

The Senate

Rural and Regional Affairs and
Transport Legislation Committee

Provisions of the Agriculture, Fisheries
and Forestry Legislation Amendment
(Export Control) Bill 2004

June 2004

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Chapter 1

Introduction

Conduct of the inquiry

1.1 The Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 (the bill) was introduced into the House of Representatives on 2 June 2004. The bill has not yet been introduced to the Senate. On 16 June 2004 the bill was referred for inquiry to the Rural and Regional Affairs and Transport Committee on the recommendation of the Senate Selection of Bills Committee.

1.2 Due to the short time available for the Committee's inquiry the Committee approached a number of interested parties to provide evidence at a public hearing. Three organisations approached provide written submissions (see Appendix 1). A public hearing was held on 17 June and witnesses are listed at Appendix 2.

1.3 The Committee's evidence and submissions are available on the parliament's homepage at <http://www.aph.gov.au>

Acknowledgments

1.4 The Committee, particularly in view of the tight time frame of the inquiry, appreciates the time and work of all those who provided oral and written submissions to the inquiry. Their work has assisted the Committee considerably in its inquiry.

Purpose of the bill

1.5 The bill amends the *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act) and the *Export Control Act 1982* (the EC Act) revising the current framework for the regulation of the export of live animals. The bill's proposals will not only increase government regulation but strengthen implementation as sanctions and penalties will apply. The proposals also include the development of a set of "nationally consistent principles that focus on the health and welfare of stock during the whole of the export chain"¹ – the Australian Code for the Export of Live-stock.

1.6 The major changes proposed to the current regime are to address problems identified and recommendations made by the Livestock Export Review (the Keniry review).²

1 Minister for Agriculture, Fisheries and Forestry, Second Reading Speech to the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, p. 2.

2 *Livestock Export Review, Final Report, A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), 23 December 2003.

The Current Regulatory Regime

1.7 Currently, a co-regulatory regime operates for the export of live animals. The responsibilities are shared by industry bodies and the government. The industry bodies are the Australian Live-stock Exporters Council (ALEC) and Livecorp. Together they are responsible “for setting standards and accrediting exporters against those standards”³.

1.8 Livecorp developed and manages the Australian Standards for Live-stock Exports (ALES) and an accreditation program for live-stock exporters (LEAP). The assessment of “an applicant’s quality management system for meeting the ALES”⁴ is subcontracted to an external auditing company. The company’s audit report informs Livecorp’s decision on an exporter’s accreditation. A license cannot be issued without Livecorp accreditation.

1.9 Licensed exporters must export live-stock in accordance with “Livecorp’s quality assurance program”⁵. The audit program provides the auditor with access to the licence holder’s quality assurance system and records and documents. The auditor can also request corrective action to be taken to correct deficiencies. These requests must be complied with, to the extent that they are reasonable. Under the LEAP program, accreditation can be downgraded or withdrawn.

1.10 Government responsibilities in the current regulatory regime include the licensing of exporters⁶. The AMLI Act provides for the licensing of meat and live-stock exporters.

Under the Act, exporters must be licensed to export sheep, cattle and goats, and must demonstrate financial standing, integrity and competency to manage the logistical requirements of assembling and exporting large numbers of live-stock.⁷

1.11 The Departmental Secretary issues the licence under subsection 10(1) of the AMLI Act. In issuing a license, any board policies formulated by Livecorp must be

3 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 3.

4 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 4.

5 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 4.

6 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 3.

7 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 3.

considered. In addition, the Secretary must “consider whether the grant of a licence to an applicant would be contrary to the interests of the industry.”⁸.

1.12 The Australian Quarantine Inspection Service (AQIS) administers licenses and can impose certain conditions on the exporters for certain stock. These conditions can be set either by directions or through orders under the AMLI Act.

1.13 Under a Memorandum of Understanding between AQIS and Livecorp, Livecorp is required to “advise AQIS of any additional relevant information ...including results of a licensee audit which would assist the Secretary to determine whether the conditions upon which a licence has been granted have been complied with and continue to be complied with”⁹.

1.14 Orders made under the EC Act regulate the granting of permits for export. At least seven days before export, an exporter must apply with a notice of intention to export for an export permit. The notice of intention to export must include the export port, “information on the nature of the consignment, ... the country of destination and the date of departure”¹⁰ Authorised AQIS officers “issue health certificates and exports permits provided they are satisfied that:

- The consignment meets the importing country’s protocol requirements;
- The animals are fit for travel; and
- Appropriate arrangements have been made to supply food and water during the voyage.”¹¹

1.15 Once at sea, exporters must comply with the standards set out in Marine Order 43 made under the *Navigation Act 1912*. In addition to setting out requirements for housing (including stocking densities), feeding and watering the animals, these standards prescribe acceptable mortality rates. Mortality rates are required to be reported to the Australian Maritime Safety Authority (AMSA) at the end of each voyage. If the rate exceeds 2 percent per voyage, AMSA investigates whether ship factors caused the high mortality rates¹².

8 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 4.

9 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 4.

10 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 5.

11 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 5.

12 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 5.

1.16 Under the current arrangements veterinarians “registered by State veterinary surgeons board and accredited by AQIS”¹³ may be contracted by the exporter to undertake testing or certify the animals’ fitness to travel. Veterinarians may also be contracted to accompany the voyage to provide treatment for animals. AQIS requires veterinarians to travel on all live-stock exports to Middle East markets and to report daily on the animal health. A final report is also required by AQIS.

1.17 In addition to veterinarians accompanying live-stock consignments to the Middle East, under the industry quality assurance scheme stockmen accredited by Livecorp are required to be on board all voyages greater than 10 days. In practice, accredited stockmen accompany all sheep export voyages to the Middle East and all cattle export voyages¹⁴.

The Keniry review

1.18 On 10 October 2003 the government announced a review of the livestock export industry. The review was chaired by Dr John Keniry and reported on 23 December.¹⁵

1.19 The review was prompted by animal welfare concerns arising from the Cormo Express incident in August-October 2003. A shipment of sheep bound for Saudi Arabia had been rejected by the Saudi Arabian Ministry of Agriculture.¹⁶ The sheep were later accepted by Eritrea, but by the time they arrived they had been at sea for two and a half months and had suffered nearly ten per cent mortality. This may be compared with a normal mortality of less than one per cent. Deaths were largely the result of heat and other factors relating to the unusually long voyage. A normal voyage takes about two weeks. When the Cormo Express first arrived in Saudi Arabia the sheep had suffered mortality of about 1 per cent, and if they had been allowed to disembark then the voyage would have been uneventful.

1.20 The Keniry review acknowledged the efforts that the industry has made to address problems in the trade. It noted that in recent years outcomes have improved

13 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 5.

14 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 5.

15 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003.

16 The reason for this is unclear. A Saudi Arabian Ministry of Agriculture veterinarian rejected the shipment on the grounds that 6% of the sheep were infected with scabby mouth. The Australian veterinarian estimated the incidence of scabby mouth at 0.35%. The overall health of the sheep was later confirmed by the OIE regional co-ordinator in the Middle East. The Saudi Arabian government did not respond to an invitation from the Keniry review to advise further on the reason for rejecting the sheep. Keniry Report, pp. 29-30.

considerably.¹⁷ However it considered that ‘industry’s approach has been, in the main, reactive and based on incremental improvements to the current arrangements rather than rigorously analysing the underlying cause of the problems and seeking to address them.’¹⁸

1.21 The review’s main discussion points and conclusions were:

National standards

1.22 The review considered that there is a need for uniform, enforceable national standards for animal welfare in relation to live exports. The review considered that it is not appropriate for industry to continue to manage this, as has been the case. With State level codes, "there will always be difficulties in ensuring that the Codes are uniformly applied..., that they cover the full range of activities involved in export and that administrative systems are in place to enforce them." The review recommended an ‘Australian Code for Export of Livestock’ which should be directly referenced to the relevant legislation (recommendation 1).¹⁹

Licences and permits

1.23 The review believed that setting national standards and licensing exporters should be government functions. The review recommended that government should be responsible for granting export licences and permits and enforcing compliance with a national standard (recommendation 2).²⁰

Criteria for export licences and permits

1.24 The review recommended that criteria for granting export licences and permits should be more closely linked in the legislation and should be directly administered by AQIS (recommendation 3).²¹

AQIS and ‘third party’ veterinarians

17 From 1999 to 2003 cattle deaths fell from 0.34% to 0.11% of stock shipped, and sheep deaths from 1.34% to 0.79%. See www.daff.gov.au - MV Cormo Express - Frequently Asked Questions.

18 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 33.

19 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, pp. 35-36.

20 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 38.

21 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 38.

1.25 The review was concerned about the role of ‘third party’ veterinarians in preparing shipments and documenting compliance to AQIS:

On the one hand, they are responsible to their employer and are required to perform as directed; on the other hand, they are responsible for performing regulatory functions but not given regulatory protection, nor are they subject to regulatory sanctions.²²

1.26 The review recommended that veterinarians should be contracted directly to AQIS, with industry paying the cost (recommendation 4).²³

Veterinarians and stockmen on board ship

1.27 The review recommended that all voyages over ten days, and ten per cent of other voyages, should carry a veterinarian on board ship who would be required by law to report directly to AQIS on animal health matters (recommendation 5).²⁴

Suitability of stock for export

1.28 The review saw a need for continuing research into the risks associated with export of particular types of animals or in particular circumstances. The review recommended that export should be banned where there is evidence of likely adverse outcomes. The review thought this would mean closing ports such as Portland and Adelaide during winter, when the risks are greatest (recommendation 6).²⁵

The Cormo Express incident

1.29 The review accepted that the unusually high mortality on the Cormo Express was caused by the extended voyage. The review agreed that the Middle East trade should only continue on the basis of clear government to government agreements.²⁶

Risk mitigation and contingency planning

22 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 39.

23 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 40.

24 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 40.

25 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 43.

26 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 44.

1.30 The review recommended a risk averse approach to planning for contingencies such as that which arose in the Corno Express incident. This could include government to government agreements, pre-embarkation inspection by the importing country, and securing alternative discharge options in the region. The review recommended that the government seek agreement with a Middle East country to establish a quarantine holding facility (recommendation 7).²⁷

Emergency response

1.31 The review recommended that a national emergency response system should be established to manage any future livestock export emergency (recommendation 8).²⁸

The government response to the Keniry review

1.32 The government accepted the Keniry report's recommendations 1, 2, 3, 7 and 8. The government accepted the other recommendations with modifications, viz:

1.33 Recommendation 4: proposal that third party veterinarians be contracted directly to AQIS: the government's position is that they should be trained and accredited by AQIS and registered with a state veterinary board, but contracted by the exporter. 'This would avoid the need to develop complex contractual arrangements with a pool of private veterinarians.' Their responsibilities will be referenced in the legislation and subject to sanctions. AQIS officers will take the role of inspection and clearance at feedlots before exporting.²⁹

1.34 Recommendation 5: a suitably qualified veterinarian should be on all voyages over ten days and a randomly selected ten per cent of other voyages: the government's position is that it is unlikely that enough veterinarians would be available, and a risk management approach is preferable.³⁰

27 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 45.

28 *Livestock Export Review - Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, p. 46.

29 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, pp. 15-19.

30 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, pp. 15-20.

1.35 **Recommendation 6:** Portland and Adelaide should be closed over winter: the government's position is that there is little support for a blanket ban, and that instead exporters should be required to implement measures to reduce risks.³¹

1.36 The bill puts into effect the government's position.

Provisions of the bill

1.37 The following is a summary of the Items that represent changes to the current legislation³²:

Schedule 1

Part 1 – Australian Code for the Export of Live-stock

Australian Meat and Live-stock Industry Act 1997

1.38 **Item 1** inserts a new part, Part 2A, after Part 2 of the *Australian Meat and Live-stock Industry Act 1997*. The effect of the new provision is to allow the Minister to determine principles relating to the export of live-stock from Australia. The principles may relate to a variety of different aspects of the live-stock export process and will be known as the *Australian Code for the Export of Live-stock*³³.

Part 2 – Integration of export licence and permit systems etc.³⁴

Division 1 – Australian Meat and Live-stock Industry Act 1997

1.39 **Item 2** inserts a definition for an “associate” in section 3 of the AMLI Act. It makes provision for the Item 11 amendment to the AMLI Act.

1.40 Section 9 of the AMLI Act is amended by **Item 3**. The proposed amendment removes the requirement for the Secretary to have regard to any broad policies developed jointly by prescribed industry bodies when exercising his or her powers in relation to live-stock export licences and to live-stock export quotas³⁵. The

31 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, pp. 16-20.

32 This section is based on information contained in Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum.

33 Recommendation 1 of the Keniry Report – recommends the development of a national standard for live-stock exports – the *Australian Code for Export of Live-stock*.

34 It is intended that all items in Part 2 will improve the integration between the export licence and export permit systems.

35 There is currently no system to establish and administer export quotas for live-stock.

amendment reflects the government's intention to have sole responsibility for live-stock export licences.³⁶

1.41 **Item 4** amends section 12 of the AMLI Act by inserting a new subsection (3). The amendment expands the criteria that the Secretary may have regard to when considering an application for a live-stock export licence.

1.42 The purpose of the amendment is to improve the integration between the provisions of the AMLI Act and the EC Act relating to live-stock. Under the amendment, the Secretary can take into account the compliance history of a person under the EC Act when determining the grant of a live-stock export licence to that person under the AMLI Act.³⁷

1.43 **Item 5** amends subsection 23(1) of the AMLI Act which sets out the matters to which the Secretary may have regard when deciding to issue a "show cause notice". This additional matter concerns the situation where a holder of a live-stock export licence makes a false declaration under the new subsection 7(3B) of the EC Act. Again the amendment will improve the integration between the provisions of the AMLI Act and the EC Act.³⁸

1.44 Section 23 of the AMLI Act deals with notices to licence holders to show cause why the licence should not be treated in a certain way. **Item 6** proposes amendments that will allow the Secretary to consider the extent to which a holder of a live-stock export licence has complied with the requirements under the EC Act when determining whether to issue a show cause notice under the AMLI Act.³⁹

1.45 **Items 7, 8 and 9** also amend section 23 of the AMLI Act.

1.46 **Item 10** amends paragraph 24(1)(b) of the AMLI Act to allow the Secretary to cancel, refuse to renew, or suspend a live-stock export licence or reprimand a holder of a live-stock export licence if, after considering any written statement by that person, the Secretary is satisfied that the new subsection 23(2A) applies.

1.47 **Item 11** inserts a new provision, section 25A, into the AMLI Act. The new provision empowers the Secretary to take certain action in relation to the licence of

36 Recommendation 2 of the Keniry Report – recommends the Government assume sole responsibility for granting export licences and permits.

37 Recommendation 3 of the Keniry Report – recommends that criteria for approval of export licenses include an assessment of the export history of the exporter as well as their related entities.

38 Recommendation 3 of the Keniry Report – recommends that the criteria for approval of export licences and export permits should be more closely linked in the legislation.

39 Recommendation 3 of the Keniry Report – recommends that the criteria for approval of export licences and export permits should be more closely linked in the legislation.

person (“Person A”) who was an associate of an applicant or holder of a live-stock export licence (“Person B”) at the time the Secretary refused to grant or renew, suspended, further suspended or cancelled the live-stock export licence of Person B.

1.48 The effect of items 10 and 11 is to address the situation where the Secretary refuses to grant or renew, or suspends, or further suspends, or cancels a live-stock export licence, and the holder or applicant of the licence seeks to frustrate this decision by relying on the licence of another person.

1.49 The combined effect of items 9, 10 and 11 is to enable the Secretary to refuse to grant a licence to Person A, or after issuing a show cause notice, take action against Person A in a manner described in paragraphs 24(1)(c) to (g) of the AMLI Act.

1.50 **Item 12** sets out the application arrangements for the new section 25A.

Division 2 – Export Control Act 1982

1.51 **Item 13** expands the definition of “orders” in section 3 of the EC Act.

1.52 Section 7 of the EC Act deals with the powers to make regulations under the Act. **Items 14, 15 and 16** amend section 7.

1.53 **Item 16** proposes a new paragraph 25(2)(h) to the EC Act. The new paragraph enables the Secretary to make orders in relation to any matter that can be the subject of regulations provided that the orders made by the Secretary are not inconsistent with the regulations or any order mentioned in paragraph 25(2)(g) made by the Minister.

1.54 This extends the order making power relating to animals (including live-stock) to the Secretary, so that the Secretary’s power under the EC Act is similar to the Secretary’s order making power under the AMLI Act in relation to live-stock.

Part 3 – Accreditation of veterinarians for the purposes of approved export programs

Export Control Act 1982

1.55 **Items 17, 18, 19, 20 and 21** relate to the accreditation of veterinarians for the purposes of approved export programs⁴⁰. The items insert definitions for the following terms in section 3 of the EC Act:

- “accredited veterinarian”;
- “approved export program”;

40 Recommendation 5 of the Keniry Report – recommends that a registered, suitably qualified and trained veterinarian should be on board all live-stock export ships where the journey takes over 10 days.

-
- “eligible animal reproductive material”;
 - “eligible live animals”; and
 - “export activities”.

1.56 **Item 22** inserts a new part, Part IIA, into the EC Act to deal with the accreditation of veterinarians for the purposes of approved export programs in relation to eligible live animals and eligible animal reproductive material.

1.57 **Item 23** amends subsection 10A(1) of the EC Act, which deals with monitoring powers in relation to registered premises and other premises entered by consent. The purpose of the amendment is to clarify that authorised officers have the power to enter premises and exercise general search powers.

1.58 **Item 24** amends subsection 10B(2) of the EC Act, which deals with the issue of monitoring warrants by magistrates.

Comment of Senate Scrutiny of Bills Committee

1.59 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters.

1.60 The Scrutiny of Bills Committee was concerned that schedule 1, item 12, new section 25A, is effectively retrospective.

1.61 Section 25A would permit the Secretary to refuse to grant a live-stock export licence to a person on the ground that the applicant had been an ‘associate’ of some-one who had previously been refused the same sort of licence. Item 12 of the Schedule would apparently mean that a person could be refused a live-stock export licence on the ground that he or she had been an associate of some-one who had previously been refused such a licence, despite the fact that both the earlier refusal, and the association between the two applicants for a licence, had all occurred before this bill was assented to, and despite the fact that any such association had ceased before that Assent.⁴¹

41 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 7 of 2004, 16 June 2004, p. 9.

Chapter 2

The Legislation

Introduction

2.1 During the inquiry, the Committee heard evidence from the peak industry bodies, the industry organisations currently with responsibilities for export industry and the Australian Veterinary Association and Animal Health Australia. While it was clear the current state of the export of live animals industry was not as robust as it was 12 to 18 months ago, there was general support for the proposals in the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 (the bill).

2.2 The submissions received from Animals Australia and the RSPCA did not support the export of live animals because of animal welfare concerns.

2.3 The Committee noted that those involved in the industry accepted the benefits resulting from regulation of the supply chain from the producer to the export market and all steps in between. There was also a general view that the legislative changes were an opportunity for the industry to improve co-ordination, with the introduction of national standards, without restricting the ability to respond to particular circumstances. The views of the Cattle Council of Australia highlight the acceptance in the industry:

I believe a strong feature of Australian agriculture is how industry interrelates and interacts with government at a variety of levels, and throughout this process we have felt as a council that we have been quite closely involved with the development of these pieces of legislation. In the future we expect to see that continued as the standards and the emergency contingencies are further developed. We see that as a very important outcome from the Keniry exercise¹.

Issues

Government Regulation

2.4 One of the major changes which will result from the passage of the bill is the Government's increased involvement in the regulation of the industry. The Secretary will no longer need to have regard to any jointly developed industry policies in issuing licences. This reflects the Government's intention to have sole responsibility for live-stock export licences².

1 Mr Hartmann (Cattle Council of Australia), *Committee Hansard*, 17 June 2004, p. 11

2 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 24.

2.5 Instead the bill proposes amendments to section 12 of the AMLI Act that expand the matters that the Secretary can consider prior to granting an export licence. The applicants' previous compliance record can also be considered. The amendments in the bill also provide a legislative base for "the revocation or suspension of licences and permissions to export"³

2.6 These amendments give effect to Recommendation 2 of the Keniry Review. The Secretary not only has the responsibility of granting licences but also has sanctions to apply if the exporter does not comply with the conditions of a licence or other requirements placed on the export of the live animals.

2.7 The increased government regulation of the export of live stock was largely supported by the Industry. In evidence, the Sheepmeat Council of Australia, for example, informed the Committee:

The Sheepmeat Council strongly supports the need for government to be solely responsible in the relevant legislation for granting export licences and permits, and enforcing compliance by exporters against the national standard. The bill improves the integration between the AMLI Act and the Export Control Act.⁴

2.8 The Exporters Council also indicated that some aspects of the industry would be improved by Government regulation and in the long term will strengthen industry:

I think the assembly depot reform was necessary, yes. Bear in mind that we don't own the assembly depot. We do not necessarily own the assembly depots. Several of the assembly depots are just custom built facilities that we utilise, and in some cases they certainly needed tightening up.⁵

2.9 Livecorp is the organisation that is most affected by the Government's new level of involvement. During the inquiry the Committee learnt of the proposed restructuring of the organisation and how Livecorp perceived its new role within the industry:

The legislation quite clearly makes the government responsible for assessing competence in the industry standards as part of the licensing process, which is something that has been a responsibility of LiveCorp. In part of our QA arrangement we accredited exporters, and that accreditation was taken as a certification of competence for the licensing process. That will no longer be the case. Under the new legislation, the government will make, in its own way and in its own time, the judgment on what competence is and it will use various measures to assist us in coming to that decision.

3 *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004*, Schedule 1, Item 15, p. 9.

4 Mr O'Sullivan (Sheepmeat Council of Australia), *Committee Hansard*, 17 June 2004, p. 10.

5 Mr McIvor (Australian Livestock Exporters Council), *Committee Hansard* 17 June 2004, p. 6.

and

From an operational point of view, we see that changes have distanced us from regulation in a sense and our function will be more one of facilitation, and we have been looking at our industry standards function. We are very committed to developing and improving industry standards. We see that, rather than putting the emphasis now on running that accreditation in terms of certifying competence, we will be running that accreditation to ensure that individuals operating in the industry can embrace upgrades in research and best practice.⁶

2.10 The Committee notes the general support for one of the key changes to the regulatory regime, government responsibility. Despite this support, some concerns were raised during the inquiry.

Definition of "associate"

2.11 Both the Australian Live-stock Exporters Council and Livecorp expressed concern regarding the breadth of the definition of "associate" to be inserted in the *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act) by item 2 of Schedule 1 of the bill.

2.12 The definition includes both individuals and corporations associated either on a personal or business basis with the "subject person". The impact of the broad definition is evident in item 11 of Schedule 1 of the bill. Item 11 prescribes the Secretary's powers in relation to the licensing of an "associate". The Secretary may refuse to grant a licence to the "associate" on the basis of the association.

2.13 The amendments to the AMLI Act are to close a loophole in the legislation, identified by the Keniry Review.

2.14 The Australian Live-stock Exporters Council informed the Committee:

One area we are slightly concerned about is associated companies. It is a small industry and unfortunately it is getting smaller. In many cases, to operate satisfactorily companies, although they may be competitors in one sense, have to work together. Invariably you are going to have the association of one company with another. One of the new regulations—I am sorry I do not have the exact wording—more or less implies that if someone happens to sin, then anyone who is associated with them could go along with them. I am concerned that this might have a knock-on effect.⁷

2.15 Livecorp, accepting there may be an issue to be addressed, suggests alternative wording would address the concerns but not be so prohibitive:

6 Mr Shiell (Livecorp) *Committee Hansard*, 17 June 2004, p. 4.

7 Mr McIvor (Australian Livestock Exporters Council), *Committee Hansard*, 17 June 2004, p. 5.

... there is a very broad definition of ‘associate’ there, and our advice is that it could cover a wide range of associations which are only marginal. Perhaps it needs to be that broad to capture the intent of what was brought forward by Keniry: people having an interest in one company, influencing it and being able to influence others. That makes it very difficult to regulate. If the secretary was able to exercise a judgment that there was some material linkage between the two, you could restrict it that way—a lawyer could obviously do that a lot better. But, as wide as it is now, a farmer could be an associate and two exporters could buy from that farmer, if they wanted to be really nasty about it. But the intent surely is that there was some means of influence occurring because of the association.⁸

2.16 However, others were more supportive of the restriction, indicating in their evidence to the Committee that there was a need for a remedy:

Sheepmeat Council has lobbied for more adequate deterrents, and for the associate loophole to be close thereby not allowing an exporter whose licence has been denied, suspended or revoked to continue operating under the licence of an associate.⁹

2.17 In responding to the concerns at the public hearing Department of Agriculture, Fisheries and Forestry (DAFF) officers indicated:

The linkages between traders in the live export industry are not offended by this particular provision. This particular provision is intended to enable the secretary to take action against an associate if they have already taken action against a licence holder, an exporter. For instance, if the secretary decided to either cancel or suspend or otherwise take action against a licence holder, the secretary could then consider whether he wanted also to take action against any associate that came within this definition. ...

The way the legislation is written means that the secretary can come to a conclusion that it would be appropriate to take action against the associate after having taken action against the licence holder. As is indicated in the explanatory memoranda, that is to ensure that if a particular exporter has had their licence suspended or cancelled for a particular reason they are not in a position to carry on business under another company or through another arrangement within the industry. ...

and

The requirements on taking action against a licence holder require the secretary to write to the licence holder and ask them to show cause why a particular action ought not be taken against them. The associate’s provision does not necessarily require that particular approach to be taken but it would be likely that the secretary would give an associate that opportunity in those

8 Mr Shiell (Livecorp), *Committee Hansard*, 17 June 2004, p. 8.

9 Mr O’Sullivan (Sheepmeat Council of Australia), *Committee Hansard*, 17 June 2004, p. 10.

circumstances. It may be possible that there are some circumstances where the secretary would want to operate quickly without going through a show cause process, but the possibility, for most circumstances, is that that would be the way it would follow.¹⁰

2.18 The Committee notes the concerns expressed and the comments made about retrospectivity by the Senate Standing Committee on the Scrutiny of Bills (see paragraphs 1.59 – 1.61). The Committee itself is concerned that the wording of the amendment proposed by item 11 of Schedule 1 suggests that the association does not have to be current at the time the Secretary takes action.

2.19 However, the Committee accepts that there is a need to be able to ensure a suspended licensee does not continue operating with others. There is sufficient balance provided by the proposed amendments requiring the Secretary to issue the associate with a "show cause notice" as to why a particular action should not be taken, providing the associate with the opportunity to respond.

2.20 The Committee notes the evidence that the amendments do not require the "show cause notice" to be issued. It would expect the Secretary to be able to justify any actions taken without this process being followed.

Proposed national code

2.21 The bill provides that the Minister may make an *Australian Code for the Export of Live-stock*. Persons exercising powers and performing functions under the Act will have to take account of the code. The code will be disallowable. The Explanatory Memorandum explains further:

It is intended that the principles formulated by the Minister will guide the Secretary and authorised officers in making decisions or carrying out functions at any stage of the export process. The Australian Code for the Export of Live-stock will be underpinned by specific standards to be met by exporters. These standards will be determined by Government and will become enforceable by being set out in subordinate legislation.¹¹

2.22 The industry supports the proposed code. Mr Hayward of Meat and Livestock Australia noted with approval that "the codes of practice and the standards will extend right along the supply chain". Mr O'Sullivan of the Sheepmeat Council noted that "the detail will be in the standards, and we seek that the government strongly consults with

10 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, p. 34.

11 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 23.

industry stakeholders on the standards development".¹² Mr Shiell of Livecorp argued the need to look to outcomes rather than prescriptive standards:

I am expecting that we will move much more towards outcomes and that we will be judged on outcomes rather than on the adherence to specific prescriptive standards.... You do not want to stifle initiative by forcing adherence to specific strict requirements.¹³

2.23 Mr McQueen of Australian Dairy Farmers Ltd suggested that there are some additional steps which the code needs to consider to cover the full export chain.¹⁴ Mr McIvor of the Australian Livestock Exporters Council argued that:

We would hope that the existing standards would be very much taken into account in setting the new ones. The existing standards were completely reviewed by an independent group less than 12 months ago as an R&D project costing some \$200,000. One would hope that if they did their job those standards would be still fairly much what we would be looking for.¹⁵

2.24 DAFF advised that the Primary Industries Ministerial Council in May endorsed an interim code, which will be the basis of the legislated code:

That code will be finalised by December, but the interim code provides many of the broad principles.¹⁶

2.25 DAFF further advised that developing detailed standards is likely to be a two stage process:

We are currently mapping existing documents, such as existing orders under the Export Control Act; existing model codes of practice; the Australian Livestock Export Standards, or ALES as they are referred to; and elements of marine order 43. We are extrapolating from those documents standards that are likely to be applicable to the detail that will support the code and the high-level principles.

That will be an interim process. The second stage, which is due to be completed by December, will be a fuller process involving consultation with all stakeholders to fully develop standards... we have a range of existing

12 Mr Hayward (Meat and Livestock Australia), *Committee Hansard* 17 June 2004, p. 8; Mr O'Sullivan (Sheepmeat Council of Australia), *Committee Hansard*, 17 June 2004, p. 10.

13 Mr Shiell (Livecorp), *Committee Hansard*, 17 June 2004, p. 7.

14 Mr McQueen (Australian Dairy Farmers Ltd), *Committee Hansard*, 17 June 2004, p. 11.

15 Mr McIvor (Australian Livestock Exporters Council), *Committee Hansard*, 17 June 2004, p. 7.

16 Mr Merrilees (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, p. 26.

documents, which we will be drawing on, and we have some gaps to fill in in that detail.¹⁷

2.26 The RSPCA was concerned that the Interim Code fails to set defined and enforceable animal welfare standards. Animals Australia felt that the language and accountability of the Code needs improvement.¹⁸

2.27 The Committee notes and endorses the comments concerning consultation. It also supports the work being done to review the current range of standards. Although the Keniry Review indicated that the industry had been reactive in developing the standards, it noted that outcomes had been improved.

2.28 However, the Committee is of the view that the new industry standards should continue to evolve as research and knowledge advance. It notes the comments by the AVA provided in evidence that:

... you put a professional on board with an increased level of reporting and a better understanding of what is happening and who is trying to generate better data upon which you can make future judgments and improve the trade. If you look as an example at the evolution of systems to allow this, there is a model which looks at how many animals you put on a ship, the background of the animals and the individual ship, and it makes it a much more sensitive process.¹⁹

2.29 Finally, the Committee highlights the difficulty in anyone making a full appraisal of the legislation without the associated Code or Standards.

"Third Party" Veterinarians

2.30 Under current arrangements, third party veterinarians (registered by the State veterinary surgeons board and accredited by AQIS) may be contracted by exporters during the preparation of a consignment. In these circumstances veterinarians may be required to undertake specified tests and/or treatments of live-stock in the consignment in line with the requirements of the importing country.²⁰

2.31 Third party veterinarians may also be contracted to examine a consignment of live-stock prior to export and provide a statement to AQIS regarding the stock's fitness

17 Mr Merrilees (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, pp. 26-29.

18 See *Submission 3*, RSPCA, p.2 and *Submission 2*, Animals Australia, p.22. Both these groups stressed that they oppose the live export trade, and they did not wish their comments on the details to imply that they accept the underlying policy.

19 Dr Doyle (Australian Veterinary Association), *Committee Hansard*, 17 June 2004, p. 24.

20 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 5.

to travel. Exporters can also request that AQIS conduct this type of pre-export testing, treatment and inspection.

2.32 The Explanatory Memorandum to the proposed new legislation argues that the current legislative arrangements cover the actions of exporters, but not other chain participants such as third party veterinarians:

Third party veterinarians play a critical role in the preparation and selection of stock for export and reporting while on board ship, yet their duties and obligations are not referenced in the legislation. This has had the effect of limiting the potential for AQIS to apply sanctions for breaches of standards.²¹

2.33 A primary focus of the proposed legislation is the role and responsibility of third party and accredited veterinarians.

2.34 Recommendations 4 and 5 of the Keniry Report relate to third party veterinarians (see paragraphs 1.25 to 1.27).

2.35 The Government accepted the general tenor of Recommendations 4 and 5, with some modification (see paragraphs 1.33 and 1.34).

2.36 As part of the Government's proposed changes in relation to the accreditation of veterinarians, a number of changes to the *Export Control Act 1982* (EC Act) will be necessary, including:²²

- the establishment, under regulation, of a system for accrediting veterinarians for the purpose of undertaking approved export programs. The new regulations will allow variations to be made to a veterinarians accreditation – including having it suspended or revoked.
- the provision for the Secretary to direct an authorised officer to monitor, review or audit the activities of an accredited veterinarian, issue a direction to an accredited veterinarian to remedy any identified deficiency and provide notice that failure to remedy a deficiency is an offence (of 50 penalty units) under the legislation.
- the creation of an offence (with a penalty of 50 penalty units) to apply to veterinarians who agree to undertake approved programs without appropriate accreditation.

21 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 10.

22 Based on information contained in Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, pp. 28-30.

- the creation of an offence (with a penalty of 50 penalty units) of strict liability to apply to accredited veterinarians for failure to keep or provide any records or reports required under the legislation. [For example, the regulations may provide that accredited veterinarians keep records and provide reports for the purpose of monitoring the mortality rates of eligible live animals].

2.37 The new legislation will also make it an offence to obstruct or hinder an accredited veterinarian (or authorised officer) in the undertaking of an approved export program. A strict liability offence will also apply to exporters who fail to provide accredited veterinarians (or authorised officers) with all reasonable facilities and assistance necessary to undertake activities in relation to an approved export program.

2.38 In its submission to the inquiry, the Australian Veterinary Association (AVA) emphasised the primary importance of animal welfare, and urged the development of a national welfare code for the livestock export industry. Whilst acknowledging the advances made by industry the AVA also advocated the need for more effective regulatory controls "in order to underpin industry initiatives in risk management and quality assurance, and to meet community expectations...".²³ The integration of the export licensing and permit systems is seen as a positive initiative in this regard.

AQIS or Exporter as contractor

2.39 The AVA's submission also noted its preference for accredited veterinarians to be directly contracted to AQIS, but acknowledged that there was a positive aspect to the new legislation in this regard:

Although the Association would prefer that accredited veterinarians were directly contracted to Government (AQIS), the Bill does allow a significantly greater degree of independence and professional judgement than the present arrangements. It is essential that veterinarians are able to report on any aspect of the export process that might impact on the health and welfare of the animals. As with all personnel along the export chain, the AVA believes that the activities of veterinarians should be subject to a rigorous, transparent audit process.²⁴

2.40 In its submission to the inquiry, the RSPCA strongly argued that veterinarians should be completely independent of exporters:

23 *Submission 1*, Australian Veterinary Association, p. 1.

24 *Submission 1*, Australian Veterinary Association, p. 1.

The RSPCA believes that it is vital that veterinarians responsible for the treatment and preparation of animals for export are accountable to AQIS and are independent from exporters, not contracted by exporters.²⁵

2.41 In evidence before the Committee, the AVA restated its support for the proposed legislation, which in effect places more responsibility on veterinarians and includes the possibility of sanctions. The AVA also indicated that it was "comfortable with the notion" that the AQIS veterinarian would do the final check at the feedlot.²⁶

2.42 When questioned by the Committee on the way the new arrangements would change the way its members performed their jobs, Dr Michael Bond indicated that:

We would expect all the veterinarians involved in the trade to act professionally. I guess it is a little bit of a carrot and stick approach. We are hoping that the legislation will allow veterinarians to act with a greater degree of professional independence than has sometimes been the case in the past. But also we are fairly relaxed about there being appropriate sanctions in place in vets that do not perform as they should. We think that is entirely appropriate.²⁷

2.43 Representatives of AVA also indicated support for the introduction of tighter restrictions under the legislation:

Yes. We see that as perhaps imposing tighter restrictions. We see an important part of the process being not the introduction of an audit process, because there already is one, but perhaps a more stringent audit process being imposed upon everyone involved along the export chain to ensure that standards are adhered to, that health protocols are followed and that all the documentation reflects reality.²⁸

2.44 Representatives of Livecorp were also questioned about the changes to the legislation and the possibility of an unfair level of responsibility being placed on veterinarians. When asked by the Committee whether their organisation thought ultimate responsibility should be placed on the exporter or the veterinarian, Mr Sheill replied:

I think it is important that, if a professional is retained who has professional qualifications and registration, he is retained to provide a service. There is an expectation that he will be able to do that. If he is working in an areas

25 *Submission 3*, RSPCA, p. 1.

26 Dr Doyle (Australian Veterinary Association), *Committee Hansard*, 17 June 2004, p. 17.

27 Dr Bond (Australian Veterinary Association), *Committee Hansard*, 17 June 2004, p. 17.

28 Dr Bond (Australian Veterinary Association), *Committee Hansard*, 17 June 2004, p. 17.

that is probably beyond the technical capability of the exporter in terms of veterinary skills then the exporter would be entitled to expect that that person would bear his responsibilities.²⁹

Veterinarians accompanying all voyages

2.45 In its submission to the inquiry, the RSPCA expressed concerns regarding the Government's modified response to Recommendation 5 of the Keniry Report:

....the Government's modified response to the recommendation that a veterinarian should be on board all livestock export ships where a journey would take over 10 days is actually an erosion on current practices, as currently AQIS requires a veterinarian to accompany all consignments to the Middle East and this would no longer be required.³⁰

2.46 The issue of veterinarians accompanying all voyages beyond ten days was raised with the Australian Veterinary Association (AVA) during the Committee's hearing:

Senator O'Brien – Recommendation 5 [of the Keniry Report] suggests that vets be on voyages beyond 10 days. Do we have enough vets to achieve that?

Dr Doyle – That is a really good question. We really do not know the answer to that. It is not easy to get those sorts of numbers of people who are prepared to do it over and over again. When you look at the number of journeys that are undertaken – in excess of 400, for example – that is an open point. But we would accept that that could be done on a risk analysis basis. We also accept as a veterinary association the valuable efforts being made by accredited stockmen.

Senator O'Brien – How do we determine whether they would effectively replace the role of the vets? Is that what you are suggesting?

Dr Doyle – No, not really. They are accredited stockmen who are doing it now. They do the reporting and so on on most voyages. The Saudi trade that was going for a time required a veterinarian, but not all of the others. So I believe we would accept the notion of the resources in terms of on-board veterinarians being applied to the areas of greatest risk. I know that AQIS and the industry generally would be prepared to develop those guidelines.³¹

2.47 In evidence, Ms Gordon, a DAFF officer indicated that:

29 Mr Shiell (Livecorp), *Committee Hansard*, 17 June 2004, p. 2.

30 *Submission 3*, RSPCA, p. 1.

31 Dr Doyle (Australian Veterinary Association), *Committee Hansard*, 17 June 2004, p. 21.

There were concerns in the consultations that took place in developing the Government's response to the Keniry recommendations that, if we required vets to be on all voyages, there may be insufficient vets.³²

2.48 While the Department acknowledged that no specific work had been done to determine the number of additional veterinarians necessary to implement the Keniry recommendation, it argued that:

.... In fact it may not be necessary to have a vet on every voyage to ensure that the standards are met but there are certain voyages where there may be indications that there are higher risks either because of the time of year, the nature of the animals or perhaps because it has been an exporter that we have had some concerns about and have put a condition on their licence or their export permit and where you would want the additional assurance of having a vet on board to monitor the health of the animals and report directly to AQIS. Through the bill, we have additional powers to enable us to require vets to report directly to us on matters that we can prescribe.³³

Accreditation of Veterinarians

2.49 The Committee also explored the new requirements for the accreditation of veterinarians. DAFF officers informed the Committee that a process was emerging following discussions between the Department and Animal Health Australia.

..we are looking at a system whereby we would require accredited vets to have registration with the Veterinary Surgeons Board, to have completed an APAV and to have completed a speciality program. This is for vets who are either working in the industry preparing livestock for export or proposing to be vets on board vessels.³⁴

2.50 Work had already commenced on developing criteria for speciality programs based on the "knowledge of the obligations that they will take on under the legislation."³⁵ In relation to the time lines involved for the development of the accreditation programs, Animal Health Australia informed the Committee that:

For accreditation within our system, three to four months; if it were required to be accredited under the ANTA arrangements, it would be a longer

32 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, p. 35.

33 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, p. 35.

34 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard* 17 June 2004, p. 26.

35 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard* 17 June 2004, p. 26.

process. A significant component of that is consultation with appropriate stakeholders.³⁶

2.51 Further, the Committee was informed that a transitional process of accreditation was being considered to ensure that accredited veterinarians would be available to undertake the new legislative tasks. DAFF stated:

... it is very likely at the time that we proclaim those particular provisions that we will also be looking to have an order, to have a regulation in place that allows vets who are currently operating in the industry and operating effectively to be deemed to be accredited vets for a period of time until it is possible for them to complete the other requirements that they will then have to meet to be an accredited vet.³⁷

2.52 The Committee considers the new monitoring role of veterinarians is critical to the successful implementation of the proposed new regulatory regime. It accepts these assurances that appropriately accredited veterinarians will be available to undertake the task.

Committee Comment

2.53 The Committee has considered the bill in the context of the Keniry report and the government's response to it.

2.54 It notes that recommendations 7 and 8 of the review are not embodied in the legislation. However, the Committee is aware that negotiations are continuing with Middle East countries in relation to live sheep exports³⁸. In the Committee's view the conclusion of these negotiations should include the arrangements for a holding facility proposed in Keniry's recommendation 7.

2.55 The Committee also notes the advice of DAFF officers at the public hearing on the bill in relation to recommendation 8:

There are discussions taking place now about what might be considered as elements of an emergency response plan. As you know, the department already has a series of plans in relation to a range of areas that it is responsible for and they will become the basis for developing an emergency response plan for this area.³⁹

2.56 In relation to the remaining recommendations, the Committee notes that Recommendation 6 was modified by the government's response and the southern ports

36 Dr Keogh (Animal Health Australia), *Committee Hansard*, 17 June 2004, p. 20.

37 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, pp. 26&27.

38 Budget Estimates 2004-2005, *Committee Hansard*, 24 May 2004, p. 24.

39 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, p. 33.

are not to be closed during the winter but appropriate risk mitigation strategies are to be adopted. The Committee was advised that new standards have been applied "to feedlots, to registered premises, required under the existing animal orders".⁴⁰ Further changes may also be introduced.

2.57 Recommendations 1, 2, 3, 4 and 5 are to be implemented with the passage of the legislation. The Committee has already noted the difficulty in ascertaining the efficacy of the proposals when the detail is to be provided in subordinate law that is yet not available. The comments made during the public hearing that the "devil is in the detail"⁴¹ is a view shared by the Committee.

2.58 However, notwithstanding this concern the Committee notes that the legislative base for the national standard and the issuing of licences and permits recommended (recommendations 1, 2 and 3) by the Keniry review will be achieved by the bill and the associated subordinate legislation.

2.59 Recommendations 4 and 5 as modified by the government's response will be given effect by the legislation.

2.60 While this bill will increase the accountability of the live-stock export sector to the Government its fails to ensure that the industry is properly accountable to the parliament and the Australian community.

Recommendation 1

2.61 The Committee therefore recommends that the Government amend the bill to place a statutory requirement on the Minister to table in both Houses of Parliament each six months consolidated mortality data and Australian Quarantine and Inspection Service and Australian Marine Safety Authority mortality reports on live-stock export shipments.

Senator the Hon. Bill Heffernan

Chair

40 Ms Gordon (Department of Agriculture, Fisheries and Forestry), *Committee Hansard*, 17 June 2004, p. 30.

41 See Mr Haywood (Meat and Livestock Australia Ltd), *Committee Hansard*, 17 June 2004, p. 4 and Mr O'Sullivan (Sheepmeat Council of Australia), *Committee Hansard*, 17 June 2004, p. 14.

Appendix 1

List of Submissions

1. Australian Veterinary Association
2. Animals Australia
3. RSPCA

Appendix 2

Witnesses who appeared before the Committee at the public hearing

Thursday, 17 June 2004

Parliament House, Canberra

Meat and Livestock Australia Limited

Mr Michael Hayward, General Manager, Livestock Exports

Livecorp

Mr Kevin Shiell, Chief Executive Officer

Australian Livestock Exporters Council

Mr Ian McIvor, Chairman

Cattle Council of Australia

Mr Michael Hartmann, Acting Executive Director

Sheepmeat Council of Australia

Mr Bernard O'Sullivan, Executive Director

Australian Dairy Farmers Ltd

Mr John McQueen, Chief Executive Officer

Australian Veterinary Association

Dr Kevin Doyle, Veterinary Director

Dr Michael Bond, Assistant Veterinary Director

Animal Health Australia

Dr Robert Keogh, Director, Programs

Department of Agriculture, Fisheries and Forestry

Ms Jennifer Gordon, National Manager, Animal and Plant Programs, Australian Quarantine and Inspection Service

Mr Dean Merrilees, General Manager, Animal and Plant Health Policy, Product Integrity, Animal and Plant Health

Ms Yvonne O'Neill, Manager, Legislation Review Unit, Australian Quarantine and Inspection Service

Supplementary Report by the Australian Democrats

The Australian Democrats are in agreement with most of the recommendations and observations of the Chair's report. Accordingly, our supplementary comments and recommendations will be confined to additional issues or areas where we have different views to those covered by the Chair.

The Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004 (the bill) is the Government's long overdue legislative response to the Keniry inquiry which revises the current framework for the regulation of the export of live animals.

The Government was so slow to respond to the to the Keniry report on the Cormo Express debacle, which was finalised on 23 December 2003, that there were numerous public demonstrations and legal action taken by live exporters. This Bill goes some way towards addressing the frustrations of animal welfare lobbyists and live exporters over the live export trade by implementing a number of Keniry's recommendations.

However, the Democrats believe this bill has several deficiencies. The legislation does not address recommendations 7 and 8, and only partly addresses recommendation 6. The legislation does not detail how it will implement recommendations one to five. And the Democrats remain to be convinced of the effectiveness of this Bill without analysing the associated national code of practice.

The Keniry report also had inadequate terms of reference when it was established by the Government, and it is disappointing that, to date, there has not been further advancement of the complete set of recommendations.

The terms of reference for the Keniry review related only to the preparation, selection, loading and shipboard phase of the live export process. They did not address more comprehensively the inherent nature of transportation stress. In particular there was no brief in relation to the treatment of the animals in the importing countries, about what happens when they get to the other end, when they are offloaded, when they are transported again, when they are slaughtered, when they are taken to market, all of those aspects that are an inevitable component of Australia's willingness to allow live animals to be exported from Australia.

There is strong, widespread public opposition to the live animal trade which has been ignored by Governments for years. The opposition to the live export trade has grown enormously following the Cormo Express debacle and the emerging evidence of the extreme cruelty, job losses and government subsidies keeping this unnecessary and economically inefficient industry afloat. In fact, in the past twelve months the Democrats have tabled petitions in Federal Parliament with over 100,000 signatures signalling concern with Australia's live export trade.

The Democrats have a long history of interest in animal welfare, and have followed the live export trade with great interest.

The Senate Select Committee on Animal Welfare was established on a motion by former Democrat leader Don Chipp back in the 1980s. One of the first inquiries of the committee was into the live sheep trade. It came down with a report and recommendations that highlighted significant problems with animal welfare in the live sheep trade nearly 20 years ago. Despite all of the concerns that have been expressed repeatedly by animal welfare organisations from the RSPCA through to Animal Liberation and many other organisations in between, other community groups, industry organisations and, most importantly, the general community continue to have the clear-cut view that the level of cruelty involved in this trade is simply unacceptable.

On top of that, we have clear-cut evidence that the trade costs jobs in Australia. We have a significant decline in the number of meatworks in Australia, and a clear opportunity for value adding in Australia is lost because of the export of live animals as, what is obviously, produce in its rawest form.

The trade has basically had 20 years to get its act together. Despite repeated assurances from consecutive governments that the trade will get its act together, that it has got its act together and that standards have been improved, time after time there is another incident, another public outcry, another inquiry and more assurances that it is fixed up until the next time it happens. I believe the industry has had enough chances and it is time to genuinely look at moving to phasing it out.

Recommendation 1

That live animal export trade is phased out over the next 5 years. There is clearly an alternative industry that is actually bigger. The slaughtered meat trade, the processed meat trade, the frozen carcass trade, is already four to five times larger than the live animal trade. The processed meat and frozen carcass trade is the one that generates jobs in Australia, and it is conducted in a way that is much closer to acceptable animal welfare standards than those overseas.

It is not sufficient for the Australian government to say that they are concerned about animal welfare standards and to make all the right noises when it is clear that the animals that are involved in the trade are subjected to unspeakable cruelty. After 20 years it is clear that the trade, the industry, is either not willing or not able to address that level of cruelty.

We welcome the fact there has been some movement from the government, some adoption of the recommendations, including a requirement that there will actually be a vet on board some voyages to the Middle East.

There will also be a new code of practice, according to the government. That is welcome in theory. It is not going to be finalised until the end of this year. How long is it going to take? Will it be ready in time? How many chances are they going to get? It might sound good, but that is what we have heard before, time after time: "We'll improve the standards. We've done a review. We'll get a new code of practice; we'll

fix it up." You can bet that the code of practice will not deal with the problems such as those that were outlined on 60 Minutes.

Recommendation 2

That the development of the national code of practice is tabled before 1 September 2004.

The big thing, of course, is that the government has ignored the recommendation (6) to not allow export of live animals from particular ports, which are Portland and Adelaide, at particular times of the year. That recommendation was made not because people were wanting to be difficult, just to make life hard; it was made because it was clearly identified that there were major problems involved in that, that were not going to be able to be overcome. That has been ignored as well.

Recommendation 3

The full implementation of Keniry recommendation 6 – the closure of ports such as Portland and Adelaide during winter, when the risks are greatest.

This Bill is a fairly disappointing response as far as the Democrats are concerned. Obviously any improvement is better than nothing, but there is no point in even pretending that it is going to address the serious and longstanding concerns about the cruelty involved in this trade. It is continuing and these sorts of changes are just not going to address them. The government has to acknowledge that the trade is taking jobs away from Australia and involves utterly unacceptable levels of cruelty.

Clearly the industry is not capable of addressing those levels of cruelty. It also means, as the report in the Australian shows, that in effect the sector here in Australia that processes meat is subsidising and losing jobs as a consequence the lower value live export trade. I think it is time to move to get rid of this trade.

Senator John Cherry
Australian Democrat

