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Submissions on orders giving effect to the new regulatory framework for livestock exports

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Introduction

The NSW Young Lawyers Animal Law Committee (**The Committee**) and the Pro Bono Animal Law Service (**PALS@PILCH**) are grateful for the opportunity to make brief submissions on the proposed regulatory framework for live exports.

NSW Young Lawyers

The NSW Young Lawyers (**NSWYL**) supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers under 36 years and/or in their first five years of practice, as well as law students.

The NSWYL Animal Law Committee (**the Committee**) comprises of a group of approximately 180 lawyers and law students interested in animal welfare and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use our legal skills and the law to help improve the lives of animals.

Pro Bono Animal Law Service

The Pro Bono Animal Law Service (**PALS@PILCH**) is a project of the Public Interest Law Clearing House (PILCH) NSW and PILCH Victoria. PALS@PILCH is a national legal referral service that puts not for profit animal protection organisations in contact with lawyers able to provide pro bono legal advice and assistance. Our members include prominent Australian law firms, barristers and universities. In addition to our referral service, PALS@PILCH is also committed to addressing significant animal welfare issues.

The Committee and PALS are of the view that the Exporter supply chain assurance systems (ESCASs) developed for Indonesia is a progressive step for animal welfare and should be implemented in all feeder and slaughter livestock export markets. However, the Committee and PALS are also of the view that in the context of inadequate responses by the Australian live export industry and the Australian Government thus far to address animal welfare issues, the proposed framework and related Government policy falls short of ensuring acceptable animal welfare standards for livestock in export supply chains. The Committee and PALS have made a series of recommendations with the aim of

improving the transparency of the regulatory framework. The Committee and PALS do so with the reservation that the most preferable response to animal welfare concerns is for the live export industry to be phased out.

Background

Inadequate responses by the Australian government to protect export animal welfare

The Committee and PALS submit that an appropriate level of transparency is required to assure the Australian public that the welfare of Australian livestock in the export industry will improve. However, this does not appear to have been properly implemented in the recommendations and proposals for the new framework.

To properly demonstrate the need for greater transparency in the regulatory framework, the Committee and PALS highlight some areas in which the Government did not take action to protect animal welfare within the live export system. For example, in August 2005 the Australian Government did not respond to Animals Australia's concerns that treatment of cattle in the Bassateen abattoir in Cairo contravened World Organisation for Animal Health (OIE) standards.[1] The Government did not monitor Egypt's compliance with the Memorandum of Understanding (MoU) it signed with Australia in October 2006 regarding the treatment of Australian animals.[2] In February 2007 the Government advised Animals Australia that it would continue to provide export permits to Egypt despite evidence, including footage and a formal report, demonstrating extensive and repeated breaches by Egypt of the MoU between Egypt and Australia.[3] The Australian Government helped fund the installation of Mark 1 restraining boxes to over 50 locations in Indonesia, despite the equipment contravening OIE standards.[4] The equipment continued to be installed until 2010, despite problems with the equipment being identified in 2003.[5] Through the Australian Quarantine and Inspection Service (AQIS), the Australian Government failed to prevent or sanction systematic non-compliance with the Australian Standards for the Export of Livestock (ASEL) in Fremantle with respect to the export of sheep;[6] and failed to prevent or sanction repeated instances of non-compliance linked with high on-board mortality.[7]

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[1] Animals Australia, *Egypt Investigation - Media Background* <http://liveexport-indefensible.com/investigations/egypt-media.php> at 22 January 2012; Animals Australia, *Australia's live exporters and the Howard Government – Partners in animal cruelty?* <http://liveexport-indefensible.com/partners.php> at 22 January 2012.
[2] Animals Australia, *Egypt Investigation – Media Background*, note 1; Animals, Australia, *Australia's live exporters and the Howard Government – Partners in animal cruelty?*, note 1.
[3] Animals Australia, *Egypt Investigation – Media Background*, note 1; Animals, Australia, *Australia's live exporters and the Howard Government – Partners in animal cruelty?*, note 1.
[4] Dr Bidda Jones, 'The Slaughter of Australian Cattle in Indonesia: An Observational Study' (RSPCA, 2011) 4.
[5] Dr Bidda Jones, note 4.
[6] Bill Farmer AO, 'Independent Review of Australia's Livestock Export Trade' (2011) 33, retrieved from <http://www.liveexports.gov.au/__data/assets/pdf_file/0016/2030380/independent-review-of-australias-livestock-export-trade.pdf> at 19 January 2012.
[7] Malcolm Caulfield, *Handbook of Australian Animal Cruelty Law* (2009) 117; see also Bill Farmer, note 6, 29-48.

Recommendations

Information

The Committee and PALS recommend that the Department of Agriculture, Fisheries and Forestry (DAFF) ensures that the following information be prepared and made available to the public:

- A guidance from the Secretary of the DAFF as to how exporters demonstrate to the Secretary that their export supply chain complies with ASEL (as required under reg 14(4)(a)(i) of the *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998* (Cth)).
- A guidance from the Secretary of the DAFF as to how exporters satisfy the Secretary that "the ESCAS will ensure that the live-stock will be transported, handled, slaughtered and subjected to any other related operations in accordance with the relevant OIE recommendations" (as required under s 2.44(2A) of the *Export Control (Animals) Amendment Order 2012 (No. 1)* (Cth)("the Amendment")).
- A guidance from the Secretary of the DAFF on the circumstances in which Approved Export Programs (AEPs) are issued by AQIS under s 9A of the *Export Control Act 1982* (Cth) in response to Notices of Intention to Export (NOIs), and the effect that they have.
- The "Guidance on meeting OIE Code animal welfare outcomes"[8], particularly the performance checklist to be used by auditors, as updated from time to time.[9] The Committee and PALS recommend that the Office of the Chief Veterinary Officer (OCVO) and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) as well as any other appropriate animal welfare agencies (including but not limited to Animals Australia) be consulted before changes are made to the performance checklist.
- A guidance, including detailed information, from the Secretary of the DAFF as to the methodology of the auditing and reporting process of the exporter supply chain as required under ss 2.42A(2)(a)(v) and 3.04A(2)(a)(v) of the Amendment. For example, this guidance should stipulate: how much notice (if any) the auditor must provide to the owner or manager of the relevant facilities before arriving; the

[8] Industry Government Working Group (IGWG) on Live Cattle Exports, 'Report to Australian Government Minister for Agriculture, Fisheries and Forestry' (2011) Attachment D, retrieved from <http://www.liveexports.gov.au/__data/assets/pdf_file/0015/2030361/igwg-cattle-report.pdf> at 20 January 2012; IGWG on Live Sheep and Goat Exports, 'Final Report to Australian Government Minister For Agriculture, Fisheries and Forestry' (2011) Attachment D, retrieved from <http://www.liveexports.gov.au/__data/assets/pdf_file/0017/2030363/igwg-sheep-and-goats-report.pdf> at 20 January 2012.

[9] Both IGWG reports state (in respect of the performance measures and targets in the performance checklist): "It is anticipated that these will be refined with experience in using and auditing against these animal welfare requirements". IGWG on Live Cattle Exports, note 8, 9; IGWG on Live Sheep and Goat Exports, note 8, 9.

number of auditors proportional to the size of a facility that are required; and whether the procedures being observed are checked consecutively or at random. The Committee and PALS recommend that, in order to prevent the process being circumvented, the methodology developed should not be predictable to the organisations and people being reviewed. Additionally, the number of slaughter procedures necessary for the auditor to observe should be significantly more than 10 or less (which is the number currently required in the performance checklist provided in the IGWG reports).[10]

- A guidance including statistics and detailed information from the Secretary of the DAFF as to the level of non-compliance with the performance checklist that will be tolerated for an exporter supply chain to be approved under ss 2.44(2A) and 3.07(2A) of the Amendment. The Committee and PALS again recommend that the OCVO and the RSPCA be consulted in making this determination.
- A guidance from the Secretary of the DAFF as to the method by which the "risk/performance" of a cattle supply chain will be determined; and the number of audits that will be required in a given time period for each level of risk/performance, following the first five performance audits.[11]
- A guidance from the Secretary of the DAFF as to the method by which the "risk" of a sheep or goat supply chain will be determined; and the number of audits that will be required in a given time period for each level of risk, following the first six months of a new supply chain.[12]
- The entire audit report for every audit of every supply chain, rather than a "high level"[13] summary or simply the "outcomes"[14].
- A guidance from the Secretary of the DAFF indicating AQIS's formalised approach to dealing with non-compliance of ASEL (at the domestic stages of the export supply chain) and OIE standards (at the international stages of the export supply chain).[15] AQIS should publicly report all detected instances of non-compliance and the sanctions taken in response.

Independent reviews

The Committee and PALS also recommend that the following independent reviews be conducted:

- An independent review of the operation of the ESCAS framework in Indonesia should be conducted within the year (in addition to the wider review proposed in

[10] IGWG on Live Cattle Exports, note 8, 49-67; IGWG on Live Sheep and Goat Exports, note 8, 52-69.
[11] IGWG on Live Cattle Exports, note 8, 3.
[12] IGWG on Live Sheep and Goat Exports, note 8, 3.
[13] Australian Quarantine and Inspection Services, *ESCAS Independent Audit Reports* (2011) <http://daff.gov.au/aqis/export/live-animals/livestock/escas/audit-reports> at 21 January 2012.
[14] IGWG on Live Cattle Exports, note 8, 3; IGWG on Live Sheep and Goat Exports, note 8, 3.
[15] Both IGWG reports state that "Remedies or compliance measures would be applied at a level and as appropriate to the non-conformity identified". IGWG on Live Cattle Exports, note 8, 10; IGWG on Live Sheep and Goat Exports, note 8, 9.

2014)[16] to assess whether the arrangement is delivering acceptable animal welfare outcomes.[17] Additionally this review should report on how compliance with OIE standards has been achieved in the supply chains in Indonesia within the two month time period that the Government claimed it did. For example, the review should report on: how the industry has dealt with the high turnover of staff in abattoirs and the implications that has on the effectiveness of training;[18] and how the capital costs which are necessary to ensure that the supply chain meets OIE standards have been met.[19] This may assuage concerns that the new framework fails to address the underlying causes of the problems facing the live export industry with respect to animal welfare. It will also provide important feedback for implementing the framework into other import markets.

- An independent review should be conducted by the OCVO of each Australian-live-export-industry project aimed at improving animal welfare outcomes in export supply chains, prior to funding by the Australian Government. This will ensure that the Australian Government does not invest in procedures, equipment or facilities that fail to meet OIE standards.

Closed Circuit Television (CCTV) Monitoring

The Committee and PALS recommend that, in addition to the other above recommendations, CCTV monitoring be installed within animal processing facilities in approved export supply chains. Footage should be provided to the OCVO and the RSPCA to assess compliance with OIE standards. This simple and effective measure would overcome the limitations of the auditing process; namely its inevitable predictability, which leaves the organisations and people being reviewed with large times periods of known absence of supervision. Secondly, CCTV monitoring would allow visual access into animal processing facilities by independent institutions that are concerned about the welfare of Australian animals.

The Committee and PALS acknowledge that to comply with obligations under the World Trade Organisation, it may be necessary that CCTVs are similarly installed domestically.

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[16] Australian Government, *Action on live exports: About the new live export forms – FAQs* (2011) response to question "What has the Australian Government Announced as part of the reforms?" <http://www.liveexports.gov.au/faqs/about-the-new-live-export-reforms> at 18 January 2012

[17] "It will be important, especially in the early stages of introducing the new arrangements, to assess the extent to which the arrangements have worked in practice to deliver animal welfare outcomes." Bill Farmer, note 6, 95.

[18] "[D]ue to the enormous turnover of people in the slaughter teams and their relatively low social status, it is not a good strategy to invest in training personnel in animal handling practices at this level". Beere, G. and Pettiford, S. (2005) *Opportunities to improve slaughter standards and profitability in Indonesia, Project LIVE*. 229, June 2005 Meat and Livestock Australia, North Sydney, cited in RSPCA Australia and Animals Australia, 'Response to the Australian livestock export industry's *Indonesia animal welfare action plan - May 2011*' (2011) 3 retrieved from <http://banliveexports.com/documents/RSPCA-AnimalsAustralia-Response-to-Industry-Action-Plan.pdf> at 18 January 2012.

[19] "Where improvements are required in the cattle supply chain to meet OIE standards the capital costs are likely to be reasonably high" Bill Farmer, note 6, 70.

However, the Committee and PALS are of the opinion that this is the only measure that can guarantee the required transparency of the live export industry and regulatory framework.