



**Submission to the Review of Live Animal
Exports Regulatory Capability and Culture**

by Vets Against Live Export

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Dear Mr Moss

Thank you for your invitation to make a submission to the **Review of Live Animal Exports Regulatory Capability and Culture**.

Vets Against Live Exports (VALE) was established in 2011. It is a national organisation that currently has over 200 members. It also has a growing international membership. Since its establishment, VALE has aimed to retrieve, review and provide accurate and objective information on the live export industry.

VALE has regularly been requested to lecture at scientific meetings and provides information to veterinary organisations, the media, politicians, government ministers and members of the public.

VALE welcomes the opportunity to make a submission to this Review.

Yours sincerely



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PREAMBLE

The Channel 9 program 60 Minutes aired on Sunday 8 April 2018 showed footage taken by a ship's officer, Fazal Ullah, during several voyages of the *Awassi Express* carrying sheep from Australia to the Middle East. Included in that footage were images of sheep in extreme distress, bogged in faeces and dying. The resultant public outrage stimulated a purported review of the relevant science, and the current review into regulatory capability and culture.

The Terms of Reference (TOR) in the current review focus on the manner in which the Department of Agriculture and Water Resources ('the Department') regulates live export, and responds to evidence of breaches of the law and animal suffering.

In the following commentary, Vets Against Live Export (VALE) has documented details of its correspondence with the Department on such matters over six years. The Department's behaviour and actions provide little evidence of any commitment to fully investigate suspected regulatory breaches, ensure compliance to standards or protect animal welfare.

During the preparation of this submission, Dr Narelle Clegg, Assistant Secretary in the Department, answered questions of the Senate Rural and Regional Affairs and Transport Committee on 24 May 2018. From the transcript, VALE notes that:

- Dr Clegg stated that it was impossible to predict the risk of heat stress occurring, given that one could not be sure on which days in August in the Persian Gulf high temperatures would occur. The detailed temperature and humidity data presented in a review by the Australian Veterinary Association (AVA)¹, and indeed in many industry publications, show that it is entirely predictable that such conditions will occur at any time between May and October. The AVA Submission noted that there have been 51 voyages since 2005 in which over 1.5% of the sheep died, with over 1000 sheep dying on 43 of them. The vast majority of these voyages were between May and October, with August having the highest number of these voyages.
- Dr Clegg confirmed that the numbers of animals on board could not be assessed with accuracy. It follows that official mortality rates are probably meaningless or at least questionable. Moreover, the heat stress risk assessment model used by the Department, which has as its output a variation in stocking densities, cannot be applied unless the number of animals loaded is known with a high degree of accuracy. It is well recognised

¹ AVA Submission: A short review of space allocation on live export ships and body temperature regulation in sheep. May 2018.

that the current system for loading does not result in accurate sheep numbers. This inadequacy is the basis for the AVA Review recommendations that not only should sheep be individually identified but that trucks carrying sheep should be weighed at the port of embarkation. It is significant that despite the Department being well aware of the issue, it has never pushed for a similar recommendation.

This latest information represents a contemporary example of the culture we have presented in this submission. The obvious conclusion is that the Department has known about, or should have known about, these key animal welfare risk issues, but has never taken effective action to address them.

OVERVIEW

During the past six years, VALE has closely monitored the limited information available to the public regarding live export. This information includes parliamentary reports of voyages and mortalities and reports of investigations of 'high mortality' voyages (both published on the Department's website). When discrepancies (principally regarding mortality levels) have been identified in those reports, VALE has requested onboard reports under the *Freedom of Information Act 1982*. VALE also receives information from onboard veterinarians, which provides background and context to analyses of these reports.

VALE has also made significant contributions to the science relating to heat stress in animals during live export, which has allowed us to comment critically on the Department's failure to take appropriate action to address this issue: Caulfield et al (2014) 'Heat stress: a major contributor to poor animal welfare associated with long-haul live export voyages'; *The Veterinary Journal* 199, 233 (Appendix 7).

It is clear that the Department has known, or should have known, about the high risk of serious and frequently fatal heat stress on voyages to the Middle East during the northern summer. The lack of acknowledgement of significant animal suffering in 'high mortality' investigation reports prepared by the Department since 2005 indicates that animal welfare has not been a concern. It has taken a whistleblower to expose the extent of this suffering when in fact this should have been uncovered by the Department. Observers, including onboard veterinarians, who would have undoubtedly seen similar incidents on the many voyages where animals reportedly died of heat stress, have made no comment about animal welfare in official reports. The apparent lack of concern about animal welfare in the Department has ultimately resulted in the current public outcry.

VALE's interaction with the Department has demonstrated that not only does it lack competence to deal with major animal welfare issues such as heat stress during northern summer voyages, but it also appears incapable of taking any substantive action against exporters who seem to have breached the relevant law.

A key issue which has been noted repeatedly is that onboard veterinarians and stockpersons are usually under pressure from live exporters to under-report mortalities and to avoid submitting adverse reports in general. The Department has chosen to ignore this issue. It is also clear that when veterinarians have made pertinent comments and recommendations on their reports, they have been ignored, and the Department has preferred exporter explanations. VALE and the AVA have long maintained that there should be veterinarians on every voyage who are independent of both the exporter and the Department. However, since the Keniry Inquiry in 2004, the exporters and the Department have resisted calls for independent veterinarians on ships.

VALE's conclusion, from monitoring the actions of the Department and interacting with its staff for over six years, is that it is completely inappropriate that the Department should be regulating live export. The Department appears to be preoccupied with promoting the trade, and deflecting criticism. VALE believes that it is imperative that there be a statutorily-established body, completely independent of the Department, to advise the Minister on the live export trade, and to regulate it. Such a body would have responsibility also for appointing the independent onboard observers to accompany every live export voyage, and for processing voyage information reported by those observers. This body should also have a remit to advise the Minister on relevant science, and any legislative changes arising from consideration of the science.

There is currently a review of the Australian Standards for the Export of Livestock (ASEL), due to report in 2019.² VALE believes that in light of the legal information in this submission that this should be abandoned and reconstituted with a revised timescale and terms of reference. It is imperative that this includes an urgent review of the entire legislative scheme applicable to live animal export. The present law is wholly inadequate to achieve good animal welfare in the sections of the trade which may continue, and should be reviewed and completely rewritten. In particular, the law should include a power allowing the independent regulatory body to impose on-the-spot penalties for breaches of relevant law. Currently, breach of live export licence conditions can only be penalised after a criminal prosecution. This is unwieldy, expensive and fraught with difficulties. For example, the Department's regulatory response to 'high mortality voyages' (usually from weather conditions resulting in heat stress) is to increase the space allowance for animals on subsequent voyages (usually later in the year when heat stress is much less likely). There is no scientific basis for such a response. This response does not represent a genuine attempt to improve animal welfare outcomes, but is a *de facto* penalty, by virtue of reducing the number of animals which can be carried on a live export voyage. This is clear evidence of the inadequacy of current systems and regulatory responses.

In general, it is almost impossible for an independent observer, such as VALE, to obtain adequate details of onboard problems regarding animal welfare. There have only been two persons in recent years who have been prepared to describe actual conditions during live export voyages. Everything noted in the following pages should be viewed with that caveat in mind. The only information routinely released by the Department are the reports to parliament of mortality levels, and 'investigation reports' relating to investigations carried out by the Department after it is informed of a 'notifiable event', as defined in ASEL. The former is nothing more than a list, and the latter are often couched in anodyne terms which indicate little if anything about animal welfare.

² Minister announcement during this manuscript preparation.

SPECIFIC ISSUES

1. Compliance with regulations – lack of responsibility of exporters for animal welfare on board live export ships

The preamble in the TOR refers to the need to ensure that persons in the live export trade are compliant with regulations and maintain high standards of animal welfare. This section addresses TOR 1-3.

VALE believes it is essential to highlight a major problem with enforceability in relation to Standard 5 of the Australian Standards for the Export of Livestock ('ASEL') (version 2.3). This particular Standard concerns onboard issues, including the welfare of animals, and in VALE's view it does not apply to exporters. This is because this Standard contains the explicit statement in its preamble that *'once loading begins at the point of embarkation, the master of the vessel assumes overall responsibility for the management and care of the livestock during transport on the vessel. This responsibility continues until the point of disembarkation'*. (page 105). Furthermore, Standard 4.16 (dealing with vessel preparation and loading) says that *'as the livestock are loaded on board the vessel at the port of export, responsibility for the livestock transfers to the master of the vessel...'* The Department has been aware of this since at least 2005, as the first version of ASEL was identical in that regard.

The importance of this wording becomes apparent when one considers section 54 of the *Australian Meat and Live-stock Industry Act 1997*, which is one of the core statutes governing live export. It says, in essence, that it is an offence for an exporter either recklessly or intentionally to breach a condition of its export licence. Compliance with ASEL is a condition of an export licence. However, VALE considers that it would be impossible to establish in any case brought against an exporter for breaching Standard 5 of ASEL, relating to onboard management of livestock, because the exporter will be able to mount an effective defence of not being responsible for the animals once they are loaded onto a ship.

In VALE's view, the Department has failed in its responsibility to maintain animal welfare standards on live export ships by failing to amend legislative requirements which would make exporters liable for ensuring the ASEL are met on board ships.

2. Breaches of laws, notification to the Department, and failure to act

VALE has a long history of communicating with the Department regarding possible breaches of the law by exporters. VALE's impression, having engaged in this exercise, is that it is fruitless. This is because, firstly, the Department has not been aware of any of the breaches which VALE has brought to its attention, so its monitoring function is inadequate, and secondly, when it is made aware of issues, it exercises its discretion – to do nothing.

Some of VALE's communication is summarised below. The references are to documents appended to this submission. The relevant TOR are 2, 3, 4, 7, 9 and 10.

2.1. Failure to accurately record numbers of animals to be exported

Appendix 1

The letter concerned what VALE regarded as a false assertion by an officer of the Department, in response to letters from Animals' Angels (an animal protection organisation), that a Notice of Intention ('NOI') to export only required estimated numbers of livestock to be entered. VALE stated this was, in our view, a false interpretation of the relevant Export Control (Animals) Order 2004 (specifically Order 2,45). This is not a trivial matter, as it is known that exporters routinely load more animals than are approved, either in the NOI, or the export permit, so that failure to be precise about the numbers of animals approved allows such practices to continue unpoliced. The consequences for any attempt to establish whether mandated stocking densities have been complied with are obvious. Furthermore, the letter highlighted that the number of sheep in the Permission to Leave for Loading was false and involved a false declaration by the AQIS Accredited Veterinarian (AAV). We noted that 'a simple comparison of the numbers on the various applications would have revealed the discrepancies' and that the Department granted an export permit despite these discrepancies.


VALE received no response from the Department.

2.2. Breaches of ASEL by exporters

Appendix 2

2.2.1. High Mortality Voyage 29

Live export is an industry that is veiled in secrecy. Details relating to animal welfare on board live export ships are not routinely published. Those responsible for monitoring and reporting (that is, the onboard veterinarians or stockpersons) are employed by the exporter (or in some cases, contracted by the exporter but employed by the importer). Those persons are susceptible to pressure from exporters not to report adverse animal welfare events on board ship and the Department has been aware of this issue. In addition to the non-specific evidence provided in the 2011 teleconference (Appendix 8), there have been specific instances of onboard veterinarians reporting such interference by the exporter to the Department, after which they have never again been employed by the industry. Those reports appear to have been ignored by the Department.

Prior to the recent footage aboard the *Awassi Express*, the only revelations regarding regulation of onboard activities came from the experiences of 

Third party information, an AAV aboard the *Hereford Express* (High Mortality Voyage 29).³ This was the subject of a case in the Federal Court brought by animal protection group Animals' Angels, seeking to compel the Department to enforce the law. It failed in that regard, because the law is written to give the Department complete discretion as to whether or not it takes action (Appendix 2.1).⁴

In VALE's opinion, what happened during and after that voyage constitutes the best illustration of the broken regulatory culture within the Department.

The evidence of **Third party information**, communicated to the Department, was that:

- contrary to the requirement in ASEL, there was no stockperson on board the ship for at least the leg of the journey from Fremantle to Singapore, and possibly from Singapore to Malaysia;
- there was evidence of overloading of animals; this is believed to be a common practice whereby exporters 'compensate' for mortalities. This would imply that there is non-compliance with the mandated stocking densities;
- the exporter, in response to the AAV informing the Department of a high mortality incident, ordered the AAV to leave the ship in Singapore contrary to the stipulations of the Approved Export Program ('AEP'). This was approved by the Department in an email, contrary to the legal requirement, which required the issue of a new AEP;
- it is likely, as a consequence, there was neither an AAV nor a stockperson for the final leg of the voyage. This is a clear breach of ASEL and undermines the whole principle of monitoring animal health and welfare on board ship;
- the exporter requested the AAV report on animals discharged in Malaysia, even though the AAV was not present in Malaysia;
- the exporter demanded that the AAV under-report goat mortality in his End of Voyage report;
- two daily reports prepared by the AAV were never given to the Department by the exporter or the ship's Master;
- the Master's report under-reported goat mortalities;
- the exporter altered the AAV's report to under-report goat mortalities and sent that altered report to the Department.

³ See <http://www.vale.org.au/high-mortality-voyages.html>. Accessed 4 June 2018

⁴ See *Animals' Angels e.V. v Secretary, Department of Agriculture* [2014] FCA 398, and appeal [2014] FCAFC 173.

The Department steadfastly refused to take any substantive action, preferring to believe the exporter's assertion that the AAV had miscounted mortalities. It is important to note that in these circumstances, the AAV is under a legal obligation to report mortalities, and faces penalties for inaccurate reporting. At no point did the Department consider it material that the exporter had altered the AAV's report without the AAV's permission. VALE note that the AAV gave sworn evidence on all these matters.

Regarding the absence of either veterinarian or stockperson for the final leg, the Department took the view that it was of no importance, as the high mortality event had been reported anyway. This seems to be a particularly perverse interpretation, as without anybody to report on that part of the voyage, the Department could not claim to know what had in fact happened.

Finally, the person who did investigate the allegations for the Department, [REDACTED] conducted four interviews, but seemingly did not make any notes during or after any of those interviews. That is to say, no notes were produced in response to the discovery ordered by the Court.

VALE regards the Department's behaviour in response to the AAV's complaint to be typical. The investigation was ineffective, and the conclusion overall was that the exporter's statements were to be preferred to the AAV's evidence (as it was in the initial investigation of High Mortality Voyage Report 65, Appendix 5).⁵ Compliance with various statutory requirements, such as the issue of a new AEP, or the need for an AAV or a stockperson to be on the ship, was evidently regarded by the Department as optional, at the discretion of the exporter.

VALE initiated significant correspondence with the Department concerning aspects of the *Hereford Express* voyage.

Stockpersons on live export ships are responsible for animal welfare. AAVs, when they are on board, are responsible for making reports to the Department on animal welfare matters. Where there is no AAV, the stockperson is responsible for the reports.

ASEL requires a stockperson to be on board every live export ship. In 2012 we corresponded with the Department (Appendix 2.2) raising the possibility that there was no stockperson on board the *Hereford Express* during its voyage from November to December 2008, for the part of the voyage from Singapore to Malaysia. The Department asserted that the exporter 'sought and received approval from the department for the AAV to leave the vessel after discharge in Singapore and be replaced by an accredited stockman. This approval was effected by an email exchange and a new AEP was not issued'. As discussed, approval in this fashion is

⁵ See <http://www.vale.org.au/high-mortality-voyages.html>. Accessed 4 June 2018.

in direct contravention of the requirement imposed on the Department by the *Export Control (Animals) Order 2014*, as applicable at the relevant time (Order 2.49).

VALE pointed out that the matter had been the subject of a statement by one of the directors of the exporter to ABC's Lateline television program, in which he made a statement which we thought could be interpreted as meaning there was no stockperson on the final leg of the voyage.⁶ VALE recommends that this statement to the ABC (Appendix 2.3) is examined carefully, as in our view it contains evidence of several false statements concerning this voyage, which can be checked by reference to the evidence in *Animals' Angels e.V. v Secretary, Department of Agriculture*.

VALE also noted that [Third party information] had informed us that [Third party information]

VALE was concerned that this may not have been an isolated incident. VALE requested a statement regarding occasions when exporters had been allowed to waive the requirement for a stockperson to be on board a live export ship, and the legal basis of any such waiver, and whether the Department had any process in place to independently check whether either an AAV or stockperson had indeed travelled on a live export voyage.

The Department responded (Appendix 2.4) and expressly stated it was aware there was no stockperson on board during the Fremantle to Singapore segment of the voyage. The Department did not address the question of whether a stockperson was on board for the final leg. Regardless, the Department concluded that the voyage report of the AAV 'demonstrates that together with the vessel's crew he was able to deliver the level of care that a stock person would have delivered...' From this, it appeared that the Department regarded the requirement for a stockperson to be on every live export voyage as an optional requirement, and regarded the failure of the exporter to ensure a stockperson was on board the *Hereford Express* as of no relevance.

Furthermore, it is apparent from the remainder of the response that despite the Federal laws, the Department regarded it as acceptable for an AAV to also perform the role of a stockperson.

On 5 February 2013, VALE responded (Appendix 2.5), noting the failure to respond to the previous questions, again seeking a response. VALE also noted the Department letter, once again, did not address the question of whether or not there was a stockperson on the final leg of the voyage.

The Department provided an obscure response in a letter dated 28 March 2013 (Appendix 2.6) implying that the Secretary had granted an exemption from the relevant Orders, without providing any details. Regarding the possible missing

⁶ See <http://www.abc.net.au/news/2012-07-25/ile-statement-for-lateline/4152136>. Accessed 4 June 2018

stockperson on the final leg of the voyage, it was claimed this question could not be addressed as it was 'the subject of current litigation'. This presumably referred to the *Animals' Angels e.V. v Secretary, Department of Agriculture* case.⁷

VALE responded to the Department in a letter on 30 April 2013 (Appendix 2.7). VALE noted that the question concerning the number of occasions on which the Department had waived the requirement for a stockperson to be on a live export ship had not been answered. VALE also highlighted that the Department had sought to convey a misleading impression by claiming the legal requirements had been changed to require exporters to inform the Department of the relevant stockperson's name in their NOI. VALE noted that, prior to any change in requirements, an Application for Health Certificate and Permission to Leave for Loading stated at the relevant time that the Application must be accompanied by documents giving the name of the relevant accredited stockperson. VALE also provided details of three voyages where we believed a veterinarian had been substituted for a stockperson, one of which had been a high mortality voyage and had an investigation that made no mention of the fact that there was no stockperson on that voyage. Finally, given the claim that the Secretary could grant an exemption only where 'exceptional or special commercial' circumstances occurred, VALE asked the Department if they had ever granted such an exemption in relation to live export and in what circumstances.

The Department responded in December 2013 (Appendix 2.8). It seemed from that response that the exemptions referred to would be granted under a section of the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act) which allowed orders and directions to be made, although the letter did not say whether any such exemption had been made. This is confusing, because that section does not refer to exemptions. However, the letter did say that 'current policy' (i.e. not past policy) was to refuse approvals where an exporter had requested an AAV accompany the voyage in place of an accredited stockperson. It implied there had been waivers in the past, and that the Department was not aware of the number of occasions an exporter had completed a voyage without an accredited stockperson; the *Hereford Express* voyage represents at least one such voyage. The letter also asserted that an AAV can also be a stockperson. If that is the Department's view, then VALE believes it needs to be challenged as a matter of some urgency. The letter did confirm that on one of the voyages brought to their attention by VALE (Port Kembla to Madagascar, December 2007), only an AAV accompanied the voyage and there had been no 'formal exemption' by the Department regarding the requirement for a stockperson. The Department asserted the exporter 'no longer holds a licence' and accordingly regulatory action was 'no longer possible'.

VALE wrote again to the Department on 1 February 2014 (Appendix 2.9) regarding this response. VALE noted that, although sanctions could not be taken which

⁷ [2014] FCA 398.

involved imposition of licence conditions in such a case, under section 54(3) of the AMLI Act, it is an offence for the holder of a licence to knowingly or recklessly not comply with a licence condition. VALE highlighted that the penalty is severe, and failure to have a stockperson on the voyage was a breach of a licence condition. VALE conveyed that legal advice indicated that a prosecution for such a breach could commence at any time. VALE also noted the exporter responsible, Central Pacific Livestock, appeared to be seeking to source livestock for export (we had identified advertisements to that effect) at a time when the Department asserted it did not have an export licence.

The response of the Department (Appendix 2.10) was that it had been mistaken in its previous letter and that the exporter in fact did still have a licence. The Department also wrote that even though there was no stockperson on the ship, the AAV was 'better qualified to diagnose and treat livestock' than a stockperson (even though that is not the role of the AAV in the legislation) and that 'it is highly unlikely that the presence of a stockman would have altered the outcome of this voyage', a high mortality voyage, so the Department was taking no action. The conclusion of the Department again appeared to be that compliance with mandatory requirements in the legislation is in fact optional and can, in effect, be left to the discretion of the exporter.

VALE's concerns regarding the Department's inability to respond appropriately to significant breaches of the law are summarised in an article in *The Veterinarian* in June 2012 (Appendix 2.11).

The reason for setting out this lengthy chain of correspondence is to illustrate a number of points. First, the Department's responses rarely address the questions raised. Even when it is noted that answers to questions have not been given, the Department responds as if the questions had never been asked. Secondly, the strong impression gained from this and indeed the entire incident occurring on the *Hereford Express* was that the Department's view of law enforcement appeared to be that the laws were not intended to be obeyed as such, but were rather to be viewed as guidelines, to be adhered to or not at the discretion of the exporter. Thus, absence or presence of AAVs or stockpersons did not appear to be a matter of concern.

Finally, VALE believes it is possible that some live export ships have sailed without either AAVs or stockpersons. The correspondence indicated that the Department does not have a mechanism in place to confirm the onboard attendance of AAVs or stockpersons. Indeed, at the time of the *Hereford Express* case, the Department did not even have a list of accredited stockpersons. The *Hereford Express* incident could be interpreted as indicating that exporters may be willing to alter reports which are required by law. It is not beyond the bounds of possibility that they may write them in their entirety.

2.2.2. Overstocking on live export ships

Appendix 3

One of the facts to emerge from the *Hereford Express* case (see Appendix 2.1) was that there appeared to be evidence, including from [Third party information] [Third party information] that overstocking of animals on board live export ships regularly occurred in the industry. This is highly relevant to the question of whether animals will suffer heat stress on a given voyage, as the dissipation of heat on board ship is certainly affected by how closely the animals are packed. If there is over-stocking, heat stress will occur at lower external ambient temperatures and morbidity (suffering) and mortality rates will be increased. The main cause of death in the case of the *Hereford Express* was heat stress albeit this was a voyage to South East Asia, not a Middle Eastern voyage.

VALE suggested to Kelvin Thomson MP that he ask the Minister (at the time, Barnaby Joyce) about these issues. The answers to the questions indicate the Department was aware of the allegations, which were not proven, so no action was taken. In practical terms, this implies that nothing further was done. Furthermore, the answers indicated the Department had not conducted any investigations to establish the extent of overstocking. This seemed to contradict the assertion that the allegations were not proven, but, regardless, indicated the Department's lack of interest in establishing whether overstocking was a significant factor in causing heat stress.

2.2.3. Loading animals outside of ASEL specifications

Appendix 4

In 2013, [Third party information] provided a submission to the Department regarding the ongoing review of ASEL. [Third party information] submission was the first time that the views of [Third party information] were made public.

VALE noted that [Third party information] submission contained many observations on voyages which indicated breaches of ASEL and requested that the Department take further evidence from [Third party information] and investigate the possible breaches.

The breaches identified included animals likely to have been loaded despite meeting the 'rejection criteria' of ASEL (including a bull with a severe scrotal hernia, animals with ringworm, lameness, pinkeye, body weight not to specification, shy feeders and animals with existing respiratory or gastrointestinal disease), late pregnant cattle, sheep and goats (giving birth at sea including lambing numbers approaching 100) and cattle with flyblown dehorning wounds. Regardless of issues surrounding exporter liability during voyages, all these examples (with the potential exception of undetected pregnancy) are, if proven, a breach of ASEL Standards which *do* apply

to the exporter, as they are relevant to sourcing, preparation and inspection of animals prior to loading the ship. Dr Simpson also identified that water 'curfews' were often imposed towards the end of voyages. This has serious negative implications for animal welfare, particularly where the animals may be exposed to heat stress, as increased drinking is an immediate and essential thermoregulatory response of an animal to increased heat load.

The Department did not respond to the letter. Nor did the Department take action to investigate the breaches. The Department's only response was to remove Dr Simpson from the Live Export Division in order to maintain good relations with industry.

2.2.4. Unreliability of mortality figures

Appendix 5

Assessment of welfare issues on board live export voyages relies solely on reporting of mortality. If mortality figures cannot be assessed accurately, then the mortality-based system becomes completely misleading and worthless.

In 2017, VALE noted a mortality rate of 4.36% for a voyage published in the six monthly parliamentary reports, July to December 2016⁸. VALE requested and obtained relevant reports under the *Freedom of Information Act 1982*. Inspection of the reports prepared by the AAV on board the vessel indicated that there was a discrepancy of 1286 sheep. The AAV's report indicated that it was 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.

VALE wrote to the Australian Chief Veterinary Officer (ACVO) to notify him of the discrepancies and that the variance in mortality was nearly 2%. VALE considered that this degree of inaccuracy constituted a significant problem for regulation of the industry. VALE also noted that it had information that exporters and shipboard veterinarians would seek to 'massage' mortality figures to keep them below the reportable level.

VALE highlighted that the voyage clearly experienced major problems with heat stress to sheep on arrival in the Middle East, and that analysis of high mortality voyage reports indicated this was a systemic problem. VALE advised the ACVO that the only reasonable action to prevent disasters occurring as a result of heat stress was to cease sheep voyages to the Middle East during the northern summer.

⁸ Report to Parliament on Livestock Mortalities During Export by Sea for the period of 1 July - 31 December 2016

VALE wrote again to the ACVO on 5 February 2018 to notify him that although the Department agreed that the true mortality figure for this voyage was in excess of 4%, the figure in the parliamentary report was still (and is at the date of this manuscript) given as 2.51%. VALE believes this has the potential to mislead members of parliament and the public.

2.3. Breaches of the Exporter Supply Chain Assurance System ('ESCAS')

2.3.1. Cruelty to Australian cattle in Gaza, Palestine

Appendix 6

Footage obtained by Animals Australia revealed that animals which should have been transported by Livestock Shipping Services to Israel were in fact transported to Gaza, where they were subjected to horrific cruelty. This was not in VALE's opinion compliant with the requirements of ESCAS. VALE requested that the Secretary of the Department issue a 'show cause' notice under section 23 of the AMLI Act requiring an explanation from the exporter.

On 24 December 2013 a response was received stating, in essence, that the matter was under investigation. No further correspondence was received.

2.3.2. ESCAS Report 2015⁹

The ESCAS Report 2015, covering the period of 10 August 2011 to 30 November 2014, failed to document the single largest instance of non-compliance. This involved a shipment of over 20,000 sheep, exported by Wellard on the *Ocean Drover*, which had delayed unloading in Bahrain on suspicion that some animals had the disease scabby mouth. The exporters did not wait for a final decision from the Bahrain authorities, but instead sought and were granted a rapid approval under ESCAS of a facility in Pakistan. The animals were then transported to Pakistan. It appears that the facility did not have quarantine approval from the Pakistani authorities. Moreover, neither the exporter nor the Department informed the Pakistani authorities that the shipment had been considered by the Bahraini authorities for rejection. The consequence was the sheep were brutally slaughtered in Pakistan. This represented a complete failure of the ESCAS system. A Wellard employee, third party information, who was centrally involved in this event, has been recently convicted of seeking to dishonestly influence a Commonwealth official as a forged document was used to expedite the diversion of the shipment to Pakistan.

VALE believes it inappropriate that this incident has not been fully reported by the Department nor even recognised as non-compliant with ESCAS. As a consequence, VALE doubts that the process of granting ESCAS approval has been scrutinised.

⁹ See: <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/information-exporters-industry/escas/escas-report>. Accessed 4 June 2018.

3. Failure to recognise and respond to the evident risk of heat stress on Middle East voyages

Appendix 7

The current inquiry was triggered by release of video footage obtained on board a voyage of the *Awassi Express* to the Middle East in August 2017. The extreme suffering and deaths depicted in that footage resulted from heat stress. This raises the question as to whether the Department was aware of the inevitable risks posed to the animals by heat stress (TOR 2, 7, 9).

Heat stress in the Middle Eastern summers was identified by the Keniry Review (2004). The Review recommended that 'exports should be banned in circumstances where the available evidence indicates that the risks of adverse outcomes are predictably high' and stated that 'this would mean the closure of ports such as Portland and Adelaide during those periods of the year when the risks are greatest'. (Recommendation 6). This recommendation was not implemented.

Seven years later, the Farmer Review (2011) recommended that a review of ASEL 'should inter alia examine the policy on export of sheep from southern ports to the Middle East in winter months, with a view to: mitigate feedlot and shipboard losses in adverse weather conditions; mitigate losses from heat stress and inanition during the voyage' (Recommendation 6). This recommendation was not implemented.

VALE also analysed heat stress in detail in 2013 and found that the Department had ample evidence of the risks posed by long haul sheep voyages during the Northern summer and had failed to take appropriate action to mitigate these risks. Firstly, the Department had begun publishing investigation reports into 'high mortality' voyages in which heat stress was identified as a cause of deaths. Those reports referred to a 'heat stress threshold' for adult Merino sheep of 30.6°C wet bulb temperature (WBT). There was no reference or explanation as to how the definition was derived.¹⁰ The reports also referred to a 'mortality limit', defined as 35.5°C WBT. Neither of these measures indicate how long the animals can be exposed to this level of temperature and humidity before adverse consequences occur and animal welfare is compromised. As early as July 2006, there was a report of nearly 1500 sheep dying mostly due to heat stress on a voyage to the Middle East.¹¹ That early report should have immediately raised alarm within the Department, because the WBTs reported were well below 30°C for most of the voyage, and were below that temperature when animals were still dying of heat stress in large numbers. This

¹⁰ On board WBT was reported as averaging between 16.4°C and 30.5°C during 181 live shipments from Australia to the Middle East (Norris RT, Richards RB 1989 Deaths in sheep exported by sea from Western Australia – analysis of ship Master's reports. *Aust Vet J* 66:97). It seems plausible that the HST of 30.6°C was not chosen on science or animal welfare grounds.

¹¹ High Mortality Voyage Report 7. The report is no longer available on the Department website, but is available at www.vale.org.au/high-mortality-voyages.html. Accessed 4 June 2018.

occurred despite the exporter complying with the 'Heat Stress Risk Assessment Model' referred to in ASEL. It was therefore apparent to VALE that the Heat Stress Risk Model was inadequate, and the 'thresholds' relating to heat stress and mortality were too high. In other words, the assessment of risk was flawed. Since 2009, there have been eight high mortality voyages to the Middle East, and every one has occurred in a period where extreme temperatures would be expected (that is, June to September). The Department did not take any action to address this serious issue. Moreover, it was clear from the reports that allocating more space to the animals during those high risk periods had no beneficial effect.

Secondly, a study sponsored by industry body Meat and Livestock Australia, carried out at Murdoch University School of Veterinary and Biomedical Sciences 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.¹² This clearly indicated that a more appropriate level for 'heat stress threshold' was 26°C to 28°C WBT, not the WBT of 30.6°C used by the Department.

Based on this study, VALE recognised an urgent need for a review of the physiology of thermoregulation, and its particular relevance to live export voyages. VALE undertook this review which was subsequently published in a major international veterinary journal.¹³ The review noted that panting was an important mechanism of evaporative heat loss in sheep, and that as humidity rose, evaporative heat loss diminish. However, as sheep panting increases, they expend energy and generate heat, thereby making it more difficult for them to maintain body temperature. The review concluded that in live export voyages during the northern summer 'there is a well-recognised risk of heat stress' and that the risk assessment model 'does not appropriately take into account the impact of high temperatures...' and 'does not allow sufficiently for the resultant severe heat stress'.

The heat stress review illustrated 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.

The AVA recently made an independent submission to the Minister of Agriculture in response to the McCarthy Review. The AVA submission reviewed factors impacting on animal welfare in shipments of sheep to the Middle East during the northern summer. The AVA report noted that historical data (from 2005) showed that the number of voyages with more than 1.5% mortality increased dramatically during northern summer months. Unsurprisingly, this large increase in mortalities

¹² Stockman, C. The physiological and behavioural responses of sheep exposed to heat load within intensive sheep industries. Doctor of Philosophy Thesis, Murdoch University, 2006.

¹³ Caulfield et al. 2014 (Appendix 7).

corresponded with increasing temperatures and humidity levels. This was also reflected in the Department's high mortality investigation reports. The AVA submission reviewed the high mortality investigation reports and concluded that where there was an accumulation of heat load in preceding days, a sudden increase in wet bulb temperature would result in high numbers of deaths. It also noted the statement made in an MLA publication associated with development of the heat stress risk assessment model that 'there is clear indication that the animal could be in trouble *even when alone* in the ambient conditions' (emphasis added). The AVA submission also noted that extreme WBT values would lead to an increase in drinking, which in turn would lead to increased urination, as well as an increase in humidity from respirations, all of which would turn the substantial amount of faeces and urine on the floor of sheep pens into a 'faecal bog'. When this occurs, it causes severe problems with animals becoming coated with faeces, or falling and unable to right themselves, resulting in more energy expenditure and heat generation.

This detailed information has been provided to illustrate that a logical conclusion regarding unavoidable heat stress was possible from historical data available to the Department in its own reports, in combination with information from scientific studies as summarised and analysed by both VALE and the AVA. The conclusion that should have been made is, as expressed in the AVA Report, that 'irrespective of stocking density, thermoregulatory physiology indicates that sheep on live export voyages to the Middle East during May to October will remain susceptible to heat stress and die due to the expected extreme climatic conditions during this time'. If the Department had indeed been aware of this, it should have taken action.

One of the most important questions is why, in all the voyages from 2005, when there was an AAV on board, was heat stress reported without reference to the severe animal suffering that must have been observed. There is now an inquiry, and serious public concern, because a Pakistani ship's officer made observations of extreme suffering which he felt obliged to record and report. The fact that he did not report this to his employers, the exporter, or the Department, indicates that he did not trust them to do anything to improve conditions. Onboard AAVs and stockpersons presumably have observed this severe animal welfare issue frequently during heat stress events, but have either not regarded it as significant or likewise did not trust the Department. The inaction again highlights the culture of these observers, the exporters who control the whole enterprise, and the Department which purportedly regulates the industry.

4. 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

Terms of Reference 9

4.1. The culture of the Department illustrated by communications with onboard veterinarians

Appendix 8

VALE is in possession of a document which notes the substance of a teleconference between [redacted] of the Department and AAVs on 17 April 2011. This provides evidence of the following serious cultural problems with the Department:

- There are clear indications that adverse publicity, and probably adverse reporting, is discouraged:
 - 'live exports is a sensitive industry; some things are better said and not written'.
- Exporters choosing from a very restricted pool of AAVs, while ignoring others. It does not seem unreasonable to suggest this is because exporters prefer AAVs who will not make adverse reports about negative animal welfare events during live export voyages. There is pressure not to write adverse reports, and anyone who does report adversely is not employed again:
 - 'The DAFF¹⁴ website lists 121 AAVs. Of these, our records show that 33 AAVs were nominated on 10 or more NOIs in 2011...';
 - 'the current system of exporters employing AAVs leads to conflict of interest...'
 - 'have personal experience of writing an End of Voyage report and being told "if you send that report, you will never work in the industry again"...'
 - 'it would be in the interests of DAFF, the AAVs and the live export industry, if the AAV system were made independent of the exporters to ensure that there can never be perception of a conflict of interest, and the AAV role is absolutely independent. Fundamental to this is that exporters should not choose the AAV for their livestock consignment – DAFF should nominate AAVs by a fair process out of the pool of qualified individuals that ensures accountability and lack of conflict of interest as would happen with any governance role...'
 - 'Any system is fundamentally flawed if the party being inspected chooses, then pays, and then decides, based partly upon content of the report, whether to re-employ the inspector or choose an alternative...'

¹⁴ DAFF was the official acronym for the Department at that time.

- 'there is a very real conflict of interest for shipboard AAVs being employed by exporters. Numerous AAVs' employment has been terminated by exporters because of critical final reports. This is not a perceived conflict as stated in the Farmer review but a real and constant conflict. There is no simple solution. If AAVs are employed by DAFF we become the export police, and there will be virtually no cooperation from exporters / ship's management...'
- 'with current levels of scrutiny of live exports, there is more intensity on the AAV. They need independence.'
- 'there is a degree of confusion over the role of the onboard AAV: independent observer, or employee of the exporter?'
- Animals are often loaded which should not have been loaded:
 - 'some sheep have been loaded that have severe diarrhoea, and should have been rejected';
 - 'sometimes see deficiencies in terms of sheep being loaded for export that should not';
- Reports are not taken seriously or responded to:
 - 'DAFF has accepted without question some questionable disease diagnoses. When a shipboard AAV did 1450 autopsies on a voyage, DAFF did not contact him to discuss. Now that reports come directly to DAFF, DAFF should read them'.

The statements made during this teleconference indicate that the Department has been aware of many of the issues pertinent to the latest footage since 2011. It also illustrates that the culture in the Department has been counterproductive with respect to communication from AAVs. The conflicted role of the AAV does not ever appear to have been addressed by the Department and the Department appears to have consistently supported the exporters rather than their own veterinary representatives on board ships.

4.2. The culture of the Department illustrated by communications with VALE

From the documents provided it is evident that the Department culture is to dismiss or ignore legitimate concerns by a recognised animal welfare stakeholder. Responses, if they are provided at all, rarely answer the questions raised. Serious issues of compliance and animal welfare identified by VALE have been ignored. Requests for information under the *Freedom of Information Act 1982* are frequently blocked, with the decision on all occasions except one being reversed when the decision was appealed.

In the last few years, VALE has restricted its requests to the Department on the grounds that such activity is unlikely to yield appropriate action. Serious veterinary and compliance issues are now directed directly to the Australian Chief Veterinary Officer (ACVO) as VALE has more confidence that such issues will be considered seriously and appropriately investigated.

4.3. The culture of the Department illustrated by the McCarthy Review

Appendix 9

The Chief Veterinary Officer (ACVO) is the primary representative of, and advisor to, the Australian Government on all matters relating to the maintenance and improvement of Australia's animal health status and the systems that support it. The ACVO also works to address major issues of national interest, including animal welfare.¹⁵ It is thus inexplicable why the ACVO was not chosen to review the welfare issues identified in the *Awassi Express* footage. The Department instead appointed a long-time exporter-employed veterinarian.

If the ACVO was not adequately qualified to conduct the review, then an independent veterinarian or team of veterinarians should have been appointed. The ACVO would be well aware that conflict of interest has to be acknowledged in any scientific publication because the issue of bias, unconscious or conscious, is universally recognised as an issue in scientific publications.

Recognition of potential bias was no doubt the basis for the misinformation provided by the Department to stakeholders regarding Dr McCarthy's suitability. Three stakeholders separately communicated with VALE asking if VALE had recommended Dr McCarthy as they had been assured by the Department that VALE had done so.

VALE wrote immediately to the ACVO (Appendix 9) and also to the Minister directly to a) clarify that VALE had not been approached by the Department for a recommendation and b) to report the apparent use of VALE's name to legitimise the Department's choice of a non-independent veterinarian for the review. The allegation was denied and VALE were referred by the Acting ACVO back to the Department.

CONCLUSION

VALE believes that the Department has failed to properly regulate the live export industry. Examples of its failure include not investigating or acting on issues of non-compliance with the law or issues identified by onboard veterinarians. In addition, the Department was either aware and did nothing, or was not aware of the obvious and longstanding problems with heat stress on Middle East voyages during the northern summer. We believe that these issues arise in large part because the Department

¹⁵ See <http://www.agriculture.gov.au/animal/health/acvo>. Accessed 4 June 2018.

has an unavoidable conflict of interest, namely that it sees its primary role as supporting, not regulating, the live export industry.

It is VALE's view that the only option is to remove the responsibility for oversight of the live export industry from the Department and set up an independent, statutorily-established body to regulate the industry. The first task of such a body should be, as a matter of urgency, to completely rewrite the relevant legislation, which is inadequate. This second task should be to immediately review the recommendations of all government reviews with respect to long haul voyages to the Middle East in the northern summer and implement the recommendations of the completely independent 2018 review by the AVA, Australia's peak veterinary body. Once this has been addressed, attention can then be concentrated on the broader welfare issues in live export and the active regulation of the live export industry.