

17 January 2020

Live Animal Exports Division  
Department of Agriculture  
GPO Box 858  
CANBERRA ACT 2601

Via: [Have Your Say](#) website

### Third Party Assurance Scheme Consultation Regulation Impact Statement

Thank you for the opportunity to comment on the Consultation Regulation Impact Statement for the proposed Third Party Assurance Scheme for Exported Livestock (the RIS).

As a general principle, the RSPCA supports industry QA schemes that facilitate compliance and compliment government-based regulation. However, the third party assurance scheme proposed in the RIS is not reflective of an industry QA scheme. The proposed scheme is a form of industry self-regulation wherein the third party provider, a private industry-owned company, is granted quasi-regulator status. Key decisions currently the reserve of the regulator, such as decisions to approve new supply chains, the investigation of non-compliance, and the imposition of appropriate sanctions for non-compliance, will be substantially transferred to the third party provider.

This is not an appropriate approach for the high risk operating environment which characterises the live export trade, where ESCAS breaches are common and strong Government oversight is critical to maintaining the integrity of the regulatory framework. The proposed model will substantially reduce the transparency and accountability of the current framework and limit the Government's direct oversight of exporters by placing regulatory authority in the hands of AniMark, a private industry-owned company that is not subject to Australia's Freedom of Information laws nor Parliamentary oversight committees.

ASIC documents reveal that AniMark's founding members include the Australian Livestock Export Corporation Ltd and the Australian Livestock Exporters Council Ltd. Given that these founding members are governed by representatives of Australia's largest live export companies, we do not believe that AniMark can be regarded as independent of the commercial interests of the trade.

We acknowledge that there are some potential strengths of a third party provider scheme, including the proposed arrangements for the appointment of auditors and the provision of in-market intel to the Department at arm's length of exporters. These proposed functions may strengthen the administration of ESCAS. But these strengths will not be realised through a model of industry self-regulation.

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The RSPCA's position is that AniMark should serve as a regulatory enabler through the provision of in-market services, not as a regulatory decision-maker. Key regulatory decisions, such as those mentioned above, must remain the preserve of Government.

The RIS also fails to provide sufficient detail on how concerns around transparency, accountability and independence may be addressed. It states that the Department would retain regulatory oversight of the third party provider through a vigorous process that will "ensure effectiveness, independence and transparency" and that the provider "must be independent, transparent and operate with high levels of integrity" but no further information is provided on how this will be assessed and ensured.

We would also like to see further information about the proposed amendments to the *Export Control (Animals) Order 2004*. Will the amendments include provisions relating to the third party provider's transparency and independence or will they simply provide an exemption for compliance with the current requirements to submit an ESCAS?

The RIS also lacks significant detail on the estimated costs of the proposed options. In fact, there are no costings provided in the RIS, only an overall estimate. We question how stakeholders are supposed to engage in the assessment of the proposed options without such data. We hope the final RIS will contain further detail on these matters.

The RSPCA cannot support the proposed scheme based on the limited information provided in this RIS. We provide further detail and analysis regarding our concerns in our submission below and look forward to discussing the proposal in further detail with the Department in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Bidha Jones". The signature is stylized with a large, looped initial "B".

Dr Bidha Jones  
Chief Science and Strategy Officer  
RSPCA Australia

We outline below the particular areas of concern about the proposed third party provider scheme.

## 1. Divesting regulatory responsibility to industry

Core components of the current ESCAS regulatory framework include the assessment and approval of supply chains, investigating reports of non-compliance, and the imposition of sanctions in the event of non-compliance. Under the proposed third party provider scheme, it appears that all of these functions would be delegated to AniMark.

As non-conformance and non-compliance will be directly addressed by AniMark, we question whether the Department will still be responsible for imposing conditions relating to the exporter's ESCAS operations in importing countries or whether it will become the responsibility of AniMark to determine what conditions, if any, will be imposed on supply chains following incidents of non-compliance and how non-compliance will be recorded against the exporter.

The RIS does not provide sufficient detail on how investigations into non-compliance will take place under the proposed model. It simply states that the Department can request the third party provider to undertake an investigation and provide a report and corrective action.

This raises serious concerns and may result in a further loss of public confidence in the Government's commitment to maintaining strong regulatory oversight of the live export trade. We understand that the Department is limited in its capacity to investigate issues of non-compliance in foreign jurisdictions and that a private company may be better positioned to gather in-market intelligence, however, ultimate responsibility for such investigations and responses to non-compliance must remain the jurisdiction of the government regulator. AniMark should be required to *assist* the Department with investigations through information gathering, not to act as the regulator itself.

The third party scheme will also significantly reduce transparency within the framework. Information held by AniMark will not be subject to Freedom of Information laws in same way equivalent information held by the Department is subject to FOI legislation now. Receiving periodic reports from the AniMark on basic statistics is insufficient for this purpose and will result in significantly reduced levels of transparency.

## 2. Shifting accountability away from exporters

RSPCA Australia welcomes a stronger focus on in-market facilities, however, this should not come at the expense of reducing exporter accountability under the current framework. Exporters must bear ultimate responsibility for the performance of supply chains for two fundamental reasons:

1. exporters constitute the jurisdictional link between Australian Government regulation and the treatment of animals in foreign jurisdictions as the Australian Government has no jurisdiction over the conduct of in-market facilities; and
2. it encourages a proactive and vigilant approach to supply chain management by exporters.

If, under the proposed third party provider model, AniMark can simply lay blame at in-market facilities for non-compliance, the incentive for exporters to ensure that every possible step has been taken to secure supply chains and confirm they have strong traceability and animal welfare standards in place before animals are sent to them will be reduced.

ALEC and LiveCorp identified this risk in their own report. In the summary LISC report, “Lower incentive for investment by exporters in supply chains” is identified as one of the risks associated with implementing the LGAP (see page 12 of the summary report). This underscores the risks associated with shifting responsibility from exporters to in-market facilities. Again, we welcome increased responsibility on in-market facilities but not at the expense of exporter responsibility. Having one abattoir or feedlot suspended from the LGAP is little deterrent for exporters when they can simply shift to another one operating down the road. Exporters must continue to bear ultimate responsibility for supply chain performance. When they make the decision to send animals into a supply chain, they take on responsibility for its performance. This is the only way to ensure a proactive and vigilant approach to supply chain management and performance, which the Australian Government has the power to enforce.

### **3. Fundamental conflicts of interest and lack of independence**

Any third party proposed to be authorised by the Australian Government for providing ESCAS assurance services must be completely transparent about its governance, funding, and membership, and be completely independent of the live export industry. As currently constituted, AniMark does not satisfy these criteria and will be exposed to fundamental and unavoidable conflicts of interest in the performance of its proposed duties.

ASIC documents reveal that AniMark’s founding members include the Australian Livestock Export Corporation Ltd and the Australian Livestock Exporters Council Ltd. Given that these founding members are governed by representatives of Australia’s largest live export companies, we do not believe that AniMark can be regarded as independent of the commercial interests of the trade.

Previous reports from LiveCorp and ALEC about the LGAP raise further concerns about the intended independence of the third party provider. The summary LISC Report is explicit about the degree of control exporters are intended to exert under the proposed scheme - “Control needs to be in the hands of the Australian livestock export industry reflecting the investment and role it has placed in LGAP’s success” (page 20). Voting rights are expected to be broken down on the basis of “1 vote per \$1 on membership fees” placing significant power in the hands of exporters as they are expected to pay membership fees 20 times that of in-market facilities. Additionally, foundation members are expected to have “strong influence” on special resolutions.

The summary LISC Report also exposes the fundamental conflicts of interest that will be faced by the LGAP company’s board in having a duty to “meet the interests of its members” while at the same time meeting “its obligations to the Australian Government” (page 21). If AniMark’s proposed role was simply to administer a QA scheme and auditing services to facilitate compliance with ESCAS, these functions may not seem so incompatible. However, when those obligations include regulatory functions like approving supply chains, investigating non-compliance with government regulations, and imposing sanctions, the interests of its exporter members and its obligations to the Australian Government represent fundamentally competing responsibilities. In our view, these competing responsibilities are irreconcilable under the scheme as currently proposed.

It is also important to keep in mind the Australian community’s expectations on the question of independence. The model proposed would be highly unlikely to satisfy what the community would consider independent for the purpose of performing the third party provider’s intended functions. The Department must provide further detail about its criteria for assessing independence in any third party provider and how this will be assured.

#### **4. Further information required in the RIS**

The RIS requires much further information about how the transparency, independence and accountability of the proposed scheme will be assured, and how the expected costs of the various options have been calculated.