

Submission on the Consultation for the Phase Out of Live Sheep Exports by Sea

30 May 2023

Contact: **Olivia Irvine**

President, NSW Young Lawyers

Timothy Allen

Chair, NSW Young Lawyers Animal Law Sub-Committee

Contributors: Timothy Allen, Giulia Prosperi-Porta, Leanne O'Reilly

Coordinator: Leanne O'Reilly

The NSW Young Lawyers Animal Law Sub-Committee (**Sub-Committee**) makes the following submission on the consultation for the phase out of live sheep exports by sea

NSW Young Lawyers - Background

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate sub-committees, each dedicated to particular areas of practice. Eligibility is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Sub-Committee comprises a group interested in laws regulating the treatment of animals. The Sub-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 Sub-Committee members is a passion and desire to use their legal skills and the law to improve protections for animals.

The Sub-Committee welcomes the opportunity to make a submission during this consultation, and makes comments on consultation questions 1, 2, 9, and 10.

Summary of Recommendations

The Sub-Committee submits that:

1. The phase out of live sheep exports by sea is strongly supported by the Sub-Committee.
2. In order to provide certainty to all affected parties, the phase out of live sheep exports by sea should be implemented by enacting primary legislation that clearly identifies a date by which live sheep exports by sea from Australia will become prohibited.
3. Legislation that identifies an end date to live sheep exports by sea should be drafted and passed as soon as practicable, and within this current term of government.
4. Implementation of the phase out should commence as soon as practicable and within this current term of government.
5. The phase out should be swift and finalised as soon as practicable and preferably within this term of government to avoid the unnecessary trade of live animals, to ensure the government's election commitment can be fulfilled, and to mitigate animal welfare risks to livestock in a declining trade.
6. The steady decline in live sheep exports by sea from Australia has correlated with an increased demand for boxed meat products, indicating an existing (at least partial) suitable market alternative. The availability of alternative boxed meat markets is consistent with the notion that a swift phase out of live sheep exports by sea is both possible from a market perspective and preferable from an animal welfare perspective.
7. There are potential reputational benefits to Australia's phase out of live sheep exports by sea in line with the growing trends and stances of other OECD nations. The reputational benefits could assist in supporting suitable boxed meat market substitutions.
8. Emerging international competitors in the live animal export trade have gained their market share in part by compromising animal welfare standards that are below standards that would be considered acceptable by Australian producers and consumers. A pivot to boxed meat products is a sustainable

and ethical solution for the Australian livestock industry and more in keeping with the direction of other OECD nations.

9. The current phase out provides an opportunity for the government to consider how a phase out could be extended to include a prohibition on other live animal exports considering the appreciable environmental, ethical and animal welfare concerns inherent in the live animal export industry.

Live Export Phase Out

1. The Sub-Committee unequivocally supports the federal government's commitment to phase out live sheep exports by sea from Australia. The live export trade has, for decades, been plagued by ethical, environmental and animal welfare concerns and has been the subject of at least 10 government and parliamentary reviews since 1985 due to the ongoing issues inherent in the trade.¹ The phase out is welcomed by the Sub-Committee.
2. The Australian public are also concerned about animal welfare in the live animal export trade and there is generally strong community support for the ending of live animal exports. A 2018 report published by consultancy firm, Futureye, for the Department of Agriculture and Water Resources, surveyed a diverse group of Australians and found that 95% of respondents were concerned about animal welfare, with 91% of respondents wanting animal welfare reform.² The categories with the two highest levels of concern reported by the surveyed participants were concern for 'poor animal welfare standards of animals on export ships' and 'poor animal welfare for Australian animals overseas'.³ The conclusions drawn from a more recent poll commissioned by the RSPCA in January 2022 found that 2 in every 3 people in *rural* or *country* areas supported the ending of all live animal exports, and almost 3 in 4 Western Australians supported an end to the live export trade.⁴

Mechanism of Phase Out

3. The Sub-Committee submits that the government must legislate an end date to the phase out and clearly identify a date by which Australia's export of live sheep by sea will become prohibited. A legislated phase out of live sheep exports will provide the highest degree of certainty to farmers, other participants in the domestic supply chain, the Australian public, and Australia's international trade partners. Anything other than a legislated phase out will undermine the federal government's 2022 election commitment on ending live sheep exports from Australia.

¹ Claire Petrie, 'Live Export – A Chronology' (research Paper, Parliamentary Library, Parliament of Australia, 6 September 2019) 1 <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/4700032/upload_binary/4700032.pdf>.

² Futureye, *Commodity or Sentient Being? Australia's Shifting Mindset on Farm Animal Welfare* (Report, 2018) 4 <<https://www.sheepcentral.com/wp-content/uploads/2019/05/190129-Commodity-or-Sentient-Being-Australias-Shifting-Mindset-on-Farm-Animal-Welfare-v.-7.0.pdf>>.

³ *Ibid* 11, 33.

⁴ 'Back to the Bad Old Days: RSPCA Again Warns Against Live Export Backflip', *RSPCA Australia* (Web Page, 31 March 2022) <<https://www.rspca.org.au/media-centre/news/2022/back-bad-old-days-rspca-again-warns-against-live-export-backflip>>.

4. The issues and ambiguity arising from the absence of a legislated end date was highlighted during Senate Estimates in February this year, when Department of Agriculture, Fisheries and Forestry (DAFF) Secretary Andrew Metcalfe was questioned by Liberal Senator Slade Brockman about the phase out of live sheep export. During a trip to Kuwait in January 2023, Mr Metcalfe met with senior government officials from Kuwait's equivalent agriculture department. When questioned by Senator Brockman about the information he provided officials about the end date for live sheep export, Mr Metcalfe said he indicated that the trade would be phased out following the next Australian election, and it was 'likely that election would be in about two years from now, but election timing is not locked in place.'⁵ Mr Metcalfe stated:

"I indicated, as I've said earlier, that ordinarily we have three-year election cycles; that most likely, therefore, that would be in the first half of 2025, but that Australia does not have fixed terms. I did not specifically say it could be sooner or it could be later. I've said that our expectation ordinarily is that terms of government run for around three years."⁶

"...We did not have an advanced discussion about Australian political institutions or public policy, but I did indicate that ordinarily Australian electoral terms run for around three years. They can run shorter."⁷

5. Mr Metcalfe's challenges in explaining Australia's end date for live sheep export emphasise the need for the government to provide the relative certainty that will accompany a legislated end date for the trade. The Sub-Committee submits that the absence of a legislated end date not only leads to uncertainty for those involved in the live export trade, as illustrated by Mr Metcalfe's comments, but also for the Australian public supporting the phase out and the international market that will need to adjust to the change.

Timeframe for Phase Out

6. The Sub-Committee submits that the government must identify an end date to live sheep exports and seek to pass legislation that gives effect to this identified end date within the current term of Parliament.

⁵ Evidence to Rural and Regional Affairs and Transport Committee, Parliament of Australia, Canberra, 13 February 2023, 12 (Andrew Metcalfe, Department of Agriculture, Fisheries and Forestry (DAFF) Secretary).

⁶ Ibid 13.

⁷ Ibid 14.

7. The Sub-Committee submits that failure to enshrine an end date in primary legislation before the end of the current term of Parliament would result in the government's phase out commitment being more readily reversed by a future government. The Coalition has already made a public commitment to reinstate live sheep exports upon their return to government.⁸
8. The Sub-Committee submits that the identified end date for live sheep exports by sea should be as soon as practicable and preferably within the current term of Parliament.
9. New Zealand is a leading example of a country that successfully phased out live animal export within a two-year timeframe. The New Zealand government committed to banning the export of cattle, deer, goats, and sheep by ship in March 2021 by prohibiting the issuing of export certificates that had previously made such live exports permissible.⁹ The prohibition on issuing export certificates was in force two years later, on 30 April 2023. The phase out included a transition period to give farmers and exporters time to adjust appropriately before the ban came into effect.¹⁰ The Sub-Committee submits that the Australian government should follow the lead of New Zealand's swift and decisive action to ensure its commitment to banning live sheep exports can be realised.
10. In recent years there has been a significant increase in the amount of boxed sheep meat exported from Australia,¹¹ and this appears set to grow. Mr Metcalfe told Senate Estimates in February that during his trip to Kuwait (Australia's largest receiver of live sheep)¹² he received 'significant interest' from government officials in Kuwait regarding the possibility of cold lamb product being exported to their country.¹³ He said the officials indicated that Kuwait was a modern economy which was capable of ensuring the cold chain occurred, effectively reducing the country's need for live animals.¹⁴ The Sub-Committee submits that such opportunities for cold meat trade, particularly with Australia's largest live sheep export market, delegitimises the need for the continued export of live sheep and supports the idea that a swift phase out can be achieved with the aid of identifiable market substitutions.

⁸ Kimberley Caines, 'Live export ban: Coalition promises to reverse Albanese Government's planned phase out of industry'; *The West Australian* (online, 6 March 2023) <www.thewest.com.au/politics/nationals/live-export-ban-coalition-promises-to-reverse-albanese-governments-planned-phase-out-of-industry-c-9950784>.

⁹ 'Bill aims to ban sea exports of some livestock', *New Zealand Parliament* (Web Page, 29 October 2021)

<<https://www.parliament.nz/en/get-involved/topics/all-current-topics/bill-aims-to-ban-sea-exports-of-some-livestock/>>.

¹⁰ *Ibid.*

¹¹ 'The cruel the bad and the ugly: debunking Australia's live export industry', *RSPCA South Australia* (Web Page, 16 April 2021) <<https://www.rspcasa.org.au/debunking-australias-live-export-industry/>>.

¹² 'Sheep Live Export', *Department of Primary Industries and Regional Development - Western Australia* (Web Page, 31 August 2020) <www.agric.wa.gov.au/sheep/sheep-live-export?page=0%2C1>.

¹³ Evidence to Rural and Regional Affairs and Transport Committee (n 5).

¹⁴ *Ibid.*

11. Finally on the issue of timeframe, the Sub-Committee holds concern about the animal welfare consequences of a protracted phase out. The Sub-Committee submits that the Parliament must ensure that adequate safeguards are in place, such as consistent independent observers on *all* ships and robust reporting on animal welfare matters, to ensure that animal welfare standards are not eroded in the context of a transitioning industry. The Sub-Committee submits that a swift phase out of live exports will help mitigate the animal welfare risks posed to livestock from any foreseeable weakening of animal welfare standards and oversight during the phase out period.

Learning from Other Countries that have Ceased Live Exports

12. Australia is not unique in implementing a phase out, restriction or ban of live sheep exports. The move follows a (relatively recent, but ongoing) trend amongst particular OECD nations of moving away from live animal exports; a Bill is currently with UK parliament for the banning of live exports of animals for fattening or slaughter (excluding poultry),¹⁵ further restrictions on the live export of animals outside the European Union are proposed to commence in Germany in mid-2023,¹⁶ New Zealand has now implemented its live export ban,¹⁷ and other proposed bans in the European Union are progressing.¹⁸ Each move is underpinned by animal welfare concerns.
13. While these illustrations display a more recent and ongoing trend, it is difficult to discern any long-term lessons from many of those bans and restrictions (proposed or implemented) or how industry is supported during implementation or beyond. However, the gradual decline in live sheep exports from Australia in recent years can be considered in this context.
14. Over the past twenty years, the number of live sheep exported from Australia has reduced significantly amidst a mix of contributing factors including changing markets, changing consumer attitudes, animal welfare concerns and export restrictions (including the Northern Summer export ban in 2019).¹⁹ During this time, however, as outlined above, there has been a significant increase in the amount of sheep

¹⁵ Animal Welfare (Kept Animals) Bill 2021 (UK).

¹⁶ Daniel Eck, 'Germany tightens animal transport rules, urges EU-wide follow-up', *Euractiv* (online, 2 November 2022) <<https://www.euractiv.com/section/agriculture-food/news/germany-tightens-animal-transport-rules-urges-eu-wide-follow-up/>>.

¹⁷ Lucy Craymer, 'New Zealand ships last livestock as ban takes effect' *Reuters* (online, 21 April 2023) <<https://www.reuters.com/world/asia-pacific/new-zealand-ships-its-last-livestock-ban-takes-effect-2023-04-21/>>.

¹⁸ See, for example, the announcement of a proposed ban in Luxembourg – 'Luxembourg Prohibits Exports of Live Animals for Slaughter to Third Countries', *The Luxembourg Chronicle* (online, 22 February 2022) <<https://chronicle.lu/category/agriculture-viticulture/39727-luxembourg-prohibits-exports-of-live-animals-for-slaughter-to-third-countries>>.

¹⁹ Petrie, (n 1).

meat exported,²⁰ suggesting there is a (at least partial) market substitution for Australian primary industry.

15. A similar trend has been observed amongst Australian states that have moved away from live exports, with Western Australia, by 2019, providing almost the entirety of Australia's live sheep exports.²¹
16. While it has not yet manifested given the short amount of time, a relevant element of the lessons to be learnt from other live sheep export bans is reputational; an analysis of how a ban (or a failure to ban) will be regarded by the global market. The Sub-Committee submits that were Australia to be an international outlier by failing to implement a live sheep ban (or at least a restriction, similar to Germany), it could attract an undesirable reputation as being negligent of animal welfare concerns or having sub-par welfare standards. This was one element considered in the development of the New Zealand live export ban, where it was highlighted that many in rural producing communities considered live exports to be incompatible with acceptable animal welfare standards.²² This is particularly relevant given that Europe (a region currently moving away from live exports) has, historically been, a competitor in the live sheep market.
17. In its report *Enhancing the competitiveness of the Australian livestock export industry*,²³ the Australian Farm Institute outlined the following:

“In the case of the Middle East more generally, the reduction of live sheep exports from Australia over the past decade has coincided with an increase in sheep meat imports into that region, but has also resulted in a major increase in live sheep imports from Romania, Somalia and Sudan among others, and a major reduction in the market share held by Australia. Similarly, the decision by Saudi Arabia not to implement ESCAS accreditation for its livestock supply chains has resulted in that nation instead importing its live sheep from North Africa, rather than Australia. This has, in effect, accelerated the economic development of the sheep industries in those nations and reduced the market share held by Australia, while at the same time

²⁰ RSPCA South Australia (n 11).

²¹ *Department of Primary Industries and Regional Development Western Australia* (n 12).

²² Ministry for Primary Industries, *Regulatory Impact Assessment: Livestock Export Review* (Report, 10 March 2021) 6 <<https://www.treasury.govt.nz/sites/default/files/2021-07/ria-mpi-ler-mar21.pdf>>.

²³ Australian Farm Institute, *Enhancing the Competitiveness of the Australian Livestock Export Industry* (Report, October 2016), 65 <https://www.mla.com.au/contentassets/d358fb903c724339bc09574e0057221d/w.liv.0189_final_report.pdf>.

having a net negative impact on animal welfare standards in the importing nation, as a consequence of the removal of Australian influence encouraging the adoption of higher standards of welfare.”

18. The Sub-Committee submits that there are two evident takeaways from this:
 - a. A marked reduction in live sheep exports has, for some time, correlated with increases in exports of meat; and
 - b. Competing with emerging competitors in the supply chain in an ongoing capacity would require significant (in the Sub-Committee’s view, unacceptable) compromises on animal welfare; Saudi Arabia is already incompatible with Australia’s welfare requirements due to its refusal to implement the Exporter Supply Chain Assurance System, and the other countries mentioned have obtained their market share through, in the report’s assessment, taking an approach to animal welfare that is weaker than Australia’s.

19. The Sub-Committee submits that the lesson in this process is that live sheep exports are only accessible in instances where animal welfare standards are neglected. Australia’s move away from this activity is a positive one, a more sustainable move for industry, and more in-keeping with the emerging but established trend amongst OECD nations of doing the same or similar. This could have a reputational benefit that could support alternative Australian markets that are already increasing in international prominence by way of market substitution.

Opportunities & Other Matters

20. While the ethical, environmental and animal welfare impacts of the live export trade have been well documented,²⁴ the phase out commitment has so far been limited to the live export of sheep by sea. The Sub-Committee submits that this current phase out provides an opportunity for the government to consider how the phase out may be extended to include other live animal exports (i.e. cattle, goats, deer, alpaca, buffalo and camelids), particularly those animals exported live for the purposes of slaughter.

²⁴ See, e.g., Petrie (n 1); John Keniry, *Livestock Export Review* (Report to the Minister for Agriculture, Fisheries and Forestry, 23 December 2003); *RSPCA South Australia* (n 11); ‘What is Live Export?’, Voiceless (Web Page) <<https://voiceless.org.au/hot-topics/live-export/>>; Stephanie Hing, Sue Foster, and Di Evans, ‘Animal Welfare Risks in Live Cattle Export from Australia to China by Sea (2021) 11(10) *Animals* 2862.

21. The Australian livestock industry lobby is understandably quick to defend the live animal export trade, noting the improvements that have been made to the trade in the last few decades.²⁵ Notwithstanding those industry's views, the very nature of the live animal export trade makes it impossible to ensure animal welfare standards are being met throughout the extended export supply chain (i.e. from the farm in Australia to slaughter in the destination country overseas) – as highlighted by the analyses of the live sheep export trade that prompted the phase out the subject of this submission. Some of the issues which challenge the industry's views that animal welfare standards can be maintained for live animal exports include the following:

- a. Australia's geographic location makes prolonged and stressful voyages at sea for livestock an inevitability.
- b. Independent observers are not required on all voyages, and data presented at Senate estimates earlier this year identified that independent observers boarded only around 14% of eligible export voyages between May and December 2022.²⁶
- c. The Exporter Supply Chain Assurance System (**ESCAS**) provides arms-length regulation of animal welfare standards in destination countries. Approval of a supply chain for exporters and assurances that World Organisation for Animal Health standards will be met cannot provide true extra-territorial regulation over animal welfare standards in destination countries. Since 2012 there have been 190 ESCAS complaints and investigations about known breaches abroad.²⁷ Furthermore, a 2021 review of the ESCAS found that:

“Loss of control and traceability, sometimes with poor animal welfare outcomes, still occurs at low but chronic levels. Particularly at peak demand periods related to cultural and religious events in various markets.”²⁸

22. In light of the regulatory challenges and the environmental, ethical and animal welfare concerns that are inherent in the live animal export trade, the Sub-Committee submits that the government should

²⁵ See, e.g., National Farmers Federation, 'Labor's Live Sheep Export Decision Sets a Dangerous Precedent' (Media Release, 6 May 2022).

²⁶ Christopher Knaus, 'Greens Decry 'Utter Decimation' of Independent Observer Program for Live Exports', *The Guardian* (online, 20 February 2023) <<https://www.theguardian.com/australia-news/2023/feb/20/greens-decry-utter-decimation-of-independent-observer-program-for-live-exports>>.

²⁷ 'ESCAS Investigations', *Department of Agriculture, Fisheries and Forestry – Australian Government* (Web Page, 4 May 2023) <https://www.agriculture.gov.au/biosecurity-trade/export/controlled-goods/live-animals/livestock/compliance-investigations/investigations-escas#_2020>.


²⁸ Inspector-General of Live Animal Exports – Australian Government, *Review of the Exporter Supply Chain Assurance System* (Review Report No 2021/01, 2021) 4.

also take this opportunity to consider how a phase out could also apply to the export of all live animals in favour of boxed meat products.

Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

Contact:



Olivia Irvine

President

NSW Young Lawyers

Email: president@younglawyers.com.au

Alternate Contact:



Timothy Allen

Chair

NSW Young Lawyers Animal Law Sub-Committee

Email: alsc.exec@gmail.com