21 August 2020

Ann McDonald
Department of Agriculture, Water and the Environment
GPO Box 858
Canberra ACT 2601

By email: exportlegislation@agriculture.gov.au

Dear Ms McDonald

Re: Draft Export Control (Animals) Rules 2020

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. As an export industry, ALEC appreciates the opportunity provided by the Department of Agriculture, Water and the Environment (DAWE) to comment on the draft *Export Control (Animals) Rules 2020* (the Rules) provisions.

As a sector, the livestock export industry is one of the few in agriculture that is 100 percent exposed to the export market, and therefore 100 percent exposed to its regulation. Overall, the livestock export industry (industry) is concerned with the significant increase in regulatory burden, particularly when advised by DAWE that regulatory burden on transition would remain static. New requirements contained in the Rules, detailed later in this submission, will require significant time and resources by industry to meet. In all cases, there is little or no discernible benefit for doing this.

Unnecessary increases in regulatory burden, on top of the >$40m increase in regulatory burden soon to be experienced by the sector with the implementation of the Australian Standards for the export of livestock (ASEL) 3.0 on 1 November 2020, will have a significant impact on the commerciality of parts of the sector. Particularly considering the industry runs on incredibly tight margins and exporters bear considerable financial risk with each shipment. Consequently, poor, unfair and unnecessary regulatory outcomes only heighten that financial risk which may be an inhibitor to trade.

Such an approach does not reflect the critical importance of the industry to the broader livestock production sector. An industry that was valued at $1.8 billion in 2018-19, representing approximately 10% of all red meat export receipts.

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Chapter 1
Part 2 – General

1-6 Definitions – agriculture regulator

- This definition clearly defines that the agriculture regulators are responsible for health and welfare and regulation of agricultural production in relation to live animals. However, there is no mention of the responsibility to certify against importing country requirements or other trade facilitation roles, which is inconsistent with the Objects of the *Export Control Act 2020* (the Act). The continual singular focus on health and welfare, while vitally important, overshadows the regulator's ability to deliver these other fundamental core duties. Industry is extremely committed to delivering good animal welfare outcomes, but it is also essential to ensure all objects of the Act are addressed in a balanced way so that the industry is viable into the future. This definition therefore requires amendment to better encompass the agricultural regulator's responsibilities.

- Presuming the agriculture regulator is responsible for producing the property of origin certification (a trade facilitation function), a definition for the period of validity of this certification needs to be incorporated. It is currently undefined and lacks clarity.

1-6 Definitions – heat stress management plan

- The definition is unnecessarily species specific.

1-6 Definitions – holder

- This definition appears to be introducing the formal concept of a license holder. This raises a number of issues:
    (1) Can a body corporate be a license holder as was previously the case?
    (2) Who is ultimately responsible for compliance with the requirements of the Act and the Rules, the holder or the directors of a company, the partners of a partnership, etc.?
    (3) How should communications between the regulator and the licence holder be structured?

1-6 Definitions – livestock

- It is unclear why pigs and horses are excluded from the definition of livestock as they are not by any definition companion animals. It appears DAWE have so far missed an opportunity to further streamline export legislation and have all exported livestock regulated under the same Rules.

Chapter 2 – Exporting goods
Part 1 – Goods

2-3 Export of prescribed livestock is prohibited unless prescribed conditions are complied with

- The *approved arrangement held by the exporter* relates to activities undertaken prior to, during and after departure from the registered establishment. It is not just confined to activities at the registered establishment. This should be reflected in s2-3 1(c) & 2-3 2 (c).

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- The Approved Export Programs (s2-3 (4)) were originally and sensibly part of the Approved Arrangement. Industry was, however, directed to remove them from the Approved Arrangement and create a separate document and processes following the DAWE's subsequently re-interpretation of relevant legislation. The drafting of this new legislation was a great opportunity to address this wasteful duplicative process, which appears to have been missed. Also refer to comments on Part 4 – Approved export programs.

Part 3 – Government certificates

2-13 Application of this Division

- It is unclear whether this section relates to Export Permits, Health Certificates, or both. If it relates to both, it needs to reference these documents and specify a consistent validity period.

2-20 Application for new government certificate if original government certificate is revoked

- Presumably, this section would only be enacted if an export destination detail were to change mid-voyage and not simply at the discretion of DAWE. Clarification is therefore required on why an original government certificate would be revoked and when this section could or would be enacted.

Chapter 4 – Registered establishments

- Clearly identifying whether the registration of a registered establishment relates to the property, or the person would be beneficial as it is currently very unclear.

Part 2 – Requirements for registration and other matters

4-2 Matters relating to construction, equipment and facilities

- These matters are addressed in subordinate instruments, such as ASEL. Reproducing within the Rules when they are already cited in subordinate instruments is non-sensical, unnecessary and makes any changes or amendments to details difficult if they are 'locked in' to higher level instruments.

Part 4 – Renewal of registration

4-10 Period within which application to renew registration must be made

- Noting the time limitations on the occupier for lodging the renewal of registration of an establishment and s4-17 and s4-18 define the initial consideration period and the maximum period for an application to be submitted, incorporating a defined remedy for any delay in meeting these prescribed timelines is necessary.
- It is unclear whether the timeframes referred to in this section relate to 'working days' or 'calendar days'. This is important as an industry definition of 'working days' is vastly different to that of the regulator.
- The impact to timeframes when further information is requested in relation to an application must be defined. Currently, timeframes either continue uninterrupted, paused while the additional

information is provided, or reset by the regulator using subjective justification. Clarification will improve the consistency and predictability of the regulator actions.

Part 6 – Suspension of registration

4-14 Other grounds for suspension

- s4-14 (3) lacks a definition or explanation on how animal welfare is to be measured. Animal welfare as a ground for regulatory action is repeated throughout the Rules and a definition is required. Presumably, compliance with ASEL would provide sufficient evidence that animal welfare requirements have been met. This also applies to s4-15.

Part 8 – Matters relating to applications

4-17 Initial consideration period

- The timelines in this section are extra ordinarily long. DAWE is adequately staffed to perform better than this. *EAN 2019-02 Livestock client service standards* states 'it will assess and make a decision on the application within 40 business days of receipt' which is a more appropriate performance level. Amendment necessary. This also applies to s5-8 & s6-29.

Chapter 5 – Approved Arrangements

Part 1 – Requirements for approval

5-1 Other requirements for approval

- Clarity is required to better define where the reference to section 3 of the Act in s5-1 (3)(a) pertains to, as it is currently unclear.
- Approved Arrangements covers up to point of disembarkation, not up to the point of final delivery as is currently described in s5-1 (4)(b). This is covered by the Export Supply Chain Assurance System (ESCAS) for feeder and slaughter livestock. Further, s5-1 (5) requires an approved arrangement to address ASEL requirements. The ASEL 3.0 introduction states that "….ASEL sets out the minimum animal health and welfare requirements the livestock export industry must meet throughout the supply chain, from sourcing to completion of disembarkation overseas." It makes no reference to 'delivery of livestock to their final destination'.
- Throughout the rules, it is contingent for applicant to have an approved arrangement to have an export licence. This also applies for an approved ESCAS where you need an export licence to have an approved ESCAS but to have an approved ESCAS you need an export licence. Clarity is required regarding the proposed order applications and approvals are to be sought and granted.

Part 2 – Conditions of approved arrangement

5-3 Information for occupier of registered establishment where prescribed livestock are to be prepared for export by sea or air

- It is not currently the case and unreasonable to require the holder (exporter) to provide the ASEL standards relevant to the export and the exporter's plans to meet those standards to the occupier of a registered establishment, as currently required in s5-3 (2) & (4)(e). The registered establishment must have appropriate systems and operations in place before it can be registered by the regulator. The exporter must be satisfied that the registered establishment is capable of delivering to ASEL requirements, however, understandably some of this satisfaction stems from the fact that it is registered by the regulator.
- S5-3 (4)(e) does not currently define whether it refers to standards relevant to the registered establishment only, or all standards relevant to the export, from pre-planning and purchase of livestock, right through to disembarkation at the destination. It should be sufficient for the exporter to expect that a registered establishment has a requirement in their operations manual for the occupier to have good working knowledge of the relevant ASEL standards and note that any specific information regarding a consignment will be provided by the exporter.
- As currently drafted, s5-3 (4)(f) is a catch-all form of regulation which is inefficient and open to interpretation. The specific applicable requirements should be defined and who specifically the section applies to needs to be clarified i.e. the exporter or the occupier of the registered establishment. These comments are equally applicable to s5-4 (4).
- Use of the phrase '*as soon as reasonably practicable*' in s5-3 (3)&(5) and 5-4 (3)&(5) is ambiguous and requires amending to a specific timeframe.

5-4 Information for occupier of approved premises where prescribed livestock are to be prepared for export by air

- The term 'Approved premises' appear in bold italics, so presumably is a defined term. However, it does not appear in the definitions. This occurs with other terms throughout the document.

Part 3 – Renewal of approved arrangement

5-5 Period within which application to renew approved arrangement must be made

- Noting the time limitations on the occupier for lodging the renewal of registration of an establishment and s5-8 & 5-9 define the initial consideration period and the maximum period for an application, incorporating a defined remedy for any delay in meeting these prescribed timelines is necessary.
- It is unclear whether the timeframes referred to in this section relate to 'working days' or 'calendar days'. This is important as an industry definition of 'working days' is vastly different to that of the regulator.
- The impact to timeframes when further information is requested in relation to an application must be defined. Currently, timeframes either continue uninterrupted, paused while the additional

information is provided, or reset by the regulator using subjective justification. Clarification will improve the consistency and predictability of the regulator actions.

Chapter 6 – Livestock export licences
Part 1 – Requirements for grant of livestock export licence

6-1 Other requirements that must be met for livestock export licence to be granted

- '*Competent to hold the licence*' referenced in s6-1 (2)(a) requires a definition because without it, assessment is subjective and inconsistent. It is also not clear how the test of competence to hold a licence differs from the '*fit and proper person*' test in s372 of the Act.
- '*Sound financial standing*' referenced in s6-1 (2)(b) requires a definition because without it, assessment is subjective and inconsistent. The inclusion of such a term is also of questionable purpose. It should therefore be better defined or deleted.
- The livestock industry is best placed to determine what is contrary to the interests of livestock industry. However, s6-1 (3) is unclear in who assesses and decides what the interests of the livestock industry are and what is contrary. Does the regulator assess these interests on behalf of industry, or do they consult the industry itself? If so, who or which organisations do they consult? Clarification is necessary to remove the risk of subjective and inconsistent application of this section.

Part 2 – Conditions of livestock export licence
Division 2—General conditions

The requirements characterised as a 'condition' on a licence should clearly encompass only the more onerous obligations that reflect matters of integrity and competence, which in turn should be reflected in appropriate constraints on mechanisms to impose them in accordance with natural justice. Breach of limited and serious conditions imposed on licences should then be overtly coupled to the most serious sanctions available to the regulator, such as suspension, cancellation and appropriate criminal or civil penalties. Other obligations then do not need to be characterised as conditions on the licence to achieve the desired regulatory outcome of continuous improvement and promotion of best practice.

Further consultation with industry is required to identify which obligations in the Rules are of a more administrative nature and that will, in the absence of serious misconduct or systemic non-compliance, be subject to civil penalties and increased obligations (to promote continuous improvement and high levels of voluntary compliance), while avoiding any unnecessary business interruption. Provision should be made in the Rules for more severe sanctions that are proportionate and reflect the seriousness and nature of the obligation or underlying behaviour that lead to any breach of the Rules, separate from breach of defined conditions.

In addition, arming the Secretary with an unlimited discretion to impose requirements in absolute terms that are characterised as a 'condition' without appropriate regard to due process and the impact this potentially has on exporters, such as proportionality or an inability to comply, is a significant issue.

6-5 Australian Standards for the Export of Livestock

- The Rules do not universally adopt principles of reasonableness and continue to require unachievable absolute compliance (infallibility) from exporters in many respects, including for the actions of third parties irrespective of culpability or possible control. This section, as a specific example, provides that export operations covered by a livestock export licence 'must' be carried out in accordance with ASEL. This creates room for an absolute requirement to be mistakenly applied to the holder of an export licence to comply with ASEL, regardless of whether or not a particular obligation is capable of absolute compliance or the exporter must ultimately rely on the actions of third parties, notwithstanding whatever mitigating steps it takes to help ensure compliance.

6-6 Holder of licence must have an approved ESCAS

- Reasonableness and achievability are also particularly relevant for ESCAS, where the exporter is required to 'ensure' the compliance of third parties to fulfil regulatory obligations (s6-6 (1)(b)). The Rules seek to enforce its objectives by creating a system of strict obligations on exporters to 'ensure' traceability, control and animal welfare outcomes in overseas export markets which includes holding exporters liable for the actions of third parties. ESCAS continues to be linked to an export licence despite industry's long held view's recommending that ESCAS be decoupled from a livestock export licence.

Division 3—Exports of cattle to the Republic of Korea
Division 4—Exports of sheep by sea to Middle East
Division 5—Exports of sheep, goats and cattle to Kingdom of Saudi Arabia

- It is illogical to put importing country, protocol, industry agreed, or other requirements relating to exports of a particular species or class of livestock to a particular market in the Rules of the Act.
- Importing country requirements and other conditions applied to exports to individual markets change regularly. Protocols are usually negotiated on a government-to-government basis and government and industry collaborate on these matters through the Protocol Committee. The results of protocol negotiations are published on MICoR, i.e. there is an established process for capturing and communicating agreed protocols.
- Specific 'special' importing country requirements have, to date, been dealt with very effectively through the established Export Advisory Notice process. There is no justifiable reason for this to be changed. Changes to importing country requirements written into the Rules can result in the perverse outcome where the enabling legislation becomes a barrier to trade.
- Division 5 does not align with the health protocol agreed between the Australian and Kingdom of Saudi Arabia (KSA) governments. Discussions between DAWE and industry are ongoing, and agreement has not yet been reached. Inclusion of this Division in the Rules is therefore disappointing and could be considered as disregarding both industry and KSA government wishes. Even if the inclusion of these condition is as a 'placeholder' until agreement is reached, incorporating outdated and overly onerous requirements in a public document demonstrates that DAWE lacks the requisite knowledge or understanding of the associated trade sensitivities. Inclusion of this Division is unacceptable and must be deleted.

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Part 3 – Renewal of a livestock export licence

6-23 Period within which application to renew livestock export licence must be made

- Noting the time limitations on the occupier for lodging the renewal of registration of an establishment and s6-29 and 6-30 define the initial consideration period and the maximum period for an application, incorporating a defined remedy for any delay in meeting these prescribed timelines is necessary.
- It is unclear whether the timeframes referred to in this section relate to 'working days' or 'calendar days'. This is important as an industry definition of 'working days' is vastly different to that of the regulator.
- The impact to timeframes when further information is requested in relation to an application must be defined. Currently, timeframes either continue uninterrupted, paused while the additional information is provided, or reset by the regulator using subjective justification. Clarification will improve the consistency and predictability of the regulator actions with regard to these sections.

Part 4 – Suspension of livestock export licence

- As currently drafted, s6-24 (4) indicates that an exporter can have their licence suspended if there is a 'failure' in relation to the health and welfare of the livestock – regardless of the cause or whether the exporter is at fault. This is unreasonable as it lacks consideration of causality. Any 'failure' must first also be satisfactorily validated as the commercial and reputational damage that comes from un- or poorly substantiated regulatory decisions is huge. This is also applicable to s6-25 (4).

Part 5 – Revocation of livestock export licence

- The grounds for revocation in s6-25 (4)&(5) are very broad and open to interpretation. Refinement is necessary to improve the consistency and predictability of the regulator actions with regard to these sections.

Part 10 – Exporter supply chain assurance system

6-31 Exporter supply chain assurance system (ESCAS)

- *Meaning of **ESCAS*** – The meaning of ESCAS is correct in that is relates to a system an exporter puts in place in market with supply chain partners to deliver humane treatment up to slaughter. However, it fails to mention that it is underpinned by standards.
- *The form and content of ESCAS* – this describes a document approved by the regulator that lists the companies and facilities in a supply chain (importers, feedlots, depots and abattoirs). This is not ESCAS, it is a supply chain description (currently referred to by the regulator as 'supply chain approval', 'EVN' or 'SCN').
- As currently drafted, the Rules appear to be applying a dual meaning to ESCAS. ESCAS is a 'system' the industry must convince its clients to commit to, implement in destination markets, maintain over time, be audited against, and report any non-compliances. Whereas the Rules appear to be applying an additional definition of a 'supply chain approval' process for specific supply chains that meet

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ESCAS requirements. This dual meaning is confusing and needs clarification. Logically, ESCAS is a 'system' and an approval of a supply chain is a 'supply chain approval'.

- An 'ESCAS' (as approved by the regulator) currently does not, nor should include the following from s6-31 (4). These need to be removed:
    (1) Each port or landing place where the livestock are intended to be unloaded (this is provided to the Dept as part of the NOI)
    (2) transport or handling of livestock
    (3) identification, tracking, accounting and reconciliation of the livestock;
    (4) access to premises
    (5) any related operations and facilities

6-32 Holder of livestock export licence must give ESCAS to Secretary

- This section is very confusing due to the dual meaning used for ESCAS and requires clarification. Is it that an application for a new ESCAS (supply chain) must be submitted to the Secretary at least 10 business days before isolation or export; or is it that the exporter must provide the ESCAS (supply chain approval, as approved by the regulator) to the regulator at least 10 business days before isolation or export?
- Currently, when a Notice of Intention to export (NOI) is lodged, the exporter references the existing supply chain approval in the NOI. Is this what s6-32 is meant to describe? If not, industry has no confidence in the regulator ability to approve a new supply chain within 10 business days of isolation or export, particularly when taking s6-33 into account.
- Does the term 'business days' equate to 'working days'?

6-33 Secretary may approve ESCAS

- Submitting information regarding transport, handling or other operations to secure an ESCAS (supply chain) approval, as per s6-33 (2) is not currently a requirement for exporters. These requirements are addressed at audit. Supply chain approvals focus on importers contact details and the independent audit of feedlots, depots and abattoirs (including slaughter type), with independent audit reports assessing compliance with OIE requirements. This section, as drafted, will create a significant additional barrier to the approval of supply chain without any apparent justification. It is also not aligned with an outcome focused approach.
- s6-33 (4) adds to the confusion as it is linking approvals of consignments (individual shipments to an approved supply chain) with approvals of ESCAS (approvals of a supply chain). They are totally unrelated issues in terms of approvals.

Chapter 8 – Other matters relating to export

Part 1 – Notices of intention to export

8-1 Person who must give notice of intention to export

- This section appears to introduce a new term unnecessarily – 'person who intends to export'. Persons in management and control have previously been referred to, although this term appears to

have been dropped for reasons unknown. To label the person who usually submits an NOI as the person who intends to export is incorrect, as this is usually an administrative / clerical officer.
- The Rules also introduce the term 'licence holder'. The same approach used for the term 'Secretary', i.e. this term relates to the 'Secretary' or their delegate should be used for 'licence holder'.

8-3 When notice of intention to export must be given
- s8-3 (1) identifies the need to provide 10 business days' notice when lodging a NOI. Exporters strive to meet this need, but the complexity of negotiating a consignment and logistical challenges do not always enable this. s8-3 (3) appears to acknowledge this, but the practical application by the regulator does not currently reflect this. It has been made clear to exporters in no uncertain terms that any NOI submitted less than 10 business days will not be approved, even though it is a fee-for-service activity. NOI's should return to being a booking tool, failing that, the regulator needs to commit to the fair and equitable application of s8-3 (3) and engage with industry about how this can be assured.
- Does the term 'business days' equate to 'working days'?

Part 2 – Pre-export approvals

8-6 Pre-export approval of consignment of prescribed livestock
- This section identifies what conditions need to be met to gain pre-export approval of a consignment and is relatively outcomes focused. The practical application of this by the regulator is currently very different. Assessing officers refuse to provide approval if minor administrative issues (such as numbers, dates, etc.) have not been updated, i.e. they are very input focused in relation to issues that have little or no impact on the issues identified in this clause or health and welfare.
- A timeframe for approval is required. While s8-3, provides very prescriptive requirements for the lodgement of a NOI, timeframes for approval also need definition to provide certainty to industry in relation to the consignment.
- The grounds for revocation in s8-9 (1)(a) is very broad and open to interpretation. Refinement is necessary to improve the consistency and predictability of the regulator actions with regard to these sections.

8-7 Pre-export approval may be given subject to conditions
- In relation to pre-export approval of livestock in an approved premises being prepared for airfreight, the Secretary currently applies an arbitrary requirement that any consignment below a specific number of head are inspected at the airport and any consignment greater than that arbitrary number will be inspected on farm. This has introduced a significant inconsistency in terms of time and cost. If such blanket requirements are to be applied to industry, they need to be clearly explained and justified.

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Chapter 9 – Powers and officials
Part 1 - Audits

9-3 Manner in which audit must be conducted

- This section needs included an additional requirement that the audit be held at a time mutually acceptable to both parties. Currently, the timing of audits is dictated by the auditor.

9-4 Notice of non-compliance with requirements

- Amendment is necessary to require any notification given orally by an auditor to a relevant person to be confirmed in writing as soon as reasonably practicable thereafter.

Part 2 – Assessments

9-7 Circumstances in which assessment may be required or permitted

- While it is acceptable for the Secretary to require an assessment at any stage of consignment preparation, there needs to be a requirement for the assessor to notify the exporter of their intention to assess the proposed consignment so that:
    (1) The exporter can ensure that any known issues are addressed, e.g. removing known rejects from its cohorts prior to assessment. Exporters are often aware of possible issues within a consignment but may not have dealt with them by a particular time or provided instructions to have them dealt with. This is because managing welfare plays a big part in how an exporter addresses the removal of rejects.
    (2) The assessor can raise any concerns with the exporter at the time of assessment, as part of a continuous improvement process. It is much easier to understand an assessor's concerns when what they raise it directly, rather than receiving a report sometime later (although written confirmation is also an essential requirement).
- Clarification is also required on what initiates an assessment, what is to entail, who will carry out the assessment and their qualifications.

Part 3 – Accredited veterinarians

9-16 Application to renew accreditation

- It is unclear whether the timeframes referred to in s9-16 (2) relate to 'working days' or 'calendar days'. This is important as an industry definition of 'working days' is vastly different to that of the regulator.
- The impact to timeframes when further information is requested in relation to an application must be defined. Currently, timeframes either continue uninterrupted, paused while the additional information is provided, or reset by the regulator using subjective justification. Clarification will improve the consistency and predictability of the regulator actions.

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9-19 Secretary may make variations in relation to accreditation

- s9-19 (2)(c)(ii) acknowledges that a veterinarian or the regulator may make minor or technical errors and provides a mechanism to correct them. This form of acknowledgement and correction mechanism is, however, missing for other relevant parties, such as exporters or registered establishment occupiers throughout the remainder of the Rules. Any relevant party, whether industry or government, is capable of (and does) making errors which need correction when identified. Redrafting of the Rules is necessary to improve consistency and equitability.
- Similar to the previous point, s9-19 (4)(d) requires the Secretary to set out the veterinarian's right to a review of any variation of accreditation required by the Secretary. As currently drafted, this is not required in relation to any other situations, including variations required by the Secretary for registered establishments, export licenses, ESCAS approvals, export permits or pre-export approvals. This is also inconsistent and inequitable and requires redrafting.

Part 4 – Approved export programs

9-32 Purpose of this Part

- This section fails to recognise the role of approved export programs in meeting importing country requirements and other Objects of the Act. This also occurs in s9-33.

9-33 Application by exporter for approval of program of activities

- The exporter's approved export program must be completed as part of the pre-export approval process. As such, they cannot be undertaken outside Australian territory. s9-33 (2)(a) is therefore in need of redrafting.

9-34 Assessment of application and Secretary's decision

- Amendment to s9-34 (3) is necessary to require any request given orally by the Secretary to be confirmed in writing as soon as reasonably practicable thereafter. This also applies to 9-36 (4) and 9-39 (5).
- s9-34 (4) implies, again, that the purpose of an approved export program is only to ensure the health and welfare of livestock. The current approved export program guidelines (EAN 2018-08 Attachment A) address some health and welfare issues but is equally focused on meeting importing country requirements. This section is a major change in regulatory approach that will result in significant time and resources by exporters to revise approved export programs. It will also create major duplication with the approved arrangement for no additional benefit. This is of significant concern as it fails to acknowledge the good work undertaken to develop current systems, ensuring good health and welfare and meet importing country requirements.
- As with the previous point, s9-34 (5) proposes major changes to the purpose of an approved export program and will create significant duplication with the approved arrangement. The approved export program primarily focuses on meeting importing country requirements, as well as some aspects of ASEL. ASEL is mainly addressed through the approved arrangement. This proposed change makes no difference to health and welfare but generates significant additional work for industry and the

regulator for no benefit. This same issue relates to sections 9-36 (5) & (6), 9-37 (1) & (2), 9-39 (7), 9-41 (1) & (2), 9-43 (1) & (2).

- s9-34 (7)&(8) provide that the Secretary is deemed to have not approved a program of export operations where a specified period of time has passed and the Secretary has not made a decision in respect of an Approval Application. The associated timeframe is vague, and exporters should be afforded more certainty. This also applies to s9-36 (8)&(9) and s9-39 (9)&(10). Amendment is therefore necessary to clarify that a decision on the application is taken not to have been made where notice of a decision approving the program of export operations has not been given under section 9-34(9), 9-36(7) or 9-39(8), as applicable; and s9-34 (8), 9-36 (9) and 9-39 (10) be amended to clarify that '*the day the request was made*' is the day that:
    - a written request was made under section 9-34 (2), 9-36 (3) or 9-39 (4), as applicable; or
    - written confirmation of an oral request made under section 9-34 (2), 9-36 (3) or 9-39 (4), as applicable, was given.

9-43 Secretary may revoke approved export program

- The word '*may*' in s9-43 (2) should be changed to '*must*' because it is reasonable and sensible that the Secretary has regard for compliance with ASEL when making a revocation decision.

9-47 Secretary may give direction to exporter in relation to implementation of approved export program

- It is a denial of natural justice for the Secretary to be able to give oral directions, as per s9-47 (1)&(2), without some form of written confirmation. This could lead to miscommunication, misunderstanding, misinterpretation, arguments, legal action and perverse or unintended outcomes. While there are situations that require immediate action and providing oral directions may be the most efficient form of communicating those directions, these also require written confirmation, provided without delay, in a form that can be referenced later. This section therefore requires redrafting to incorporate this requirement.

9-49 Circumstances in which exporter must allow accredited veterinarian or authorised officer to accompany livestock

- s9-49 (2) is acceptable if there is room on the vessel to accommodate all parties. However, some vessels have limited accommodation and may not be able to accommodate these additional people without removing crew. As the crew's job includes ensuring the health and welfare of the livestock, removing crew could have a detrimental effect on the health and welfare of the livestock in addition to vessel operations. Redrafting is therefore required to incorporate the ability for the Secretary to waive this requirement or accept alternative approaches to ensuring the desired outcome is achieved.

9-50 Inconsistency between activities in Secretary's approved export program and exporter's approved export program

- It is unclear what this section means by '*inconsistent export operations*'. Amendment is therefore necessary to provide clarity.

Chapter 11 – Miscellaneous

Part 1 – Review of decisions

11-1 Reviewable decisions

- Any review processes that can impact on an exporter's ability to export require time limitations, just as there are time limitations on exporters in relation to these issues. There needs to be maximum timeframes applied for each *Reviewable decision* listed in this section. If these timeframes cannot be applied, there needs to be a clearly defined remedy for the delay in reviewing a decision. Timeframes need to be defined in terms of 'working days' or 'calendar days'.

Part 2 – Records

11-6 Records to be retained by exporter

- s11-6 (b) uses the term '*document*' rather than '*record*'. Although the requirements for a '*record*' are set out in s11-3, the term '*document*' is not defined. A definition of '*document*' therefore needs to be incorporated, because the natural meaning of document is very broad.

Part 3 – Samples

11-12 Storage of samples

- s11-12 (2) requires rewording to clarify whether the reference to *'in the performance of functions or duties*' is, like the reference to '*the exercise of powers under*', intended to be limited to Chapter 10 of the Act or the *Regulatory Powers Act*.

Part 4 – Damaged or destroyed prescribed livestock, prescribed live animals or prescribed animal reproductive material

11-14 Amount of compensation

- This section provides that the amount of compensation payable under 419(1) of the Act is the market value of, relevantly, livestock immediately before they were damaged or destroyed, and that the market value is to be determined by the Secretary. However, the Secretary or delegate is unlikely to be suitably qualified to assess market value of damaged or destroyed livestock and would also lack independence in assessing the market value. Importantly, a decision by the Secretary to approve payment of compensation under section 419(1) of the Act is not a reviewable decision within the meaning of section 381(1) of the Act. Amendment to s381 (1) and 419 of the Act is necessary to make a decision to approve payment of compensation a reviewable decision.

Overarching comments

- During the 30 July presentation to provide an overview of the new proposed Rules, it was stated by DAWE that the transition to the Act and adoption of the Rules would not increase regulatory burden. As currently drafted, this is not the case. There are new requirements contained in the Rules,

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identified in this submission, that will require significant time and resources by industry to meet. In all cases, there is little or no discernible benefit for doing this.

- ALEC supports the drafting and implementation of outcomes-based regulation, and the flexibility that it affords, particularly compared to a prescriptive regulatory approach. Some of the comments made above, seeking clarification and refinement to the regulatory powers provided in some sections may not have been needed had an explanatory statement been included in the consultation material.
- ALEC, together with LiveCorp have been actively participating in roundtable meetings with DAWE in efforts to improve regulatory efficiency and efficiency. Outcomes from the roundtable meetings need to be incorporated as appropriate within the revised Rules for consultation during the formal process to follow.
- Timeframes are of fundamental importance and industry requires certainty in approval process timeframes. Consignment preparation is a time-bound process that can result in significant loss if timeframes are not met. There must be equity in terms of all parties meeting prescribed timeframes and the inclusion of remedies to address any failure to meet these timeframes.
- The Rules are currently silent on how the regulator must deal with multiple applications. For example, if an exporter lodges an application for a licence renewal and a variation to a supply chain, are they dealt with concurrently or in series? This has significant implications in relation to exporter operations.
- The regulator will need to work closely with industry and provide clear guidance, training and support materials that articulate and quantify their expectations in relation to complying with the requirements of the Rules. It is unreasonable to expect an industry that is continually exposed to ever-increasing regulatory burden to have the whole legislative framework revised and immediately understand and adopt new and revised requirements without the necessary support.
- Not addressed in the Rules but a potential risk to industry and the regulator is importing countries requiring a 'Certificate of Origin'. The regulator's current position is that it is a commercial requirement and of no interest to the regulator. It will, however, quickly become an issue for the regulator when a consignment is denied entry to a market for 'commercial reasons'.
- To promote certainty and proportionality in administrative action and avoid inappropriately reversing the onus of proof and penalising industry, the Rules should contain objective criteria to which the Secretary must refer when exercising decision-making powers. This criteria must overtly preserve continuation of the export approval process and minimise business interruption, while DAWE obtains objective and reliable evidence to support any reasonable belief of serious breach. Appropriate thresholds or criteria should be included that differentiate between situations that are serious or urgent and those that are not (i.e. there must be objective and reliable evidence of a material and serious risk of breach before the export process is halted).

Thank you for the opportunity to provide comment on the Rules. ALEC notes that a formal consultation process is to follow this initial consultation. Given the gravity of the changes proposed in the Rules, as detailed above, the establishment of a working group between ALEC and DAWE is necessary to thoroughly consider relevant provisions, ensuring that they are consistent, reasonable and proportional.

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Ensuring sufficient and appropriate timeframes for considered industry consultation and feedback on changes required before the 28 March 2021 commencement date is, however, potentially problematic. Particularly considering the time and the number of drafts required to produce the Meat and Meat Products Rules, which ALEC understands are yet to be finalised and still in need of further redrafting. It is likely that the Rules will require similar redrafting work and extensive industry consultation as the Meat and Meat Product Rules has had. ALEC is not aware of any reason for disparity between the consultation processes and expects consultation on the Rules to be afforded the same consultative opportunities.

Please do not hesitate to contact me at ceo@livexcouncil.com.au or on 0400 980 452 should you wish to discuss further.

Yours sincerely

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