters are assessed by the department as having systems in place to manage the export chain to achieve health and welfare of animals and meet importing country requirements
 - a requirement for exporters to outline how they will comply with the Australian Standards for the Export of Livestock (ASEL) before the department will grant an export licence and an export permit
 - the department's capacity to issue further specific conditions on a case by case basis on individual voyages
 - a requirement to have an Australian Government accredited veterinarian (AAV) on board vessels travelling to, or through, the Middle East. The AAV is engaged by the exporter and is responsible for managing and reporting on the health and welfare of animals on the voyage. AAV expertise is critical to assess and ensure animal health and welfare during the voyage, provide a daily report to the department, and provide an end of voyage report within five days, which must include any additional information about any unexpected animal health or welfare issues
 - ASEL's definition of a 2% mortality rate in consignments as the trigger for initiating a review of the preparation and management of sheep during a voyage
 - the requirement that exporters are responsible at end of voyage for achieving specific animal welfare outcomes for exported livestock in the importing country through the Exporter Supply Chain Assurance System (ESCAS)
 - vessels which carry live animal consignments must also receive an Australian Certificate for the Carriage of Livestock from the Australian Maritime Safety Authority (AMSA). AMSA performs a range of checks on such vessels to ensure that they are seaworthy and appropriate to transport livestock.¹⁴

Shortcomings in regulatory approach

15. The department's statement also referred to the shortcomings in its regulatory approach to date, including:

¹³ [*Hansard, Senate, Rural and Regional Affairs and Transport Legislation Committee, Estimates, 24 May 2018, p. 88.*](#)

¹⁴ *Ibid.*, p. 71.

- reliance on certain key performance indicators
- reliance on exporters' and AAVs' reporting on conditions and outcomes of voyages, including information that did not indicate animal welfare conditions which warranted further regulatory action
- inadequate reporting that did not convey the extent of the problems on the *MV Awassi Express* in August 2017 and other voyages between May and November 2017
- inadequacy of mortality as the predominant measure of animal welfare in the regulatory approach, in the Heat Stress Risk Assessment (HSRA) model used by industry and as a trigger for the department to investigate
- insufficient means of assuring exporter compliance with regulatory obligations while consignments of livestock were at sea. Reference was also made to limitations in the regulatory framework, including a lack of compliance tools available to the department as the regulator.¹⁵

Action taken in response

16. The department's statement further referred to the following action that was underway:

- investigation to determine if there were breaches of the *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act), *Export Control Act 1982* (the Export Control Act) or the *Criminal Code Act 1995* as it applies to the AMLI Act and the Export Control Act. The commencement of these investigations related to allegations of overstocking of the vessel, failing to have sufficient food and water available, illness and injury not being treated, and AAVs and stock handlers leaving the vessel prior to completion of unloading.
- a requirement for the department to have one of its veterinary officers as an independent observer (IO) on board all voyages of live animal consignments to the Middle East, at the direction of the Minister. This measure is in addition to the presence of the AAV. The department's IO role includes issuing directions as required on the vessel to ensure the welfare of the livestock and having daily contact with the department. Other conditions imposed on long-haul voyages to and through the Middle East included:
 - reduced stocking density for live sheep consignments by up to 17.5%
 - requiring the first port of discharge for live sheep consignments to be Kuwait when travelling to multiple ports in the Middle East, and providing greater space for the remaining livestock as they head towards higher humidity ports
 - the establishment of a hotline to enable whistleblowers to provide information to the department for it to follow up, as announced by the Minister.

17. The department's statement also referred to the Minister's intention to increase the penalties and sanctions in order to reflect the seriousness of any offences under the legislation. A bill to amend current export legislation to strengthen penalties and consequences for exporters and directors of export companies permitting poor animal welfare practices was prepared. As a result, the Export Legislation Amendment (Live-stock) Bill 2018 was introduced into the parliament.¹⁶

¹⁵ Ibid., p. 72.

¹⁶ Ibid. p. 73.

McCarthy review

18. On 11 May 2018, the McCarthy review reported on live sheep exports to the Middle East during the northern summer. The report set out a series of recommendations that represent a significant shift in the regulatory approach.
19. In its statement at Senate Estimates, the department noted that it intended to make a series of directions and orders aimed at implementing the recommendations of the McCarthy review. These measures included placing conditions on export licences to reflect the new approach to the regulation of the live animal export industry proposed by the McCarthy review report and to manage the risk on future voyages.
20. The department's statement also noted that the McCarthy review recommendations concerning the management of heat stress should feature in risk assessments and flow through to stocking density. These recommendations are to be subject to further consideration and consultation with key stakeholders to understand their ramifications and impacts, and to test if the recommended animal welfare outcomes can be achieved through other means.
21. In the meantime, the department had implemented an allometric model¹⁷ to determine stocking density for the 2018 northern hemisphere summer. The result is that stocking rates of up to 28% less than those defined by ASEL may occur. In addition, the notifiable mortality level for sheep exported by sea to the Middle East was reduced from 2% to 1%.
22. The statement further noted that the department will work with AMSA to implement relevant recommendations from the McCarthy review.
23. In a media release on 13 September 2018 by the Minister, a summary was provided of the new conditions that apply to exporters during the period 1 May to 31 October. In addition to the conditions already mentioned:
 - independent auditing of ventilation readings would occur in order to confirm the accuracy of data entered into the live animal export industry's HSRA model
 - only vessels with automatic watering systems installed for each sheep deck would be used.

Department as regulator in transition

24. The department's statement at Senate Estimates concluded that as the regulator of live animal exports, it is in transition and working with all relevant stakeholders to improve health and welfare outcomes in relation to live animal exports.¹⁸

¹⁷ Ibid p. 91. Allometric stocking reflects the characteristics of the animals and their behavioural needs given the length of the voyage.

¹⁸ Ibid., p. 74.

Deregulation policy

25. A centrepiece of the Australian Government's 2013 Deregulation Agenda policy was an annual net reduction target of at least \$1 billion in red tape. The then Minister for Agriculture, Fisheries and Forestry announced that his portfolio had identified \$25 million worth of reductions in regulatory compliance costs across a range of areas, including live animal exports.¹⁹
26. In November 2013, the department established a Deregulation Unit (now called the Regulatory Reform Unit) to coordinate the implementation of the deregulation agenda in the department and portfolio regulatory bodies.²⁰
27. As a consequence of deregulation policy, in December 2013, the Australian Animal Welfare Strategy (AAWS) was discontinued and the department's Animal Welfare Branch was disbanded. The branch had employed 21 staff and was responsible for supporting the AAWS.
28. The AAWS was a national program to develop new, nationally consistent policies on animal welfare. It provided a framework for coordinated national animal welfare activities across key animal use sectors, including livestock, and brought together experts, stakeholders and representatives from industry, research and animal welfare organisations, professional associations and governments to deliver the program.
29. The aim of the AAWS was to build on Australia's current arrangements, including state and territory legislation, standards, guidelines, codes of practice, industry quality assurance programs, education and training, and research and development.
30. The Australian Animal Welfare Advisory Committee, which was established in October 2011 and abolished in November 2013, provided governance and oversight for the implementation of the AAWS.
31. Following the discontinuance of the AAWS, a lack of national animal welfare coordination was identified in Australia's World Organisation for Animal Health (OIE) Performance of Veterinary Services Report of November 2015.²¹ At the international level, Australia's Chief Veterinary Officer (CVO), who is located in the department, represents Australia in animal welfare matters. At the domestic level, the department plays a role in animal welfare matters through its membership of the Australian Animal Welfare Task Group (AWTG), which reports to the Agriculture Senior Officials Committee.

¹⁹ Department of Agriculture and Water Resources, Agriculture Portfolio—Deregulation, *Annual Report 2014*, p. iii, <http://www.agriculture.gov.au/SiteCollectionDocuments/about/deregulation/agriculture-portfolio-deregulation-annual-report-2014.pdf>

²⁰ Department of Agriculture and Water Resources, Mylink internal website, *Regulatory reform*, <http://mylink.agdaff.gov.au/PolProc/DLR/deregulation/Pages/default.aspx>

²¹ Department of Agriculture and Water Resources, *OIE Performance of Veterinary Services (PVS) Evaluation Report of Australia*, June 2018, <http://www.agriculture.gov.au/animal/health/oie-evaluation-report>

32. The question that arises is whether the department can again play a national role in relation to animal welfare when it does not have regulatory responsibility, except in the context of live animal exports. This issue is discussed subsequently in this report.

Trade facilitation and regulation

33. The department plays a key role in facilitating trade. In its 2018–19 Budget, there is provision for \$51.3 million over four years to ensure Australia’s continued growth and competitiveness in agriculture and food exports.
34. Some stakeholders and departmental officers told the review that the department’s trade facilitation and regulatory functions are contradictory. Another view which was expressed is that regulation is not to be seen as a barrier to trade, but as the means to facilitate trade to operate within prescribed parameters, essential to its proper functioning.²²

Deregulation and trade facilitation: impact on regulation of live animal exports

35. The department has eight strategic objectives, which are outlined in its 2016–17 Annual Report. Included in these strategic objectives is: “Being a best practice regulator: DAWR’s performance as a regulator and its service delivery.”²³
36. As a regulator, the department’s website (as at June 2018) states that it helps importers and exporters to meet regulatory requirements by:
- issuing import and export permits and undertaking certification of goods
 - ensuring compliance through audit, investigation and assurance activities
 - accrediting third parties to undertake activities on behalf of the government
 - reforming regulation and bureaucracy.²⁴
37. The department undertakes an annual self-assessment of its performance against six outcomes based on key performance indicators. These key indicators are:
- regulators do not unnecessarily impede the efficient operation of regulated entities
 - communication with regulated entities is clear, targeted and effective
 - actions undertaken by regulators are proportionate to the regulatory risk being managed
 - compliance and monitoring approaches are streamlined and coordinated
 - regulators are open and transparent in their dealings with regulated entities.
38. Under the Australian Government Regulator Performance Framework (RPF), which was released in October 2014, Commonwealth entities with a regulatory function must undertake

²² Department of Jobs and Small Business, *Deregulation*, July 2018, <https://www.jobs.gov.au/deregulation-agenda>

²³ Department of Agriculture and Water Resources, *What we do*, June 2018, <http://www.agriculture.gov.au/about/what-we-do>

²⁴ Department of Agriculture and Water Resources, *Annual Report 2016–17*, June 2018, <http://www.agriculture.gov.au/about/reporting/annualreport June 2018>

an annual self-assessment of their regulatory performance. Implementing deregulation policy is an ongoing priority for the government and therefore for the department.

39. The deregulation agenda, together with its trade facilitation function, means that the department must balance factors which compete with its role as the regulator of live animal exports. It appears that the discontinuance of the AAWS and the disbandment of the Animal Welfare Branch has detracted from the department's ability to achieve the right balance.
40. Despite the department's efforts to deregulate, some members of the live animal export industry said that they are flooded with documentation for no apparent benefit. One stakeholder commented that the department's response to regulatory non-compliance is to increase the amount of paperwork required rather than address what is happening on the ground.²⁵
41. Parts of the industry told the review that they would welcome engagement to ensure that animal welfare standards are upheld so that the trade can continue on a sustainable basis, by penalising poor performers in the industry.
42. To conclude, the department needs to address these issues and rebalance its competing priorities. To achieve this outcome, the department needs to ensure that its regulatory capacity is adequately resourced and that it has staff members with skills in animal health and welfare.

²⁵ Otway Livestock Exports, submission to the review, p. 1.

1. Regulatory powers

This section reports on the first term of reference:

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 are those powers to ensure compliance by the live animal exports industry, and how effectively the Department uses those powers.

Regulatory powers

44. This section reports on the regulatory powers available to the department to ensure compliance with ASEL and animal welfare standards.

Legislative framework

45. The legislation relevant to live animal exports are the *Export Control Act 1982* (the Export Control Act) and the *Australian Meat and Livestock Industry Act 1997* (the AMLI Act). The department administers both these enactments.
46. The Export Control Act establishes a framework under which ‘prescribed goods’ (including live animals) can be exported from Australia.
47. The AMLI Act prohibits the export of livestock without an export licence and establishes a regime to license exporters. The AMLI Act also outlines provisions for the funding of research and development and marketing bodies including Meat and Livestock Australia (MLA) and LiveCorp.²⁶
48. In addition to the Export Control Act and the AMLI Act, the *Navigation Act 1912* also applies. The Australian Maritime Safety Authority (AMSA) has responsibility for the application of *Marine Order 43 (Cargo and cargo handling—livestock)* which outlines the requirements for vessels to carry livestock from Australia.²⁷

Regulations and orders

49. Both the Export Control Act and the AMLI Act provide for regulations. Under these regulations, the Secretary of the department can issue directions and orders.
50. Under the Export Control Act, the *Export Control (Orders) Regulation 1982* provides for Export Control Orders, to give effect to the administrative detail of the export regime. Section 17 of the AMLI Act provides for the power to issue directions and orders, with which compliance is an export licence condition.

²⁶ The Australian Livestock Export Corporation Ltd (LiveCorp) is a not-for-profit industry service provider with approximately 44 members and associate members involved in the export of Australian livestock. LiveCorp website, *About us*, September 2018, <http://www.livecorp.com.au/about-us/introduction>

²⁷ These requirements cover the structure and operation of the ship. Exporters must apply to AMSA for an Australian certificate for the carriage of livestock. AMSA also has responsibility for Marine order 95—Marine pollution prevention—garbage which controls the discharge of animal carcasses at sea. AMSA website, September 2018 <https://www.amsa.gov.au/vessels-operators/regulations-and-standards-vessels/marine-order-95-marine-pollution-prevention>.

51. Of the 12 Export Control Orders under the Export Control Act, three are relevant to live animal exports. They are the *Export Control (Animals) Order 2004*, the *Export Control Order (Prescribed Goods) Order 2005* and the *Export Control (Fees) Order 2015*.
52. The new model for regulating live animal exports, approved arrangements was established in 2016 under the *Export Control (Animals) Order 2004*.
53. Both the *Export Control (Animals) Order 2004* and the *Australian Meat and Live-stock Industry (Standards) Order 2005* require compliance with and demonstrated adherence to ASEL. The *Australian Meat and Live-stock Industry (Conditions on live-stock export licences) Order 2012* also requires compliance with the Animals Order. Compliance with ASEL is therefore imposed with varying effects under the above orders.

Regulatory powers under the Acts

54. The *Export Control (Animals) Order 2004* provides for the preparation, implementation, variation, suspension and cancellation of approved export programs (AEPs) to export livestock from Australia. An AEP is a program of activities undertaken by accredited veterinarians or authorised officers for the purpose of ensuring the health and welfare of animals in the course of export activities.²⁸
55. The Export Control Act also provides for regulations for the accreditation of veterinarians for the purpose of undertaking AEPs and provides for certain offences by exporters and AAVs in relation to AEPs.²⁹
56. The *Export Control (Animals) Order 2004* also provides for approved arrangements. An approved arrangement means an arrangement for the preparation of live-stock for export by an exporter that is approved by the department.³⁰
57. Under the *Export Control (Animals) Order 2004*, the department can approve the registration of premises to be used for holding and assembling live-stock for export.³¹
58. Under the AMLI Act, the Secretary of the department can grant and renew a licence to a person to export live-stock from Australia.³²
59. The department must not grant an export licence unless it is satisfied that certain conditions are met by an individual or a company.³³

²⁸ *Export Control Act 1982*, section 9A, paragraphs (1) and (2).

²⁹ *Export Control Act 1982*, section 9B.

³⁰ *Export Control (Animals) Order 2004*, paragraph 1A.02.

³¹ *Export Control (Animals) Order 2004*, paragraph 2.03.

³² *Australian Meat and Livestock Industry Act 1997*, section 10 and section 22,

³³ These requirements relate to being: a person of integrity; competent to hold a licence; and of sound financial standing, *Australian Meat and Livestock Industry Act 1997*, section 12.

60. The department can make orders and directions with which the export licence holder must comply.³⁴
61. The department can give a notice to show cause, issue a reprimand, suspend or cancel an export licence if an export licence holder ceases to comply.³⁵
62. Under the *Australian Meat and Live-stock Industry (Standards) Order 2005*, the *Export Control (Animals) Order 2004* and the *Australian Meat and Live-stock Industry (Conditions on live-stock export licences) Order 2012*, it is a condition of the livestock export licence that the licence holder must not export livestock except in accordance with ASEL.^{36 37}

Proposed changes to legislation

63. The Export Control Bill 2017 was introduced into the Federal Parliament on 15 December 2017.³⁸ The bill would establish a legislative framework comprising a new Export Control Act, supported by export control rules.³⁹

Australian Standards for the Export of Livestock (ASEL)

64. ASEL exist to ensure that livestock are fit to travel in order to meet health and welfare outcomes during the voyage.⁴⁰
65. As mentioned above, exporters must as a condition of their export licence comply with ASEL. The standards apply throughout the export supply chain until the point of disembarkation in the destination country.⁴¹ Under ASEL, exporters must notify the department if the mortality rate on a consignment of livestock exceeds 1% for cattle and 2% for sheep. It is noted that, pursuant to an order under the AMLI Act, the mortality is now 1% for sheep exports to the northern hemisphere during the northern summer.
66. If ASEL are not complied with, the department can:

³⁴ *Australian Meat and Livestock Industry Act 1997*, section 18, for example the Department can make orders to ensure the best commercial interests of the industry.

³⁵ *Australian Meat and Livestock Industry Act 1997*, sections 23-24.

³⁶ *Australian Meat and Live-stock Industry (Standards) Order 2005*, paragraph 3.

³⁷ It is noted that ASEL refers to a plan for the export of livestock (including a Consignment Risk Management Plan), prepared by a holder of an export licence under an Approved Arrangement.

³⁸ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1121

³⁹ Unlike the present Export Control Act, the bill incorporates parts of the existing export legislation and the export control orders that are common across all commodities. See Department of Agriculture and Water Resources, Exports Division, *Export legal review*, March 2018, p. 6.

⁴⁰ ASEL was developed as part of the Australian Government's response to the Livestock Export Review (Keniry Review) of the livestock export industry in 2003. http://www.agriculture.gov.au/SiteCollectionDocuments/animal-plant/animal-welfare/trade/export-transport-review/keniry_review_jan_04.pdf

⁴¹ The stages of the export supply chain include planning the consignment, sourcing and on-farm preparation of animals, land transportation, pre-embarkation assembly, vessel preparation and the sea voyage or flight. See RSPCA, *How is the live export trade regulated?* p. 2, http://kb.rspca.org.au/how-is-the-live-export-trade-regulated_107.html
http://kb.rspac.org/how-is-the-live-export-trade-regulated_107.html

- require the exporter to remove non-compliant animals or address the non-compliance (eg arrange for pregnancy testing to be done)
- increase its review of documentation for consignments
- specify additional conditions for the exporter's future consignment(s) (eg reduced stocking density, increased bedding and fodder requirements, increased preparation time in registered premises, individual weighing of animals)
- refuse to grant a health certificate and export permit
- suspend or cancel the approved arrangement
- issue a reprimand, suspend or cancel the export licence
- require the exporter's AEP to be varied
- provide a brief to the Commonwealth Director of Public Prosecutions (CDPP) in relation to a criminal offence.

Review of ASEL

67. As one of the primary elements of the regulatory framework for the live animal export industry is ASEL which establish the requirements that exporters must meet. The regulatory framework needs to balance community expectations with legitimate business, a situation which demonstrates the importance of regular review processes to ensure the right setting.⁴²
68. A process to review ASEL commenced in 2012. The review committee included representatives from the department, the live animal export industry and animal welfare organisations. However, by mid-2013, the review could not be concluded because of 13 unresolved issues. As a result, ASEL have remained unchanged instead of being reviewed.
69. The department noted that the unresolved issues were significant and included stocking densities, provision and management of bedding requirements, lowering mortality rates, weight and type of cattle to be exported, time after shearing prior to the export of sheep by sea. The department also noted that animal welfare organisations wanted higher standards, whereas industry did not. The department further noted that the reason why the issues remained unresolved was the lack of research to support one view over the other.
70. The department further noted that in 2013 with an incoming government, the ASEL review was placed in line to be dealt with after the government's other priorities for the sector were implemented, including reducing regulatory burden on all exporters.
71. When work began on ASEL in October 2016, there was reportedly no shift in positions on the unresolved issues and no new research was available.
72. A revised format to review ASEL was agreed in 2017. The new format has an independent chair and three technical experts, with animal welfare groups and the industry contributing as

⁴² LiveCorp, submission to the review, p.3.

the technical reference group. The new process provides for ASEL to be reviewed every three years.

73. At the direction of the Minister, the ASEL review, which commenced in February this year and planned to conclude at the end of 2019, will now report at the end of 2018.⁴³
74. **Conclusion:** The department as the regulator should have ensured an early resolution of the disputed issues so that the ASEL review could have been completed when it was due in 2013.

Recommendation 1: That the department ensure the Australian Standards for the Export of Livestock are reviewed on a regular basis to reflect industry, scientific and regulatory developments and community expectations concerning live animal exports.

State and territory laws

75. The Australian Position Statement on the Export of Livestock⁴⁴ and ASEL state that “[l]ivestock sourced for export must also meet all requirements under relevant state and territory legislation, including animal welfare Acts.”⁴⁵ These considerations include animal health and welfare, vehicle registration and operation, licensing and operation of facilities, equipment and, where appropriate, occupational health and safety and environmental protection and operation of companies.⁴⁶
76. The position paper notes that the World Organisation for Animal Health (OIE) has established international animal health guidelines and developed animal welfare guiding principles that are relevant to the export of livestock, and that the intention is for “standards developed in Australia [to] take into account OIE animal welfare guidelines and in most case exceed them”.⁴⁷
77. The Export Control Act, Export Control (Animals) Order and ASEL have provisions which refer to state and territory animal welfare laws. For example:
- section 5 of the Export Control Act states that it is not intended to exclude the operation of state laws that are capable of operating concurrently with the Export Control Act
 - the *Export Control (Animals) Order 2004* preserves the operation of state and territory law, if compatible with the order, and that nothing in the order or ASEL requires the

⁴³ Senate, Rural and Regional Affairs and Transport Legislation Committee, Estimates, Hansard Thursday 24 May 2018, pp. 73-4.

⁴⁴ The Australian Position Statement on the Export of Livestock (first published November 2006); Australian Standards for the Export of Livestock (Version 2.3) 2011; Australian Position Statement on the Export of Livestock, p. 5, <http://www.agriculture.gov.au/SiteCollectionDocuments/animal-plant/animal-welfare/standards/version2-3/australian-standards-v2.3.pdf>

⁴⁵ Ibid., p. 5.

⁴⁶ Ibid., p. 5.

⁴⁷ Ibid., p. 11.

Commonwealth to enforce any law of a state or territory, or any code of practice or similar instrument.

78. ASEL states:

livestock sourced for export must meet any requirements under a state or territory law [and that] state and territory governments are responsible for ensuring that these jurisdictional requirements are met under respective state and territory legislation.⁴⁸

79. Both ASEL and the relevant state and territory laws aim to ensure that appropriate animal welfare standards are maintained.

80. However, stakeholders have reported that there is a lack of clarity around the overlap between the Commonwealth live animal export legislative and regulatory framework and state and territory animal welfare laws. In some places, state and territory standards may differ from the Commonwealth framework. For example, under Western Australia's *Animal Welfare Act 2002*, an offence occurs not only when an offender causes unnecessary harm, but also when an offender is 'likely to cause' unnecessary harm.

81. Moreover, although the Export Control Act and ASEL recognise state and territory animal welfare legislation, the Commonwealth, state and territory legislative frameworks are not integrated. At times, there has been a lack of engagement, and even contention, between the legislative frameworks around animal welfare. The reason is that, under section 109 of the Commonwealth of Australian Constitution, state and territory animal welfare laws may be limited in their operation.

82. In this context, it is noted that some states and territories are about to review existing legislation relating to animal welfare (eg South Australia and Western Australia) or enact new legislation (eg Northern Territory).

83. **Conclusion:** There is a need for clarification about the relationship between the Commonwealth regulatory framework in relation to live animal exports and state and territory laws.

Recommendation 2: That the department undertake to clarify the interaction between the *Export Control Act 1982* and the Australian Standards for the Export of Livestock and the operation of state and territory animal welfare laws regarding live animal exports.

84. Further discussion about the operation of state and territory legislation is provided later in this report (see Section 8. Interactions with states and territory authorities).

⁴⁸ Ibid., p. 56.

Exporter Supply Chain Assurance System (ESCAS)

85. The Exporter Supply Chain Assurance System (ESCAS) monitors the movement of Australian-exported livestock to ensure that they are managed, transported and slaughtered humanely, with the objectives of both facilitating trade and delivering good animal welfare outcomes.⁴⁹
- ⁵⁰ The scheme is designed to ensure that Australian livestock exported for feeder and slaughter purposes are handled in accordance with international animal welfare standards. The scheme also provides a mechanism to deal with animal welfare issues when they occur in order to avoid the need for the suspension of trade.⁵¹
86. The department introduced ESCAS in 2011 following the release of footage showing the inhumane slaughter in Indonesia of Australian-exported cattle. In 2012, ESCAS was implemented progressively in all Australian export markets.
87. If ESCAS is not complied with, the department can:
- require exporters to work with their supply chain partners to address the non-compliance, (eg change race and pen design to improve animal handling arrangements, train workers, directly supervise the facility)
 - require audits of facilities to confirm corrections have been effective
 - remove facilities for a period or permanently, suspend or cancel the entire supply chain.
88. Despite the introduction of ESCAS, reports of supply chain breaches in the live animal export trade have continued, as has criticism of the effectiveness of the existing enforcement mechanisms and procedures.

Livestock Global Assurance Program (LGAP)

89. To address continuing breaches of ESCAS, the live animal export industry is developing a quality assurance program, referred to as the Livestock Global Assurance Program (LGAP).
90. When LGAP commences, ESCAS will remain as the department's regulatory framework.⁵² LGAP is also discussed in later sections of this report.

⁴⁹ *Exporter Supply Chain Assurance System Report*, January 2015, foreword by the then Minister for Agriculture, Fisheries and Forestry <http://www.agriculture.gov.au/SiteCollectionDocuments/biosecurity/export/live-animals/livestock/escas/escas-report.pdf>.

⁵⁰ *Ibid.*, p. 2.

⁵¹ *Ibid.*, p. 2.

⁵² Meat and Livestock Australia & LiveCorp, *The facts about LGAP (Development of a global conformity assessment and assurance program for the livestock export industry)*, p. 3, <http://www.livecorp.com.au/LC/files/26/26d3c4d5-fd37-4c3d-906a-c2857e9c434b.pdf>

Effectiveness of regulatory powers

91. This section reports on the effectiveness of the department's regulatory powers to ensure compliance by the live animal exports industry.
92. In the context of live animal exports, it is noted that there is an ever evolving, complex framework of regulation coupled with obligations under Commonwealth, state and territory jurisdictions, within Australia and overseas.⁵³
93. In its submission to this review, LiveCorp noted that effective regulatory regimes require clear legislation to guide and support the regulator and provide certainty and clarity for the regulated parties.⁵⁴ In its submission to the Productivity Commission Inquiry into the Regulation of Australian Agriculture (2016),⁵⁵ LiveCorp also noted that the *Fisheries Management Act 1991* includes clear guiding objectives that help to insulate the fisheries regulatory process from the pressures of activism, politics, differing personalities and philosophies within the regulator and government, and corporate lobbying.
94. LiveCorp said that similarly detailed and clear objectives and associated principles clauses would be invaluable for the department and exporters. The purpose would be to define why the regulation exists and provide clarity on what balance is sought, and how that balance is to be achieved. The department does not currently have clearly articulated objects for the regulation of live animal exports.
95. **Conclusion:** As the regulator of live animal exports, the department would benefit from greater regulatory clarity of its objectives and guidance or principles for decision-making.

Changes to regulatory powers

96. Recently, there have been initiatives to strengthen the legislative and regulatory framework relating to live animal exports.⁵⁶
97. In April 2018, the minister made the *Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018* to allow the department to collect information from exporters, and disclose such information to ensure the health and welfare of live animals.⁵⁷
98. It is noted that in May 2018, the minister introduced the *Export Legislation Amendment (Live-Stock) Bill 2018* to amend the Export Control Act and the AMLI Act to "ensure the penalties and sanctions available are sufficiently high to provide a level of deterrence and punishment

⁵³ LiveCorp submission to the review p. 3.

⁵⁴ LiveCorp submission to the review p. 2.

⁵⁵ Productivity Commission, *Inquiry into the Regulation of Australian Agriculture*, November 2016, <https://www.pc.gov.au/inquiries/completed/agriculture/report>

⁵⁶ As noted new AMLI Orders around mortality and sheep to the Middle East are now in effect.

⁵⁷ *Export Control (Animals) Amendment (Information Sharing and Other Matters) Order 2018*, 30 April 2018, <https://www.legislation.gov.au/Details/F2018L00580>

necessary to protect animals carried on live-stock export voyages”.⁵⁸ These penalties are intended to meet community expectations by allowing the courts to impose significant penalties when there has been a serious breach of law.

Challenges

Licensing regime

99. As noted above, the AMLI Act provides for the licensing of a person to engage in live animal exports. The department can approve a licence on the basis that relevant persons involved are persons of integrity, including the person(s) in management or control; that the company itself is competent to hold the licence and is financially solvent; and that there is no other reason, in the interests of the industry, to refuse the licence. The department can give a direction or order to a licence holder on a variety of matters that are limited only by the scope and purpose of the AMLI Act. For instance, the interests of the industry as a whole can be taken into account.⁵⁹
100. The department has noted that the relevant provisions of the AMLI Act are effective. It was the use of these provisions⁶⁰ which led to the suspension and then the cancellation of two export licences, following the release of the MV *Awassi Express* footage.
101. It is apparent that the existing provisions under the AMLI Act are adequate to suspend and cancel export licences.⁶¹ However, additional measures to promote compliance are required. The need is for strengthened penalties and sanctions to protect livestock on export voyages, as proposed in the *Export Legislation Amendment (Live-stock) Bill 2018*.

Emphasis needed on animal welfare

102. The question which arises is whether the regulatory framework sets an adequate standard required for animal welfare.
103. The department’s view is that ASEL provide the framework to ensure animal welfare. Currently, ASEL reflects such measures as acceptable mortality, untipped horns, heavy animals, lame animals, animals with existing minor health conditions, pregnancy, risk of heat stress, time in registered premises to prepare consignments for export and conditions for transport. In practice, reportable mortality levels, as set out in ASEL, have been the department’s primary means to assess animal welfare outcomes.
104. As is apparent from submissions to the review and ongoing media interest, compliance with the ASEL standards appears not to be sufficient to meet community expectations or provide social licence. One comment made to the review is that the live animal export industry works

⁵⁸ Export Legislation Amendment (Live-Stock) Bill 2018, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6122

⁵⁹ See sections 12 and 17 of the AMLI Act.

⁶⁰ See sections 23, 24 and 25A of the AMLI Act.

⁶¹ It is noted that the license suspensions are to review in the AAT.

on the basis of compliance with ASEL, not one that goes beyond those standards to ensure good animal welfare outcomes.⁶²

105. As a consequence, while ASEL may reduce the risk of adverse animal welfare outcomes, they appear not to be sufficient to achieve comprehensive animal welfare outcomes. This view is supported by stakeholders from the industry and animal welfare organisations.
106. In a report entitled *Future proofing for profitability, live export industry reform*⁶³ a provisional set of supply chain 'hot spots'⁶⁴ for animal welfare was identified. The hot spots relate to stock sourcing, land transport, registered premises (domestic handling), vessel handling and transit, overseas port off-loading and handling, registered premises (overseas handling) and abattoir management (slaughter practices).⁶⁵ The report suggested that all stages of the supply chain require agreed indicators, tolerance ranges and goals, and public reporting. On that basis, its authors recommended that animal welfare indicators be measured and the reports made publicly available. As the Futureeye report notes, visibility and transparency are critical to the live animal export industry, which must be able to demonstrate how good animal welfare are being achieved.⁶⁶
107. It is noted that the Live Export Program (LEP)⁶⁷ is currently undertaking a project concerning new animal welfare indicators, for the live export supply chain, that expand beyond mortality.⁶⁸
108. **Conclusion:** A comprehensive framework of animal welfare indicators is required and should be incorporated into the regulatory framework.

Recommendation 3: That the department work with the live animal export industry to develop comprehensive animal welfare indicators relating to every point of the export supply chain and for those indicators to become part of the regulatory framework.

ASEL and effectiveness of the department's powers

109. In its submission to the review, the RSPCA said that the regulatory framework does not provide the department with an adequate range of regulatory tools to respond to instances of non-compliance. According to the RSPCA, one of the main limitations of the regulatory

⁶² In-confidence submission to the review.

⁶³ Futureye, *Future Proofing for Profit, Live Export Industry Reform*, 2013, p. 55.

⁶⁴ A 'hot spot' is described as where the gaps between expectations and performance are biggest; *ibid*, p. 55

⁶⁵ Futureye, *Future Proofing for Profit, Live Export Industry Reform*, 2013, p. 55.

⁶⁶ *Ibid.*, p. 56.

⁶⁷ LiveCorp delivers RD&E services to industry. The predominant system is the LEP through which LiveCorp and Meat and Livestock Australia collaborate to fund RD&E projects for the benefit of producers and exporters of beef cattle, sheep and goats. LiveCorp *Research, Development and Extension Strategy*, accessed September 2018, <http://www.livecorp.com.au/research-development/about-r-d>

⁶⁸ LiveCorp, submission to the review, p. 2.

framework is that it is based solely on a licensing regime. ASEL are conditions placed on an exporter's licence under the AMLI Act and are not regulated standards.

110. The RSPCA noted that non-compliance with ASEL is not an offence in itself, but a breach of the exporter's licence conditions. Sanction for which is restricted to suspending or revoking the licence, and which has rarely if ever been imposed for a breach of ASEL.⁶⁹ Non-compliance with ASEL is a factor which the department considers the next time the exporter applies for an export permit and in the continued approval of the exporter's approved arrangement.⁷⁰ However, the review notes that there is an additional consideration. Section 54(3) of the AMLI Act makes breach of a licence condition, either intentionally or being reckless to the condition, a criminal offence.
111. The RSPCA also said in its submission that the other limitation of this licensing-based approach is that it restricts the department's jurisdiction to the exporter. The AMLI Act and Animals Order impose conditions for compliance with ASEL on the exporter, not other parties within the live animal export supply chain such as transporters, stock handlers at the port, or the ship's master. While s.5.3(2) of ASEL states that once loading begins the master of the vessel assumes overall responsibility for the management and care of the livestock, there is no jurisdictional nexus with the AMLI Act or Animals Order, as the conditions for compliance with ASEL under these legislative instruments attach to the exporter alone.⁷¹
112. The RSPCA notes that ASEL should be prescribed as regulations under the Export Control Act – as the *Export Control (Australian Standards for the Export of Livestock) Regulations* – with appropriate penalties for non-compliance. This approach would afford ASEL the equivalent legal status of the national standards for the welfare of livestock at the state and territory level. These standards are not simply adopted as licence conditions that only apply to the licensee, but as prescribed regulations, applicable to all who have responsibility for and interactions with relevant livestock, and non-compliance is an offence. The review notes that the Export Control Act is a trade act, which generally only licenses people engaged in the supply chain. It is not clear that the RSPCA proposal would be within the scope of the Export Control Act regulation making power. Nevertheless the idea has merit.
113. The RSPCA also notes that this proposal would not replace the current licensing regime, but be in addition to it. Compliance with ASEL should still be a condition of the exporter's licence under the AMLI Act and a condition of granting an export permit under the Animals Order.
114. It is noted that the AMLI Act provides for offences relating to contravention of a licence condition either intentionally or recklessly and also relating to providing false or misleading information. It is also noted also that the AMLI Act provides for the suspension or cancellation of an exporter's export licence if the terms of ASEL are contravened. In effect, that result in the commercial context is a serious consequence. Arguably, the issue is that the regulator just has to apply the existing regulatory framework and have within the appropriate culture and skillset to do so.
115. **Conclusion:** The RSPCA proposal would strengthen the current regulatory framework.

⁶⁹ RSPCA, submission to the review, p. 16.

⁷⁰ RSPCA, submission to the review, p. 16.

⁷¹ RSPCA, submission to the review, p. 16.

Recommendation 4: That the department take steps to have the Australian Standards for the Export of Livestock prescribed as regulated standards, with appropriate penalties, for the purpose of strengthening the regulatory framework and encouraging compliance.

Effective use of regulatory powers

116. This section reports on how effectively the department uses its regulatory powers.
117. A regulator can only be as effective as the regulatory framework allows, as stated in LiveCorp's submission to the review.⁷² Accordingly, it is necessary to distinguish between the effectiveness of the regulator and the effectiveness of the regulatory framework.

Exercising its powers

118. An exporter told the review that regulatory powers have not been exercised. According to this submission, breaches in the live animal exports supply chain for which an exporter has full control and responsibility, the exporter will still have little reason to expect sanction for carelessness, poor management of livestock and/or disregard of the ASEL guidelines.⁷³
119. The department has advised that the response for non-compliance are to impose such conditions as; increased space for shipments where mortalities have occurred, additional medical kit and pre export vaccination to address outbreaks of respiratory disease, additional veterinarians or stockpersons to supervise when voyages have poor outcomes and removal of animals from consignments for ASEL issues.
120. One submission made to the review stated that the department has sufficient regulatory powers to regulate the live animal exports industry, however the concern among the live animal export industry is about the department's prevailing culture in executing those powers.⁷⁴
121. It is noted that it was only after the publicity in April about animal welfare concerns on the MV *Awassi Express* that the department used existing regulatory powers to cancel the licences of two exporters.
122. **Conclusion:** The issue seems not just to be the effectiveness of the regulatory powers available to the department, but that the department's regulatory culture is not sufficiently robust.

Mortality events

123. In a submission to the review, Vets Against Live Export (VALE) stated that it had noted a mortality rate of 4.36% for a voyage published in the six monthly parliamentary reports, July to December 2016. VALE requested and obtained relevant reports under the *Freedom of Information Act 1982*. The reports prepared by the on-board AAV indicated that there was a

⁷² Ibid, p. 3.

⁷³ Otway Livestock Exports submission to the review, p. 1.

⁷⁴ National Farmers' Federation submission to the review, p. 1

discrepancy of 1286 sheep. The AAV's report indicated that the likely daily mortality numbers were understated. The official investigation report by the department revised the mortality figure to 2.51% on the basis of the discrepant numbers and the parliamentary report for July to December 2016 was subsequently altered.

124. It is noted that the department agreed that the true mortality figure for this voyage was in excess of 4%, the figure in the parliamentary report given as 2.51%.⁷⁵
125. VALE stated that, through its monitoring of publicly available information regarding live animal exports, since 2009 there have been eight high mortality voyages to the Middle East. According to VALE every voyage has occurred in a period when extreme temperatures would be expected (that is in the June to September period). Moreover, VALE maintained that it was clear from the reports that allocating more space to the animals during those high risk periods had no beneficial effect.⁷⁶
126. VALE referred to a study sponsored by MLA, carried out at Murdoch University School of Veterinary and Biomedical Sciences which showed that elevating WBT to greater than 26°C or 27°C (depending on acclimatisation) caused an increase in the core body temperature of sheep.⁷⁷ This study indicated that a more appropriate level for 'heat stress threshold' was 26°C to 28°C WBT, not the WBT of 30.6°C developed by the industry and used by the department.⁷⁸
127. VALE concluded that for at least 10 years, and probably longer, the department was aware, or should have been aware, of heat stress during these Middle Eastern summer voyages. It is not, however, clear whether the department was aware of these issues, and ignored them, or whether department staff did not have the expertise to recognise them.
128. In its submission to the review, Animals Australia stated that the department has had for some time a knowledge of the animal welfare risks associated with exporting to the Middle East during the northern summer. It provided an overview of 36 studies, reports or reviews in relation to heat stress and related issues.⁷⁹ The department noted that exporters are required to use the heat stress risk assessment software developed by the industry to assess and manage the risk of heat stress during the export of livestock by sea.

MV Awassi Express

129. The department noted at the Senate Estimates Hearings in May 2018 that the information on the MV *Awassi Express* was inadequate to foresee the animal welfare concerns, and that it had not requested any further information.⁸⁰
130. The department explained to the review that it did not expect the poor animal welfare outcomes on the MV *Awassi Express* voyages,⁸¹ as shown in the videos, because the exporter had prepared livestock for this market for many years, stocked the ship according to the heat

⁷⁵ VALE, submission to the review, p. 16.

⁷⁶ VALE, submission to the review, p. 19.

⁷⁷ Stockman, C. The physiological and behavioural responses of sheep exposed to heat load within intensive sheep industries. Doctor of Philosophy Thesis, Murdoch University, 2006.

⁷⁸ VALE, submission to the review, p. 19.

⁷⁹ Animals Australia, submission to the review, p.12.

⁸⁰ *Hansard*, Senate, Rural and Regional Affairs and Transport Legislation Committee, Estimates, 24 May 2018.

⁸¹ Voyage 25 was the voyage with the highest mortality.

stress risk assessment model, had an experienced AAV and stockman on board, i.e. met the ASEL requirements that exporters must meet, which should ensure the livestock's welfare during the voyage.

131. The situation highlights the fact that an exporter can seem to comply with the regulatory framework and yet have a mortality event and poor animal welfare outcomes. As such the ASEL are insufficient to ensure the animal welfare during the northern summer.
132. According to Animals Australia, AAV reports stated that the livestock were increasingly feeling the impacts of heat and humidity prior to the *MV Awassi Express* incidents.
133. The review examined the AAV reports for the *MV Awassi Express* voyages prior to the mortality event on Voyage 25. AAV reports on the voyages leading up Voyage 25 indicated adverse conditions on-board. For the voyage immediately preceding (Voyage 24, LNC-009543) that departed Fremantle on 21 June 2017, the AAV end of voyage report (uploaded to TRACE on 20 July 2017, eight days before voyage 25 departed) included such commentary as "Thereafter it was hot and humid - extreme at times."
134. Under the heading *Health and Welfare*, the Voyage 24 end of voyage (EOV) report stated:

It was a voyage in 2 parts. The first 14 days could be described as a good consignment of sheep, fit and thriving on the > ASEL ration, with few health problems, & few deaths (115 or a mortality rate of 0.18% at day 14). And afterwards from day 15 to day 21, during a period of prolonged extreme humidity while transiting the Gulf and at Doha, that caused a heat stress "smash" and the loss of 600 animals from heat stroke.
135. In addition, the Voyage 24 EOV report stated "While in the Gulf many heat stroke cases were removed from pens when found and put in well ventilated places and offered water. Some recovered. Many (102 [sheep]) were euthanised." Further evidence of the extreme conditions experienced during voyage 24 is found in the daily reports provided to the department for Days 15 and 16 of the voyage when the AAV reported wet bulb temperatures between 32 and 34 degrees Celsius and 33 and 37 degrees Celsius respectively. This reporting indicated temperatures on-board exceeding the heat stress threshold of 30.6 degrees wet bulb temperature (WBT) and for day 16 exceeding the mortality limit of 35.5 degrees WBT.⁸²
136. It is unclear whether the EOV report for Voyage 24 was reviewed. If the EOV report were reviewed, it appears not to have been acted on.
137. The EOV report for the *MV Awassi Express* Voyage 23 (LNC-009453) which departed Adelaide on 9 May and Fremantle 14 May 2017, early in the northern summer period, stated "Humidity maximum occasional low 80%, wet bulb below 30C except around Oman with 35C WET. Humidity average for ship until very low at Qatar. High around Emirates (bunkering) and Oman". This EOV report was uploaded into TRACE on 13 June 2017. Again, this reporting indicated temperatures on-board exceeding the heat stress threshold of 30.6 degrees wet bulb temperature (WBT).

⁸² The heat stress threshold is the maximum ambient wet bulb temperature at which heat balance of the deep body temperature can be controlled using available mechanisms of heat loss. Mortality Limit is the wet bulb temperature at which the animal will die. For adult merino sheep the heat stress threshold is 30.6 degrees Celsius and the mortality limit is 35.5 degrees Celsius. Maunsell Australia Pty Ltd. 2003. LIVE.116 Development of a heat stress risk management model. Meat and Livestock Australia.

138. Taken together, these two EOVR reports could suggest that the risk of a heat stress incident for the following voyages was perhaps greater than in previous years. It is unclear whether the department considered these preceding voyages when allowing Voyage 25 to go ahead, no additional conditions were applied.
139. The end of voyage report by the AAV on MV *Awassi Express* Voyage 25 (which departed Fremantle on 1 August 2017, LNC-009602) stated that the mortality rate “reached the “incident” level (2.66%) on the 16th August (day 15) and was reported to those concerned”. The end of voyage report also states:
- The mortality rate for the voyage was 3.76%. Note that once discharge was completed at Dubai it was possible to get a more accurate count of bodies - and to revise the total losses to 2400 head.
140. The department responded to the reportable mortality event on Voyage 25 of the MV *Awassi Express* by requiring a lower stocking density of 10% on the next consignment. But, no further action was taken in relation to five subsequent voyages. The department stated that this was “because the summer period had ended. The mortality rates on voyages 26 and 27 were within the 2% limit, in fact, less than 1%. The department used the 2% limit as the trigger for investigation as previously explained.”⁸³
141. After the adverse publicity in April 2018, the department took action which led to its asking exporters to show cause, suspend or cancel export licences.⁸⁴ The department noted that “When the department was provided with the evidence from [Animals Australia], action was taken”.⁸⁵
142. It is telling that the department had rarely used its significant regulatory powers (show cause, suspend or cancel an export licence) and that it took whistleblower action to prompt a regulatory response of that order.
143. **Conclusion:** As a regulator, the department appears in some respects to have been inactive. It has failed to address issues within the regulatory framework leading to continuing incidents. The department has not been effective in the use of its available regulatory powers to ensure compliance with ASEL. The use of such stronger powers as show cause, suspension or cancellation of an export license sends a clear message to the industry and helps to ensure compliance.

Recommendation 5: That the department as the regulator of live animal exports adopt a dynamic, forward looking posture to its regulatory responsibilities.

⁸³ Department, submission to the review 19 September 2018 p. 14.

⁸⁴ It is noted that in 2013, a similar heat stress incident occurred. The following voyage, the Department required the exporter to provide 10% additional space above the ASEL standards and for subsequent voyages on the same vessel, in the May to October period of the northern summer the following year.

⁸⁵ Department, submission to the review 19 September 2018 p. 14.

2. Regulatory conditions for animal welfare standards

This section reports against the second term of reference:

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.

144. Regulation can be defined broadly as a means of achieving the Government's desired outcomes or more narrowly as rules set by a government authority where there is an expectation of compliance⁸⁶. Regulation serves an important role, without which the live animal export industry could not be facilitated.

Regulation has become a critical feature of contemporary economies and societies. As the OECD points out, regulation "underpins markets, protects the rights and safety of citizens, and their property, and assists the efficient and equitable delivery of goods and services."⁸⁷

ASEL

145. ASEL are the regulatory tool in relation to animal welfare standards.
146. The department advised that most ASEL standards are based on animal welfare standards and codes of practice agreed and regulated by the states and territories, shipboard standards from AMSA, and air standards from the International Air Transport Association for the transport of animals by air.
147. Health and animal welfare standards are outlined in ASEL. These standards include the following: sourcing livestock that are fit and healthy (no respiratory issues, pink-eye, lameness, broken limbs, have a healthy appetite, are not pregnant and have appropriate body fat coverage); sheep with short wool making them less prone to heat stress; water and food access (and the type of feed appropriate); shade and shelter to protect animals against extreme weather conditions (in registered premises and on-board); and hospital pen provision for sick or injured animals on-board.⁸⁸
148. ASEL requires compliance with Australian Government legislation, animal codes of practice, state and territory legislation (including animal welfare Acts). Despite this statement there is confusion about the relationship between ASEL and state and territory legislation with many stakeholders feeling there is a lack of clarity about the relationship between the two.

⁸⁶ Department of Prime Minister & Cabinet (2014) *The Australian Government Guide to Regulation*, July 2018, <https://www.pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>

⁸⁷ Woodward, *Regulatory maturity project final report*, April 2016, quoting OECD (2011). *Regulatory policy and governance: Supporting economic growth and serving the public interest*, <http://www.oecd.org/gov/regulatory-policy/regulatorypolicyandgovernancesupportingeconomicgrowthandservingthepublicinterest.htm>

⁸⁸ ASEL (Version 2.3).

Measuring animal welfare

149. Under ASEL, the aim is to avoid animal mortalities during export. Since 2005, in order to improve the transparency of the live export trade, the department, with the agreement of the Live Export Industry Consultative Committee, has reported on investigations into consignments with reportable mortality events.⁸⁹
150. The department noted that investigations relating to ASEL non-compliance have also taken place for a number of reasons not related to mortality.⁹⁰ However, mortality remains the primary indicator of animal welfare. This situation is evidenced by mortality being the reportable measure which the department investigates and publicly reports (now 1% for sheep and cattle, previously 2% for sheep).⁹¹ These investigations are reported every 6 months on the department's website.⁹² This focus on mortality fails to recognise the suffering of animals on the voyage who survive the journey. In the department's response to the McCarthy review, the department acknowledged that "mortality, in isolation, is an insufficient measure of animal health and welfare"⁹³.
151. The World Organisation for Animal Health defines animal welfare as:

how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress. Good animal welfare requires disease prevention and veterinary treatment, appropriate shelter, management, nutrition, humane handling and humane slaughter/killing. Animal welfare refers to the state of the animal; the treatment that an animal receives is covered by other terms such as animal care, animal husbandry, and humane treatment.⁹⁴

⁸⁹ Department of Agriculture and Water Resources, *Investigations into mortalities*, September 2018, <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-mortalities#consignment-70-buffalo-exported-by-sea-to-vietnam-september-2017>

⁹⁰ Submission to the review, Department of Agriculture and Water Resources, p. 25. Investigations have taken place before for non mortality reasons; false declarations of pregnancy testing (turned out to be AAV not exporter in this case) deaths in feedlot in Victoria, movement of animals outside quarantine areas, transfer of animals in Victoria which led to licence cancellation following positive BJD tests in Japan in 2016, unloading of a vessel in Darwin because of ticks not seen by RVO after full inspection, removal. Of animals from consignments for various reasons; too fat, too thin, lame, horns, etc.

⁹¹ Department of Agriculture and Water Resources, *Reports to Parliament*, September 2018, <http://www.agriculture.gov.au/export/controlled-goods/live-animals/live-animal-export-statistics/reports-to-parliament>

⁹² Ibid., Every six months, the Minister must table in Parliament a report from the department that includes livestock mortalities on every sea voyage. The report is compiled from information provided to the department by the ships' masters, as required by the Marine Orders Part 43 under subsection 425(1AA) of the Navigation Act 1912. In accordance with the requirements of the Australian Meat and Live-stock Industry Act 1997 (AMLI Act), the report relates only to information provided to the Secretary or a delegate during the reporting period, whether or not the voyages occurred during the reporting period.

⁹³ Department of Agriculture and Water Resources: Regulator's response to the McCarthy Review into the export of sheep to the Middle East during the northern hemisphere summer, page 3 (2018)

⁹⁴ World Organisation for Animal Health, *Terrestrial Animal Health Code*, 12th ed. (2011).

152. The McCarthy review recommended a fundamental change in the way the industry should view animal welfare, moving away from using AAV reported mortality as an indicator of and to animal welfare indicators.
153. The department's process for determining what regulatory conditions should apply to live animal export consignments does not appear to be supported by sufficient scientific evidence. Mortality rates on equivalent past consignments appear to be the main criteria used by the department to apply additional conditions like reduced stocking densities. Past mortality rates on similar voyages are not an adequate means by which to conclude that the transportation arrangements are adequate for animal health and welfare. More sophisticated and scientifically valid measures of welfare must be adopted by the department and the industry.
154. A 2009 report to investigate the cause of mortality in cattle exported to the Middle East⁹⁵ noted there were concerns with the department's ability to capture information provided by the on-board AAV, establish linkages between the voyage outcomes and pre-delivery management and monitor animal welfare measures. Accordingly, the department needs to consider how to effectively undertake to:
- direct scientific research funding towards best practice in live animal export animal welfare outcomes
 - capture industry knowledge into policy making in a meaningful way
 - capture advice from animal welfare organisations to improve compliance against ASEL and state and territory based animal welfare legislation
 - ensure continual improvement of legislation through data capture and pre-delivery management.
155. Several exporters also acknowledged that mortality is not a sufficient indicator of animal welfare. MLA is currently undertaking work to develop alternative methods of measuring animal welfare on ships.⁹⁶ There is also work being undertaken through Murdoch University's Live Export Research and Development Committee, which is jointly supported by the Commonwealth Government, LiveCorp and MLA to develop a web-based application to develop animal welfare indicators on-board vessels, using research undertaken by on-board veterinarians.

⁹⁵ The Roles and Responsibilities of Accredited Veterinarians and Stockpersons Onboard Livestock Vessels (Michael McCarthy, Leisha Hewitt and Tristan Jubb).

⁹⁶ Meat and Livestock Australia, *Developing alternative methods of measuring animal welfare on ships* <https://www.mla.com.au/research-and-development/search-rd-reports/final-report-details/Live-Export/Developing-alternative-methods-of-measuring-animal-welfare-on-ships/614>

156. Animals are sometimes transported which should not have been: ‘some sheep have been loaded that have severe diarrhoea, and should have been rejected’; and there is very little the AAV can do to address sickness or lameness for an animal once on-board a vessel.
157. The risk to the welfare of exported livestock is the multiplicity of stresses that are experienced during transportation. These risks include changes of climate, feed, physiological status, social and physical environment. The result is that animal welfare risks are cumulative throughout the export process, starting at the point of leaving the producer’s farm or premises.

Reviewing and improving

158. The regulatory conditions should be continually evolving to improve outcomes. A comment made to the review was that “policy without a feedback loop is on a hiding to nothing.”⁹⁷ The National Farmers’ Federation noted in a recent interview that it is logical that standards are reviewed constantly according to scientific knowledge.⁹⁸
159. One recommendation of the McCarthy review was that the heat stress risk assessment model (HSRA or ‘HotStuff’) that is currently being used by exporters to avoid sheep mortality events, have its risk settings changed to avoid most sheep suffering from severe heat stress.
160. Following a series of heat stress mortalities in 2007, the department imposed additional conditions on sheep exports to the Middle East in order to minimise the risk of a heat stress mortality event occurring. The additional conditions required exporters to provide additional space of the sheep over and above the ASEL minimum for that time of year. This regulatory pressure was motivation for industry to revise the model. The department cannot require industry to update the model, but can apply measures that encourage industry to manage risk themselves.
161. The current heat stress risk assessment model is calculated on methodology owned by the industry. The basis of the calculations are not publicly available. While industry and the model’s developers have briefed the department on the workings of the model, this knowledge has not been maintained within LAE Branch. It is at the discretion of the industry to update the model (noting the financial implications).
162. The department noted that it can and does run the model independently to verify the numbers provided by exporters. However, it is noted that the department does not independently verify the details of the consignment relevant to the heat stress risk assessment model (eg numbers, weight, distribution on the vessel). The department relies on the exporter to load the ship in accordance with the heat stress risk assessment.
163. **Conclusion:** The department’s process for determining the regulatory conditions that should apply to live animal export consignments does not appear to be supported by sufficient scientific evidence. Past mortality rates on similar voyages are not an adequate means to conclude that transportation arrangements are sufficient to ensure animal health and welfare. As such, more sophisticated scientifically valid measures of welfare must be adopted by the department and the industry.

⁹⁷ In-confidence submission to the review, p. 17.

⁹⁸ Interview with National Farmers' Federation President, Fiona Simson. Radio National, Canberra, Breakfast, Fran Kelly, 23 August 2018 at 8:15 am.

Recommendation 6: That the department develop a regulatory approach which fosters and incorporates scientific best practice to ensure continual improvements in animal welfare outcomes for live animal exports.

Communication of regulatory conditions

This section reports on how regulatory conditions are communicated.

- 164. The department communicates regulatory conditions for live animal exports through ASEL.
- 165. The department also publishes Export Advisory Notices on its website to give advice, guidance or instructions to live animal exporters on about the requirements of importing countries, Australian legislative and administrative requirements.
- 166. The department also meets with industry several times a year (every 4–6 months) and undertakes monthly teleconferences with exporters and industry representatives, including regional veterinary officers (RVOs),⁹⁹ to communicate changes to export conditions. However, as reported to the review teleconferences do not always provide sufficient opportunity for questions or clarification.

Concerns around communication

- 167. Some exporters, as well as MLA, have expressed their preference for more information-sharing and transparency by the department. Further, regional veterinary officers (RVOs) and AAVs have expressed concerns about the lack of clarity when changes are made to regulatory conditions.
- 168. A specific concern raised with the review is that the department issues Export Advisory Notices to communicate changes in regulatory conditions to exporters at the last minute and expects adherence in a short time frame. Although the department has a formal communications plan for issuing Export Advisory Notices, changes to regulatory conditions present a challenge to the industry. The underlying issue is the need for the department to improve its communications with the industry.
- 169. Lack of clarity around changes to regulatory conditions, and the subjective nature of ASEL, presents challenges for RVOs in assessing compliance and has led to discrepancies and inconsistency.
- 170. Transparency and better communication will be important in improving the functioning of the regulatory framework.
- 171. **Conclusion:** The department needs to adopt an open and transparent communication strategy. The department also needs to consult with and provide avenues for the industry and animal welfare organisations to engage with the department. Reinstatement of the department's Animal Welfare Branch would facilitate this engagement and provide a conduit for state and territory communication with the Commonwealth on animal welfare.

⁹⁹ RVOs are departmental officers located in the regions.

Enforcement, verification and measurement

172. This section reports on how enforcement of regulatory conditions is verified and measured.

Compliance with approved arrangements

173. Prior to approved arrangements, applications to export livestock were assessed on a consignment by consignment basis by veterinary and technical officers with knowledge of animal health and welfare. Departmental officers would board the vessel, check that the load plans were met and that stock were assessed individually prior to the Export Certificate being issued.
174. Under approved arrangements, export livestock are inspected on a 'sample' basis at registered premises and there is no requirement for the RVO to board the vessel. RVOs are able to do so at their own discretion, but the department discourages boarding vessels for work health and safety reasons. This situation means loading and pen density of stock are often not checked by the department. AMSA noted that industry's word is accepted at 'face value' effectively leading to self-regulation.
175. **Conclusion:** The current process could be strengthened by providing for complete inspections of live animal export consignments on a random unannounced basis including at registered premises and once vessels have been loaded.

Recommendation 7: That the department strengthen the approved arrangements model for live animal exports by introducing full inspections of consignments on a random unannounced basis.

Compliance

176. In imposing requirements, the department operates on the expectation that the live animal exports industry will comply. In the current system departmental oversight is insufficient to verify compliance. Regional Veterinary Officers conduct inspections, issue the health certificates required to meet importing country requirements and sign off on export permits. These staff members are not sufficiently supported. RVOs conduct inspections at the last minute, inspect a small sample of animals and relevant paperwork and work under tight time frames. This approach affects the thoroughness of inspections and the ability of RVOs to observe conditions and address issues.
177. As the regulator of live animal exports, the department has both direct and indirect roles under the regulatory framework. In granting health certificates and export permits, the department plays a direct role. In the case of ESCAS, the department does not have direct line of sight of the activities it is regulating and relies on third-party auditors.

Identifying non-compliance

178. Issues arise with enforcement and verification of compliance because of short time frames and a lack of departmental line of sight across the supply chain as a whole. Some exporters have expressed concern to the review that the department's processes do not result in regulatory action. An exporters stated:

we spend all our life completing paperwork to justify our existence to the Department and their auditors, yet with no meaningful ramifications if we fail to execute operationally, this is all pointless, time wasting - severely impacting on

productivity and taking resources away from focusing on running a best practice business focused on animal welfare and commercial outcomes.¹⁰⁰

179. On 3 July 2018, the department issued an Export Advisory Notice¹⁰¹ to suspend feeder/slaughter sheep and goat exports to Malaysia with effect from 7 July 2018 until 25 August 2018. This suspension followed calls from animal welfare organisations to address leakage of Australian animals through the ESCAS supply chain during the festival of Korban¹⁰² which falls on 24 August each year. The Export Advisory Notice stated that:

Following Korban in 2017, reports were received by the department demonstrating poor animal welfare outcomes and loss of control and traceability of Australian livestock exported to Malaysia. The Australian Livestock Exporters' Council (ALEC) advised the department that members had agreed not to export sheep or goats to Malaysia in the six weeks prior to Korban 2018 due to concerns around compliance with ESCAS requirements. Considering the above information, the high risk of non-compliance during Korban, the lack of response from exporters in regard to ESCAS breaches in 2017, and the evident lack of effectiveness of exporter's control and traceability systems, the department has determined that sheep and goat exports should be suspended for the six weeks prior to Korban 2018.

180. **Conclusion:** The department operates in a regulatory framework that requires it as the regulator to rely on the compliance and reporting of other parties and entities.

Recommendation 8: That the department adopt a regulatory approach that recognises the contribution of animal welfare organisations in identifying non-compliance with the Australian Standards for the Export of Livestock, the Exporter Supply Chain Assurance System and animal welfare standards.

Oversight

181. A challenge facing the department as the regulator of live animal exports is that it does not have oversight of significant aspects of the export supply chain. The department relies upon the exporter to ensure animal welfare. It can be the case that exporters own the whole supply chain, from the farm to destination market in the importing country. Although ownership of animals may change along the supply chain, depending on the business model, the exporter has responsibility for animal welfare outcomes.
182. The department's oversight under the regulatory framework does not extend across the entire live animal export chain. The Livestock Global Assurance Program (LGAP) has been designed to address some of the challenges the department faces when regulating overseas, including when faced with political or sovereignty concerns. It should be noted too that LGAP is not proposed to be a form of self-regulation and is not intended to displace or dilute ESCAS.¹⁰³

¹⁰⁰ Otway Livestock Exports, submission to the review p. 1.

¹⁰¹ Export Advisory Notice – 2018-04 dated 3 July 2018.

¹⁰² Korban is an Islamic festival.

¹⁰³ The facts about LGAP – Summary to final report.

183. **Conclusion:** The department's lack of visibility across the supply chain as a whole is a major issue for enforcement and verification of compliance. The department operates on a regulatory framework that requires it to rely on the compliance and reporting of other parties and entities.

An enhanced regulatory model

184. An enhanced regulatory model is required. It would require a partnership between the department, the industry and animal welfare organisations, with animal welfare as the focus.
185. It is envisaged that bringing animal welfare organisations into the regulatory model would assist in identifying when ASEL and ESCAS are deficient in ensuring regulatory compliance. Engagement with animal welfare organisations would give support to social licence for the industry.
186. An enhanced regulatory model would also draw on the scientific community and animal welfare experts to ensure that the standards of animal welfare based on scientifically sound welfare standards. It is noted that changes in policy and regulations must be underpinned by science.

3. Investigating mortality events and complaints

This section reports on the third term of reference:

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

Reportable mortality events

187. This section reports on the process for investigating reportable mortality events.
188. A reportable mortality event occurs when the number of animal deaths exceeds the reportable level under ASEL. The reportable level is a percentage of the total consignment and varies from animal type to animal type.¹⁰⁴ For sheep and cattle, the reportable level is now 1% (before the McCarthy review, the reportable level for sheep was 2%).
189. ASEL also refers to a notifiable incident—that is, an incident which has the potential to cause serious harm to the health and welfare of animals. It includes, but is not limited to, a shipboard event equal or greater than a reportable level.
190. When a reportable mortality event occurs, the exporter must notify the department within 12 hours. The department then informs internal and external stakeholders, including the minister's office.
191. Any immediate regulatory action deemed necessary, such as additional conditions to future Notice of Intent to export (NOIs), is then applied.
192. The department begins an investigation only when reportable levels are reached or exceeded—that is, it does not investigate voyages where the mortality level is below the reportable level. This approach is being considered in the light of the McCarthy review, which concluded that mortality alone is not an appropriate indicator of animal welfare.

Process for investigation

193. The causes of mortality for cattle and sheep are well known and generally do not vary significantly:
- the most common causes of mortality for sheep are salmonellosis, inanition and heat stress
 - the most common causes of mortality for cattle are pneumonia, trauma and heat stress.
194. Reportable mortality events and exporter non-compliance are investigated by staff in the department's Live Animal Exports Branch (LAE Branch). When the potential for a criminal issue exists—for example, provision of false and misleading information or forgery—the investigation is passed to the department's Enforcement and Sanctions Branch.

¹⁰⁴ Department of Agriculture and Water Resources website, *Investigations into mortalities*, September 2018, <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-mortalities>

195. As part of the investigation, the department obtains and reviews relevant documentation, such as:
- the exporter's investigation report
 - departmental documentation relating to the consignment (eg livestock export consignment reports, RVO reports, information on the origin of the consignment)
 - AMSA reports relating to the vessel
 - previous mortality event investigations.
196. Before the department finalises a report on an investigation into a reportable mortality event, the exporter is given an opportunity to review a draft version to respond to any proposed regulatory action.
197. The department advised that mortality reports take around 11 months to complete. Of the last nine reportable mortality investigations, a cause could not be attributed in three. (The length of time it takes the department to finalise an investigation is discussed in section 7. Skills, capabilities and systems.)
198. The department's investigations can lead to criminal investigations.
199. Following consultation with industry and in response to increased applications under the *Freedom of Information Act 1982*, the department began publishing its investigation reports to provide information to exporters, registered premises operators, AAVs, departmental officers and the public. The most recent report to parliament about reportable mortality events published on the department's website is dated December 2017.

Concerns

200. The review heard concerns about the department's investigation process, including:
- lack of clarity around mortality figures
 - lack of information about causes of mortality
 - investigations not adding a great deal of additional information to the department's understanding of how to prevent the common causes of mortalities from recurring
 - investigations being undertaken by departmental staff members with limited experience in live animal exports
 - decline in the level of supervisory experience to provide technical guidance to those undertaking investigations, including in relation to heat stress
 - cross-jurisdictional issues, such as reliance on information from third parties.

Lack of clarity around mortality figures

201. The RSPCA in its submission to the review stated:

We also note incidents in which significant discrepancies in mortality figures have been recorded by the exporter and accepted by the Department with seemingly little scrutiny. In July 2016, a vessel recorded a 2.51% mortality rate with 1,741 sheep dying. However, it was later revealed that 1,286 sheep were actually unaccounted for so the

Department retrospectively amended the mortality report to note that the 'mortality rate for this voyage is likely to be closer to 4.36 per cent.'^{105 106}

202. In an in-confidence submission, departmental staff members, who formerly worked in LAE Branch, stated:

On occasions, in our view, reportable mortality reports were revised or redrafted to dilute or expunge findings which adversely reflected on the regulatory framework. Additionally, there was a reluctance to take meaningful action in response to mortality events to prevent reoccurrence (sic). Recommendations by investigating officers were dismissed where they did not align with the reform process and Approved Arrangements.¹⁰⁷

203. At least one similar other incident occurred following the investigation of a heat stress event. The investigating officer recommended that the heat stress risk assessment output be checked by a departmental veterinary officer on loading. However the recommendation was declined by a more senior staff member. It was said that the heat stress risk assessment output was a not core document under approved arrangements.
204. The review has checked these comments which stand, although the department noted that the areas responsible for receiving and dealing with allegations of wrong doing, grievances, complaints have not received any reports of this nature.

Lack of information on causes of mortality

205. A submission to the review noted that investigations into reportable mortality events do not contain much information about why livestock died during the sea voyage. As mentioned above, and also noted in the submission, the causes of mortality for cattle and sheep generally do not vary significantly.¹⁰⁸ The submission further noted that the department's inability to address these issues and prevent recurrence, even when reported repeatedly, displays flaws in the process. The department notes that the causes are well known and the inability to address such issues as bovine respiratory disease, salmonellosis and inanition is an industry-wide problem.
206. When investigations are conducted, standardised epidemiological data and other information are said not to be readily available to assist in establishing the contributing factors and responsibilities relevant to the reportable incident. The review heard that this situation limits the department's capacity to attribute cause and responsibility for poor animal welfare outcomes, as well as its ability to take appropriate action.
207. Mortality investigations in part rely on the AAVs' expertise in post-mortem examination without laboratory testing. In the past, samples for laboratory testing have not been collected. There are a number of reasons why, including that testing was not possible until the end of the voyage, exporters did not wish the testing to be conducted in the importing country, and testing on return to Australia is complicated by import and quarantine

¹⁰⁵ RSPCA, submission to the review, p. 18.

¹⁰⁶ Note that this incident was referred to previously based on a submission to the review by VALE.

¹⁰⁷ Departmental staff members, in-confidence submission to the review.

¹⁰⁸ The submission made to the review noted that salmonellosis and inanition are the most common causes of mortality for sheep, unless there is a heat stress event, and that pneumonia and trauma are the most common causes for cattle.

requirements. Greater knowledge and understanding of mortality incidents would improve if laboratory testing options were possible.

Lack of staff experience

208. The departure of knowledgeable and experienced staff from LAE Branch has reduced the department's capacity to investigate non-compliances with the regulatory framework, including the investigation of reportable mortality incidents.
209. One departmental staff member told the review about being assigned to investigate reportable mortality events, despite having little investigation experience—the staff member said they were “thrown into this fairly contentious space.” The staff member noted:

some of the exporters literally try and feed you the minimal amount of information, and do the minimal amount they can to just try and get us off their back; whilst others appear to be quite proactive and actually understand that ... by contributing in a proactive way when there's a problem they can actually improve their processes.¹⁰⁹

210. The department cannot always independently collect or verify information; it is reliant on information and reports from AAVs, exporters, registered premises operators, ship masters and AMSA to investigate incidents and prepare reports. Independent observers (IOs) on vessels now provide another source of information.
211. **Conclusion:** The current investigation process does not produce timely results. Staff with appropriate skills and investigative training need to be provided with appropriate resources to conduct investigation in a timely manner.

Recommendation 9: That the department ensure reportable mortality events and other non-compliance relating to live animal exports, are investigated by staff members with appropriate skills and training who are sufficiently resourced to delivery timely outcomes.

ESCAS

212. The department assesses the independent audit reports and investigates identified non-compliances. The outcomes of these investigations are included in the ESCAS regulatory performance reports which are published. Animal welfare organisations play a significant role in alerting the department to instances of non-compliance.
213. Non-compliance with ESCAS includes instances of livestock leaving the approved supply chain (known as leakage). Currently, individual traceability is required for cattle, but not for sheep and goats. This situation will continue to be an issue. It is noted that LGAP proposes traceability for these types of livestock.

¹⁰⁹ In-confidence submission to the review, p. 9.

214. When ESCAS breaches are identified, the department drafts a report based on findings from the exporters' assessment of the issue. ESCAS breaches are classified according to the department's biosecurity guideline for management of non-compliance.¹¹⁰ The framework states:
- [The department] may receive and consider substantiated information of adverse animal welfare handling, traceability and control aspects from various sources in various formats including independent audit reports and advice from importing country governments. Substantiated information provided from other sources such as Meat and Livestock Australia, animal welfare organisations and media may also be considered.¹¹¹
215. The ESCAS regulatory framework enables the department to review and require information about reported non-compliance with ESCAS requirements when taking regulatory action.
216. A submission to the review noted that many live export investigations are related to off-shore environments and events occurring outside Australia's sovereign border, which has limited the scope and capacity of the department to undertake investigations. When non-compliance has occurred, government investigations have relied on these external sources and the limited data that is collected. Without a physical presence on the vessels and monitoring in the destination market, there appears to be significant reliance upon operatives within the supply chain for accurate information. The veracity of this process has been identified as a challenge.
217. Meat and Livestock Australia expressed the view that, should the effectiveness of current regulatory powers lack the capacity to regularly and properly monitor and enforce requirements, there is a risk that supply chain participants will discount the capacity of the legislation to impose a consequence.¹¹²
218. As noted previously, the Government has introduced a Bill to increase the penalty provisions in legislation relating to live animal exports.
219. It is also noted that LGAP, which is intended to provide auditing and verification that exporter supply chain entities are conform to ESCAS animal welfare standards for Australian livestock, could include the capacity to provide information for the purposes of departmental investigations of ESCAS breaches.

Criminal investigation

220. As noted, if an issue concerning live animal exports involves a possible criminal offence under the Export Control Act, AMLI Act or *Criminal Code Act 1995*, it is referred to the department's Enforcement and Sanctions Branch. Staff members in this branch have investigative skills and qualifications to undertake investigations in accordance with the Australian Government Fraud Control Framework and the Australian Government Investigation Standards.

¹¹⁰ Department of Agriculture, Fisheries and Forestry, *Biosecurity guideline management of non-compliance: Exporter supply chain assurance system (ESCAS) for feeder and slaughter livestock*, <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/non-compliance>

¹¹¹ *Ibid*, p. 2.

¹¹² Meat and Livestock Australia submission to the review, p. 3.

221. Criminal investigations undertaken by the department may result in a brief of evidence being provided to the Commonwealth Director of Public Prosecutions (CDPP).
222. Between January 2010 and September 2018, the department conducted 60 investigations of which four investigations that have not yet been finalised. Over the period, 13 briefs of evidence have been referred to the CDPP, resulting in two successful prosecutions.
223. Apart from prosecution, departmental investigations have resulted in other actions including one letter of caution issued by the CDPP, two letters of advice issued by the department (that seek written acknowledgement and an undertaking to comply in the future) and the cancellation of two export licences.¹¹³
224. A number of issues have been identified that have hindered the department's ability to investigate or complete live animal export investigations. They include jurisdictional and evidentiary issues, public interest concerns and the complexity of the statutory regime.
225. The department has lost investigatory capacity due to amendments to the *Telecommunications (Interception and Access) Act 1997*. For example, the department no longer has access such investigative measures as call charge and reverse call charge records.
226. The department noted that its statutory regime is complex with multiple acts and orders governing the export of livestock. Due to the complex nature of the investigations, as well as the availability of witnesses and documentary evidence, there can be a significant delay between breaches being detected and in the case of offences, the brief of evidence being referred to the CDPP.
227. In relation to the investigation of ESCAS breaches which occur outside Australia, investigators often rely on information provided by the exporting company to ascertain the circumstances of a suspected breach. Evidentiary issues are also encountered, including the inability on occasions to trace back animals to a particular exporter.
228. The department also noted that the success rate from briefs of evidence provided to the CDPP is consistent with the outcome of investigations by the regulators of other industry sectors.

Complaints

229. This section reports on the process for investigating complaints received about industry compliance with ASEL and animal welfare standards.
230. Complaints about industry compliance can be made to the department through a variety of channels, including to the:
- Minister or Secretary (usually referred to the LAE Branch)

¹¹³ In-confidence submission to the review.

- LAE Branch or Enforcement and Sanctions Branch
- Redline, the department's free call service for people to report information about suspected breaches of Australian biosecurity, meat or food inspection laws¹¹⁴
- The department's suggestions, compliments and complaints form¹¹⁵
- Whistleblower hotline, a free call service for people to report information on non-compliance in live animal exports and breaches or suspected breaches of export conditions. This hotline was established in April 2018.¹¹⁶

Animal welfare organisations and complaints

231. While exporters are required to report breaches under ASEL and ESCAS, animal welfare organisations continue to be a significant source of information about breaches of animal welfare standards, both in Australia and overseas. Of the investigations into ESCAS breaches listed on the department's website, a significant number have been reported to the department by animal welfare organisations.
232. Although self-reporting by the industry is said to be increasing, a significant number of investigations are initiated on the basis of information provided by animal welfare organisations. This situation indicates the department's reliance on such assistance to regulate the live animal export industry.
233. Animal welfare organisations and other interested parties are an established and significant part of the current reality and should be proactively engaged. Consistent with good regulatory practice, the department could set in place arrangements to obtain information from animal welfare organisations to assist with identifying possible breaches of ASEL and ESCAS.
234. **Conclusion:** Changes are needed to improve investigative outcomes. The department should:
- ensure staff members who undertake investigations have appropriate skills and training
 - ensure complaints are dealt with in a timely manner
 - establish either a consolidated investigative capability or a joint triage system—for with LAE Branch and Enforcement and Sanctions Branch—in relation to complaints and allegations concerning industry compliance with ASEL and animal welfare standards.

Recommendation 10: That a consolidated investigative capacity or a joint triage system be developed between the department's Live Animal Exports Branch and Enforcement and Sanctions Branch to investigate issues concerning industry non-compliance with the Australian Standards for the Export of Livestock, the Exporter Supply Chain Assurance System and animal welfare standards.

¹¹⁴ Department of Agriculture and Water Resources, *Redline—report a biosecurity breach*, <http://www.agriculture.gov.au/biosecurity/legislation/compliance/redline>

¹¹⁵ Department of Agriculture and Water Resources, *Suggestions, compliments and complaints*, <http://www.agriculture.gov.au/about/commitment/suggestions-compliments-complaints>

¹¹⁶ Department of Agriculture and Water Resources, *Whistleblower hotline*, <http://www.agriculture.gov.au/export/from-australia/whistleblower>

4. Effectiveness of reporting obligations

This section reports on the fourth term of reference:

The effectiveness of reporting obligations under relevant legislation.

Current obligations for reporting

- 235. Under the *Export Control (Animals) Order 2004*, and ASEL, an exporter must report to the department for all voyages. Such reports are prepared by the AAV or accredited stockperson employed by the exporter. For journeys greater or equal to 10 days,¹¹⁷ reporting is required on a daily and end-of-voyage basis, for journeys of less than 10 days, end of voyage reporting only is required.
- 236. The AMLI Act (Section 57AA) requires the department to provide the Minister for Agriculture and Water Resources with a report every six months on the carriage of livestock on voyages to ports outside Australia.¹¹⁸ The report sets out details of voyages obtained from ship masters' reports provided to AMSA. There are no other legislated reporting obligations.
- 237. The department publishes other information on its website about the live animal export trade on a regular basis, for example mortalities for air consignments, ESCAS non-compliance reports and investigations, and volumes and destinations for exports of live animals.
- 238. Under ESCAS, exporters are required to provide the department with an audit report prepared by an independent third-party auditor who has checked the import supply chain in the country of export destination.

Effectiveness

AAV and Stockperson Reporting

- 239. AAVs appear have an inherently conflicted role. While they are required to report to the department on animal welfare issues, they are either employed, or engaged by exporters or contracted on a consignment by consignment basis. AAVs and department staff members told the review that some AAVs, who had reported concerns about animal welfare on board livestock vessels, had said that they would not be asked again to work for that exporter or receive another contract.
- 240. In the absence of an AAV, the senior stockperson meets the reporting obligation on behalf of the exporter in relation to on-board consignments of livestock for export. An industry training course is provided to stockpersons who accompany livestock consignments. Successful attendance at the course, which runs for four days, is a requirement for accreditation. Persons who have attended the course told the review that not enough focus is given to providing daily and end of voyage reports.
- 241. AAVs and stockpersons are not required to provide daily reports or end of voyage reports to the department in a consistent format and there is no template available to standardise the

¹¹⁷ ASEL, paragraph 5.12.

¹¹⁸ ASEL, paragraph 1A.49.

reporting. Daily reports and end of voyage reports are sent in various forms including email, excel spreadsheets or word documents. This lack of uniformity reporting reduces the ability to analyse information. The department noted that work is underway in LAE Branch to develop a standardised and streamlined reporting template to assist with consistent and timely reporting by IOs.

242. It is noted that there is no capability in the department data base known as Tracking Animal Certification for Export (TRACE) to aggregate information. The department noted that a new IT system is being developed for export certification that may have more capability, further supporting the requirement for consistent reporting.
243. Although AAV reports are loaded onto TRACE, the reporting has not been analysed systemically. It is apparent that analytical and data literacy as a skillset of LAE Branch staff members is limited. This situation has begun to change since the end of June 2018 when additional staff members were allocated to the Compliance Section of LAE Branch. However, the effect of an increased focus on processing and analysing reports is yet to become clear.
244. The animal mortality and suffering on the MV Awassi Express voyages in 2017 about which the department as the regulator needed to know and should have known were said to be not apparent from exporter and AAV reporting. Yet, the review was informed that reports were made about adverse conditions leading to the reportable mortality events on the *MV Awassi Express*.
245. **Conclusion:** The reporting framework in relation to animal health and welfare on board export vessels has not been fully effective. In addition, the department had only a limited capacity to analyse and assess the reporting of animal welfare conditions.
246. **Conclusion:** The department needs to have arrangements to verify the information it receives about the health and welfare of livestock being exported. Currently, the placement of IOs on-board vessels is helping to meet that need.

Recommendation 11: That the department ensure it receives the reporting necessary to assess the health and welfare of livestock during the export process.

247. While on board vessels, IOs and AAVs would benefit from being able to report on matters and discuss them with the department in real time. An arrangement for IOs and AAVs to contact the department at all necessary times would increase the department's situation awareness and facilitate timely reporting. Although the department noted that it issues IOs with satellite phones and laptops to facilitate direct communication, the review was informed of instances when communication with the department was not possible due to faulty equipment and time differences. Exporters and AAVs told the review that are unable to contact the department outside of business hours when seeking guidance or reporting on issues as they arise.
248. **Conclusion:** The department should work with AMSA to develop an arrangement whereby the AMSA response centre would be the point of contact for IOs and AAVs on board vessels when issues arise outside of the department's business hours.

Recommendation 12: That the department make arrangements to enable on-board Australian Government Accredited Veterinarians and independent observers to contact the department at all times, including when necessary through the Australian Maritime Safety Authority response centre.

5. Departmental structure

This section reports on the fifth term of reference:

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.

Current structure

249. The department structure, as depicted on its organisational chart, shows that several Divisions and Branches are directly involved in live animal exports to ensure that regulatory responsibilities are met. These Divisions and Branches are:

- Live Animal Exports Branch in Exports Division
- Veterinary and Export Meat Services (VEMS) Branch in Biosecurity Operations Division
- Audit Services Branch in Biosecurity Operations Division
- Enforcement and Sanctions Branch in Compliance Division.

250. Other areas of the department are involved, for example the Office of General Counsel provides legal advice.

251. In recent years, the department has moved in its operations from a regionally-based approach to a nationally-based approach. Previously, regional managers ran the department's operation across all lines of business. The current focus is on achieving a consistent approach for each line of business at the national level.

252. It is also noted that, under the department's functional structure, the work of the VEMS Branch, Audit Services Branch and Enforcement and Sanctions Branch extends beyond live animal exports to agricultural commodities.

LAE Branch

253. LAE Branch has the primary responsibility in the department for live animal exports and is the point of contact with the industry. It performs this role by developing policy, managing legislative changes to the Export Control Act and AMLI Act and associated orders and a range of other activities including; assessing notices of intent to export, ESCAS and registered premises applications, undertaking traceability audits and investigations of mortality events as well as determining the process for RVOs to perform consignment inspections. The LAE Branch also engages with the live animal export industry, manages IT reporting infrastructure and responds to correspondence.

VEMS Branch

254. VEMS Branch has regional veterinary officers (RVOs) and principal veterinary officer (PVOs) who are based in capital cities and regional centres. RVOs conduct inspections of consignments of animals destined for export at registered premises and issue the health certificates and export permits required under the regulatory framework. They are also

required to provide Livestock Export Consignment Record (LECR) ratings for each consignment. These ratings determine the level of auditing and scrutiny which the department applies to each exporter under approved arrangements. The RVOs report to Principal Veterinary Officers (PVOs) in VEMS Branch. These senior officers provide guidance and support to RVOS carrying out export certification.

Audit Services Branch

255. The Audit Services Branch undertakes audits of exporter documentation relating to live animal exports, as stipulated by LAE Branch. This function involves physical audits of registered premises (feedlots and biosecurity facilities) and desktop audits of exporter performance under approved arrangements.

Enforcement and Sanction Branch

256. The Enforcement and Sanctions Branch conducts investigations using investigation powers of authorised officers under the Export Control Act and the AMLI Act, and conduct investigations into Criminal Code offences. The department refers matters that it has investigated, and assesses to conform with the prosecution policy of the Commonwealth, to the CDPP for consideration.

Appropriateness of structure

257. In its structure, the department can be characterised as being divided between those parts which are responsible for trade facilitation and those parts which are responsible for trade regulation. The review received a number of submissions expressing the view that the department is charged with contradictory responsibilities.¹¹⁹
258. It is evident that the department's regulatory capability is dispersed by being located in four branches which, in turn, are part of three separate divisions (led by different first assistant secretaries). In addition, these three divisions are located in two separate groups (led by different deputy secretaries).
259. Under this structure, accountability is diffused and the relevant divisions and branches have challenges in working effectively together to ensure that regulatory responsibilities are met. As a result, a concerted focus in relation to the regulation of live animal exports is lacking. There is no clear direction about how the relevant Divisions and Branches are to work together. In the absence of such a framework, there is inadequate coordination, overlap of roles, poor communication and insufficient information exchange.
260. The need is for the relevant Divisions and Branches to develop a common sense of purpose, identity and alignment in relation to their respective regulatory responsibilities. The most pressing challenge relates to information collection and dissemination. In essence, more

¹¹⁹ Animals Australia, submission to the review, p. 20.

communication and information sharing is required.¹²⁰ For this outcome to occur, the role of Exports Division and LAE Branch as the lead entity has to be more clearly defined and better aligned with the regulatory model operating across other export-related functions of the department.

261. As stated in the Department of the Environment *Regulatory Maturity Project Final Report*

Best practice regulators have clear governance structures to ensure that regulatory activities and policies are administered consistently and appropriately across the organisation.¹²¹

262. As at September 2018, the LAE Branch is divided into six teams; Operations, Business Administration and Systems, Compliance, Governance and Reform, LAE Reviews, Independent Observer Program. Since April 2018, the staff numbers of the Branch have increased. Streamlining of some responsibilities with other relevant Branches may be necessary. For instance, it is noted that overlap now occurs between LAE Branch and the Enforcement and Sanctions Branch in relation to investigation.

Support for staff

263. The demands on LAE Branch staff members also has to be considered to ensure that they are fully supported. A comment made to the review was that they “are bludgeoned by all sides [in relation to live animal exports].”¹²² In addition, LAE Branch has experienced high staff turnover.
264. The department’s regional staff members also face challenges and require support. It is noted that RVOs often work alone and have significant responsibility in relation to issuing health certificates and export permits. An RVO told the review team that communication with other parts of the department is not always satisfactory. In some instances, when export conditions have changed, an exporter will sometimes know before RVOs.
265. RVOs also reported that concerns they raise are not always properly considered. As told to the review there were instances at the commencement of approved arrangements in 2017 when a small number of LECR ratings were changed under a moderation process without telling the RVO. The result was reported to be confusion and uncertainty in ensuring that regulatory responsibilities are met.
266. The department’s senior leadership is considering these challenges and how to meet them. Comments made to the review were that the department is in transition and re-posturing itself with the stated aim of being “a clear and consistent regulator”.
267. The conclusion is that the existing structures within the department have to develop purpose, identity and alignment to ensure that regulatory responsibilities are met in relation to live animal exports.

¹²⁰ For instance, RVOs told the review team that audit services and inspection service staff members visit their location, but do not always make contact.

¹²¹ Regulatory Maturity Project Final Report, Joe Woodward, April 2016, page 43, <http://www.environment.gov.au/epbc/publications/regulatory-maturity-project-final-report> accessed August 2018.

¹²² In-confidence submission to the review, p. 26.

Recommendation 13: That the roles and responsibilities within the department performed by Exports Division, Compliance Division and Biosecurity Operations Division be clarified to develop a common sense of purpose, identity and alignment in relation to the regulation of live animal exports.

Need for an Animal Welfare Branch

268. The need to focus on animal welfare instead of animal mortality in the context of live animal exports was identified in the McCarthy review. The ASEL Review Panel is currently looking to develop animal welfare indicators for sheep consignments.
269. The department needs reflect the focus on animal welfare in its organisational structure. In the context of ensuring regulatory responsibilities are met, sufficient focus within the department on animal welfare is currently lacking.
270. In a Futureye report entitled *Future Proofing for Profitability, Live Export Industry Reform*,¹²³ a provisional set of supply chain ‘hot spots’¹²⁴ for animal welfare was identified. The hot spots relate to stock sourcing, land transport, registered premises (domestic handling), vessel handling and transit, overseas port off loading and handling, registered premises (overseas handling) and abattoir management (slaughter practices).¹²⁵
271. The Futureye report suggested that all stages of the supply chain require agreed indicators, tolerance ranges and goals and public reporting. On that basis, the report notes that animal welfare indicators need to be measured and reporting made publicly available. As the report notes, visibility and transparency are critical to the industry, which must be able to demonstrate how animal welfare is being achieved.¹²⁶
272. It is noted that the industry should be prepared to make a significant input into the development of animal welfare indicators. Related work being undertaken by LiveCorp and MLA has already been mentioned in section 3.
273. The department needs to re-establish an Animal Welfare Branch to engage with the industry in relation to animal welfare in the context of live animal exports. It is noted that the Commonwealth has few animal welfare powers beyond live animal exports and export approved abattoirs. Nevertheless, the department has a role in providing national leadership from this perspective.
274. The department will need to define – with the Minister’s direction – what broader objective/outcome an Animal Welfare Branch could be expected to have.
275. **Conclusion:** The department, together with the industry, must place animal welfare at the centre of its regulatory activities relating to live animal exports consistent with legislative obligations.

¹²³ *Future Proofing for Profit, Live Export Industry Reform*, Futureye, 2013, p. 55.

¹²⁴ A ‘hot spot’ is described as where the gaps between expectations and performance are biggest. Future report, p. 55.

¹²⁵ Ibid.

¹²⁶ Futureye report, p. 56.

Recommendation 14: That the department re-establish an Animal Welfare Branch and place animal welfare at the centre of its regulatory activities in relation to live animal exports.

Principal Regulatory Officer

276. In considering the appropriateness of the department's structure, it is noted that there is a need for the department to establish the position of Principal Regulatory Officer. This issue is addressed in section 6 of this report.

Regulator Performance Framework

277. Reference was made earlier in this report to the department's requirement under the Regulator Performance Framework (PRF) to undertake an annual self-assessment. In its *Regulator Performance Framework 2016-17 report - Department of Agriculture and Water Resources self-assessment*, the Department stated that RPF assessments help entities to identify areas for improvement. The report provides an overview of each of the regulatory schemes for which the Department is responsible and a self-assessment against key RPF performance indicators.¹²⁷
278. The 2016-17 Report states as follows:
- New information provided in relation to some live animal voyages to the Middle East in 2017 has seen the Government initiate several reviews which are still underway at the time of publication. In responding to these reviews, we will look actively to improve our regulatory policy, approach and posture in relation to live animal exports. While this is not further canvassed in this report, it will be reported in the 2017-18 self-assessment.
279. In the context of live animal exports, it is noted that the forthcoming RPF annual self-assessment provides an opportunity to identify areas for improvement and 'improve regulatory policy approach and posture'.

External Inspector-General

280. This section reports on whether an external Inspector-General would provide superior oversight of the department as the regulator, compared with its current structure.

Existing bodies with external oversight

281. Several external agencies currently oversee the department, although not specifically in its role as the regulator of live animal exports. These agencies include the:
- Auditor-General, Australian National Audit Office (ANAO)
 - Commonwealth Ombudsman
 - Integrity Commissioner, Australian Commission for Law Enforcement Integrity (ACLEI)
 - Inspector-General of Biosecurity (IGB).

¹²⁷ *Regulator Performance Framework 2016-17 report - Department of Agriculture and Water Resources self-assessment*, page v.

Auditor-General

282. The functions of the Auditor-General include the conduct of performance audits, assurance reviews or audits of the performance measures of Commonwealth entities and companies.
283. The ANAO has not conducted a review relating to live animal exports, and none is listed in its current annual audit planning process.

Commonwealth Ombudsman

284. The function of the Commonwealth Ombudsman is to consider and investigate complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department or agency. The Ombudsman can undertake an own motion inquiry and make a report containing conclusions and recommendations.
285. In 2017–18, the Commonwealth Ombudsman received and dealt with 42 complaints about the Agriculture and Water Resources portfolio. The Commonwealth Ombudsman has not recently released any reports about the activities of the department.

Integrity Commissioner

286. The function of the Integrity Commissioner, who is the head of the Australian Commission for Law Enforcement Integrity, is to provide assurance to government about the integrity of law enforcement agencies and their staff members. The Integrity Commissioner decides independently how to deal with each corruption issue.
287. Since 2013, specified departmental staff members have been prescribed to be within the Integrity Commissioner's jurisdiction. The Integrity Commissioner has not recently reported publicly on any matter relating to the activities of the department.¹²⁸

Inspector-General of Biosecurity

288. The function of the Inspector General of Biosecurity (IGB), a part-time statutory position established in 2016, is to review the performance and exercise of powers of the Director of Biosecurity, who is also the Secretary of the Department of Agriculture and Water Resources.¹²⁹ The IGB makes recommendations for system improvements and provides an assurance framework for stakeholders. The IGB has absorbed the role of Inspector-General of Horse Importation.¹³⁰
289. The IGB has undertaken a number of reviews. Completed reviews include; Hitchhiker pest and contaminant biosecurity risk management in Australia (July 2018), Military biosecurity risk management in Australia (July 2018), Horse importation biosecurity risk management (September 2018).
290. **Conclusion:** In their present configuration, the existing external oversight bodies, either individually or collectively, do not provide sufficient focus on the department as the regulator of live animal exports. They perform the role of investigating specific complaints and issues. In the light of the above discussion, the conclusion is that the department structures to ensure that regulatory responsibilities are met would be strengthened by external oversight.

¹²⁸ Department of Agriculture and Water Resources, *Annual Report 2016–17*, p. 117.

¹²⁹ Inspector-General of Biosecurity, *Inspector-General of Biosecurity*, <http://www.igb.gov.au/Pages/igb.aspx>

¹³⁰ The IGB's scope does not extend to Australia's national biosecurity policies, international trade issues and market access opportunities.

Proposed external oversight

Productivity Commission: commission for animal welfare

291. In November 2016, the Productivity Commission in its report *Regulation of Australian agriculture* recommended the establishment of a statutory organisation named the Australian Commission for Animal Welfare (ACAW). The functions of the proposed ACAW included publicly assessing the efficiency and effectiveness of the livestock export regulatory system and making recommendations to improve the system.
292. There has been no government response so far to the recommendations of the Productivity Commission.

Private member's bill: animal welfare inspector-general

293. In June 2018, the Hon. Joel Fitzgibbon MP tabled in the House of Representatives a private member's bill called Inspector-General of Animal Welfare and Live Animal Exports Bill 2018. The bill provided for the appointment of an independent statutory officer to be known as the Inspector-General of Animal Welfare and Live Animal Exports.
294. The proposed Inspector-General would provide independent oversight and review of the regulator excising powers under the *Australian Meat and Livestock Industry Act 1997* or the Export Control Act. Its function would be to ensure that industry is complying with defined animal welfare standards and that appropriate action is taken if those standards are breached. The Inspector-General would also constantly review the methods and practices developed by the regulator in the exercise of its powers and in meeting its responsibilities.
295. The review notes that the bill's title and scope include animal welfare as part of the Inspector-General's role, and its object is "to strengthen animal welfare assurance in the live animal export trade".

Consideration of oversight

296. The review noted the range of possibilities in relation to oversight of the department as the regulator of live animal exports. It received a number of submissions which proposed that an independent statutory authority be established to regulate the live animal exports industry.¹³¹
297. It is noted that the current arrangement with the department as the regulator, provides flexibility to the regulatory function in terms of policy development, staff expertise and resourcing. Also, there is advantage in retaining the regulation of live animal exports within the broader policy and regulatory context of agriculture.
298. That said, the inherent risk to animal welfare and the special challenges associated with the regulation of live animal exports are acknowledged as is the need for appropriate regulatory measures, not necessarily applicable to other agricultural products.
299. **Conclusion:** An external entity should be established to oversee the department in its role as the regulator of live animal exports.

¹³¹ Productivity Commission Inquiry report, *Regulation of Australian Agriculture*, 2016, <https://www.pc.gov.au/inquiries/completed/agriculture/report>

300. The review considered the possibility that an existing agency, namely the Commonwealth Ombudsman, could perform the oversight role. The advantage of this idea is that it is an established entity with investigative powers and experience in specialist oversight roles, for example Commonwealth law enforcement.
301. The review also considered the model provided by the Inspector General of Biosecurity and concluded that it could be applied to the Department in its role as the live animal export regulator. The advantage of an entity with a single focus on the oversight of the live animal export regulator is thought to be appropriate.
302. **Conclusion:** The proposed Inspector-General of Live Animal Exports would:
- be independent of the department, be appointed by the Minister and would review the performance of functions or exercise of powers by department staff members in the regulation of live animal exports
 - in consultation with the department and key stakeholders, would develop a review program which would be over and above the department's internal audit and performance programs
 - provide reports to the Minister and make recommendations about the regulatory framework and provide an assurance framework for stakeholders.

Recommendation 15: That an independent external entity, known as the Inspector-General of Live Animal Exports, oversee the department in its role as the regulator of live animal exports.

6. Effective regulatory culture

This section reports on the sixth term of reference:

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.

Departmental culture

303. This section reports on the department's current regulatory culture, in light of its ability to deliver on animal welfare standards and ASEL.
304. Culture is "a set of shared values or assumptions. It can be described as the mindset of an organisation" and is important "because it is a key driver of conduct".¹³²
305. To be an effective regulator, the department must consider its regulatory culture. One view expressed to the review team is that the department does not have a single regulatory mindset.¹³³
306. The underlying challenge for the department in terms of regulatory culture is to be an effective regulator. One view expressed to the review team is that the department does not have a single regulatory mindset.¹³⁴
307. Animal welfare organisations raised the concern to the review that animal welfare issues are being overlooked. Under the approved arrangements model, the regulatory framework places primary responsibility on the live animal exports industry, through AAVs, to meet ASEL and animal welfare standards.

Staff pressures

308. As already noted, there are pressures on RVOs, who sign off on health certificates and export permits, to act in a short time frame. The department notes that if RVOs identify issues they must raise them with their PVO and, if required, with the LAE Branch.
309. RVOs are currently required to check a sample number of animals per consignment. Previously, RVOs were expected to check the entire consignment. RVOs have questioned this sampling system they are required to use for inspections relating to animal health certification and issue of export permits. One RVO told the review that a request made for the scientific methodology on which RVO inspections are based has received no response.

Approved arrangements

310. Approved arrangements are based on exporter's business systems and approval by the department. This initial approval can be amended as required. The department's aim through approved arrangements is to achieve efficiencies in the regulatory framework and to adopt

¹³² J Price, ASIC Commissioner, *AICD Directors' Forum: Regulators' Insights on Risk Culture*, (Sydney, Australia), 19 July 2017, <https://download.asic.gov.au/media/4393665/john-price-speech-aicd-regulator-insights-on-risk-culture-published-20-july-2017.pdf>, p. 1.

¹³³ In-confidence submission to the review.

¹³⁴ LiveCorp submission to the review p. 3.

the same approach it uses for a wide range of export commodities. Previously, export documentation was reviewed on a consignment-by-consignment basis. In practice, approved arrangements result in the department providing upfront approval and then relying and checking on exporter compliance.

311. The framework provides for increased administrative and regulatory burden to be placed on exporters deemed at risk of non-compliance. The intent of this prospect is to provide an incentive to exporters to adhere to ASEL and animal welfare standards. However, this approach, which involves less regulatory intervention, has led in some cases to inappropriate expectations by the live animal exports industry and by the department.

312. One RVO told the review that:

A lot of exporters would get frustrated if we asked too many questions or asked to look for more because they were under the impression that [with] approved arrangements they had the power to do whatever they wanted.¹³⁵

313. It appears that at times RVOs are constrained in their role and placed in a difficult position. For example, the RVO work instruction states:

Additional documents may only be requested when a cause for concern has been identified and a document could potentially resolve the situation. When asking for any additional documents, you must explain to the exporter what your concern is and how the documents requested can resolve this.¹³⁶

314. Before approved arrangements, RVOs used to inspect all animals in a consignment which could take several hours. Under approved arrangements, inspections of animals destined for export are now undertaken in accordance with a prescribed sampling methodology. The time taken can vary. If issues are found, the work instruction states that the RVO must use their judgement and inspect more animals, taking the time they need. It is a cost saving to the exporter. However, in practice, it is noted that RVOs work under the pressure of time constraints. The two factors of sampling methodology and time constraints have resulted in animals being loaded in an inappropriate level of health (including pregnant cows and ewes or animals with injuries), resulting in poor animal welfare outcomes. Such a situation is the responsibility of the exporter, but it is not always picked up by the RVO for the reasons outlined above.

315. RVOs have stated that if they place too much emphasis on the flaws or risks of current inspection process they may be reprimanded by the department. This state of affairs indicates what has been described as a 'sway towards facilitation'.¹³⁷ The department acknowledges that there are different views about the approach to regulation. Hence the reference earlier to the lack in the department of a single regulatory mindset.

¹³⁵ In confidence submission to the review, p. 8.

¹³⁶ Department work instruction for RVOs.

¹³⁷ In-confidence submission to the review, p. 24.

316. As noted in a submission to the review:

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.¹³⁸

317. Regulation requires consistent and transparent implementation to be effective. One exporter noted its preference for the department to provide swift action for underperformance to improve the industry as a whole.¹³⁹

318. It is noted that an effective regulatory culture is not just about the regulator's culture, but industry attitude to the need for regulation and its own responsibility for good industry and animal welfare outcomes. In that context, the department needs to discard what some would regard as a self-effacing regulatory posture and reset its regulatory relationship with the industry. Recent action to suspend and cancel two export licences using existing powers under the regulatory framework is noted.

319. In section 5, it is recommended that an Animal Welfare Branch be re-established in the department. One of the effects of the proposed branch is intended to bring a greater focus on animal welfare for the department as the regulator of live animal exports, particularly in relation to its regulatory culture. The proposed branch would also reflect the department's commitment to international animal welfare standards, and link them more directly to its own regulatory practice, informed by in-house expertise in animal welfare and consultation with industry stakeholders. The Animal Welfare Branch would also perform an advisory role in relation to the department's other functions which relate to animal welfare.

Challenges

320. To achieve a regulatory culture that supports a sustainable live animal exports industry, consideration needs to be given to a number of challenges.

A cost recovered model

321. One such challenge is the regulation of live animal exports under a cost recovered model. Under the current arrangement, revenue is less than expenses and costs because of structural under recovery. A cost recovery impact statement indicates the underfunding to be about \$2 million.¹⁴⁰ The result for the department has been constant pressure to minimise the costs and expenses in the regulation of live animal exports. This situation is having an adverse impact on regulatory culture.

¹³⁸ Livecorp submission to the review, p. 3.

¹³⁹ Otway Livestock Exports submission to the review, pp. 2-3.

¹⁴⁰ In-confidence submission to the review, p. 28.

322. There is another aspect to the regulation of live animal exports under a cost recovered model. It is that some parts of the industry may think that they are paying for a service. Inherent in this attitude is a risk to a proper relationship between the department and the Industry. It has to be clear in the mind of the party paying for a regulatory function and the regulator itself that the former is covering the cost of regulation, not paying for a service.¹⁴¹
323. The conclusion is that regulation on a cost recovered model raises significant issues in relation to the achievement of an effective regulatory culture that supports a sustainable live animal exports industry.

Recommendation 16: That full cost recovery be accepted by the live animal export industry as underpinning the model of regulation and that the department ensure that the model operates effectively.

Information flow

324. Another challenge for the department as the regulator of live animal exports is information collection and information flow. It is noted that the department collects a lot of information from a range of parties and sources. However, that information is not routinely shared between relevant areas of the department. One example is the lack of information flow between LAE Branch and Audit Services Branch. This situation impedes effective regulation.
325. When auditors undertake approved arrangement audits they are not routinely advised of notifiable events that may have occurred and which should be specifically checked. Also, auditors do not have access to the relevant data to check for themselves when preparing to undertake an audit. Under the client relationship management system, which is currently under development, the expectation is that auditors going into a facility would have access to all relevant information.¹⁴²
326. The department noted that, although information relevant to audit activity is available to departmental staff members who have requested and been granted access (for example through the Tracking Animal Certification for Export (TRACE) system records details of licenced exporters, and the AAV daily and end of voyage reports), sharing information is not standard practice.
327. **Conclusion:** The department needs to ensure there is effective information sharing between the relevant divisions and branches which regulate live animal exports.

Recommendation 17: That the department implement fully integrated information sharing between the divisions and branches that regulate live animal exports when developing its client relationship management system and other information technology.

Ability to raise concerns

328. An important aspect of information flow is the need for a robust system whereby department staff members can raise issues and concerns. It needs to be regarded, accepted and

¹⁴¹ In-confidence submission to the review, pp. 23-4.

¹⁴² Department submission to the review, pp. 5-6.

encouraged as a component of active risk management and an important element of regulatory culture.

329. A comment, which a department staff member made to the review, was:

There is at present a concern by a number of operational staff members that there was little point in raising concerns, as they would not be well received or fairly considered.¹⁴³

330. Staff members must be able to report ways in which they see the regulatory framework being circumvented or at risk. What is needed is a clear audit trail that records when an issue or concern was raised, how it was dealt with, whether or how it was resolved and its current status. Inherent in that arrangement is the requirement for such information to pass quickly to the policy area, and to be considered fairly and in a timely manner.¹⁴⁴

331. **Conclusion:** In the context of live animal exports, dealing with staff members' issues and concerns is an important part of an effective regulatory culture.

Recommendation 18: That the department develop a system to ensure that any issues and concerns raised by staff members in the context of live animal exports are addressed in a transparent and timely manner.

Transparency in the regulatory framework

332. AAVs apply to the department every five years to be accredited. The review was informed that there is generally only limited contact between LAE Branch and AAVs except for the registration process.

333. The review was informed that some AAVs may have financial interests in aspects of the live animal export industry by being producers and or owners of registered premises at the same time as working as AAVs in a regulatory capacity. The review understands that although the issue has been brought to the department's attention, no action has resulted.¹⁴⁵ It is noted that similar issues may arise with AAVs and authorised officers more widely in the department.

334. **Conclusion:** The department should require AAVs and authorised officers to declare any conflict of interest on an annual basis.

Recommendation 19: That the department require Australian Government Accredited Veterinarians and authorised officers to make a declaration each year of any personal conflict of interest.

¹⁴³ In-confidence submission to the review, p. 9.

¹⁴⁴ In-confidence submission to the review, p.9.

¹⁴⁵ In-confidence submission to the review, p. 9.

Principal Regulatory Officer

335. The development and maintenance of an effective regulatory culture that will deliver on ASEL and animal welfare standards require ongoing attention and resourcing. A strategy is needed to enable departmental staff members to become better regulators in relation to live animal exports. The relevant staff members are those in the Export Division (LAE Branch) and the Biosecurity Operations Division (VEMS Branch) and the Audit Services Branch. These staff members, both individually and corporately, need to develop a strong sense that they are professional regulators. One way to achieve this transformation would be for the department to establish the role of the Principal Regulatory Officer (PRO).
336. In the context of live animal exports, the role of the PRO would be to provide a focus on the theory and practice of regulation as it applies to the department's functions and how departmental staff members performed those functions. Specific training, both initial and ongoing, of departmental staff would be required to achieve this outcome. The PRO role would advise staff members and sponsor training and contribute to the regulatory framework in order to achieve best practice. The PRO would also engage with the wider regulator community of practice and such external persons as academics specialising in regulation and other departments and agencies with regulatory functions.
337. Such an approach has been adopted overseas. For example, New Zealand has developed a framework of regulation that involves specific training for regulators. Accordingly, the role of the PRO would be responsible for devising and implementing a strategy to reset the regulatory culture of departmental staff members working in live animal exports.
338. It is envisaged that the role would apply in relation to the department's other regulatory responsibilities. It is noted that the PRO would work with the department's senior leadership team in its responsibility to set the tone, influence and oversee regulatory culture.
339. **Conclusion:** The department needs to establish the position of a Principal Regulatory Officer position would enable it to develop and maintain an effective regulatory culture and in doing so support a sustainable live animal export industry.

Recommendation 20: That the department establish the position of Principal Regulatory Officer to enable its staff members engaged in the regulation of live animal exports to develop a culture of being professional regulators, an approach which would also apply to the department's other regulatory activities.

Recommendation 21: That the department engage in a cultural shift in its role as the regulator of live animal exports and ensure that its staff members understand the need for and implications of this change.

7. Skills, capabilities and systems

This section reports on the seventh term of reference:

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.

Skills

340. The review identified a lack of particular skills and experience in some areas of the department that work with live animal exports.

Knowledge of the live animal exports industry

341. An exporter told the review that over time, staff members of the department's central office had changed to the extent of that few of them have operational experience at the regional level or in the market in relation to the live animal export industry. The shortage of operational experience is thought to be a major influence on the "current disconnect between the industry and the regulator". The same submission said that operational and technical expertise exists in the regions, but that this expertise is not applied in operational management and policy development.¹⁴⁶
342. This same view was shared by other stakeholders. In its submission to the review, the Australian Livestock Exporters' Council (ALEC) reported its belief that the department should have a greater depth of knowledge around the live animal exports industry. Noted was the limited experience among department staff members of having worked or been directly exposed to the complexity of live animal exports. As a result, it is thought that the department is not fully effective as a regulator.¹⁴⁷ The department has acknowledged that, as staff move on to further their careers, gaps occur that take time to fill. In the last few years, department staff members with significant experience have moved on.

Interpreting reports

343. In its submission, the Australian Veterinary Association (AVA) said that it would like to see the department equipped with an understanding of the live animal exports industry and the veterinary animal welfare and epidemiology expertise necessary for investigation and enforcement.¹⁴⁸
344. An example provided to the review about the knowledge needed to interpret an AAV report is as follows:

¹⁴⁶ In-confidence submission to the review, p.1.

¹⁴⁷ Australian Livestock Exporters' Council (ALEC) submission to the review, p. 8. A comparison is made with the Civil Aviation Safety Authority, which has a crossover between personnel having worked in both a commercial and regulatory capacity.

¹⁴⁸ Australian Veterinary Association submission to the review p. 14.

Three animals smothered” on the mortalities list. So, now, knowing – if I read a daily report like that, I would know that there were a lot of animals affected by that; it’s not just those three animals that were affected.

But because the reporting is very vague, it’s very non-specific and, so, something that I write about “the feeding pattern is getting aggressive and we’re increasing – this is what we’re doing about it” – to me, that says that the animals are very, very hungry and they’re aggressive and there’s a welfare issue around feeding at the moment.¹⁴⁹

345. The department noted that its management of daily voyage reports and end of voyage reports is linked to the reportable mortality levels set out in ASEL, which is the trigger for the department to act and investigate. In a regulatory framework focused on animal mortality, the department staff members may fail to understand the significance of other report details. It is noted that as a result of this focus and lack of industry knowledge, signs of an approaching adverse animal welfare event can be missed.
346. The review heard from a number of stakeholders who expressed concern about the department’s ability to engage on issues in a meaningful manner, and interpret information provided through daily and end of voyage reporting.
347. The McCarthy review stated that:
- the reporting and feedback of the IO [Intendent Observer] must be actively received by someone who knows something about live exporting and converts the information into something constructive, and/or takes action about any observed discrepancies (e.g. wool length).¹⁵⁰
348. The conclusion is that the department needs to consider career pathways for persons with a broad range of skills relevant to the regulation of live animal exports, for example AAVs, to improve its breadth of understanding of the regulatory and commercial realities of the industry and how this relates to animal welfare.

Capabilities

Approach to regulation

349. One exporter noted that the department regulates by imposing conditions on the industry more broadly rather than focussing on the compliance of individual exporters. The use of Export Advisory Notices require compliance by all industry participants, rather than pursuing individual exporters for instance of non-compliance. The review was told that the imposition of additional measures at an industry level tends to frustrate best practice and innovation.¹⁵¹
350. The department noted that when an issue arises with a specific exporter and is likely to affect the wider industry, regulatory action on a whole of industry basis is appropriate. The department also noted that, if it were only to apply conditions to one exporter and similar issues then arose with other exporters, it would be criticised for not addressing the issue for

¹⁴⁹ In-confidence submission to the review, p 15.

¹⁵⁰ McCarthy Review, *Independent Review of Conditions for the Export of Sheep to the Middle East during the Northern Hemisphere Summer*, 2018, pp 23-24.

¹⁵¹ In-confidence submission to the review p. 1.

all exporters. It is noted that the department needs to identify its regulatory approach and make that approach clear to the industry and other stakeholders.

351. **Conclusion:** In addressing and managing non-compliance, the department needs to consider approaches which can differentiate between individual exporters and the industry as a whole.

Investigation of animal welfare incidents

352. It is noted that there is variance in the department about what activity can be properly described as an investigation. LAE Branch undertakes desktop audits or reviews of breaches of ASEL or ESCAS which they commonly refer to as investigations. Unlike Compliance Division investigations, LAE branch audits are not conducted in accordance with the Australian Government Investigative Standards. This situation, especially when published, leads to misunderstanding about the nature of LAE Branch's activities in relation to non-compliance.
353. The investigation of animal welfare incidents can take the department a long time. Animals Australia noted in its submission that there is a significant and unreasonable delay in the time between complaints are made to the department and when subsequent departmental ASEL or ESCAS investigation reports are published. In some instances this delay has been more than a year.¹⁵²
354. ALEC noted that the length of investigations could be counter-productive to effective regulation and the live animal export industry's social licence. One exporter suggested multi-disciplinary investigations, involving the department, AMSA, an independent veterinarian and an independent person, with the results presented within a fixed time frame and with recommendations and outcomes.¹⁵³
355. The department agrees that there can be long delay in finalising reports, including ESCAS non-compliance, reportable mortality events or complaints prior to departure for export.
356. The department noted that while LAE Branch takes immediate action on receipt of reports as required, (eg applying additional conditions to an exporter's future consignments, adding additional stockmen/AAVs/ training, suspending access to a market, removing facilities from ESCAS or suspending/cancelling supply chains), the lack of timeliness of reporting actions taken and providing the reports can reduce confidence in the department as the regulator.
357. The department also notes that there is a need for thorough examination of issues and due process in obtaining information from exporters. In its view, investigations conducted within limited time frames are generally deficient in their findings. The department further noted that, given that evidence in such matters is required to be gathered and verified across multiple sources outside of Australian jurisdiction, delays are unfortunately inevitable.
358. The department further notes that the IO role provides immediate information and additional insight on voyages that will enable better and more comprehensive reports about the conditions of livestock on vessels. The LAE Branch is exploring whether RVOs who approve consignments could manage these reports and other animal welfare related matters, while LAE Branch would manage ESCAS reports.

¹⁵² Animals Australia, submission to the review, p. 18.

¹⁵³ In-confidence submission to the review, p.2.

359. **Conclusion:** The department needs to ensure that it has the capacity to investigate animal welfare incidents in a timely manner. Accordingly, the department needs sufficiently skilled and knowledgeable staff members with resourcing to work within defined time frames. Consideration needs to be given also to incorporating the role of state and territory authorities in relation to pre-embarkation incidents in registered establishments and at the point of loading.

Recommendation 22: That the department identify the skills and experience necessary to enhance its regulatory capability in relation to live animal exports and employ people with relevant skills and experience.

Systems

Information management

360. The Regulatory Maturity Project noted that a mature regulator ensures that its staff members are well trained and supported by integrated business systems and tools, so that officers are proficient in regulatory processes and have a clear understanding of the judgement and analysis required at each step.¹⁵⁴
361. Under the current structure, LAE Branch receives information from exporters, AAVs, RVOs, IOs, animal welfare organisations and other areas of the department. Consequently, a significant amount of information is captured. Currently the information is stored on four or more platforms and in different file formats.
362. The department currently uses the following systems:
- for livestock export licences and consignments - TRACE
 - for approved arrangements – TRACE and Excel
 - for ESCAS and mortalities – TRIM and Excel
 - for audit reports – Audit Management System (AMS)
 - for importing country requirements – Manual of Importing Country Requirements (MICoR).¹⁵⁵
363. It is noted that the use of multiple systems does not facilitate efficient regulation of live animal exports. Information is loaded manually with these systems, a process which is time consuming and susceptible to inaccuracy. Because the systems do not relate to each other, the information they contain is not easily compared. As such, the capacity for analysis and identification of trends is reduced.
364. There is no practical means currently available to the department to consolidate information about consignments of live animal exports. While department staff members can aggregate information from different systems, it is not automated, slow and can introduce error. In addition, such information needs to be reviewed by other officers.

¹⁵⁴ Regulatory Maturity Project Final Report, Joe Woodward, April 2016, page 9, accessed August 2018, <http://www.environment.gov.au/epbc/publications/regulatory-maturity-project-final-report>.

¹⁵⁵ It is noted that the Department also uses a range of systems to record information relating to investigations and intelligence. It is appropriate that these functions are kept separately from the main systems for access, functionality and security reasons.

365. It is noted that the same challenge applies to import consignments. Because information is stored on multiple systems.
366. It is also noted that the department is working to address this situation, although a solution will be some time in the future. It has engaged a consultant to assess the department's current systems and how they could be used in the interim to assist the LAE Branch in the regulation of all species, not just livestock.
367. The majority of the consignments regulated by LAE branch are not on an electronic system. Only applications relating to livestock are submitted electronically using TRACE, amounting to about 500 a year. However, over 12,000 non-livestock consignments certified each year are assessed and must be reported on manually.

On-board technology

368. The use of on-board technology would assist in monitoring the health and welfare of livestock consignments.
369. The AVA notes that real time reporting, through the use of blockchain¹⁵⁶ and cloud¹⁵⁷ technology, would remove the potential for delay in exporters and the department becoming informed of and acting on animal health and welfare concerns.¹⁵⁸ The data collected through such technology would also form a data set for ongoing scientific research and inform science-based continuous improvement.
370. Investment in technology solutions would also facilitate the level of transparency that the AVA, animal welfare organisations, industry, producers and the public are seeking.¹⁵⁹ The department's orientation towards greater digitalisation of processes and reporting is supported by industry because of the potential to reduce costs and improve efficiency, and oversight of the trade.¹⁶⁰
371. AMSA has indicated its willingness to work with the department and the live animal export industry to install monitoring devices on live export vessels, at exporters' expense. This initiative would reduce reliance on AAVS and IOs to monitor on-board vessel issues such as heat, humidity and ammonia levels. It would also increase the prospect of greater transparency for stakeholders.
372. **Conclusion:** The department needs to invest in business systems and staff training to ensure information received is captured, stored and analysed appropriately. As a high priority, the department should bring forward investment in an integrated end-to-end IT system to improve its reliability, effectiveness and efficiency in regulating live animal exports and ensuring appropriate animal welfare outcomes.

¹⁵⁶ Blockchain is a list of electronic records which are linked using cryptography. By design, blockchain is resistant to modification of data.

¹⁵⁷ Cloud computing is internet-based computing whereby shared resources, software, and other information are provided to computers and other devices on demand. It can be likened to the electricity grid.

¹⁵⁸ Australia Veterinary Association, submission to the review, p. 11.

¹⁵⁹ Ibid.

¹⁶⁰ Australian Livestock Export Council, submission to the review, p. 8.

Recommendation 23: That the department invest in information technology systems to achieve enhanced information management in relation to live animal exports.

Recommendation 24: That the department work with the live animal export industry and the Australian Maritime Safety Authority to develop automated monitoring of animal welfare indicators on-board vessels.

Instructional material

373. The department's instructional material library provides guidance to its staff members about the way to operate, make decisions and ensure that such decisions are made consistently. In the past, the policy area developed the instructional material and the operational area implemented it. Some business areas take a dual sign-off approach between the policy and operational areas as a matter of practice, but there is no requirement to do so. LAE Branch which is responsible for the live animal export instructional material has not adopted the dual sign-off approach.
374. In the case of instructional material relating to live animal exports, it is noted that in contrast to other areas of the department, the partnership approach between policy and operations is not working as effectively as other areas.
375. At times, RVOs feel conflicted between their professional obligations as veterinarians in relation to animal welfare and the constraints imposed by instructional material, such as sample size and supervision of vessel loading.
376. The department acknowledged that that these conflicts may exist for RVOs, yet notes that, under the present regulatory framework, their role is primarily to oversee and direct rather than intervene on animal welfare matters. The department noted the exporter must have an AAV to inspect and manage the livestock and that it is not the role of the RVO. The department also noted that occupational health and safety should not be put at risk by RVOs engaging in direct animal welfare intervention.
377. Another comment made to the review about instructional material was that it was out-of-date in a number of key areas, and that instructional material for IOs, who have been operating since April 2018, is not yet available. It is noted that instructional material needs to be practical, sensible and meet the policy intent.
378. The department noted that it is working through instructional material to ensure that it is correct and practical. The department also noted that of the eight priority work instructions, relating to LAE Branch and VEMS Branch, two have been signed off and published.
379. **Conclusion:** Instructional material in relation to live animal exports needs to be reviewed and the current lack of agreement about a single approach in relation to the role of RVOs that meets the department's work instruction policy be resolved.

Recommendation 25: That instructional material relating to live animal exports be updated in consultation with operational areas in order to reflect current policy and operational requirements.

Improvements

Industry self-reporting

380. ALEC commented that self-reporting by the live animal export industry should not be seen as an indication of non-compliance.¹⁶¹ Rather, it should be seen as a proactive approach by exporters to improve the industry and better animal welfare outcomes.
381. The department noted that ESCAS reporting already provides this mechanism. Self-reporting is treated differently because it demonstrates the exporter's systems for detecting non-compliance are working, and that the exporter is taking action when an issue is identified. The department does not record 'non-compliance' when the exporter reports promptly and takes appropriate corrective action.

Department as regulator in transition

382. A submission made to the review noted that proper regulation prevents industry failure. The submission also noted that there have been a series of incidents which suggest that the department's regulatory capability and culture and investigative capacity have not been sufficient to prevent such occurrences.¹⁶²
383. The idea of social licence applies. The footage of dead and dying sheep on the MV *Awassi Express* released publicly in April this year caused community outrage. As such, it has raised doubts about social licence for the continuation of the live sheep export trade.
384. It is to be noted that the achievement of industry success and the prevention of industry failure does not rest with the regulator alone. In a written submission to the review, LiveCorp noted that industry bodies such as ALEC and LiveCorp build capacity and provide technical advice and support for their members to improve performance and compliance. By building strong internal structures to support industry performance and regulatory compliance, LiveCorp acknowledged that industry bodies have an important role to support the regulator and conduct activities beyond the codes and standards required.¹⁶³
385. **Conclusion:** The relationship between the regulator and the live animal exports industry needs to change. For this outcome to be achieved, the industry needs to re-orient itself to support the regulator and to ensure that approved arrangements model works effectively. For its part, the department needs to enhance the capability and skills of its staff members as professional regulators.

¹⁶¹ Australian Livestock Exporters' Council (ALEC), submission to the review, p. 6.

¹⁶² The RSPCA estimates that since 2006 there have been at least 70 occasions when there have been mortality rates exceeding 1% for cattle and 2% for sheep. See http://kb.rspac.org/how-is-the-live-export-trade-regulated_107.html

¹⁶³ LiveCorp, submission to the review, p. 7.

8. Interactions with states and territory authorities

This section reports on the eighth term of reference:

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.

386. State and territory animal welfare legislation applies to all participants in the live animal exports supply chain. It is noted that state and territory governments are responsible for ensuring compliance.
387. As noted previously, section 5 of the Export Control Act states that it is not intended to exclude the operation of state laws that are capable of operating concurrently with that Act. ASEL stipulate that “[l]ivestock sourced for export must meet any requirement under a law of a state or territory relating to the sourcing of livestock. State and territory governments are responsible for ensuring that these requirements are met.”
388. The *Animal Welfare Act 2002* (WA) provides for the welfare, safety and health of animals. It states that “a person in charge of an animal is cruel to an animal if an animal is transported in a way that causes or is likely to cause it unnecessary harm”. The provisions of the WA legislation extend to 200 nautical miles to the coast of WA by reason of the *Crimes at Sea Act 2000* (WA). This situation reflects an instance of overlap between Commonwealth and state legislation.
389. The above statement from ASEL reflects the confusion which exists about the application of relevant state and territory law. As a consequence of section 109 of the Australian Constitution, state and territory animal welfare laws may be limited in their operation.
390. In its submission to the review, the WA Department of Primary Industries and Regional Development noted that, since operational inconsistency between Commonwealth and state and territory laws is a complex legal issue, state and territory regulators risk exposure to significant costs should they attempt to enforce their legislation where there is overlap with Commonwealth legislation.¹⁶⁴

There seems to be a significant level of disconnect an inconsistency between the apparent intent as expressed in the APSEL¹⁶⁵ as reflected in the ASEL, and what can be implemented in practice, at least in Western Australia.¹⁶⁶

391. In a 2005 case, although the elements of cruelty were proven the court found that the state legislation to be invalid to the extent of its inconsistency with Commonwealth law.

¹⁶⁴ Western Australian Department of Primary Industries and Regional Development, submission to the review, p. 7.

¹⁶⁵ Australian Position Statement on the Export of Livestock (APSEL).

¹⁶⁶ Western Australian Department of Primary Industries and Regional Development, submission to the review, p. 8.

Challenges and the way forward

392. There are differing views about the way forward. On the one hand, animal welfare organisations say that state and territory-based animal welfare legislation should be operative in the live animal export industry.¹⁶⁷ The RSPCA's suggestion is that jurisdictional and operation arrangement between the department and relevant state authorities be reviewed, with the aim of granting state and territory authorities greater access to the live animal export supply chain to facilitate the application of state and territory animal welfare legislation.¹⁶⁸
393. On the other hand, exporters suggest that the department should be in a position to apply resources to improve national alignment on key practices in the sector by establishing a national, as distinct from a state and territory, approach to animal welfare aspects of the live animal exports. An example would be a national approach to pregnancy testing in relation to animals destined for export.
394. As to producers, the NFF also envisages a national coordination role for the department concerning not only national agricultural animal welfare policy, but also co-regulation between industry and state and territory jurisdictions, and national agricultural animal welfare research and development strategy.¹⁶⁹
395. The department noted that this outcome would be difficult and potentially unrealistic to achieve as states and territories have their own rights and approaches. The department also noted the transaction costs involved in negotiating and delivering such an outcome could outweigh the benefits.
396. Notwithstanding the department's view, as expressed above, it is noted that there is significant scope for improvement in the communication, relationship and clarification of regulatory powers between the Commonwealth and the state and territory jurisdictions. At the intersection of Commonwealth and state powers there needs to be clear arrangements for enforcement.
397. It is noted that for investigations, agencies should routinely collaborate and exchange information according to their relevant jurisdictional roles. It is also noted that an information and data exchange protocol for biosecurity is currently under development through an Intergovernmental Agreement on Biosecurity with the states and territories. This approach could be used as a model for cooperation on matters concerning live animal exports.
398. **Conclusion:** A clear understanding is needed between the Commonwealth and state and territory governments about the various legislative frameworks which apply across the entire live animal export supply chain. A clear understanding is also needed about how the different jurisdictions can work together more effectively to ensure animal welfare. In particular, the apparent inconsistency between the intent of Australian Position Statement on the Export of Livestock and ASEL and the practical application of state and territory animal welfare legislation needs to be clarified.

¹⁶⁷ Animals Australia, submission to the review p. 29.

¹⁶⁸ RSPCA Australia, submission to the review p. 3.

¹⁶⁹ National Farmers' Federation, submission to the review, p. 2.

Recommendation 26: That the department work with the states and territories to review jurisdictional and operational arrangements between the department and relevant state and territory authorities.

Improvements to cooperation

399. The former Australian Animal Welfare Strategy (AAWS) provided a framework to identify priorities, coordinate stakeholder action and improve consistency across all animal use sectors, including livestock export.
400. The role of AAWS was to build on current arrangements, including state and territory legislation, standards, guidelines, codes of practice, industry quality assurance programs, education and training and research and development. Its charter acknowledged the importance of broad engagement with industry, governments, professional associations, service providers, researches and welfare organisations to assess issues and develop solutions.
401. Since the disbanding of AAWS, there has been a lack of national animal welfare coordination to perform these functions which was identified in Australia's World Organisation for Animal Health (OIE) Performance of Veterinary Services Report in 2014.¹⁷⁰
402. It is noted that in 2014, the Agriculture Ministers' Forum (AGMIN) and the Agriculture Senior Officials Committee (AGSOC) was formed to deal with agricultural issues of national significance. The Animal Welfare Task Group (AWTG), which is the national successor to the Animal Welfare Committee, pursues priorities set by AGMIN.
403. The AWTG is a high level task group which reports to AGSOC on national animal welfare issues. It oversees the development of national animal welfare policies, standards and advice to AGSOC, including on model codes of practice, across all agriculture animal sectors.
404. It is noted state and territory jurisdictions have been collaborating for some years to replace existing voluntary industry Codes of Practice with new National Animal Welfare Standards and Guidelines which can be implemented in state or territory law. However progress has been slow. The re-established Animal Welfare Branch could become involved in this work.
405. In its submission to the review the Australian Veterinarians Association suggests that an independent expert advisory body be re-instated to provide national animal welfare coordination.
406. **Conclusion:** The department needs to engage with state and territory governments and other stakeholders to develop national animal welfare coordination and alignment on key practices, including in relation to live animal exports.

¹⁷⁰ Department of Agriculture and Water Resources, *OIE Performance of Veterinary Services (PVS) Evaluation Report of Australia*, June 2018, <http://www.agriculture.gov.au/animal/health/oie-evaluation-report>

Recommendation 27: That the department engage with the states and territories and other stakeholders to develop national animal welfare coordination to improve animal welfare outcomes in relation to live animal exports.

9. Community and stakeholder expectations

This section reports on the ninth term of reference:

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.

Community engagement and expectations

407. The department engages industry representatives through:
- face to face meetings every four to six months
 - monthly teleconferences with exporters and industry representatives, including regional vets
 - ad hoc meetings as required.
408. The department meets with the RSPCA several times a year (about every four months) to discuss animal welfare issues.
409. The community can write to the department or relevant minister on matters of interest, and the department responds. Otherwise, there is no direct engagement to assess community views about live animal exports.
410. The department noted that AMSA and state agencies are consulted “as required”.
411. A report¹⁷¹ commissioned by the department found that societal expectations on farm animal welfare are evolving, and that there is a gap between societal expectations and the regulatory reality. The report notes that regulation of animal welfare issues needs to be effective, consistent and proactive, and that the Australian community wants greater transparency about animal welfare practices and more consistent information.¹⁷²
412. As mentioned, the regulator must not only balance regulatory objectives, but also ensure that the regulation sufficiently meets the expectations of the Australian community while operating within the legislative framework established by Parliament.¹⁷³

¹⁷¹ Futureye, *Commodity or sentient being? Australia’s shifting mindset on farm animal welfare*, 2018.

¹⁷² Ibid, p.8.

¹⁷³ LiveCorp, submission to review, p. 2.

Key stakeholder engagement

Live animal export industry and supply chain

413. Key organisations in the live animal export industry note that the department has engaged effectively.
414. MLA noted its cooperative work with the department to facilitate trade access and to minimise trade barriers. It also noted its efforts to communicate to overseas customers about the Australian Government regulatory requirements and the importance of animal welfare outcomes through the supply chain.¹⁷⁴
415. MLA also noted the need for an appropriate and effective regulatory framework in which the department has suitable oversight of the live animal export industry to deliver acceptable animal welfare outcomes. MLA strongly supports the change in approach from mortality measures to animal welfare indicators, and for change to be supported by science that recognises and considers the unique nature of live animal exports.¹⁷⁵
416. ALEC noted that it has experienced effective engagement with the department. In addition, it would like a more formalised roundtable approach with the department to address short, medium and long-term issues and for the department to work more closely with industry to understand its strategic planning. This forum would aim for greater understanding about the industry's future outlook and volume projections and address specific issues and areas of redress.¹⁷⁶
417. ALEC also noted that, although the department as the regulator is well informed about the live animal export industry, its understanding could be deeper.¹⁷⁷ The department's involvement in and input into the development of LGAP was cited as an example of its priorities and actions being well assessed.
418. LiveCorp noted its strong and constructive relationship with the department. In relation to live animal exports, it has worked closely with the department to negotiate health protocols and improvements to market access.¹⁷⁸
419. Stakeholders in the supply chain expressed concerns about their engagement with the department. The Australian Livestock and Rural Transporters Association (ALRTA) noted its own proactive approach to animal welfare, but expressed concern about the lack of a national animal welfare policy. The ALRTA's view is that the department places the interests

¹⁷⁴ Meat and Livestock Australia (MLA) submission to the review, p. 5.

¹⁷⁵ MLA submission to the review, p. 6.

¹⁷⁶ ALEC submission to the review, p. 9

¹⁷⁷ ALEC submission to the review, p. 9.

¹⁷⁸ LiveCorp submission to the review, p. 2.

of livestock producers and exporters before the interests of supply chains, the community or even the welfare of livestock.¹⁷⁹

420. Sheep Producers Australia noted the failure to update ASEL more regularly. It stated that this situation has enabled some in the export industry to avoid implementing technology and practices that would improve animal welfare outcomes. It also noted that active regulation must involve working with the industry to ensure standards remain relevant, to ensure changes in technology and public opinion.¹⁸⁰ It further noted that the live animal export industry relies on community support or social licence, which relies on trust in the regulatory structure. It regards reports of continuing industry breaches as the result of a winding back of regulation and reduction of the department's capacity as a regulator.
421. The Cattle Council of Australia noted that the communication between the regulator and the industry continues to produce challenges. In addition, it also noted that crisis management plans should incorporate industry consultation, roles and responsibilities to ensure well-coordinated and factual industry responses. Its view is that the department continues to be disadvantaged by budgetary considerations that inhibit its capacity as a regulator.¹⁸¹

Recommendation 28: That the department engage with the live animal export industry to demonstrate joint unequivocal commitment to animal welfare.

Animal welfare organisations

422. Animal welfare organisations expressed a negative view of the manner in which the department engages. The review heard that the department does not have the ability to assess community relations, nor does it have the cultural capacity to respond.
423. Animals Australia's view is that the department exists primarily to represent the interests of the live animal export industry.¹⁸²
424. RSPCA notes that it has worked closely with the department over many years on animal welfare issues relating to the live animal export trade. While it regards interactions with the department as being mostly positive, it says that it been left:
- perpetually frustrated by the lack of action and apparent constraints on the Department's ability to respond effectively to serious animal welfare problems brought to its attention.¹⁸³
425. RSPCA makes this criticism not of individuals, but of the current governance structures for animal welfare policy and legislation. In its view, departmental officers who regulate animal

¹⁷⁹ Ibid., p. 5.

¹⁸⁰ Sheep Producers Australia, submission to the review, p. 5

¹⁸¹ Cattle Council of Australia, submission to the review, p. 3

¹⁸² Animals Australia, submission to the review, p. 29

¹⁸³ RSPCA Australia, submission to the review, p. 4.

welfare standards operate within a bureaucratic framework which fundamentally constrains what they can do to protect animal welfare and fulfil their regulatory responsibilities in accordance with community expectations.¹⁸⁴

426. VALE notes that the department has failed to regulate the live animal exports industry properly. In its view, examples of this failure include not investigating or acting on non-compliance with the law or issues identified by on-board veterinarians. VALE noted that these issues arise in part because the department has an unavoidable conflict of interest in that it sees its primary role in supporting, not regulating, the live animal export industry.¹⁸⁵

Other regulators

427. As mentioned, AMSA has responsibilities with regard to live animal exports under the *Navigation Act 2012*.¹⁸⁶ However, it has been reported that communication between the department and AMSA is limited. In 2017, an incident occurred when there was 17 minutes of vessel engine and power failure resulting in ventilation system shut-down. This shut down occurred during high temperatures. This incident was described in the AAV reporting received by the department. The department did not share information with AMSA, leaving it uninformed about this significant incident.
428. It is not current practice for the department to share daily, end of voyage or IO reports with AMSA, except when AMSA requests this information. IO reports would be helpful to AMSA, but to date they have only been provided in exceptional circumstances. AMSA's access to such information would allow it to identify issues relating to its responsibilities in a timely manner.

Recommendation 29: That the department and the Australian Maritime Safety Authority, in their respective regulatory roles, develop and maintain a collaborative relationship for the effective regulation of live animal exports.

Community stakeholders

429. The department considers the views of the relevant stakeholder groups (including the Australian Government) when developing programs to manage the various industries and programs for which it has responsibility. In live animal exports, this approach includes industry representatives and animal welfare groups. The department consults livestock exporters and respective representative bodies on proposals to amend regulatory arrangements (including fees, charges, systems), rather than the Australian community more broadly.
430. It is noted that best practice regulators adopt a strategic approach to engagement with their stakeholders, including regulated entities, other regulators and the broader community. The use of forums, ad hoc meetings, seminars and conferences would serve to increase the department's knowledge of community stakeholders' perspective.¹⁸⁷

¹⁸⁴ RSPCA Australia, submission to the review, p. 4.

¹⁸⁵ Vets Against Live Exports (VALE), submission to the review, p. 22.

¹⁸⁶ *Navigation Act 2012*, Marine Order 43 (Cargo and cargo handling — livestock) 2006.

¹⁸⁷ Woodward, *Regulatory maturity project final report*, April 2016, p. 43, <http://www.environment.gov.au/epbc/publications/regulatory-maturity-project-final-report>

431. It is also noted that the department has commissioned research and consultants to inform itself about community perceptions of animal welfare issues in relation to agriculture. This approach could be adopted in relation to community stakeholders in the context of the regulation of live animal exports.
432. **Conclusion:** The department needs to regard stakeholders who raise concerns as valued sources of information which can assist in improving the way the department regulates live animal exports.

Recommendation 30: That the department establish appropriate forums to consult with stakeholders and assess community expectations.

International trading partners and governments

433. Australia's agricultural export trade is predicated on meeting importing country requirements. The department has formal mechanisms for:
- understanding requirements of importing countries (including bilateral exchange of information through overseas diplomatic posts and its own network of agriculture counsellors overseas)
 - conveying these requirements to Australia's agricultural industry (including through the Manual of Importing Country Requirements website and regular interaction by staff with industry)
 - regulating to provide assurance that Australian exporters meet the requirements.
434. The department's efforts on ESCAS have focused on explaining to Australia's trading partners (including through its positions at posts) the higher regulatory settings for live animal exports from Australia, and working with these countries through practical partnerships (eg those facilitated by MLA) to help them meet the regulatory requirements placed on exporters from Australia.

10. Related matters

This section reports on the final term of reference:

Any related matter.

Integrity

435. Regulatory capability and culture must go hand in hand with resistance to corrupt conduct. The department's Assurance Branch and Enforcement and Sanctions Branch focus on integrity issues, not just in relation to live animal exports, but across the range of the department's functions and activities. Currently, only some parts of the department are within the jurisdiction of Australian Commission for Law Enforcement Integrity (ACLEI), but not live animal exports and other regulatory aspects.
436. In May 2018, the department indicated its support for a recommendation made by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity in its report on the Inquiry into the Jurisdiction of ACLEI. The inquiry recommended that the government amend the *Law Enforcement Integrity Commissioner Act 2006* to include the entire department within ACLEI's jurisdiction. It is noted that, under the approved arrangements model of regulating live animal exports, AAVs and authorised officers may not be covered by an expanded ACLEI jurisdiction.
437. In 2009, ACLEI issued a report entitled *Resistance to corruption*,¹⁸⁸ which noted that corrupt conduct is pervasive and insidious and adapts to exploit new and changing environments. Effective integrity systems need to be dynamic and comprise detection and deterrence measures that are specifically designed to counter the threat that corrupt conduct presents.
438. Sufficient attention and resources are needed to ensure that the department develops and maintains a high resistance to corrupt conduct. Measures to match risk can be implemented through integrity arrangements, promotion of leadership values and governance, and other practical measures. The department recognises that it operates in a complex environment involving risks and threats, one of which is the risk that it is vulnerable to corrupt conduct.
439. The department has commenced several initiatives in relation to its integrity measures. It has developed an integrity framework and is implementing a program of work. A national rollout of training for all staff members has commenced, an integrity hotline is in place and an Integrity Unit has been established.
440. The department noted that:
- now that we have better data and we've been able to join the dots, we're finding patterns and anomalous behaviour that we hadn't previously recognised.¹⁸⁹

¹⁸⁸ Australian Commission for Law Enforcement Integrity (ACLEI), *Resistance to corruption*, <https://www.aclei.gov.au/sites/g/files/net846/f/documents/Reports%20submissions%20and%20speeches/ACLEI%2B-%2BResistance%2Bto%2BCorruption%2B-%2BReport%2BJune%2B2009.pdf>

¹⁸⁹ In-confidence submission to the review, p. 20.

441. **Conclusion:** The department should continue its efforts to understand the strengths and weaknesses of its risk and control environment. It should aim to build a corruption risk profile and gain a high-level understanding of the strategies presently deployed or planned to address those risks.

Recommendation 31: That the department strengthen its regulatory capability and culture, including in relation to live animal exports, by developing its whole-of-department integrity measures.

Conclusion

442. This report is being finalised in a time of uncertainty for the live animal export industry. The immediate focus is on the live sheep export trade. In June 2018, an exporter announced its intention not to consign sheep to the Middle East during the northern summer. In June and July, the department suspended the export licences of two sheep exporters. Subsequently, both those exporters have had their export licences cancelled.
443. The wider live animal export industry has expressed concern both to the review and publicly that the present focus by some stakeholders on ending the live sheep exports trade during the northern summer may in time shift to other species.
444. On 5 September 2018, the department stated in a media release that it is now actively considering applications from other potential exporters to the Middle East, against the strict requirements of the legislation.¹⁹⁰ The department also stated that it is considering some further changes to conditions that will apply to the export of sheep to the Middle East once the northern hemisphere summer has ended.
445. On 10 September 2018, a bill providing for an end to the live sheep trade within five years was introduced into the Senate and subsequently passed. The bill later failed to pass the House of Representatives.
446. In this context, it is important that the regulatory framework and the capability and culture of the regulator have the correct setting. From this report, the clear indication is that the current regulatory framework needs to be strengthened. Under this regulatory framework, the department as the regulator has failed to prevent continuing animal welfare incidents. This failure has been the result of various factors and competing priorities outlined in this report. Correspondingly, parts of the live animal export industry have failed to adhere to the existing standards and give priority to animal welfare.
447. Some action is already underway to redress the situation—including the placement of IOs on long-haul voyages and working towards the implementation of the McCarthy review recommendations—which indicates the need for a shift towards a focus on animal welfare and for proposed legislation to enhance the regulatory framework.
448. The recommendations in this report are intended to enhance the regulatory framework, and the performance under the framework of both of the department as the regulator and the live animal exports industry.
449. The review team takes this opportunity to acknowledge the preparedness of departmental staff members to contribute to this review and to thank them for their commitment to improving regulatory practice and animal welfare in relation to live animal exports.

¹⁹⁰ Department media release, *Second live export licence cancelled*, 5 September 2018, <http://www.agriculture.gov.au/about/media-centre/media-releases/second-live-export-licence-cancelled>

Appendix A: Terms of reference

The reviewer will assess and make recommendations on:

- 1) 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.
- 2) 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.
- 3) The process for investigating reportable mortality events and complaints received about industry compliance with the ASEL and animal welfare standards.
- 4) The effectiveness of reporting obligations under relevant legislation.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) Any related matter.

In undertaking the review, the reviewer should have regard to relevant Australian Government policies and guidelines on best practice regulation, compliance and investigation standards.

Appendix B: Consultations undertaken

The review team met with the following organisations/groups to inform the review. Individuals who discussed their views with the review team or provided submissions have not been identified to respect their privacy.

Organisation
Adelaide Against Live Export
Animals Australia
Accredited stockman
Australian Government Accredited Veterinarians
Australian Livestock Export Corporation (LiveCorp)
Australian Livestock Exporters' Council (ALEC)
Australian Maritime Safety Authority (AMSA)
Australian Veterinary Association (AVA)
Cattle Council of Australia
Department of Agriculture and Water Resources <ul style="list-style-type: none"> • Current staff members • Former staff members • Staff members based in Canberra • Staff members based in regional offices
Department of Primary Industries and Regional Development (WA)
Department of Primary Industries and Regions SA (PIRSA)
Department of Primary Industry and Resources (NT)
Department of Water, Land and Biodiversity Conservation (SA)
Emanuel Exports
Harmony Agriculture and Food Co.
Livestock Shipping Services (LSS)

Meat and Livestock Association (MLA)
National Farmers' Federation (NFF)
N.T Buffalo Industry Council
Northern Territory Cattlemen's Association (NTCA)
Northern Territory Live Export Industry
Otway Livestock Exports
P & D Exports Pty Ltd
Port Adelaide Monitors
Royal Society for the Prevention of Cruelty to Animals (RSPCA) Australia
Royal Society for the Prevention of Cruelty to Animals (RSPCA) Northern Territory
Royal Society for the Prevention of Cruelty to Animals (RSPCA) South Australia
Sheep Producers Australia
South East Asian Livestock Services
The Hon. Alannah MacTiernan MLC, Western Australian Minister for Regional Development, Agriculture and Food
The Hon. Ken Vowles MLA, Northern Territory Minister for Primary Industry and Resources
Vets Against Live Export (VALE)
Wellard Ltd
Western Australian Farmers Federation (WA Farmers)

Appendix C: Chronology ¹⁹¹

Date	Incident	Outcome
27 March 1980	Farid Fares disaster One crew member and more than 40,000 sheep die when Lebanese-registered livestock carrier <i>Farid Fares</i> catches fire and sinks en route from Tasmania to Iran.	In response to criticisms of the live trade in the wake of the disaster, the Government sends a veterinarian from the Australian Bureau of Animal Health (ABAH) to the Middle East on board a live export vessel to investigate the health, welfare and handling of the sheep at sea.
1989 to 1990	In July and August 1989 two vessels carrying Australian sheep are prevented from unloading their cargo by Saudi Arabian authorities due to scabby mouth. Examinations by an Australian veterinarian reveal no sign of disease.	The Saudi Arabian livestock trade is temporarily suspended, resuming in December 1989. After another shipment is rejected in November 1990 the live trade with Saudi Arabia is again suspended and does not resume until 1999.
August 1996	67,000 sheep die on board Uniceb One crew member and 67,000 sheep are killed when the <i>Uniceb</i> — registered in Panama and chartered by Wellard Rural Exports — catches fire and sinks in the Indian Ocean while travelling from Fremantle to Jordan. Fifty-four crew members are rescued by a passing freighter.	The <i>Australian Meat and Livestock Industry Act 1997</i> (Cth) (<i>AMLI Act</i>) introduces structural reforms to the meat industry, creating industry-owned and run organisations in place of the old statutory bodies. Meat and Livestock Australia (MLA) and the Australian Livestock Export Corporation Ltd (LiveCorp) are responsible for administering the live export trade.
January 1999	Deaths at sea Eight hundred cattle suffocate when travelling from Darwin to Indonesia after the ship's generator fails.	The Australian Veterinary Association calls for a Cabinet-level investigation into live export deaths, stating that 'the people of Australia and the veterinary profession have lost confidence in this entire process'.
August to October 2003	MV Cormo Express incident Saudi Arabia rejects a shipment of 57,000 sheep on board the MV <i>Cormo Express</i> due to scabby mouth infection. After a further eight weeks at sea the sheep are sent to Eritrea. 5,581 sheep die on board. The Government temporarily suspends shipments to Saudi Arabia, and farmers associations and animal activists call for a review of the industry.	In October the Agriculture Minister, Warren Truss, announces an investigation into the livestock export industry and the MV <i>Cormo Express</i> incident, to be led by Dr John Keniry, former President of the Australian Chamber of Commerce and Industry.
February 2006	Suspension of live exports to Egypt	Exports resume in 2008 following the signing of MOUs which require cattle to be handled and slaughtered in accordance with

¹⁹¹https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Chronology/LiveExport

	<p>The <i>60 Minutes</i> program broadcasts footage of the mistreatment of Australian cattle in the Bassateen abattoir in Cairo, Egypt. Agriculture Minister Peter McGauran announces a ban on live cattle exports to Egypt whilst claims of mistreatment are investigated.</p>	<p>international World Animal Health Organisation (OIE) standards, and permit only the use of a new abattoir at the port of Ain Sokhna.</p>
December 2010	<p><i>Al Kuwait case</i></p> <p>The <i>7:30 Report</i> program broadcasts footage appearing to show Australian sheep in Kuwait being handled and slaughtered brutally during preparations for the three-day festival of sacrifice (in February 2008). Meat and Livestock Australia argue that animal welfare education programs are needed in Kuwait, pointing to improvements flowing from such programs in Bahrain and Qatar.</p>	<p>The Magistrates Court of Western Australia finds an operational inconsistency between the Commonwealth live export regime—specifically orders made pursuant to the <i>Australian Meat and Livestock Industry Act 1997</i>—and the Western Australian <i>Animal Welfare Act 2002 (AWA)</i>. The AWA is held invalid to the extent of this inconsistency and, as a result, an exporter found to have breached the AWA whilst transporting sheep for live export is acquitted.</p>
30 May 2011	<p><i>Four Corners report: ‘A Bloody Business’</i></p> <p>The ABC <i>Four Corners</i> program broadcasts footage of the slaughter of Australian cattle in Indonesian abattoirs which depicts traditional rope slaughter, use of slaughter restraint boxes, failure to stun cattle prior to slaughter as well as the kicking and hitting of animals. The Government immediately suspends live cattle exports to the eleven Indonesian abattoirs under investigation.</p>	<p>Agriculture Minister Joe Ludwig extends the live cattle trade suspension to all Indonesian abattoirs until the establishment of new safeguards for the trade. A supply chain review of all markets is announced, headed by Bill Farmer, and industry-government working groups are tasked with reporting on a process for implementing a supply chain regulatory framework (ESCAS).</p>
August 2011	<p><i>Release of footage from Turkey and Israel</i></p> <p>Animals Australia releases footage from Turkish abattoirs depicting slaughtering practices which appear to violate international standards. Footage shot by Israeli group Anonymous for Animal Rights is also released, depicting Australian cattle being hit with spike-tipped poles whilst being unloaded from a truck in Israel.</p>	<p>The <i>Farmer Review</i> report finds that, despite improvements to domestic elements of the export supply chain since the <i>Keniry Review</i> and introduction of the ASEL, problems remain. These include a lack of nationally consistent and enforceable standards and insufficient understanding of the conditions and practices in importing countries.</p>
September 2012	<p><i>Kuwait and Bahrain reject sheep shipments</i></p> <p>Kuwait and Bahrain reject sheep shipments due to claimed outbreaks of scabby mouth. The Bahrain-blocked <i>Ocean Drover</i> is subsequently diverted to Karachi, Pakistan, where the sheep</p>	<p>The incident leads to rallies and calls for a ban on live exports. A report commissioned by the Pakistani Government finds ‘serious lapses’ in protocol by its own quarantine officers, the Australian exporter and Pakistani importer. Australian exporters temporarily suspend exports to Pakistan and Bahrain. A DAWR investigation into the incident, released in</p>

	are culled by Pakistani disease control authorities (including being clubbed, stabbed and buried alive).	July 2013, finds that the culling of the sheep in Pakistan was beyond the exporter's control.
6 September 2012	<p>Supply chain breaches in Kuwait</p> <p>Following the release of footage of 200 Australian sheep being sold in an unaccredited Kuwait City meat market, a Department of Agriculture investigation finds evidence of non-compliance with ESCAS requirements.</p>	DAWR directs three exporters to strengthen the control and traceability of future consignments. A further investigation is undertaken after a similar complaint is made in January 2013, with DOA finding that the ESCAS is unlikely to detect small numbers of sheep leaking from approved supply chains.
December 2012	<p>Footage of cruelty in Israeli abattoir</p> <p>The 7:30 program broadcasts footage of cattle being beaten and poked in the eyes and genitals with stun guns at the Bakar Tnuva abattoir in Israel.</p>	The abattoir had passed an audit commissioned by Australian company Elders in July 2012, raising concerns about the auditing process.
May 2013	<p>Suspension of trade to Egypt</p> <p>Footage released by Animals Australia of 'systemic and routine abuse' of cattle at the two Egyptian abattoirs operating under a MoU with the Australian Government.</p>	The industry suspends trade with Egypt.
October 2013	<p>Supply chain breaches in Jordan</p> <p>The DOA investigates allegations of supply chain leakage in Jordan, finding that 2,718 sheep were moved outside the approved Jordan supply chain.</p>	The Government affirms its support for the industry in spite of the incident.
November to December 2013	<p>Allegations of cruelty in Mauritius and Gaza</p> <p>Footage of Australian bulls being abused prior to slaughter in Mauritius, and of brutal methods of cattle slaughter in Gaza, prompt Departmental investigations.</p>	DAWR stops issuing export permits to Gaza and subsequently suspends use of the Gaza municipal abattoir for Australian animals.
January to February 2014	<p>Sheep deaths at sea</p> <p>4,000 sheep are reported to have died of heat stress on the <i>Bader 3</i>, travelling from Adelaide and Fremantle to the Middle East. Animals Australia and Labor MP Kelvin Thompson call for the licence of the exporter, Livestock Shipping Services (LSS), to be suspended.</p> <p>There are further deaths of sheep and cattle on board the <i>Ocean Drover</i></p>	<p>The Australian Livestock Exporters Council (ALEC) lifts its 18-month ban on live exports to Bahrain after the Australian and Bahraini Governments reach an agreement on health protocols for sheep. Australia also resumes its live sheep and cattle trade to Egypt after Egyptian importers agree to the ESCAS.</p> <p>In May live exports resume to Iran, following the government reaching agreement with Tehran regarding an animal health certification system.</p>

	travelling from Fremantle to Israel in February 2014.	
14 April 2014	<p>Rogue trader allegations</p> <p>The 7:30 program alleges that, during the 2012 <i>Ocean Drover</i> incident, the Australian exporter Wellard falsified the Certificate of Australian Origin required to get permission to land sheep in Pakistan, and falsified figures to cover up 600 missing livestock.</p>	DAWR reviewed the documentation submitted by Wellard for this consignment and the NOI, CRMP and ESCAS approval conditions against the information provided by Wellard. The assessment found that Wellard complied with all conditions of approval of the NOI and CRMP. The assessment also found that Wellard complied with the conditions of approval for the ESCAS, except during the time when the Pakistan authorities took control of the sheep.
22 October 2014	<p>Footage of slaughter outside supply chain</p> <p>The ABC broadcasts footage of Australian sheep and cattle being slaughtered outside the approved abattoirs in Kuwait, Gaza and Jordan.</p>	Wellard ceases its Jordan trade.
June 2015	<p>Allegations of cruelty in Israeli abattoir</p> <p>Animals Australia releases footage taken by hidden cameras inside the Dabbah abattoir in Deir Al Asad, Israel. The footage depicts Australian cattle having their tails deliberately crushed and throats sawn. Animals Australia argues that CCTV cameras installed in the abattoir are not effective deterrents.</p>	
January 2016	<p>Ship stranded near Fremantle</p> <p>The <i>MV Ocean Outback</i>, chartered by Otway Livestock Exports, is stranded off the coast of Fremantle for ten days due to engine problems. 7,500 sheep and 5,500 cattle are on board the vessel, which is due to travel to Israel. 30 sheep and three cattle die on board.</p>	The sheep are subsequently offloaded and transported to a pre-export quarantine feedlot. The cattle are cleared to be shipped to Southeast Asia.
June 2016	<p>Japan suspends Australian cattle imports</p> <p>Japan suspends the import of feeder and breeder cattle from Australia after breeding heifers arriving in the country test positive for Bovine Johne's disease (BJD).</p>	DAWR commences an investigation and subsequently cancels the export licence of Frontier International Agri, finding that the consignment was not prepared in accordance with regulatory requirements.
June 2016	<p>Footage of cruelty in Vietnam</p> <p>The ABC airs footage obtained by Animals Australia showing cattle being</p>	As part of its ongoing investigation, DAWR suspends 21 facilities in Vietnam and directs two exporters to cease supply to the Vietnam market until effective measures are in place

	<p>beaten with sledgehammers in Vietnamese abattoirs. Animals Australia investigators report that large numbers of Australian cattle have been leaving approved supply chains. The industry suspends exports to three abattoirs, and announces additional measures including a three-month independent inquiry into the systems and standards in place to support ESCAS requirements in Vietnam.</p>	<p>to address animal control, traceability and verification processes.</p>
<p>August 2017</p>	<p>About 2,400 sheep died on voyage from Fremantle to the Middle East in August 2017, mostly from heat stress. A whistleblower filmed conditions on the ship on a number of voyages and provided the footage to Animals Australia. Minister Littleproud was shown the footage on Wednesday 4 April 2018.</p>	<p>A Federal Government-ordered review into live sheep exports by Dr Michael McCarthy.</p> <p>In addition, a comprehensive review of the Australian Standards for the Export of Livestock (ASEL) commenced in February to examine the long-term legislative requirements required to ensure animal health and welfare on all voyages.</p> <p>This review of the department as a regulator was also announced by Minister Littleproud.</p>

List of shortened forms

AAV	Australian Accredited Veterinarian
AAWS	Australian Animal Welfare Strategy
ACLEI	Australian Commission for Law Enforcement Integrity
AEP	approved export program
AGMIN	Agriculture Ministers' Forum
AGSOC	Agriculture Senior Officials Committee
ALEC	Australian Livestock Exporters' Council
AMSA	Australian Maritime Safety Authority
ANAO	Australian National Audit Office
APSEL	Australian Position Statement on the Export of Livestock
ASEL	Australian Standards for the Export of Livestock
AVA	Australian Veterinary Association
AWTG	Animal Welfare Task Group
CDPP	Commonwealth Director of Public Prosecutions
CRMP	Consignment Risk Management Plan
EOV report	End of Voyage report
DAWR	Department of Agriculture and Water Resources
department (the)	Department of Agriculture and Water Resources
EAN	export advisory notice
ESCAS	Exporter Supply Chain Assurance System
FOI	freedom of information
IGB	Inspector-General of Biosecurity
IO	independent observer
LECR	Livestock Export Consignment Record
LAE Branch	Live Animal Exports Branch
LEP	Live Export Program
LiveCorp	The research and development corporation for ALEC
LGAP	Livestock Global Assurance Program
MLA	Meat and Livestock Australia
NOI	notice of intention to export
OIE	World Organisation for Animal Welfare (<i>Oficina Internacional de Epizootias</i>)
PVO	principal veterinary officer
RP	registered premises
RPF	Australian Government Regulator Performance Framework
RSPCA Australia	Royal Society for the Prevention of Cruelty to Animals Australia
Secretary (of DAWR)	The designation given to the head of a department in the Australian Public Service; the equivalent of the position of Chief Executive Officer
TRACE	Tracking Animal Certification for Export

VALE
WBT

Vets Against Live Exports
Wet bulb temperature