

New Zealand Animal Law Association



Submission on the Ministry for Primary Industries' Livestock Export Review

22 January 2020

Introduction

1. This submission is lodged on behalf of the New Zealand Animal Law Association (**NZALA**). NZALA is a coalition of lawyers working to improve the welfare and lives of animals through the legal system. NZALA considers and submits on a range of legal issues that have the potential to impact animals and animal welfare.
2. NZALA currently has over 500 members. Our membership is made up of lawyers from all circles of the legal profession, including law firms, criminal and civil litigators, in-house counsel, and public sector lawyers. We also have many law students and graduates amongst our members.
3. The Ministry for Primary Industries (**MPI**) is undertaking a review to improve the welfare of exported livestock (defined as cattle, deer, goats and sheep) and to protect New Zealand's reputation. MPI have proposed the following four options for consultation:
 - **Option one:** A total ban on export of livestock.
 - **Option two:** Regulation imposing a ban conditional on the requirement that an applicant can satisfy the Director-General of MPI that any risks to animal welfare and New Zealand's reputation can be mitigated before an application for an Animal Welfare Export Certificate (**AWEC**) can be made.
 - **Option three:** New regulations. Examples provided include independent monitoring and a registration scheme for exporters.
 - **Option four:** "Continuous improvement". Examples provided include removing livestock from existing AWEC exemptions, an "Export Destination Approval Process" and new operational policy.
4. After having reviewed MPI's "Livestock Export Review" Discussion Paper No: 2019/10, NZALA supports the adoption of option one, on the basis that the ban applies to all livestock across all aspects of export. Option one aligns best with the objectives of the review; to improve the welfare of livestock and protect New Zealand's reputation. The rationale for NZALA's position is outlined below.

Legal Framework

Granting an AWEC

5. Part 3 of the Animal Welfare Act 1999 (**Act**) states the purpose of that Part is to protect the welfare of animals being exported from New Zealand and to protect New Zealand's reputation as a responsible exporter of animals and products made from animals.
6. Section 40 sets out that a person commits an offence where they export an animal from New Zealand to another country on a ship or aircraft other than under the authority, and in accordance with the conditions, of an AWEC. An application to the Director-General must be made at least 20 working days before the date on which the applicant proposes that the animal leave New Zealand.
7. Section 43 sets out the relevant considerations that the Director-General must consider when assessing an application, and section 45 sets out conditions that the Director-General may impose on an applicant in the granting of an AWEC.

8. In making their decision the Director-General must also have regard to the general scheme of the Act and the text of Part 3 must be interpreted in light of the Act's purpose, as required by section 5 of the Interpretation Act 1999.
9. The purposes of the Act include requiring owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals. Part 1 of the Act sets out what is required to attend properly to the welfare of animals.

Welfare requirements

10. Part 1 of the Act sets out that the purpose of the Part is to ensure that owners of animals and persons in charge of animals attend properly to the welfare of those animals and then states:

This Part accordingly—

- (a) requires owners of animals, and persons in charge of animals, to take all reasonable steps to ensure that the **physical, health, and behavioural needs** of the animals are met in accordance with both—
 - (i) good practice; and
 - (ii) scientific knowledge; and
- (b) requires owners of ill or injured animals, and persons in charge of such animals, to ensure that the animals receive treatment that alleviates any unreasonable or unnecessary pain or distress from which the animals are suffering; and
- ...
- (f) specifies certain minimum conditions that must be observed in relation to the transportation of animals.

11. Section 4 of the Act defines physical, health, and behavioural needs as follows:

In this Act, unless the context otherwise requires, the term **physical, health, and behavioural needs**, in relation to an animal, includes—

- (a) proper and sufficient food:
- (ab) proper and sufficient water:
- (b) adequate shelter:
- (c) opportunity to display normal patterns of behaviour:
- (d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress:
- (e) protection from, and rapid diagnosis of, any significant injury or disease, being a need which, in each case, is appropriate to the species, environment, and circumstances of the animal.

12. Section 22 sets out the requirements for transportation of animals:

Every person in charge of a vehicle or an aircraft, and the master of or, if there is no master, the person in charge of, a ship, being a vehicle, aircraft, or ship in or on which an animal is being transported, must ensure—

- (a) that the welfare of the animal is properly attended to; and
- (b) that, in particular, the animal—
 - (i) is provided with reasonably comfortable and secure accommodation; and
 - (ii) is supplied with proper and sufficient food and water.

13. Read together, the Act's provisions require high levels of care of animals being exported under an AWEC. The Act also provides for regulations to be made which can further specify animal welfare controls available to the regulator.

Discussion

Risks of live export

14. By its very nature, live animal exports present a high risk to animal health and welfare.¹ There is well documented scientific evidence on the risks to animals undergoing long distance travel in ships and aircraft.² A review of the live export industry commissioned by the Australian Ministry of Agriculture and Fisheries in 2003 states:³

The livestock export industry is uniquely and inherently risky because it deals with sentient animals along an extended production chain, from farm to discharge into the market.

15. New Zealand's location means international transport of animals is inevitably long distance and frequently involves arduous sea journeys. Evidence-based research shows there are significant risks to the welfare of livestock caused by transporting them in ships, especially over long distances.⁴ Animals are initially loaded and transported from the farm, a process that often involves a heightened risk of stress and injury, to holding places at the port of departure. During long distance transportation animals are often exposed to high stocking densities, extremely high or low temperature and ammonia concentration, as well as noise, vibration and photoperiod and light intensity.⁵ Forms of suffering during transport can include hunger, thirst, pain, discomfort, frustration, fear, and distress.⁶
16. While MPI may set stringent controls through an AWEC, there is a lack of transparency regarding the levels of compliance. A ship departing from port may be compliant, however during the journey or on arrival and during offloading, the controls may fail or not be adhered to. This was found by independent onboard observer reports in the Australian live export context which showed that conditions onboard ships can quickly change and lead to serious animal welfare concerns and regulatory breaches.⁷ Examples of shipboard failures may include: the ventilation system breaking down with no backup generator; vessels being unavoidably detoured or delayed; crew becoming ill and unable to tend appropriately to the animals' needs or those of the sick or injured animals; food and water sources being insufficient for a change in journey length and/ or becoming spoiled en-route; or voyages taking the animals through extreme weather events including cyclones. These circumstances will invariably give rise to breaches of the AWEC.
17. The difficulties in regulating animal welfare during offshore transportation and at destination were discussed in a 2018 Australian independent review of the regulatory capability and culture of the Department of Agriculture and Water Resources, which regulates Australia's live export (**Moss Review**). The Moss Review found:⁸

¹ Moss P *Review of the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports* 27 September 2018 at viii.

² See discussion at [13]. For further see Collins, T., Hampton, J., and Barnes, A. (2018) *Literature review of scientific research relating to livestock exports* (Murdoch University: Perth).

³ J Keniry *Livestock Export Review, Final Report: a Report to the Minister for Agriculture, Fisheries and Forestry*, 23 December 2003, at 4.

⁴ C Phillips and E Santurtun, *The welfare of livestock transported by ship*, *The Veterinary Journal* Vol 196, Issue 3, June 2013, at 309.

⁵ C Phillips and E Santurtun, *The welfare of livestock transported by ship*, *The Veterinary Journal* Vol 196, Issue 3, June 2013, at 309.

⁶ M Appleby, *Chapter 1 : the science of Animal Welfare*, in Appleby, MC, Cussen, C, Garcés, L, Lambert, LA, Turner, J (ed.) 2008. *Long distance transport and welfare of farm animals* CABI Publishing, Wallingford, UK at 42.

⁷ See <http://www.vale.org.au/independent-observer-reports.html>.

⁸ P Moss, *Review of the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports* 27 September 2018 at viii.

There have been instances of non-compliance with animal welfare standards and instances of animal cruelty that have not been anticipated by the regulatory framework or evoked an appropriate regulatory response.

The Moss Review states its starting point was a statement made to a select committee hearing by the deputy secretary of the Department of Agriculture and Water Resources which said there was *insufficient means of assuring exporter compliance with regulatory obligations while consignments of livestock were at sea*⁹ (emphasis added). This statement has equal applicability to New Zealand's live export.

18. The limited metric of deaths per shipment provided by MPI in their discussion paper for this review gives no insight into exporter compliance with AWECs and the Act.¹⁰ Assessing animal welfare by reference to mortality rates is an extremely blunt welfare metric, which is entirely unable to detect and measure any adverse impacts on animal welfare that do not result in mortality. Therefore there is a significant lack of transparency in respect of animal welfare breaches in live export, the outcomes they result in, and ultimately, how such outcomes are assessed and responded to by MPI.
19. The current reporting regime primarily relies on post arrival reporting from the exporter for data on compliance with the AWEC and Act. MPI now also requires reporting on conditions of animals 30 days after their arrival at destination. Reliance on self-reporting by those with commercially driven interests can foreseeably result in inaccurate and or incomplete reporting. Exporters are aware that their compliance record will be taken into account for any future export applications. This conflict of interest, which is inherent in the current self-reporting regime, incentivises underreporting of incidents and breaches. Such behaviour was observed by the Guardian when it reported on possible fraud in the Australian live export supply chain reporting, having analysed government reports which included allegations that documents and photos supplied for export reports were falsified.¹¹
20. While it is noted that the Australian live animal export is the largest by volume in the world and has a different regulatory environment from New Zealand, notably in permitting live export of animals for slaughter, numerous parallels nonetheless exist. For example, the transport of animals takes place on some of the same vessels, with similar animals and loadings, and land in the same destination countries as New Zealand live exported animals. The Yangtze Fortune is one such vessel. In July 2018 the Yangtze Fortune commenced a twenty-day voyage from Portland, Australia to Ningbo, China. During this trip the Independent Observer reported that the animals suffered heat stress in fifteen of the twenty days. Tragically, thirty-three of the 2192 cattle onboard died. The onboard vet reported *the animals had plenty of space and ventilation was good; there was simply no relief from hot and humid conditions*.¹² It was also reported that *food and water troughs were regularly knocked over, leaving the cattle without food and water*.¹³ Analogies can equally be drawn from the Australian report regarding onboard conditions and welfare breaches in New Zealand live export.

⁹ P Moss, *Review of the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports* 27 September 2018 at viii.

¹⁰ MPI Livestock Export Review Discussion Paper No: 2019/10 at 22.

¹¹ *Australia promised to fix live export after hammer slaughter video. It hasn't* 12 April 2018, Guardian online <https://www.theguardian.com/world/2018/apr/13/weak-rules-fail-to-stop-inhumane-slaughter-of-australian-animals-overseas>.

¹² See report <http://www.vale.org.au/independent-observer-reports.html>.

¹³ Farah Hancock *Live cattle export on troubled ship* 12 September 2019 <https://www.newsroom.co.nz/2019/09/12/803253/live-export-on-troubled-ship>.

21. An Australian veterinary organisation, Vets Against Live Export, reported in 2016:¹⁴

Shipboard veterinarians describe overstocking due to loading more (or heavier) animals than are detailed in the manifest, and there is no doubt that the current space allowances are at best uncomfortable for animals and at worst, a common cause of death and injury (e.g. heat stress, smothering, trampling, herniation and lacerations).

22. Changes in social groups can also induce negative welfare effects. For example, this has been observed in goats, where housing unfamiliar goats together can result in fatalities; either through physical violence, or subordinate goats being refused access to food and water.¹⁵

23. There are also other significant risks associated with transporting live animals via ship which cannot be mitigated. Examples include the recent November 2019 incident where livestock carrier the Queen Hind capsized leaving the port of Midia in Romania with approximately 14,600 sheep on board.¹⁶ In 1996, 67,000 sheep being exported from Australia to Jordan died after the crew abandoned ship from an onboard fire.¹⁷ In the 2003 MV Como Express incident, where 5,581 sheep died of the 57,000 on board, the ship spent a further eight unplanned weeks at sea after travelling to the Middle East and being refused landing in Saudi Arabia due to incidence of disease.¹⁸

24. Additionally, there are significant ongoing risks to the exported animals' welfare upon arrival at the destination country. New Zealand's regulatory regime sets standards for animal welfare that represent the minimum legal requirements for the care and welfare of animals. There is an inherent disconnect with the live export regime which provides for the participation of these same animals, not only being transported long distances with its attendant risks, but then also being subjected to a different regulatory regime that does not meet our minimum welfare standards.

25. The purpose of the live export regime under the Act is to protect the welfare of animals being exported from New Zealand and to protect New Zealand's reputation as a responsible exporter of animals. It is difficult to see how this can be achieved where few countries have welfare regulations and standards on par of those in New Zealand. The reputational risks to New Zealand are high where exported animals are subjected to inhumane condition which result in poor health and welfare outcomes. There are very limited controls that can be placed in another country where New Zealand does not have jurisdiction. MPI's recourse as a regulator is confined to the exported who has been granted an AWEC. This is of limited use, as an exporter no longer has control over the animals' welfare once they arrive at destination. Even where controls exist, we appear to rely solely on self-reporting of conditions at destination, and enforcement is only ever possible where there is a New Zealand based offender. The absence of the ability to influence and control the welfare outcomes is in direct conflict with the objectives and purposes of New Zealand's animal welfare regulatory regime.

¹⁴ Vets Against Live Export *Live Export: Feces, Falls and Flooding* 13 August 2016 The Maritime Executive <https://www.maritime-executive.com/editorials/live-export-feces-falls-and-flooding>.

¹⁵ World Organisation for animal health OIA guideline Chapter 7.2 *Transport of Animals by Sea* of the Terrestrial Animal Health Code 28th edition at 12.

¹⁶ BBC News online *Queen Hind: Rescuers race to save 14,000 sheep on capsized cargo ship* 26 November 2019 <https://www.bbc.com/news/world-europe-50538592>.

¹⁷ *67,000 Sheep Lost When Ship Catches Fire* New York Times, 6 September 1996 <https://www.nytimes.com/1996/09/07/world/67000-sheep-lost-when-ship-catches-fire.html>.

¹⁸ N Wells, *Animal Welfare Act 1999- Export of Animals* Chapter 27 in *Animal Law in New Zealand*, Brookers Ltd, Auckland, New Zealand, 2011, at 251.

26. Examples of reputational risks include the April 2019 media reporting of a trade deal where approximately 2000 New Zealand cows were sent to Sri Lanka. In this example, media reported¹⁹ *hundreds of cows have died and the rest have turned out overpriced, unhealthy and infertile, and Sri Lankan farmers are reportedly suicidal after going broke in a dairy deal with Australia and New Zealand that's turned sour*. Detrimental reports like this operate to undermine New Zealand's reputation as a responsible agricultural nation. There is little to nothing the New Zealand regulator can do once the animals have landed and the treatment of animals in countries with lower welfare standards is wholly at odds with the objectives and purposes of our regulatory regime.

Summary of issues with existing statutory scheme

27. The controls that currently exist under the Act do not go far enough to ensure that there is consistent care of animals on long international voyages in compliance with the AWEC and the Act.
28. The Act requires that animal welfare be provided for, including that the animals' physical, health, and behavioural needs are met (including the opportunity to display normal patterns of behaviour) and that the animals be provided with reasonably comfortable and secure accommodation and proper and sufficient food and water.
29. However, the current limits on controls, including lack of independent reporting, onboard and at destination, and the inherent risk associated with lengthy long-distance travel, mean that there are frequent breaches of the legislative requirements for animal welfare during live export.
30. Non-compliance with the statutory scheme is not appropriately reported, and as a result is not adequately addressed. The current regime focuses on risk management but has little follow-through or independent scrutiny of actual welfare outcomes.
31. Further, there is often an irreconcilable inconsistency with the welfare protections afforded to animals under New Zealand law and the welfare requirements in countries that animals are exported to. For example, the majority of our live cattle exports go to China,²⁰ a country that has minimal animal welfare legislation, reflected by its present rating of 'E' in the World Animal Protection's Animal Protection Index.²¹ In contrast, New Zealand received an 'A'. This disparity can quickly become the focus of global media attention,²² and the associated risks posed to New Zealand's reputation do not outweigh the commercial gain derived from this trade.
32. Animal welfare is central to New Zealand's global reputation as a responsible provider of agricultural products. Live export of our animals under the current regime clearly undermines this. The current rules fall short of expectations, and this review is accordingly welcomed.

¹⁹ *Australian cattle exported to Sri Lanka dying and malnourished, local farmers left suicidal*, 5 April 2019 <https://www.abc.net.au/news/2019-04-04/australian-dairy-cattle-sent-to-sri-lanka-dying-malnourished/10936258>; and *New Zealand cows sent to Sri Lanka diseased, dying, failing to produce milk - report* 4 April 2019 <https://www.newshub.co.nz/home/rural/2019/04/new-zealand-cows-sent-to-sri-lanka-diseased-dying-failing-to-produce-milk-report.html>.

²⁰ MPI Livestock Export Review Discussion Paper No: 2019/10 at 9.

²¹ See: <https://api.worldanimalprotection.org/#>

²² See for example - <https://www.youtube.com/watch?v=m1V96Y533Ds>.

Our view on the proposed options

Option one: A total ban on livestock export

33. Given the abovementioned detrimental effects of long-distance travel on animal welfare, the greatest improvement for animal welfare would clearly come from a total ban on the international transport of all livestock. A total ban would also eliminate the risks to New Zealand's reputation associated with this activity. Given that livestock exports represent only a small proportion of total New Zealand agricultural exports, adopting this option would result in a minimal impact on rural communities and the New Zealand farming sector as a whole.

Option two: A conditional ban on livestock export

34. Where proposed mitigation of risks is robust, transparent and comprehensive enough to ensure high levels of animal welfare, a conditional ban would likely result in improved welfare of exported animals.
35. Mitigation measures must comply with the Act and ensure persons in charge of exported animals attend properly to the welfare of those animals. This is a high standard requiring that an applicant must show the animals' welfare needs can and will be consistently maintained throughout their journey, including through extreme weather conditions, prolonged delays and diversions.

Option three: New regulations

36. Specific regulations could be used to address discrete concerns. However, tackling individual issues through piecemeal regulation would not address the fundamental issue that long-distance travel is intrinsically very detrimental to the welfare of animals.
37. The proposed requirement to satisfy the Director-General that the risks to animal welfare and New Zealand's reputation can be mitigated before an application can be lodged is appropriate.
38. Under current regulatory exemptions, MPI can only place post-arrival controls on exporters when animals have travelled by sea, and not when they are flown. This inconsistency in the regulations needs to be addressed as part of this review.
39. Given MPIs current enforcement resourcing we have grave concerns about such an approach being implemented effectively

Option four: Continuous improvement

40. Making incremental changes over time is not enough to protect the welfare of animals that are exported before change is fully implemented. We have significant concerns which need to be addressed soon and comprehensively. For this reason this is not our preferred option.

Conclusion

41. It is difficult to see how animals' physical, health, and behavioural needs are currently met, or could be met, by the practice of livestock export.
42. Given the risks involved, a total ban on all livestock exports across all aspects of export is the option that best achieves the objective of improving the welfare of livestock and protecting New Zealand's reputation. NZALA therefore supports option one.

43. In the event that option one is not adopted, we advocate for option two as the next best alternative; as a conditional ban to ensure comprehensive risk management will improve compliance with the Act and AWECS.
44. We reiterate our support for this review, and welcome any requests from MPI to provide further detail in support of this submission.