



Implementation of Moss Review's Recommendations

Submission
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VETS AGAINST LIVE EXPORT
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Mr Ross Carter
Interim Inspector-General of Live Animal Exports
18 Marcus Clarke Street
CANBERRA ACT 2601

29th August 2020

Re: Implementation of the Moss Review's Recommendations

Dear Mr Carter

Thank you for your invitation to make a submission to this Review.

Vets Against Live Export (VALE) was established in 2011, following the revelations of serious cruelty inflicted on Australian animals exported to Indonesia. VALE currently has over 200 veterinarian members.

VALE provided a detailed submission to the Moss Review and VALE was referenced in the Review Report. VALE welcomes this opportunity to make a submission to the assessment of the implementation of the Moss Review recommendations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Foster', written in a cursive style.

Dr Sue Foster BVSc MVetClinStud FANZCVS
(Spokesperson)

Introduction

Subsequent to the Moss Review, the Department of Agriculture, Water and the Environment (DAWR) supported or supported in principle the 31 recommendations of the Moss Review and, as a result, has declared that it has focussed on:

- organising for a strong regulatory practice
- ensuring a transparent and well-engaged regulator
- delivering a regulator with the necessary skills and systems
- ensuring animal welfare is integral to its regulatory approach

These four factors will be analysed separately in this submission. Given the requirement for a succinct submission (3 pages), VALE has concentrated on two examples: the exemption of the MV *Al Kuwait* from the Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020 (Northern Summer Order) and cattle voyages to China. When these are combined with the difficulty in obtaining documents from DAWR, they provide irrefutable evidence that animal welfare is not prioritised by DAWR and that the criticisms and findings of the Moss Review are as relevant and ongoing in 2020 as when they were first released. VALE believes that an Independent Office of Animal Welfare must be established to ensure animal welfare is a priority and without a conflict of interest.

1. Organising for a strong regulatory practice

There is no evidence in the public domain that DAWR has a strong regulatory practice. No exporters have had any significant sanctions since the Moss Review despite major non-compliances with both ASEL and ESCAS. There is good evidence that the “regulator” does not have strong regulatory practice with respect to ASEL and voyage orders.

In June 2020, there was a request for exemption from the Northern Summer Order for the MV *Al Kuwait*. The Northern Summer Order was upheld by the Assistant Secretary, Live Animal Export, Ms Tina Hutchison.¹ The overturning of Ms Hutchinson’s decision at the request of the exporter by Deputy Secretary Mr David Hazlehurst² indicates that any regulations are entirely flexible and inadequate to protect Australian animals. Mr Hazlehurst’s reason for the exemption was as follows: “Overall, I gave weight to the financial and ongoing trade impact that a decision to refuse to grant the exemption would have on RETWA’s business operations and the interests of other entities and persons associated with it.... I had regard to the adverse impacts on industry, including for producers....” Trade was prioritised over animal welfare. The advice from the Australian Veterinary Association (AVA) was dismissed as being not representative of the public, which is quite true – the AVA is not a lay-organisation, it is an organisation made up of highly trained animal health professionals, whose opinion should have been given more than just “some weight” by Mr David Hazlehurst who is not a trained veterinary professional.

ASEL itself is an ineffective regulatory instrument in the hands of DAWR. ASEL non-compliance is evident in numerous Independent Observer (IO) summaries.³ In these summaries, DAWR often fails to acknowledge non-compliance with ASEL. When compliance issues are noted, there is often no indication that they have been discussed with the exporter.⁴ No ASEL breaches in any of the summaries have resulted in sanctions. The only sanction evident on High Mortality Reports (HMR)⁵ was the revoking of the licence of Emanuels Export, which was deftly handled by allowing its parent company RETWA to have a licence instead (just as Emanuels had been allowed to trade when RETWA had its licence revoked in 2003).⁶ The HMRs and the IO Reports detail repeated issues of non-compliance with no change to practices resulting and no exporter penalised or sanctioned.

ASEL has never been enforceable. It is notable that the Government withdrew proceedings against Emanuel Exports with respect to the ASEL infringements evident from the MV *Awassi Express* footage⁷: “Following careful consideration of all the available evidence in accordance with the Prosecution Policy of the Commonwealth, the CDDP concluded that it could not be satisfied that there were reasonable prospects of conviction of those alleged to have been involved.” Despite this obvious failure of legislation, DAWR refused to reassess the legislation and determined that redrafting ASEL with ‘more enforceable language’ would provide a better approach for the regulator and industry. They stated that “This approach will ensure that animal health and welfare requirements can be met while also allowing for a more flexible regulatory framework that can readily facilitate continuous improvements”. That “more flexible” regulation is most convenient for the exporters. This industry

continues to be essentially unregulated with no legal recourse possible even when the most shocking animal welfare incidents are exposed.

As per VALE's submission to the Moss Review⁸, VALE still recommends *"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."*

Contrary to DAWR assertions, it is very clear that DAWR has a weak to non-existent regulatory practice just as it did prior to the Moss Review.

2. Ensuring a transparent and well-engaged regulator

The regulator is predominantly engaged with exporters and the industry. The regulator's assertion regarding the Northern Summer Order exemption was *"I did not consider that granting an exemption two months after the Northern Summer Order commenced would, in and of itself, undermine public confidence in the regulatory framework, the Department's administration of that framework, and the live animal export industry"*. This statement incensed thousands of Australians and indicated that not only does the regulator not engage with the public, it would appear to have an absolute disconnect with the Australian public.

Regarding transparency, it is commendable that DAWR, at Minister Littleproud's direction, instituted an IO Program to ensure that there was some degree of "independent" monitoring on voyages. That most of the IOs were DAWR employees meant however that the process was not truly independent. Reports varied in quality and some displayed obvious bias. However, even with those limitations, the IO Program has provided significant information about the voyages that has never previously been possible. This is the only DAWR action that has provided some transparency but significant improvements are still required eg more consistent reporting, honest and accurate acknowledgement of non-compliance issues and greater transparency regarding action taken and outcomes.

VALE's extensive analysis of all IO Reports⁴ has demonstrated that DAWR repeatedly sanitises these reports. Welfare incidents are downplayed and, subsequent to the release of the first IO report (IO Report 10), references to "heat stress" appear to be actively avoided or minimised. There are repeated statements to the effect that *"this [welfare incident] had no impact on animal health and welfare"*. VALE was assured by Ms Hutchison that DAWR does not sanitise IO reports (Appendix A). VALE duly tried to obtain the original reports for two voyages in which there were a high number of such comments (IO Reports 197 and 201). Consistent with the ongoing lack of transparency by DAWR, VALE's multiple requests for the reports for these two voyages under the *Freedom of Information Act* (1982; FOI) have been repeatedly blocked.⁹ After two requests (first request refused), a total of 6 revisions and four months, VALE now has approval for a limited number of documents for IO Report 197 only. VALE is still awaiting the documents. In 8 years, VALE has never met with such protracted difficulties in obtaining voyage documents under FOI. Likewise, Sentient, another veterinary organisation, has also had a relatively straightforward FOI request refused. DAWR also no longer makes released "FOI" documents publicly available as was their practice from 2013 to 2017/2018.

The obstructive actions by DAWR and the failure to make released documents available to the Australian public are evidence that DAWR has no intention of being transparent. It is very obvious that apart from the IO program, there has been no improvement in DAWR transparency since the Moss Review. It is of concern that transparency actually appears to have diminished since the Moss Review.

3. Delivering a regulator with the necessary skills and systems

VALE is not able to directly assess whether DAWR has the necessary skills and systems. Despite being a professional organisation and a strong veterinary presence in the field of live export, VALE has never been included in any consultation processes. VALE can only comment from the perspective of a "member of the public" and as such, there is little evidence that the regulator has the necessary skills and systems.

The repetitive nature of welfare incidents on voyages to China and the Middle East would suggest that the regulator lacks skills, systems and capacity to prevent such incidents or regulate the trade. The China voyages show numerous and repeated animal welfare incidents. Analysis of just one of these issues, hunger (APPENDIX B), demonstrates that DAWR either has not had the ability to analyse the data or has failed to act on its analysis. Food shortages either due to insufficient food loaded or limited food access occurred on 11/37 voyages (30%). To have nearly 1/3 of voyages with animals experiencing hunger, often extreme hunger, with no changes to exporting requirements indicates that DAWR has no skills or systems in place to recognize or address poor animal welfare. Provision of food is basic animal husbandry. Failure of provision represents a serious animal welfare issue.

4. Ensuring animal welfare is integral to its regulatory approach

VALE's analyses of the IO reports⁴ reveal that breaches of ASEL and adverse animal welfare conditions occur repetitively with seemingly no action taken. However, the exemption of the Northern Summer Order for the MV *Al Kuwait* would again be the clearest indication that animal welfare is not integral to its regulatory approach.

The animal welfare consequences of this exemption were entirely predictable with the data provided by DAWR. All 33,341 sheep suffered heat stress. Unfortunately, IO Report 219 does not provide full details of the heat stress suffered. However, at the maximum wet bulb temperature of 32°C, using the government scoring system¹⁰ there were 3% sheep at score 4 (distressed), 12% at score 3 (extreme discomfort), 84% at score 2 (discomfort) and 1% at score 1 (Appendix C). Despite this the IO Report states "*The observer commented that no sheep were observed to be in severe heat stress or distress from heat during the voyage.*" Was this DAWR sanitisation or IO incompetence? Heat stress affecting 100% of sheep was predictable and avoidable had DAWR upheld the existing regulations. It is also notable that DAWR did not comment on the loading of late pregnant sheep (contrary to ASEL) or the fact that the close supervision guaranteed by David Hazlehurst to VALE (email correspondence) failed to remove them.

DAWR also makes no reference to the fact that this exporter has had other voyages with discrepant sheep numbers (IO Report 7 and HMR 65). The public is expected to believe that the mortality figure for the MV *Al Kuwait* is correct when 155 sheep are unaccounted for, but apparently not dead. DAWR consistently accepts exporter explanations of sheep discrepancies. It was only through VALE's interventions¹¹ that the Australian public was given the true mortality percentage of 4.36% sheep rather than the exporter (and thus DAWR) figure of 2.51% in HMR 65. This example was provided to Mr Moss and featured in the Moss Report. Yet, in the high-profile voyage of the MV *Al Kuwait*, DAWR again disregarded discrepant numbers without comment.

CONCLUSION

DAWR may have implemented some changes to their operations, such as the IO program and answering emails in a more timely fashion, but have made very little real progress. Most changes appear to be merely "cosmetic" seemingly aimed at improved acceptance (marketing strategy) rather than any real and positive shift in culture or capabilities.

Of great concern since the Moss Review, is that DAWR continuously promotes itself as an "independent regulator". This inaccuracy is also propagated by the Minister of Agriculture David Littleproud. DAWR is not and never has been independent. The main role of DAWR is, as it always has been, to promote the live export trade. DAWR prioritises trade over animal welfare, accommodates the exporters and fails to penalise exporters for non-compliance. The criticisms in the Moss Review remain unchanged and there is increasing evidence that DAWR is irrevocably conflicted. As such, VALE considers the Moss Review recommendations have not been instituted and that DAWR continues to operate largely unchanged. VALE believes that the only option to achieve transparency and accountability is for the regulator to operate from an Independent Office of Animal Welfare, separate from DAWR.

APPENDIX A: Email from VALE to Assistant Secretary Tina Hutchison and her response.

4 March 2020 VALE email

“Analysing the Independent Observer (IO) reports closely, it is very obvious that particular vessels, or particular areas in certain vessels have issues that are noted repetitively...For example, MV Yangtze Fortune has had repeated reports of water infrastructure issues such as clip on domestic hose fittings dislodging or breaking with leaks, flooding and lack of water delivery in addition to troughs being easily displaced due to shape with the issue resulting in food and/or water deprivation and spillage. MV Ocean Drover has some drainage issues and has had these historically also. MV Gloucester Express has had exhaust fumes noted in some areas. MV Al Shuwaikh has significant heat issues in selected parts of the vessel as do many other vessels, usually in the areas closest to the engine room (eg Decks 4 and 5 on MV Greyman Express and Deck 4 on the MV Rahmeh (renamed Gulf Livestock 1)). In addition, other management issues sometimes get reported repeatedly eg pilot sheep on the MV Maysora reported on a number of occasions to be deprived of food and water.

VALE could compile a list of these repetitive issues from the IO reports 2018 and 2019 but as you know, the IO reports available in the public domain are summarised, sanitised and variable in quality and quantity of data provided (eg even basic information such as maximum and minimum dry bulb temperature (DBT) are not routinely provided and maximum wet bulb temperature rarely; 11/35 available IO summaries for voyages to China have no maximum DBT or humidity provided and 21/35 have no minimum DBT provided - an issue for northern winter Chine voyages). Any compilation we did would thus be incomplete and would fail to capture all available data. The Dept is far better placed to accurately analyse which decks or pens are an issue for each ship and also which ships are repetitively problematic. The fact that some stand out even on the scarce data available eg the MV Yangtze Fortune is concerning and we believe all IO reports (original reports and summaries) from this vessel should be immediately analysed and forwarded to AMSA for assessment....”

5 March 2020 Response

“Hi Sue

Thank you for your email. We are aware of the issues with the vessels as identified by the independent observers, and work closely with AMSA on matters that cross over into their responsibilities. The department is analysing the information obtained through IO reports, as you suggest. I would note that I don't agree with your characterisation that IO reports are sanitised.

The department is continuing to work on the IO program, including consistency of information capture and reporting, with temperature recording and reporting being an example of one area of focus. Thank you for your suggested approach to managing issues such as ventilation, hot spots and drainage - there are a number of ways we follow up on these issues; directly with specific exporters, generally with all exporters and with AMSA and vessel operators. There are multiple ways some of these issues can be addressed, and the department follows up with targeted observations to review any strategies put in place.

As I mentioned, we continue to work on both the program and our reporting on the program, and will continue to utilise the information gained from IO observations in policy review and development of standards for the regulation of the industry.

Regards, Tina”

APPENDIX B: Detailed examples of food deprivation on voyages to China

DAWR's feed contingencies do not appear to be sufficient to safeguard against food deprivation. ASEL specifies that there must be sufficient feed on the ship to meet anticipated needs of the cattle during the voyage plus an additional 20% or 3 days feed, whichever is less. Yet, it is not uncommon for live cattle export voyages from Australia to China to run 4 to 9 days longer than anticipated (eg IO 12, 17, 40, 55 and 182).

We have provided a number of examples of food deprivation below. Despite clear evidence of hungry, underfed animals on multiple voyages, DAWR appears to have consistently concluded that failure to provide sufficient feed to cattle (including pregnant heifers), did not result in poor health outcomes. There was no indication that DAWR recognised the welfare issues of inadequate food (basic animal husbandry) or addressed them. Adverse impact was only specifically noted on one of these voyages (IO Report 55). Even in the absence of grossly observable clinical signs, feed deprivation is associated with stress and functional impairment especially when combined with transportation. The absence of a feeling of satiety also represents the absence of a very basic positive affective state that should reasonably be accommodated in any routine livestock husbandry system and is also an expectation of OIE.

Evidence of food deprivation

IO Report 182; MV *Ocean Ute* (September 2019) carrying 4593 breeding heifers to Weifang had concerns *"part way through the voyage that there would not be sufficient fodder...between day 10-17, the feed rate was reduced to 1.6-2.1% of body weight, which was well below the ASEL mandated rate"*.

IO Report 11; MV *Yangtze Fortune* (July 2018) experienced food shortages and limited food access (amongst other stressors). The voyage lasted 20 days but only 16 days of fodder was loaded. In the HMR (HMR 74), DAWR reported that the cattle on board this voyage were only able to consume on average 11kg of fodder per head per day. The average weight of cattle on board was 597kg. According to ASEL, these cattle should have been fed a minimum of 23.88kg DM per head per day, over double that which they were fed.

IO Report 201: MV *Yangtze Fortune* (November 2019) bound for Qin Zhou. Such was the hunger amongst the 4165 cattle on board that *"most food troughs were observed licked clean...[and] cattle [were] jostling and competing for pellets"*. During the first week of the voyage, the cattle received "on average, 1-1.5kg of feed per head below ASEL requirements". DAWR reportedly addressed the breach *"to ensure cattle are fed to their requirements"* but just a month later, the situation was repeated (IO Report 210).

IO Report 210; MV *Yangtze Fortune* (December 2019); 4657 cattle bound for Huanghua exhibited *"considerable clamour for access to feed...cattle were frequently observed bullying [and] feed troughs were licked clean"*. The IO stated that *"feeding rates did not meet ASEL requirements for cattle in the first 6 days of the voyage" and feed provided to pregnant cattle "was below ASEL requirements for the duration of the voyage"*. No explanation was provided as to why this was allowed to occur, particularly by the same exporter, on the same vessel, just a month after the IO 201 voyage.

IO Report 94: MV *Ocean Swagman* (March 2019) carrying 5012 cattle to Tianjin. Pens were described as *"too deep for the number of cattle in these pens, not all cattle were able to access sufficient fodder. It was observed that, on average, 14 cattle per pen (approximately 50%) were waiting their turn to feed. When they finally got to the trough, there was usually nothing left"*. The IO reported that staff responded to this issue by *"removing skinny and weak cattle"*. There is no explanation as to why "skinny and weak cattle" were even loaded (contrary to ASEL with ASEL non-compliance not noted) or mixed with other classes of cattle leading to indirect causes of hunger. As explained in another IO report (IO Report 166) when *"cattle of a wide range of body weight were penned together...[this] can lead to stocking density irregularities, and smaller animals potentially missing out on trough access"*.

IO Report 55: MV *Shorthorn Express* (December 2018/January 2019). The 3234 cattle shipped to Jintang suffered severe food deprivation. The IO reported, *"some pens not being fed ASEL required"*

levels for between 5 and 13 days of the voyage...[there was] competition for access to feed troughs...trampling...[and] very little feed was available from late Day 19 [of the 22 day voyage] as the fodder supplies had been almost exhausted". The regulator absolved the exporter of responsibility stating that failure to provide sufficient food was "*outside the control of the exporter*". While the vessel in question was reported to have encountered difficulties, the IO also describes mismanagement of feed supplies: "*the method used for estimating remaining pelleted feed in the silos was considered unreliable...the CO and livestock crew did not manage feed distribution well. Despite concern from day two that feed supply might need to be rationed...fodder was not managed*". In addition, the vessel diverted on Day 16 to take additional fuel and water yet there is no mention of any effort to load further feed supplies even though food shortages were evident from day two. It seems inconceivable that failure to provide adequate food should be deemed outside the control of the exporter.

APPENDIX C Heat Stress on the MV Al Kuwait voyage June 2020

TABLE: Number of sheep suffering heat stress tabulated against the Australian Government Scoring (EAN 2018-11)*

Heat Stress Score	Number of Sheep	Respiratory Character	Appearance or Demeanour
0	0	Normal	Normal
1	333 (1%)	Increased RR	Normal
2	28006 (84%)	Rapid RR	Discomfort
3	4000 (12%)	Laboured	Extreme discomfort
4	1000 (3%)	Extremely laboured	Distressed

*See: <https://www.agriculture.gov.au/export/controlled-goods/live-animals/advisory-notice/2018/2018-11> Accessed 26th August 2020

References

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10. See: <https://www.agriculture.gov.au/export/controlled-goods/live-animals/advisory-notices/2018/2018-11> Accessed 26th August 2020
11. See VALE correspondence with Mark Schipp and DAWR in February and April 2018; <http://www.vale.org.au/gov-correspondence.html> Accessed 26th August 2020