Law Council
OF AUSTRALIA

Business Law Section

31 May 2023

Live Sheep Export Independent Panel
Department of Agriculture, Fisheries & Forestry

[to be uploaded at haveyoursay.agriculture.gov.au/Live-Sheep-Phase-Out]

Dear Panel

Phase out of live sheep exports by sea: consultation paper

We refer to the consultation paper "Phase out of live sheep exports by sea: consultation paper".

This submission is made by the Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**). Under the auspices of the Law Council of Australia, the Committee works for the improvement of the law and of the administration of justice and it is from this perspective that we make this submission. The Committee welcomes the opportunity to do so.

Executive summary

The Committee supports compliance with legislation and an orderly and clearly publicised transition to any new regime. Past issues with compliance and enforcement of animal welfare regulation need to be addressed during the transition, notwithstanding that this trade is being phased out and, indeed, to address the greater risks of non-compliance and lack of enforcement during the phase-out transition.

Submission

Regulatory deficiencies

As has been demonstrated by Review Report No 2023-01 by the Inspector-General of Live Animal Exports (IGLAE): "*Communication and engagement in livestock export regulation"*, there are clearly issues with regulatory compliance and with regulatory enforcement.

This report was the sixth and final review by the former IGLAE,[1] and recorded that of the 41 recommendations made in his six reports since 2019, the Department has 33 that remain open. The report quoted from the submission by the Law Council of Australia (among others) regarding the Department's lack of transparency. It found that there is a lack of trust and confidence among animal welfare stakeholders that the Department is taking appropriate action against non-compliance, and that there is little counterfactual evidence that the Department can provide.

This situation is compounded by the current gap in oversight of live export, pending the creation of a new position of Inspector-General of Animal Welfare and Live Exports.

[1] The Inspector-General Ross Carter retired on 6 April 2023. The Government has announced an intention to create a new position of Inspector-General of Animal Welfare and Live Animal Exports, following the passage of relevant legislation.

The Department's failure to date to implement the vast majority of recommended regulatory enhancements, the paucity of enforcement action in response to non-compliance, and the present hiatus in the position of Inspector-General need to be recognised in setting any transition period and the requirements that apply. The Department is otherwise unlikely to prioritise expenditure on addressing deficiencies in the regulation of live sheep export by sea during the phase-out period, given that there are so many calls on its funds. In addition, exporters are unlikely to expend money or devote resources to improving compliance eg investment in relation to infrastructure or skilled personnel.

Transition arrangements

At a minimum, the Committee urges that the following identified matters of regulatory compliance and enforcement be addressed during the phase-out period:

- Requiring Independent Observers on all ships carrying live sheep;
- Publishing Independent Observer reports (without redaction, other than in relation to the identity of the Independent Observers); and
- Taking enforcement action in respect of regulatory non-compliance.

Legislation and timing

Finally, the Committee makes the point that the phase out should be through legislation, to provide certainty for all stakeholders and to lessen the likelihood of legal challenge or other litigation against the Government and any regulatory compliance personnel.

Conclusion and further contact

The Committee would be pleased to discuss any aspect of this submission. Please contact the chair of the Committee Robert Sultan at robert.sultan@nortonrosefulbright.com or Committee member Dr Elizabeth Boros SC at eboros@vicbar.com.au, if you would like to do so.

Yours faithfully



Philip Argy
Chairman
Business Law Section