AUSTRALIAN LIVESTOCK EXPORTERS COUNCIL

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Ms Eunice Chuah
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Department of Agriculture, Fisheries and Forestry

via email: eunice.chuah@aff.gov.au

Dear Ms Chuah

The Australian Livestock Exporters' Council (ALEC) is a member-based, peak industry body representing Australia's livestock export sector which contributes over $1 billion in export earnings annually while employing 13,000 mainly regional Australians. ALEC provides strategic direction to the industry, sets industry policy and represents Australia's livestock export trade in Australia and internationally.

ALEC members account for more than 96 per cent of Australia's annual livestock exports, by volume and value. ALEC's membership also extends to supply chain participants including registered premise operators, ship owners, feed suppliers and other service providers to the trade. ALEC therefore appreciates the opportunity to make a submission to the review of the Exporter Supply Chain Assurance System (ESCAS).

Introduction

Several piecemeal, ad hoc reviews of ESCAS have occurred since 2011, but there has not been a full scale, comprehensive review since its inception. ALEC welcome the current review as a substantial opportunity, both to highlight the beneficial aspects of ESCAS that should be retained and raise issues with the current framework that industry believes need to change.

The first question that must be answered when assessing the current state of ESCAS, is: "What are the objectives of ESCAS?" The discussion paper does not directly address this question and therefore, it is difficult to assess the issues raised in it.

Fundamentally, ESCAS is a regulatory system that places the onus on Australian exporters of feeder and slaughter livestock to ensure minimum standards of welfare, control and traceability throughout the supply chain verified by independent auditing. The purpose of the system is to promote animal welfare up to the point of slaughter that give the community confidence and, ultimately, facilitate the live export trade.

The goal of any assurance system should be weighted towards a continuous improvement. A framework that promotes transparency and openly addressing any issues within the supply chain should be prioritised over the current system of attribution of fault and public 'naming and shaming'.

The next question to be answered is: "What roles do the following parties play in delivering the objectives of ESCAS:

- The Department of Agriculture, Fisheries and Forestry (DAFF, as the regulator)?
- Exporters?
- Facility operators in-market?
- Third party providers of assurance (including auditors)?"

The original vision for ESCAS was for the regulator to set requirements for welfare, control and traceability, tightly inked to international standards, with exporters and facility operators in-market working together to develop and implement policies, procedures and training to ensure the requirements are met on a continual basis. The outcomes and effectiveness of the policies and procedures was to be verified by independent auditors.

How has ESCAS performed in meeting its objectives?

On the first criteria, ESCAS has performed well in improving animal welfare, control, and traceability in-market. As the Inspector-General of Live Animal Exports, Mr Ross Carter, noted in-market improvements in animal welfare practices, control and traceability in his 2021 review of ESCAS:

> *"This is evident by the increased number of ESCAS-approved facilities. When ESCAS was implemented in 2012 there were around 300 abattoirs and feedlots included in the scheme. By 2014 this had increased to 866 facilities. In 2021 there were 1,152 ESCAS-approved facilities (717 abattoirs and 435 feedlots). Although improvements have been made predominantly at facilities in exporter supply chains, it is understood that in some instances ESCAS has also resulted in improved practices in importing countries."*[1]

ESCAS was modelled to be an assurance system where exporters were to have processes in place to address nonconformance under a Plan-Do-Check-Act loop methodology. Such a system anticipates there will be nonconformance and focuses on continuous improvement.

ESCAS should create a culture where nonconformance (or noncompliance in regulatory terms) is rapidly identified, swift corrective action is undertaken, and preventative measures are developed and implemented to eliminate or mitigate future occurrences. Such a system needs clear incentives for all parties to do the right thing (both positive and negative) – it also requires an explicit statement of expectations from the regulator, accompanied by a well-defined risk appetite and tolerance.

The key point is that the regulator should set the outcomes required, clearly state expectations for compliance and the risk appetite, while exporters develop and implement the assurance systems and processes to meet those requirements. Auditors should play a role in identifying noncompliance and verifying corrective/preventative actions.

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[1] https://www.iglae.gov.au/sites/default/files/2022-11/escas-report-22.pdf (see p.12)

This is not what we have today. Under the current policy settings, any noncompliance with the ESCAS Standards is considered a "breach". The primary focus of the regulator appears to be determining the number of noncompliances, attribution of fault and taking compliance action to punish noncompliant exporters, including public reporting to name and shame 'guilty' exporters. A supply chain can have the ESCAS approval temporarily or permanently suspended, which ultimately renders any assurance efforts ineffective and redundant. A big stick approach is taken with compulsion on exporters to report noncompliances. These system attributes create perverse incentives, both for exporters and facility operators, by reducing the incentive to self-report and it reduces the effectiveness of auditors and independent auditing.

Making exporters responsible for control throughout the supply chain up to the point of slaughter, through a prescriptive regulatory framework, rather than an outcomes-based set of requirements, supplemented through assurance systems, is a recipe for failure. Yet this is the direction ESCAS has slowly headed since its inception.

It goes beyond the Australian Government's legal authority and does not recognise the realities of transfer of ownership of livestock in the supply chain. The more transactions that take place, the harder it is for exporters to implement risk control measures and ensure full traceability up to the point of slaughter.

ESCAS has also had an impact on the competitiveness of the industry, although the data to assess that impact is limited. This has manifested in different supply chains in different ways.

Meat and Livestock Australia (MLA), at ALEC's request, provided an analysis of impact on relative prices between live cattle and boxed beef exported from Australia to Indonesia. Data limitations prevented analysis of other markets. Nevertheless, the analysis serves to highlight some general trends. According to MLA:

> *"What the data clearly shows (Figure 1) is that after the introduction of ESCAS in 2012, the export price of cattle rises far faster than boxed exports, and the price does not fall as supply improves in the same way that we see in boxed exports.*
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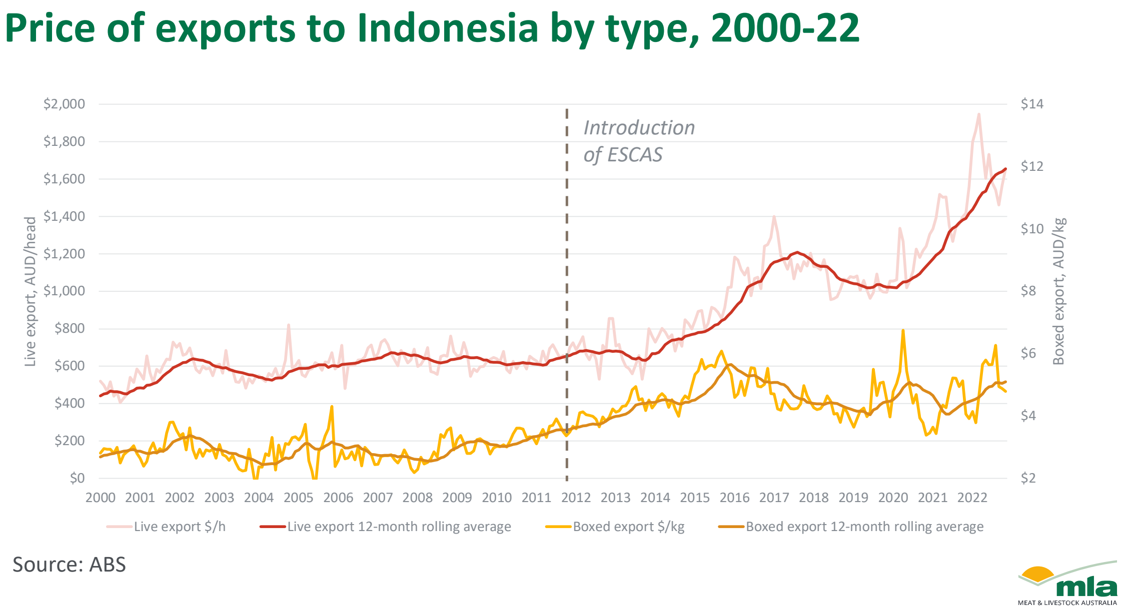
> *Between 2000 and 2010, the unit price for boxed exports rises by 16% to $4.33/kg, while the live export price rises by 27% to $613/head. By comparison, between 2012 and the first 11 months of 2022, the unit price for boxed exports rises by 31% to $5.20/kg, while the live export price rises by 146% to $1,668/head. This means that in the 2000's price movements were broadly comparable between the two, while in the 2010's live export prices rose four times faster."*[2]

[2] Meat and Livestock Australia, email correspondence between Mr R. Atkinson (Senior Market Information Analyst, MLA) and Mr S. Kompo-Harms (Deputy CEO, ALEC), 7 February 2023. MLA were asked to provide some data on the effect of the implementation of ESCAS. MLA selected the indicators, time periods and markets to analyse. MLA concluded that trade data from Vietnam and the Middle East and North Africa (MENA) region were not robust enough over a sufficient time span to draw any firm conclusions.

Figure 1: Relative prices, live cattle vs boxed beef, Indonesia, 2000 to 2022



In the Middle East, which is made up of several different sheep-importing countries with markets of varying size, the introduction of ESCAS saw substantial loss of Australian market share. These countries play different roles in the supply chain – the relationships are complex and the interrelated markets operate very differently to other parts of the world. The downturn in volumes of live sheep imported from Australia has been picked up by other countries – the demand has not disappeared. The primary driver was the inability for many middle tier customers that make up the traditional sales and distribution networks to comply with ESCAS requirements. This has meant Australia has effectively been shut out of a considerable portion of the trade and sheep have been sourced from elsewhere with no comparable animal welfare safeguards, including Europe and Africa.

Critically, even though the prices of live exports have risen relative to boxed meat, livestock imports remain a vital part of many trading partners' food security strategies. Many countries have accepted ESCAS as the price of doing business with Australia, but we have seen other countries increase their market share of livestock imports. DAFF must bear this in mind as part of this review and act to cease this preventable trend.

Exporters and their staff are proud of their role in improving animal welfare abroad and several exporters devote significant human, physical and financial resources to training and improving facilities in-market. This improvement cannot occur through Australian Government regulation alone. It can only be delivered by exporters that have the ongoing relationships with their customers throughout the supply chain. If exporters were not committed to practical animal welfare improvements abroad and were solely motivated by profit, they would simply cease trading out of Australia and either source livestock from other countries or exit the industry altogether. Therefore, adding compliance costs and regulatory burden only serves to make delivering animal welfare outcomes harder and ultimately worsens them globally.

What does industry need?

ALEC's view is that the regulatory framework has grown over time and strayed into the domain of quality assurance. This is driven by DAFF's risk-averse regulatory culture and lack of adherence to good regulatory governance and structures. Changes over time have been introduced through instruments such as export licence conditions that do not expire or Export Advisory Notices (EANs), with little or no consultation and no oversight through, or accountability to, the Parliament. Without a hint of irony, this has, to date, crowded out the private sector from providing commercial solutions to the limitations faced by the Australian Government.

This review is an opportunity to undo some of the regulatory creep beyond the original scope of ESCAS. It is imperative that this opportunity is grasped, and more importantly, the causes and mechanisms that allowed it to happen are curtailed. Therefore, the first and most important priority, from an industry point of view, is for DAFF to develop a more accountable hierarchy of regulatory instruments that removes the ability to make unilateral, discretionary changes to the framework without adequate analysis of the potential impacts and consultation with affected parties. It will also ensure DAFF does not exceed its legislative and regulatory authority.

Importantly, these changes will not prevent DAFF from reviewing and adapting the system in future. It will merely mean that DAFF will need to carefully consider options, present evidence and analysis that proposed changes will produce animal welfare benefits that justify the costs and consult before making changes. DAFF needs to clearly define:

- the regulatory objectives for ESCAS.
- the roles and responsibilities of each party – DAFF, exporters, and auditors,
- to undo some of the regulatory creep beyond the original scope of ESCAS.

Table 1 below adapts a table from the IGLAE review report and specifies ALEC's view of those roles and responsibilities.[3] The main feature to note is that ALEC sees a greater role for exporters and auditors in managing noncompliance, coupled with a new compliance posture from DAFF which better balances encouragement of good behaviour with discouraging bad behaviour.

Another critical element of this will be updating the Guideline and incorporating all material used for regulatory purposes, currently in EANs. This requires more than just tweaking. DAFF needs to start from scratch and develop a new Guideline which, read in conjunction with the Act and the Rules, will be the primary mechanism to implement ESCAS. There are some features which are worth retaining. Specifically, the categories of noncompliance (minor, major and critical). At a minimum, the Guideline must also incorporate the material in EAN 2018-01 (and attachments – most importantly, attachment B).

The intent should be to include all requirements to comply and the accompanying guidance material for both exporters and auditors. DAFF should clarify the status of ESCAS requirements to meet the WOAH standards, the evidence of compliance (ways to meet the requirements) and auditor guidance (methods, processes and systems auditors should verify).

EANs should only be used a communication tool – they should not be de facto regulatory instruments nor used for compliance purposes. The Guideline should also be comprehensive and flexible enough for DAFF to avoid using additional licence conditions as primary regulatory instrument. Additional licence conditions should only be used in exceptional circumstances and they should be subject to a sunsetting provision incorporated into the *Export Control (Animals) Rules 2021* (or some similar instrument). That is, the Rules should specify that DAFF is only able to apply additional ESCAS-related conditions on an exporter's licence as a temporary (time-limited) measure to deal with exceptional circumstances. The conditions should automatically expire, with limited grounds to extend them.

The second critical priority for industry is to develop a new compliance framework self-contained within a new Guideline. The discussion paper does cover some of these issues in chapter 3 (Noncompliance management). In addition to developing a new Guideline, the new compliance framework would also require some changes to other departmental policies and guidelines – such as DAFF's Stakeholder Engagement and Communication Policy

[3] https://www.iglae.gov.au/sites/default/files/2022-11/escas-report-22.pdf (see p.15)

Table 1: Roles and responsibilities in ESCAS

Category	Task	Current responsibility	Responsibility - ALEC view
ESCAS Application	Independent initial audit report	Auditor	Auditor
	Control and traceability declarations	Exporter	Exporter
	Variations to ESCAS	DAFF; exporter	DAFF; exporter
	Assess ESCAS application	DAFF	DAFF
	Approve ESCAS with conditions	DAFF	DAFF
	Refuse to approve ESCAS application	DAFF	DAFF
Importing country	Maintain animal welfare standards in ESCAS	Exporter	Exporter
	Control of livestock in ESCAS	Exporter	Exporter
	Ensure all cattle and buffalo are traceable and sheep/goats are accounted for in ESCAS	Exporter	Exporter
Audit and reporting	Independent performance audit report	Auditor	Auditor
	Report non-compliance to DAFF	Auditor; third party; expor	Auditor; third party; exporter
	End-of-process report	Exporter	Exporter
Non-compliance	Act on non-compliance report	DAFF; exporter	MINOR/MAJOR: Auditor, third party or exporter identifies; Auditor or exporter classifies; Exporter reports to DAFF and takes corrective action; auditor verifies and closes out within defined timeframe or escalates to DAFF CRITICAL: Auditor, third party or exporter identifies and records; DAFF investigates; exporter takes corrective action; DAFF takes compliance action; DAFF applies penalties, sanctions and applies additional surveillance
	Assess and investigate non-compliance	DAFF	MINOR/MAJOR: Auditor and exporter assess and report to DAFF CRITICAL: DAFF investigates
	Provide evidence of non-compliance to DAFF	Third party; exporter	MINOR/MAJOR: Auditor, third party or exporter identifies; Auditor and exporter record CRITICAL: Auditor, third party or exporter identifies and reports to DAFF; Auditor and exporter record
	Manage incidents	Exporter	
	Regulate non-compliance	DAFF	DAFF should set the compliance framework, including categories of severity, administrative actions, sanctions and penalties; Exporter takes corrective action and implements effective controls; DAFF applies administrative actions, sanctions and penalties
	Publish non-compliance report	DAFF	MINOR/MAJOR: DAFF should only report aggregated numbers of major and minor noncompliances based on the number or events (not the number of livestock involved - this should contribute to severity); CRITICAL: DAFF should publish investigative report with appropriate steps to taken to protect privacy of individuals

ALEC believes that the critical priorities for a new compliance framework are:

- The regulator should structure the compliance framework in the following way:
    - A broad framework, including provisions to internally and externally review regulatory decisions, laid out in the *Export Control (Animals) Rules 2021*, including regulatory objectives.
    - Detail outlined in a standalone instrument – that is, it should be a single Guideline, without the need to be supplemented with licence conditions or other instruments, except in exceptional circumstances.
    - The Guideline should specify the regulatory risk appetite and tolerances.
- Retention of categories (minor, major and critical noncompliances) with greater clarity around categorisation of noncompliances into each category.
- The number of noncompliances should relate to the number of events, not the number of livestock involved – instances where multiple head of livestock are involved should instead affect the severity of the noncompliance.
- A greater role for auditors to identify, and verify rectification and closure of, noncompliances – with appropriate reporting to DAFF as the regulator – industry needs greater clarity from DAFF on expectations.
- Moving away from a risk-averse compliance culture with a focus on naming, shaming and punishing exporters for each and every noncompliance, no matter the severity.
- Shifting towards a compliance framework and regulator posture that rewards responsible behaviour, with better incentives to self-report and swiftly rectify noncompliances.
- Recognising that exporters are responsible for quality assurance and internal control systems.
- Recognising the valuable role auditors, third party providers of assurance and exporters play in ensuring compliance (and rectifying noncompliance) on an ongoing basis.
- Recognising that 100 per cent compliance at every point in time is an unrealistic goal that creates incentives not to report and rectify minor noncompliances - instead DAFF should seek to minimise periods of noncompliance and prioritise rapid return to compliance before they escalate to major or critical noncompliances.
- Ensuring DAFF is accountable for its decisions through an internal and external review process for compliance decisions and actions.
- Building in a framework that places explicit responsibility on external parties that submit complaints and evidence of noncompliances - DAFF should:
    - develop a standard complaints form template.
    - set criteria that the complaint must be credible and supported by objective evidence.

    - incorporate whistle blower protections.
    - disincentivise activist groups from using the complaints process in a vexatious manner, by excluding them from animal welfare related consultation forums if they make spurious or deliberately misleading complaints of noncompliance.
- Protecting the privacy of exporters in accordance with the *Privacy Act 1988.*
- Establishing a notification process whereby DAFF informs all relevant exporters in a supply chain of the nature of other noncompliances within their supply chains so they can take preventative action.

Conclusion

In summary, many of the issues that arise with ESCAS today come from the use of inappropriate regulatory instruments and DAFF using discretion without accountability or consultation with industry to make changes to ESCAS.

The importance of ESCAS being an outcomes-based set of minimum requirements tightly linked to WOAH standards, as originally conceived in 2012, cannot be understated. Exporters must have the ability to develop their own systems and processes to meet animal welfare, control and traceability requirements either internally or through commercial third-party providers. It will create room in the market for third party providers of assurance to develop commercial solutions to enable exporters to meet their requirements.

The voluntary nature of assurance systems in market have the potential to overcome many of the constraints on the Australian Government's ability to regulate extraterritorially and to monitor compliance overseas. Prescriptive ESCAS requirements only serve to crowd out these solutions and freeze Australian exporters out of supply chains overseas without generating animal welfare improvements globally.

The compliance framework is confusing and currently has poor incentives built into it. There are substantial opportunities to improve it, based on other models, such as AniMark's Livestock Global Assurance Program (LGAP) nonconformance framework.

Greater alignment between the LGAP and ESCAS frameworks will provide better incentives to exporters, address some of the limitations inherent in the regulatory framework and ensure responsibility for compliance and quality assurance rests with exporters and facilities in-market, backed by robust verification from auditors and third party providers of assurance.

An improved compliance framework, with a greater role for auditors overseeing corrective action and closing out lower-level noncompliances will encourage a greater pool of auditors to develop skills, expertise and capability in providing these services. In time, this would deliver greater competition and economies of scale, lowering fees. It would also enable a greater degree of auditor rotation and would enable DAFF as the regulator to focus its efforts on more serious noncompliances.

ALEC believes this review is the best opportunity to reshape ESCAS into the framework that was originally intended, with a structure and objectives that are fit-for-purpose and will provide industry, the regulator and the community with greater confidence in the live export trade going forward.

Thank you for the opportunity to provide a submission to the technical review of ESCAS. ALEC would welcome the opportunity to discuss the issues, concerns and recommendations raised in this submission with you and your team. Please do not hesitate to contact ALEC Deputy CEO, Mr Scott Kompo-Harms at deputyceo@livexcouncil.com.au or on 0449 839 725 should you wish to discuss further.

Yours Sincerely

Mark Harvey Sutton
Chief Executive Officer
Australian Livestock Exporters Council