
Live Export:

Animal Welfare Standards and
the Al Kuwait case

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Some introductory comments...

- Live export: thriving with the support of the Federal Government
 - Recent figures – in the 6 months to 30 June 2008, the number of animals exported
 - Cattle 395,593
 - Sheep 2,042,791
 - Goats 3,870
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The Al Kuwait case – The Response

- Both sides claimed a victory...
- Animals Australia:
“Magistrate Rules that Live Export is Cruel”
[Press Release, 8 Feb 2008]
- MLA/LiveCorp:
“Australian livestock export industry applauds
Magistrate’s ruling”
[Press Release, 8 Feb 2008]

But what did the case actually say?

The case heard in WA

- Magistrates Court of WA (Criminal Jurisdiction), heard Feb 07, decision delivered Feb 08
 - Between Dept of Local Government & Regional Development (prosecutor) and Emanuel Exports P/L, Graham Richard Daws, and Michael Anthony Stanton
 - 3 charges under the Animal Welfare Act 2002 (WA)
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The voyage

- November 2003: 103,232 live sheep were loaded in Fremantle on to the MV Al Kuwait
 - Destinations: Oman, Kuwait, Bahrain, UAE
 - High mortality rates amongst certain classes of sheep
 - A Class Wethers: 3.367% mortality
 - Muscat Wethers: 1.999% mortality
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Regulation of the industry at this time

- Live export industry was still largely self-regulated
 - Cormo Express disaster a recent event (Aug-Oct 2003)
 - Al Kuwait voyage occurred prior to the release of the Keniry Report (December 2003)
 - State AWAs
 - Federal legislation – multiple Acts
 - Australian Livestock Export Standards (ALES)
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Circumstances leading up to the case

- Investigation by Animals Australia and CIWF leads to AA lodging a complaint with WA police (Dec '03)
 - Complaint moves to RSPCA (WA) (Mar '04)
 - AA lodges complaint with Director General of Local Government & Regional Development (Jun '04)
 - Writ of Mandamus (Jan '05)
 - Charges Laid (Nov '05)
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The Charges: Emanuel Exports P/L and its directors

- Under Sec 19(1) of the AWA: Cruelty to animals
 - Charge 1: transporting animals in a way likely to cause unnecessary harm [s 19(3)(a)]
 - Charge 2: confining animals in a manner likely to cause unnecessary harm [s 19(3)(b)(ii)]
 - Charge 3: not providing proper food [s 19(3)(d)]
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Decision (in brief)

- Charge 1: proven
- Charge 2: dismissed
- Charge 3: dismissed

BUT

- The AWA was declared partially invalid under s 109 of the Constitution due to operational inconsistency with Commonwealth law
 - Accused acquitted
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The issues

- Jurisdiction – the first 24 hours
 - Legal responsibility – was Emanuel a “person in charge” of the sheep
 - Were the elements of each charge proven
 - Constitutional issue: operational inconsistency
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Was Emanuel a “person in charge” of the sheep?

- For the purpose of each of the charges under s 19(3) of the AWA, the person must be a “person in charge”
 - Defined in s 5 of the AWA to include a person whose member of staff is in physical custody or control of the animal
 - “staff” defined to include persons working for or engaged by that person as employees, agents, contractors or in any other capacity
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Custody or control through House

- House was the onboard stockman for the voyage
 - Was House in physical custody or control of the sheep?
 - Was House “staff” of Emanuel?
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The role of House on the ship

- No employment contract with Emanuel with respect to this voyage but a longstanding relationship
 - Paid by KLTT (the ship owner)
 - Requested to accompany stock by export manager for Emanuel
 - Shipboard Stockmans Instructions provided by Emanuel—signed by House and ship's Master
 - 34-50 ship's crew assisted with sheep but responsibility to care for sheep was with House
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Features of the arrangements

- Ownership in the sheep passed to KLTT dockside at Fremantle
 - Emanuel had no financial interest in the sheep from that point
 - As a holder of a licence to export, under the ALES, Emanuel must ensure that there is an experienced stockman on board the ship and must provide instructions to the ship's Master
 - Procedures to contact *exporter* in case of health or welfare emergency
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Conclusions

- » House was a person in charge of the sheep
 - » House was engaged by Emanuel at least in “any other capacity” and was therefore “staff”
 - » Emanuel was therefore a person in charge of the sheep
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Cruelty issues – Charge 1

- Basics of the charge: that it was cruel to transport by sea A Class wethers and Muscat wethers in the second half of the year as they were at greater risk of inanition and salmonellosis which causes distress and in some cases death
 - Inanition: failure to eat
 - Salmonellosis: gastrointestinal infection caused by salmonella bacteria
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Issues in relation to the charge – “transported in a way”

- “Transported in a way”: includes all relevant circumstances of the particular transport event, including the time of year
 - Was there a greater risk of the conditions developing in fat adult sheep transported at this time of the year? Yes, based on data
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Was this “likely” to cause harm?

- Likelihood of harm, not survival
 - A number of studies had shown that it was likely that older, fatter sheep would have a significantly greater chance of mortality when transported in the second half of the year as compared to the first half of the year
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Would the sheep with these conditions suffer “harm”?

- “Harm” defined in the AWA to include injury, pain and distress evidenced by severe, abnormal physiological or behavioural reactions
 - Scientific evidence
 - Inanition: distress, kidney failure, liver failure
 - Salmonellosis: diarrhoea, dehydration, high temperature, depression, gut pain
 - Need not show that harm likely to be experienced in the first 24 hours
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Was the harm “unnecessary”?

- The exporter knew of the greater risk of mortality but chose to ignore that risk in order to fulfil the order from KLTT
 - No evidence that excluding those categories of sheep would jeopardise the whole shipment
 - “In the context of this case that commercial gain has to be balanced against the likelihood of pain, injury or death to relevant sheep”
 - » The harm suffered was unnecessary
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Charge No 2 – manner of confinement

- Allegation: the way in which the sheep were confined made it, in practice, impossible to identify those sheep suffering from inanition or salmonellosis
 - Factors: density, lighting, low ceiling
 - Evidence did not show that with better lighting and lower density the sick sheep would necessarily have been detected or that treatment would have led to less harm
 - Dismissed
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Charge 3 – provision of proper food

- Only feed on ship was pellet food which the sheep suffering from inanition rejected
 - Issue whether hay or chaff should have been provided
 - Expert evidence: hard to say that, had hay or chaff been available, there would have been a lower mortality rate
 - Dismissed
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Constitutional Issue

- Whether the AWA was inconsistent with Commonwealth law and therefore invalid under s 109 of the Constitution
 - Law of a State: AWA (WA)
 - Law of the Commonwealth:
 - Australian Meat and Livestock Industry Act 1977
 - Exports Control Act 1982
 - Navigation Act 1912
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Animal Welfare in the Commonwealth laws

- AMLI Orders: Conditions for grant of export licence include having regard to prescribed animal welfare standards → ALES
 - Export Control (Animal) Orders: conditions for grant of export permit include rules linked to welfare
 - Marine Orders
 - Are these Orders each a law of the Commonwealth for the purposes of s 109?
 - Yes, but ALES were not
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Is there a direct inconsistency?

- No evidence that Commonwealth intended to regulate animal welfare per se or exclusively or exhaustively
 - However, the Commonwealth legislative regime permitted the export of these sheep at this time of the year
 - The AWA would make this act criminal
 - Therefore there is an operational inconsistency → AWA invalid in this regard
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Regulatory Regime Today:

Export Control

- Export Control Act 1982: s 7 - regulations may specify conditions for export of prescribed goods
 - Export Control (Orders) Regulations 1982: Reg 3 - Minister may make orders
 - Export Control (Animals) Order 2004:
 - 1.04 live animals are prescribed goods
 - Part 2 re export of live-stock by sea
 - Grant of export permits
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AMLI Act

- Australian Meat and Live-stock Industry Act 1997: Division 2 – export licences; conditions may be prescribed by legislation (s 15) and orders (s 17); Division 5 reports to Parliament
 - Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998: application for licence must include ASEL
 - Australian Meat and Live-stock Industry (Standards) Order 2005: s 3 ASEL
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Maritime Legislation

- Navigation Act 1912: s 425(1AA) power to make orders
 - Maritime Orders Part 43, Issue 6: Cargo and cargo handling—livestock (AMSA): includes equipment for care of livestock; pen design; mortality incident reports (s 37); ASEL has priority if there is a conflict (s 3.3)
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Australian Standards for the Export of Livestock (version 2.1)

- 6 standards covering stages in export chain
 - “Livestock sourced for export must meet any requirement under a law of a state or territory.”
 - AQIS must ensure that the ASEL and the importing country’s requirements are met before issuing the health certificate and export permit.
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Std 1: Sourcing and on-farm prep

- S1.1 requirement to meet any relevant state animal health and welfare requirements and requirements under Model Codes
 - Restriction on sourcing animals based on location and time of year
 - Rejection criteria based on conditions which could cause health/welfare to decline
 - Body condition score
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Std 2: Land transport

- Requirements re loading density, length of trip, feed and water curfews, maximum water deprivation times
 - Manner of loading – specific prohibitions
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Std 3: Management at registered premises

- Preparation for export
 - S3.9 prohibits preparation of certain classes of sheep for export to the Middle East during May to Oct
 - Appendix of rejection criteria
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Std 4: Vessel prep and loading

- Ship must be certified by Aus Maritime Safety Authority
 - S4.5 An accredited stockperson who is employed by the exporter and is not ordinarily a member of the crew must be appointed to accompany each consignment
 - In some cases also an accredited vet
 - S4.16 responsibility for livestock transfers to ship master on loading
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Std 5: Onboard management

- S5.1 accredited stockperson must accompany each consignment
 - Accredited vet when required
 - Regular inspections and daily meetings
 - Notifiable incident must advise w/in 12 hrs
 - Daily report to Aus Govt for journeys of 10 days or more
 - End-of-voyage reports w/in 5 days
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OIE World Organisation for Animal Health

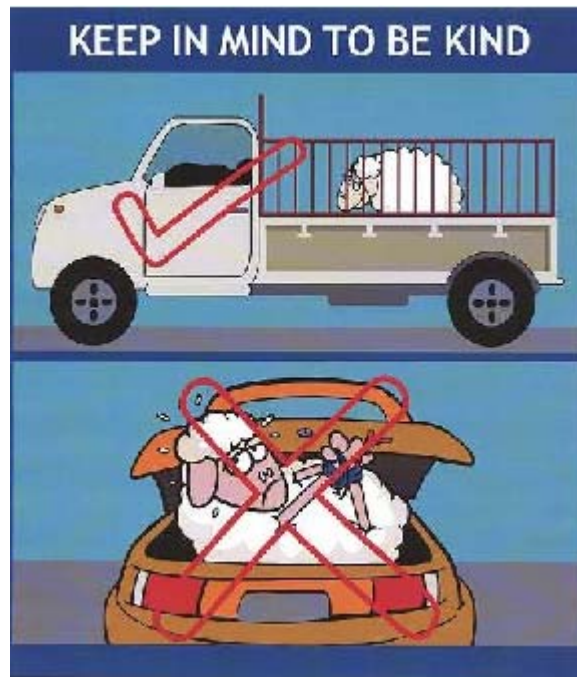
- 2nd global conference on animal welfare, Cairo, October 2008
 - Terrestrial Animal Health Code 2008, Section 7: Animal Welfare, Ch 7.2 Transport of Animals by Sea
 - Art 7.2.3 Exporters, importers, owners of animals, business or buying/selling agents, shipping companies, masters of vessels and managers of facilities are jointly responsible for the general health of the animals and their fitness for the journey, and for their overall welfare during the journey, regardless of whether duties are subcontracted to other parties during transport.
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Post-disembarkation issues

- Numerous MOUs
 - Resumption of trade in cattle to Egypt, May 2008
 - LiveCorp: Middle East animal welfare training for stockmen
 - Ongoing Animals Australia investigations
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“No truck, No sheep”

Bahrain Livestock Company, Dec 2008



Conclusions

- Many issues still unclear
 - Relationship between state welfare laws and the ASEL
 - Jurisdictional issues
 - “person in charge” test
 - Enforceability of the ASEL
 - Welfare largely measured based on mortality alone
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