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SUBMISSION FOR CONSIDERATION

Thank you for the opportunity to comment on the Independent review into Australia's live export trade Senate Standing Committees on Rural Affairs and Transport inquiry. We commend Senator Rachel Siewert for introducing the motion to conduct this inquiry into the upper house.

It is our view that the continuation of the live animal export trade poses an unnecessary risk to animal welfare. In addition, the current trade fails to provide any assurances for the protection of exported animals and simply serves to entrench and protect poor animal welfare practice as illustrated by the investigation aired on Four Corners on the 30 May 2011. As early as 1985 the Senate Select Committee on Animal Welfare, in considering live animal exports, advised that 'if a decision were to be made on the future of the trade purely on animal welfare grounds, there was enough evidence to stop the trade. It was observed that the trade is, in many respects, inimical to good animal welfare'.¹

We submit that the live animal export trade is contrary to the purpose and legislative mandate of State and Territory Animal Welfare Acts and offends contemporary public attitudes and opinion.

Despite the growing public concern for animal welfare in Australia, since its inception the Government has maintained its support for the live animal export trade. We adopt the submission of RSPCA Australia that regard must be had to the fact that producers, transporters and stockman are only liable to prosecution for breaches of state and territory

¹ Senate Select Committee on Animal Welfare, Parliament of Australia, *Export of Live Sheep from Australia* (1985).

animal welfare laws when the animals are in Australia. Once animals leave Australia they will no longer be subject to the protection of animal welfare laws or the Australian Standards for the Export of Livestock (“ASEL”). The standards set out in ASEL are referenced in the Australian Meat and Livestock Industry (Export Licensing) Regulations 1998 and the Export Control (Animals) Order 2004 which came into effect on 1 December 2004. These Australian Government Laws only apply to the exporter.

We hold serious concerns regarding the adequacy and independence of industry self-regulation. There has been a continuous failure to appropriately address poor animal welfare standards in countries to which Australian animals are exported. For example; MLA and Livecorp have known about incidents of severe animal welfare abuses in Indonesia since at least May 2010.² MLA and LiveCorp commissioned and received a report, which states the following animal welfare concerns;³

‘At an abattoir in Sumatra the neck was struck with a knife using a hard impact to sever the skin above the larynx and then up to 18 cuts were made to sever the neck and both arteries.’

‘Bleeding was impaired in 10 per cent of cattle... possibly resulting in extended consciousness... In some instances where stunning was not used, the delay between restraint and slaughter was significant.’

Legal liability for adverse welfare outcomes in another jurisdiction.

We refer to the case of *Department of Local Government & Regional Development v Emanuel Exports Pty Ltd & Ors* as an earlier example of systemic animal welfare issues inherent in the live animal export trade. In 2003 investigators obtained evidence that a number of Australian sheep unloaded from a vessel at Kuwait City were suffering from various ailments, including broken limbs and blindness. Investigators also observed a significant number of sheep carcasses aboard ship. Based on evidence and data obtained, a complaint was lodged with Western Australia Police. The complaint was that the animals

²Kelly Burke, ‘Meat Industry Knew of Indonesia Last Year’, *Sydney Morning Herald*, 25 June 2011; <http://www.smh.com.au/environment/animals/meat-industry-knew-of-indonesian-cruelty-last-year-20110624-1gjl.html> viewed 13/07/2011

³ http://www.daff.gov.au/_data/assets/pdf_file/0005/1886477/indonesia.pdf viewed 13/07/2011

aboard the *Al Kuwait* had been transported in a way that caused, or was likely to cause them unnecessary harm, in breach of section 19(3)(c) of the *Animal Welfare Act 2002* (WA) (the “WA Act”).⁴

On 8 February 2008 Magistrate Crawford delivered judgment, finding the accused guilty of one of the charges laid, but acquitting the accused on the basis of an inconsistency between the Commonwealth legislation authorising the export and the relevant part of the WA Act. The accused were acquitted on section 109 grounds.⁵ However, the decision in *Emanuel Exports* made it plain that animals suffered unnecessary harm as a consequence of their live export.

There is an arguable case that the transport of live animals to jurisdictions where appropriate welfare standards cannot be enforced and those involved in or responsible for authorizing the transport of those animals are aware of the methods by which those animals are slaughtered, is an act “likely” to cause unnecessary harm for the purposes of the relevant Animal Welfare Act and is contrary to the intent of ASEL in regulating the health and welfare of the animals whilst within jurisdiction. There can be no doubt that if an Australian abattoir workers subjected animals to the practices depicted the footage obtained by Animals Australia and aired on Four Corners, he or she would be liable for prosecution under the applicable Animal Welfare/Cruelty law.

Legal liability should not be permitted to be avoided as a consequence of the harm being caused in another jurisdiction.

The term “likely” in other statutory contexts has been interpreted to mean “less than a probability, but more than a remote possibility, or a real or not remote chance of possibility regardless of whether it is less or more than 50%”.⁶ For example in the High Court decision of *Waugh v Kippen*⁷ the majority observed that the “*the likelihood of injury must be judged in the light of the circumstances which are known or ought to have been known to [the person]...on whom the duty is cast*”.

⁴ Proceedings for an offence under the Act may only be commenced by the Chief Executive Officer of the department responsible for administering the Act, an inspector or an officer of the department authorised by the Chief Executive Officer: section 82 WA Act. An “inspector” includes a police officer: section 5 WA Act.

⁵ COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 109
http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s109.html viewed 13/07/2011

⁶ In *Waugh v Kippen* (1986) 160 CLR 156 the High Court considered a rule made under a Queensland statute which proscribed certain practices which were “likely to cause” risk of injury. It referred with approval to *Sheen v Fields Pty Ltd* (1984) 51 ALR 345 which considered that the word “likelihood” meant “a real or not remote chance or possibility regardless of whether it is less or more than fifty per cent”.

⁷ (1986), at [14] p.166, quoting from the judgment of Gibbs CJ in *Sheen v Fields Pty Ltd* (1984) 51 ALR 345

On the question of harm falling within the definition of ‘unnecessary, the Court in *Ford v Wiley*⁸ observed that:

“the mere infliction of pain, even if extreme pain, is manifestly not by itself sufficient...[it] involves a consideration of what “necessary and “necessity” mean in this regard. It is difficult to define these words from a positive side, but we may perhaps approach a definition from the negative. There is no necessity and it is not necessary to sell beasts for 40 shillings more than could otherwise be obtained for them nor to pack away a few more beasts in a farmyard or a railway truck than could otherwise be packed, nor to prevent a rare and occasional accident from one unruly or mischievous beast in injuring others. These things may be convenient or profitable to the owners of cattle, but they cannot with any sure reason be called necessary.”

Commercial gain is no justification for the infliction of harm. Commercial considerations do not render harm ‘necessary’. Harm may fall within the definition of ‘necessary’ where the harm results from the pursuit of a legitimate aim that could not reasonably be attained through less painful means, and the pain inflicted must be proportionate to the objective sought.

We acknowledge that the aim of the review is to 'assist the Australian Government establish safeguards to ensure there is verifiable and transparent supply chain assurance up to and including the point of slaughter for every consignment that leaves Australia'. We appreciate the importance and role of traceability of Australian animals, but notes however, that tracing of itself does not ensure the welfare of the individual animal or provide any means by which appropriate welfare standards can be enforced in another jurisdiction. Traceability may result in the detection of animal cruelty or abuse but can do nothing to prevent it.

In this regard, although many countries are signatories to the OIE⁹, including Indonesia, these standards are unenforceable and do not provide the same level of protection as Australian animal welfare laws. The OIE Code is generally not supported by a locally enforced code governing animal welfare practices. Most importantly, these standards do not mandate the use of pre-stunning, the absence of which highlighted the inhumane practices documented in Indonesia. Industry itself has stated, as recently as this year, that expanding the use of

⁸ (1889) 23 QB 203

⁹ Contained in the World Organisation for Animal Health’s Terrestrial Animal Health Code, Chapter 7.5 Slaughter of Animals

stunning in Indonesia would be extremely difficult, if not impossible.¹⁰ In addition, the design of the Mark I, II, and III restraint boxes is in direct contravention of the OIE Code which, states that “methods of restraint causing avoidable suffering should not be used in conscious animals because they cause severe pain and distress”.¹¹

The Australian Government cannot enforce stunning in Indonesian abattoirs, nor does it have any right to inspect those outlets to identify poor welfare practices. In countries with no enforceable animal welfare regulations or penalties, adherence to animal welfare standards is not an attainable goal.

Economic considerations.

The absence of any, or any enforceable welfare regulations and standards in countries to which Australian animals are exported, coupled with hard evidence of ill-treatment and cruelty means that live animal export facilitates what, if it occurred in Australia, would be a crime. Economic considerations should not prevail where animal cruelty and abuse is established but cannot be regulated.

The World Society for Protection of Animals commissioned economists ACIL Tasman to investigate the Australian sheep meat trade. This Report revealed the negative economic impact of live sheep exports and warned that potential value adding opportunities were being lost due to trade distortions in the live sheep export trade.¹² Further, a report commissioned by the Australian meat processing industry concluded that the live animal export trade is also costing the country in terms of lost gross domestic product, lost household income, and lost Australian jobs.¹³ These reports demonstrate that live animal export is not a necessity to the Australian economy.

Conclusion

We are of the view that the live export trade should be phased out over the next 3 years, as set out in the private members bill proposed by Senators Wilkie and Xenophon. Animal welfare

¹⁰ RSPCA Australia and Animals Australia, May 2011, ‘Response to the Australian livestock export industry’s *Indonesia animal welfare action plan – May 2011*’ <http://www.banliveexport.com/#downloadFactsheets> viewed 14/07/2011

¹¹ http://web.oie.int/eng/normes/mcode/en_chapitre_1.7.5.htm

¹² Barber, Mark. (2009), Australian live sheep exports ACIL Tasman Report.

¹³ Heilbron, S.G. and Larkin, T. (2000) Impact of the Live Animal Sector on the Australian Meat Processing Industry. Australian Meat Processor Corporation, Sydney, Australia.

is a vital component to the future sustainability of industry, and the continuing live animal export exposes industry to substantial risk due to a lack of consumer confidence.¹⁴

We strongly object to the continuation of live animal export. We believe the continuation of exporting live animals abroad is unethical and cannot be justified by any economic gain due to the disparities between animal welfare standards.

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¹⁴ Kelmeny Fraser and Samantha Healy. Australian shoppers react to live meat export cruelty by buying more organic meat <http://www.adelaidenow.com.au/news/australian-shoppers-react-to-live-meat-export-cruelty-by-buying-more-organic-meat/story-fn7kiea5-1226086429234> viewed 14/07/2011