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VIA: haveyoursay.agriculture.gov.au

Dear Melissa

Live Sheep Exports to the Middle East Draft Regulation Impact Statement

Thank you for the opportunity to comment on the Live Sheep Exports to the Middle East - Northern Hemisphere Summer Draft Regulation Impact Statement (the RIS).

We believe the analysis of costs and benefits in the RIS is generally robust and well presented. However, we believe the assessment of net benefits under option 3, and the proposed policy decision of adopting option 2, is flawed as it does not reflect the cost/benefit analysis presented in the body of the RIS.

Our greatest concern with the department's preferred option is that it does not include acting on the recommendations of the Heat Stress Risk Assessment (HSRA) Review (option 3). Many stakeholders contributed considerable time and effort to this review upon the belief that it would result in a revised Heat Stress Risk Assessment model for the industry. The proposal to now place responsibility for revising the model back in the hands of industry would undermine the review process and further damage public confidence in the department as an objective and evidence-based regulator of the trade.

We believe the analysis of costs and benefits in the RIS actually provides support for the adoption of options 2 and 3 in combination as this would provide the greatest certainty and net benefits to all stakeholders.

We provide further detail and analysis regarding the RIS and our preferred option below.

Yours sincerely,



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1. General comments on the RIS

Defining animal welfare

As our submission to the Options Paper outlined, adopting a robust and scientifically defensible definition of animal welfare is critical to the task of effectively regulating animal welfare in a consistent manner. With the re-establishment of the Animal Welfare Branch, we would like to see further considered policy on what the department considers animal welfare to be and how it intends to integrate this within departmental policy and operations in live exports.

We support the OIE's definition of animal welfare as it is inclusive of different domains of welfare including the animal's physical and mental state. However, we would encourage the department to provide further conceptual and operational detail as to how it intends to apply and assess animal welfare from a policy and regulatory perspective. It is for this reason that we highlighted the Five Domains model of welfare assessment in our submission to the Options Paper.¹ This framework provides a robust method for assessing welfare benefits and impacts of the different policy options proposed.

Social factors such as "people's subjective evaluations as well as historic and cultural differences" are not part of the scientific definition or assessment of animal welfare. These factors may be relevant to the ethical and political question about what an acceptable state of welfare should be for an animal in a given context and what our obligations are to give effect to that state, but this is a separate inquiry. For policy and regulatory purposes, it is critically important that the scientific questions around what an animal's state of welfare is in a given context are determined separately from the ethical and political questions about societal or industry obligations towards animal welfare.

The Productivity Commission has also recommended that effective governance arrangements be established to ensure this separation in practice: "it is important that factual (scientific and economic) considerations are separated from judgements about what is appropriate (ethics) and that an effective governance framework is in place for this to occur."²

We would like to see the department adopt a robust scientific framework for assessing animal welfare to apply to future policy and regulatory decisions relating to the live export trade.

The problem

The consequences of inaction and the affected stakeholders have been well outlined in the draft RIS. We are pleased to see acknowledgement of members of the public who are distressed by poor welfare in live exports. This is a very real factor that impacts upon many people's wellbeing. We would also like to see the exported animals recognised as a category of affected stakeholder because no one has a greater stake in the effective operation of the regulatory framework than the animals themselves.

Objectives of government action

We note the department has now adopted quite a precise regulatory objective of reducing heat stress risk to less than 5%. While we welcome the added clarity such precision brings to the government's regulatory

¹ Mellor D (2017) Operational details of the Five Domains Model and its key applications to the assessment and management of animal welfare, 7 *Animals* 60; Ledger M and Mellor D (2018) Forensic use of the Five Domains Model for assessing suffering in cases of animal cruelty, 8 *Animals* 101.

² Productivity Commission, Regulation of Australian Agriculture, Inquiry Report No.79, 15 November 2016, pp 205-206.

objectives, we note that this outcome deviates from the 2% risk threshold recommended by the Heat Stress Risk Assessment Technical Reference Panel. As it is more than doubling the level of risk tolerance recommended to the department, it is incumbent upon the department to provide the technical and policy rationale for this deviation, including how it arrived at such a risk setting and why it believes such a setting is appropriate in light of the significant consequences to animal welfare should and when such risks materialise.

Barriers to achieving objectives

We note the stated barriers to achieving the identified regulatory objectives include the lack of agreement and consensus among stakeholders on the appropriate risk settings for heat stress risk assessment and the validity of research underpinning the HSRA Review Report. Lack of consensus among stakeholders should not be a reason to delay critical policy and regulatory decisions. Stakeholders with diverse values and interests rarely reach consensus on sensitive policy issues like animal welfare. This is precisely the reason independent expert advisory committees, like the Heat Stress Risk Assessment Technical Reference Panel, are appointed - to provide the independent advice so that the regulator can make informed judgements in the face of contradictory stakeholder and community positions. The Technical Reference Panel has provided a robust report with clear recommendations for the department to act upon. A lack of consensus among stakeholders should not be used as an excuse for delaying further action.

Assessment of animal welfare benefits

The assessment of the animal welfare benefits outlined in s.5.1 is well set out. Industry sustainability, strategic business benefits, human and community benefits, and trust in the industry and regulator are all tangible factors that are directly affected by standards of animal welfare. The correlation between animal welfare and these benefits will continue to grow stronger as community concern for animal welfare continues to rise. It is also positive to see the department proposing to frame animal welfare by its worth rather than its cost.³

However, we do not believe these benefits will materialise under options 1 or 2. We would like to see greater quantification of the direct animal welfare benefits incorporated into the benefits analysis in the RIS, including the number of animals not exported as a result of each option. The number of animals avoiding heat stress as a result of not being exported during the Northern Summer period should be expressly acknowledged as a significant animal welfare benefit in its own right.

Assessment of economic impacts

We believe the assessment of economic impacts of each option is generally well presented. However, we disagree with the analysis of net benefits in option 3. As discussed in further detail below, we believe the assessment of economic impacts actually provides a case for why option 3 should be considered feasible, particularly in light of the superior animal welfare and associated benefits it presents.

2. Option 1

We agree with the analysis presented in option 1. The regulatory status quo, without a prohibited period, would lead to unacceptable animal suffering, and inevitably, to another adverse animal welfare event,

³ Draft RIS, p.33.

which would lead to the end of the trade. Option 1 should not be considered a viable pathway forward for the industry.

3. Option 2

RSPCA Australia supports a definitive prohibited period on the trade during the Northern Summer period and the proposal for a single point of discharge. We note the department has adopted a 5% risk setting in defining the prohibited period of 1 June to 14 September:

The department has assessed, on the basis of available climatological and historical data, that a 3.5 month prohibition is the appropriate duration to ensure sheep are not subjected to climatological conditions where the risk of heat stress would be 5% or greater.⁴

This risk setting departs from the 2% risk setting proposed by the Technical Reference Panel, which, as outlined at 7.1 of the RIS, would have the impact of “effectively stopping live sheep exports for the Northern Hemisphere summer period.”

We also note that the implications of the 5% risk setting presented in the RIS appear to depart from the department’s previous analysis presented in the Options Paper, which stated that:

The HSRA Review recommended the revised HSRA model be set at a 2% probability that deck temperatures would exceed a sheep’s HST. The department also considered a 5% probability marker, however our initial analysis found that this did not materially affect volumes of sheep able to be exported.⁵

This analysis appears to have changed significantly in the current draft RIS, which now suggests that a 5% risk setting would only stop exports for 3.5 months of the Northern Summer as opposed to approximately 6 months. RSPCA Australia would like further information from the department as to:

1. the technical and policy rationale for departing from the 2% risk setting recommended by the Technical Reference Panel; and
2. why the department’s analysis of the effect of a 5% risk setting on volumes of sheep able to be exported changed between the Options Paper and the draft RIS.

The RSPCA’s biggest concern with option 2 is the proposal to not proceed with a revised HSRA model. The current mortality-based HSRA model has been found to be inadequate in multiple reviews and reports since May 2018. The McCarthy Review first identified that the current HSRA model was inadequate and recommended the department move from a mortality based approach to one based on animal welfare.⁶ The department accepted this recommendation in principle and has made multiple public commitments to moving away from a mortality based approach. As stated by Deputy Secretary Malcolm Thompson at Senate Estimates in May 2018:

The footage of horrific animal welfare conditions experienced by sheep on the 2017 voyages has exposed the inadequacy of mortality as the predominant measure of welfare in our regulatory approach, in the heat stress risk assessment model used by industry and as a trigger above the two

⁴ Draft RIS, p.52

⁵ Options Paper, p.15

⁶ McCarthy Review, recommendation 3.

per cent threshold for further investigation by the department. The application of the current model for calculating stocking densities, given the risk of heat stress events and the characteristics of vessels, is clearly not working as intended.⁷

The extensive work undertaken by the HSRA Technical Reference Panel over the latter half of 2018 and into the first half of 2019 provided further evidence of the inadequacies of the current HSRA model. All stakeholders participated in this process in good will with a view to revising the model from one based on mortality to one based on animal welfare, namely heat stress indicators. The final report of the Technical Reference Panel provides several clear recommendations to the department on how the HSRA model should be revised to reflect the scientific evidence base and government policy commitments to moving from mortality to welfare based indicators.

Implementing the revised HSRA could be done immediately as “the recommended welfare thresholds align with heat stress thresholds already embedded within the existing HSRA model (but not currently used).”⁸ It would simply require an adjustment to the risk settings. As the McCarthy Review advised, “the risk settings in the HSRA model can be changed reasonably quickly and should be operational for this northern hemisphere summer or at a minimum by 1 July 2018.”⁹

The department has the regulatory power to compel such change as it is responsible for determining the conditions under which live export takes place under both the *Export Control Act 2004* and the *Australian Meat and Livestock Industry Act 1997*. The ASEL can also prescribe what the HSRA risk settings must be, as it currently does for the export of Bos Taurus cattle.¹⁰

To now suggest proceeding without a revised HSRA model and placing the ongoing revision of the HSRA model back in the hands of industry is very concerning as it undermines much of the good work that has taken place over the last 18 months and may affect stakeholder confidence in future review processes managed by the department.

Option 2 would also result in subjecting sheep to ongoing heat stress. As stated in the RIS itself, “AAV and independent Observer reporting from the 5 voyages conducted during May, September and October 2019 recorded several occasions where sheep exhibited moderate levels of heat stress during periods of high WBT.”¹¹ To continue subjecting sheep to these conditions during the months of May, September and October, contrary to the expert advice of the Technical Reference Panel, would be unconscionable.

The extensive benefits outlined in s.5.1 would therefore not apply to option 2.

The revised HSRA model as recommended by the Technical Reference Panel must be implemented in conjunction with a defined prohibited period to provide greater certainty to all stakeholders.

We believe the analysis of non-regulatory impacts for option 2 is generally well explained and presented. However, the economic benefits of diverting live export sheep into alternative markets needs to be better factored into the analysis. The extent to which increased employment and value-adding through the meat processing sector offsets any expected losses in reduced live export should be assessed and presented. Indeed, much of the economic data and analysis presented in the RIS demonstrates why a longer period of

⁷ Hansard, Rural and Regional Affairs and Transport Legislation Committee, Estimates, 24 May 2018.

⁸ Draft RIS, p.53.

⁹ McCarthy Review, p.4.

¹⁰ See ASEL, s.1.5A.

¹¹ Draft RIS, p.30.

prohibition, consistent with the revised HSRA model under option 3, is entirely feasible. This will be discussed in further detail below.

4. Option 3

RSPCA Australia believes that option 3 presents the greatest net benefit, as options 1 and 2 continue to expose sheep to unacceptable levels of heat stress risk and suffering, which is not compatible with the industry's sustainability.

The clarity on the implications of the revised HSRA model set out in Figure 16 is welcomed. Prohibiting the trade for the entire Northern Summer period is consistent with the position RSPCA has advanced for many years, and with the evidence presented by the Australian Veterinary Association to the McCarthy and subsequent reviews.

The welfare benefits of option 3 are profound. These benefits are not adequately captured in the presentation of benefits in s.7.2. To better quantify the welfare benefits, the department should provide an estimate, based on past export volumes, as to how many animals would not be exported under option 3 relative to the other options. Not being exported should be recognised as a welfare benefit in itself.

The assessment of the economic impacts of option 3 is not well justified. It is not clear in the RIS why the analysis of the economic costs and required adjustments to accommodate a 3.5 month shut down (as proposed in option 2) cannot be equally applied to an additional 2.5 months. The assessment of costs presented in option 3 is not adequately distinguished from the assessment presented in option 2 so to justify the disparate conclusions drawn in terms of their respective impacts on the industry. The costs and adjustments required in option 2 are presented as being feasible while those required for option 3 are deemed to cause considerably more impact but there is no clear rationale for why this is the case or at what point the line of industry viability is crossed.

Indeed, many of the factors presenting a case for why diversion from the live trade to domestic processing is feasible, apply equally to a 6 month prohibited period. These include:

- the proven ability of the industry to respond to market signals and adapt to change;
- the capacity of the WA meat processing sector to absorb all sheep that would otherwise be exported during the proposed prohibited period;
- the increased jobs and economic revenue generated by processing those sheep in WA to service the growing international demand for sheep meat including mutton;
- the potential increased employment on-farm following additional investment in prime lamb production; and
- the reduction in any price impacts over time as the market adjusts.

We believe the final analysis of net benefits for option 3 is therefore flawed as it does not appropriately balance the respective costs and benefits. The suggestion that the "welfare benefits to be derived from option 3 do not materially differ from option 2" is a fundamental mischaracterisation. Option 3 will prevent many thousands of sheep from being sent into climatic conditions that will exceed their HST. This is a very real and tangible animal welfare benefit that must be acknowledged in the assessment of net benefits in option 3 to be balanced against the costs.

It is the RSPCA's view that due to the ongoing risks presented to sheep welfare in option 2, combined with the feasibility of the industry adapting to a 6 month prohibited period over time, that option 3 provides the



greatest net benefit of the three options. However, to improve certainty, the department should combine options 2 and 3 to ensure there is a definitive prohibited period together with the revised HSRA model. This would generate the benefits outlined in s.5.1 and avoid the consequences of inadequate action outlined in s.2.3.