

Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998 1998 No. 202

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 202

Issued by the Authority of the Minister for Primary Industries and Energy

Australian Meat and Live-stock Industry Act 1997

Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998

Subsection 74(1) of the *Australian Meat and Live-stock Industry Act 1997* (the Act) provides, inter alia, that the Governor-General may make regulations prescribing all matters that are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

As part of the Government's meat industry reform package, the Australian Meat and Livestock Corporation (AMLC) is to be wound up and its export licensing and export quota administration functions transferred to the Department of Primary Industries and Energy (DPIE). This was achieved through the passing of the Act in December 1997.

The purpose of the regulations is to introduce a scheme for the administration of export licensing under that Act as follows:

Regulation 1 creates new regulations under the Act entitled the *Australian Meat and Livestock Industry (Export Licensing) Regulations 1998*.

Regulation 2 provides that the new regulations are to commence on 1 July 1998, the date fixed by proclamation for Parts, 2 and 3 of the Act to commence.

Regulation 3 defines the terms 'person in management and control', 'standards body' and 'relevant standards body' used in these regulations. It also makes it clear that expressions used in the regulations have the same meaning as they do in Part 2 of the Act, unless a contrary intention appears.

Regulation 4 defines the term 'meat unfit for human consumption' for the purposes of paragraph 8(2)(a) of the Act.

Regulation 5 lists the bodies which are to be prescribed industry bodies for the purposes of section 9 of the Act. Under section 9, the Secretary must, when exercising powers in relation to export licensing or quota administration under Parts 2 and 3 of the Act, have regard to any broad industry policies formulated jointly by such prescribed industry bodies.

Regulation 6 sets out how to apply for a licence, the information which must be included in an application, and the documentation which must accompany an application. Subsection 11(1) states that an application must be made in accordance with the regulations. The Regulation also states that where an application form has been prepared *by the* Secretary requesting this information, and the form is available free of charge, then applications not made on such a form do not have to be processed.

Regulation 7 prescribes the fee that is payable on making an application for a licence. The fee for an application for a licence is \$500, regardless of whether the one application is applying for

a meat or live-stock licence, or both. However this fee does not apply to an applicant applying for a meat export licence who is already the occupier of a registered establishment under the Export Control Act 1982.

Regulation 8 sets out the matters to which the Secretary is to have regard to for the purpose of satisfying himself or herself that an applicant for an export licence is a person of integrity, competent to hold a licence, is of sound financial standing, is and will continue to be able to comply with conditions to which the licence would be subject, and that the granting of the licence to the applicant would not be contrary to the interests of the industry. It also sets out matters to which the Secretary is to have regard to in deciding whether persons in management and control of the applicant's export business are also persons of integrity.

Regulation 9 prescribes further conditions to which export licences are to be subject. Section 15 of the Act states that an export licence is subject, in addition to the conditions listed in the Act, to any conditions that are prescribed in the regulations. The conditions set out in this regulation are that a licensee agree to the auditing of their quality assurance arrangement by auditors appointed by the relevant standards body, that a licensee comply with their quality system accredited by the relevant standards body, that a live-stock export licensee comply with mandatory animal welfare requirements prescribed by the relevant standards body, and that a licensee inform the Secretary of prescribed circumstances by completing relevant sections of the form supplied as an application form.

Regulation 10 prescribes, for the purposes of section 16 of the Act, that a licensee must inform the Secretary within 7 days of the occurrence or particular events and circumstances, and lists these particular events and circumstances.

Regulation 11 states that a renewal of an export licence is to be made in the same way as an initial application, and that the same application fee scheme applies.

Regulation 12 prescribes how things that are seized or samples that are taken *in* accordance with the enforcement provisions in Part 4 of the Act are to be dealt with.

Regulation 13 sets out what must be contained in a notice of appointment of a nominee under subsection 52(2) of the Act.

Regulation 14 ensures that the Secretary (or his or her delegate) is the only person who can authorise or dispose of meat *and* live-stock forfeited to the Commonwealth under section 57 of the Act.

The regulations commence on 1 July 1998.

REGULATION IMPACT STATEMENT FOR THE LICENSING OF RED MEAT AND LIVE-STOCK EXPORTERS

BACKGROUND

All exporters of meat *and live-stock are* required to be licensed by the Australian Meat and Live-stock Corporation (AMLC) under the provisions of the Meat and *Livestock Industry Act 1995*, (the Act) after meeting tests as to their integrity, competency and financial standing.

The conditions attaching to export licences are given legislative effect through *the Meat and Live-stock Industry (Conditions of Export) Regulations* and AMLC Orders and Directions issued pursuant to the Act and the *Australian Meat and Live-stock (Quotas) Act 1990*.

Changes to the institutional structure in the meat industry are being made from 1 July 1998 with the implementation of the red meat reform package. The Australian Meat and Live-stock Corporation (AMLC), Meat Research Council (MRC) and Meat Industry Council (MIC) are *being* abolished. A new company - Meat and Live-stock Australia Limited (MLA) - is being established to undertake marketing, promotion, and R&D on behalf of the beef, sheep, and goat industries, including providing services for processors and live exporters.

As part of these new arrangements, Cabinet decided on 17 March 1997 to continue licensing of exporters. As the AMLC is being *abolished*, the regulatory authority for licensing is to be transferred from AMLC to DPIE from 1 July 1998. This is to be achieved through proclamation into force of Part 2 of the Australian Meat *and Livestock Industry Act 1997*.

The Australian Quarantine Inspection Service (AQIS), part of DPIE, will undertake administration of the export licensing function. As part of these arrangements, and in *line with* the thrust of the meat reforms to empower industry and provide it authority to manage its own affairs, the policy regarding licensing and its operation is to be commercially driven and transparently set in consultation with industry.

Provision has been made under *the Australian Meat and Live-stock Industry (Repeals and Consequential Provisions) Act 1997* for all AMLC orders and directions to continue in force after commencement of the new legislation as if they had been issued by the Secretary of DPIE. Orders will continue to be disallowable instruments. However, regulations overriding the new licensing scheme have to be made. In making new regulations, the current scheme administered by AMLC was reviewed in detail, and a couple of problems were identified.

(A) COMPETENCY OF LIVE-STOCK EXPORTERS

Problem

The export of live animals is an important and growing trade for Australia, providing farmers with a valuable alternative market to exports of chilled and frozen meat products. This industry has grown from almost nothing in the early 1970s to one worth A\$665 million in 1997. It has an infrastructure that can export almost one million cattle and some six million sheep a year.

The sustainability of this live export trade is dependent on it being conducted in such a way as to meet community expectations in respect of animal welfare, and to maintain our reputation as a quality supplier. Licensing of exporters is, to some extent, aimed at ensuring these conditions are met.

However, animal welfare groups both overseas and domestically have been highly critical of the live export trade, many calling for it to be ceased altogether. The live animal export industry itself recognises as a whole that appropriate animal husbandry practices must be adopted by all participants to ensure both quality assurance (QA) and animal welfare goals are met.

QA issues can in many instances be addressed through market mechanisms. However, it has been demonstrated that a form of market failure occurs in the industry in relation to animal welfare. If one, or a small number of participants, fail to follow acceptable husbandry practices to ensure the wellbeing of animals throughout the export process, perhaps because of "cost cutting", the whole live export trade can be brought into public disrepute. All participants in the industry are adversely affected while offenders do not bear costs commensurate with their actions.

Animal welfare groups are able to readily point to cases where acceptable animal welfare practices have not been followed in the live export trade, and most people in the community have a deep concern regarding what they judge as acts of cruelty in the trade. For example, the RSPCA commenced a campaign in February 1998 calling for firm Federal government regulation of the live export trade to ensure animals are treated humanely throughout the export process. Approximately 20,000 postcard representations have been received by the Office of the Hon John Anderson MP, Federal Minister for Primary Industries and Energy, since the commencement of this campaign as well as almost 500 individual ministerial representations.

Community support for regulation where animal welfare *is concerned* is readily evidenced not *only* through such campaigns as above, but also by the call for effective legislation for the prevention of cruelty to all animals. The knowledge that mechanisms are in place to prevent acts of cruelty, and that those responsible will be effectively sanctioned, contributes to community cohesion through the notion *of* belonging to a humane, caring society.

It is dear the community expects measures to address animal welfare concerns with live exports must apply to all participants in the industry, provide effective and transparent sanctions for non compliance, and result in significant and demonstrable improvements. This involves the dear allocation of responsibility for all stages involved in the export process including the way animals are selected, treated, prepared and handled.

A review of the current licensing scheme in light of its transferal to DPIE has enabled Government and industry to revisit the test of competency to hold an export licence, with the goal of introducing standards for live-stock exporters. This would mirror the existing situation for red meat exporters.

Specification of the objective

The objective is to amend the current test of competency to hold a live-stock export licence to address highlighted short falls in the live export trade so as to:

- (i) introduce animal husbandry practices in the live export trade that will allow community welfare expectations to be met, including the considerate humane management of animals with a minimum of stress and injury at all stages of the export process, and
- (ii) strengthen Australia's live animal exporting reputation.

Options

Option 1

Retain *the* current arrangements where it is up to the discretion of individual participants in *the* trade whether they employ acceptable husbandry practices, with live animal export licensing continuing on the same basis as at present.

Option 2

Introduce an industry formulated animal husbandry program in the live export trade providing for animal welfare and quality assurance concerns to be met on a voluntary basis.

The program would rely on industry *itself, through* an appropriate accreditation *scheme*, for enforcement.

The live animal export licensing *regime* as operated at present would continue.

Option 3

Introduce mandatory standards which will be a condition of being granted and holding a live-stock export license.

It is proposed that this would be achieved by introducing an industry formulated accreditation program, know as the Live-stock Exporter Accreditation Program (LEAP), into the live export trade, and linking this accreditation program to export licensing.

Impact Analysis

Option 1

Option 1 is a 'no-change' option.

This option does not address the problems identified in the "Problem And Issue Identification" section above which generated the need for improved husbandry practices and consequently does not meet the objective. Option 1 will not be considered further.

Option 2

Option 2 essentially envisages industry self regulation through the operation of a voluntary accreditation scheme.

Participants in the live export trade would be free to make individual judgments on whether the costs and obligations of becoming a member of the accreditation scheme are outweighed by the benefits of being a member. Such benefits can flow, for example, through premium prices being obtained for brand name products.

The disadvantage of such a voluntary scheme is that it does not satisfactorily address the problems caused by those participants in the live export industry who do not appear to share the community's concerns with animal welfare.

There is readily available evidence that some individual participants in the trade, particularly "short term" or "opportunistic" operators, have shown a willingness to disregard sound animal welfare practices in the interests of making quick profits. This has on many occasions resulted in high mortality and morbidity of animals both in their preparation for export and on ocean voyages, as well as resulting in long delays before importers were prepared to accept delivery.

These operators have brought the live export trade into question both with overseas markets and the overseas and domestic communities in general. They have the potential to threaten the very future of the entire trade.

Experience has shown it is extremely difficult to sanction (prosecute) these operators under the current regulatory regime. This includes by the AMLC, and the Australian Quarantine Inspection Service (AQIS) using its powers under the *Export Control Act 1982*.

Option 3

Were LEAP accreditation to constitute the "competency test" under the Australian Meat and Live-stock Industry Act for holding an export licence, such accreditation would be a compulsory condition of holding any future live export licence.

LEAP consists of both mandatory and "industry best practice" requirements. "Industry best practice" requirements would not have to be complied with. However, mandatory standards comprise the bulk of LEAP. "Best practice" recommendations simply set standards above the mandatory requirements which it is judged will result in further improvements in animal welfare and QA, as measured by outcomes in the industry.

In addition, LEAP also incorporates relevant Australian national codes of practice such as the "National Pellet Standards for the Live Sheep Export Industry" the "Model Code of Practice for the Air Transport of Live-stock", and "Standards for the Preparation and Carriage of Sheep by Sea". Other codes of practice, such as for the road transport of live-stock, will also be incorporated into LEAP when they are finalised.

Adherence to LEAP will be verified by an independent audit to provide on-going monitoring of the degree to which exporters adhere to the competency standards.

The costs of LEAP for individual participants in the live export trade are estimated to be as follows:

Purchase of Training Kit	\$750
Accreditation Fee (desk audit)	\$200
Annual Fee (maintenance for the scheme)	\$200
Compliance Audit Fee	
One audit per year @ \$75/hour	
(Most audits take between 4 and	
5 hours)	\$300 to \$375
Total Cost Year One	\$1,450 - \$1525
Ongoing Annual Cost	\$500-5575

Note: The cost of any random audit program will be met from industry funds contributed to LIVECORP (an industry owned organisation). Specific audits undertaken where there is evidence of a major problem with non-conformity would be paid for by the exporter.

Most small businesses in the live export trade will not be disadvantaged by these fees. The majority of these participants specialise in the export of small numbers of high priced stud animals, and the level of fees are not of a magnitude to adversely effect their operations.

For the participants currently in the industry who have been adhering to voluntary codes of practice, there is unlikely to be a significant increase in financial burden. However, other members of the industry and new entrants are likely to face increased compliance costs from the imposition of mandatory standards under LEAP. A comprehensive analysis of these costs has not been undertaken at this time.

All participants will face increased record keeping and other administrative costs associated with developing and maintaining the required quality system. These costs have not been estimated at this time.

Significant benefits are expected to flow from the LEAP program. However, it is not possible to accurately estimate these benefits at this time.

As mentioned previously, the Act requires exporters to satisfy a "competency test" in order to hold an export licence. The use of LEAP accreditation to constitute this test will result in significant cost savings to industry compared to alternative arrangements Government would need to develop and put in place to ensure the Secretary is satisfied of and with the competency of applicants. The costs of developing and maintaining such arrangements would have to be recovered from industry as AQIS operates on a full cost recovery basis.

The live export trade will be able to demonstrate to the domestic community and foreign welfare lobby groups it has adopted acceptable animal welfare practices through a lowering of animal mortality and morbidity in the export process. Overseas markets will be provided with a higher outturn of sound healthy animals which will enable Australia to gain market advantage as a preferred supplier. This latter point is becoming particularly important as Australia seeks new markets for live animals in the wake of the Asian currency crisis. Our major Asian markets have fallen by some 80% over the last six month period.

Consultation

Industry sees the cost of the scheme as the price it must pay to ensure the long term sustainability of the industry by demonstrating its commitment to *the* enforcement of appropriate welfare and QA standards. A minority of exporters are also developing ISO quality systems which will be linked into LEAP in order to better demonstrate their commitment as a quality suppliers of healthy stress free animals.

It was the peak industry body representing Australian live exporters, the Australian Live-stock Exporters Council (ALEC), who asked the AMLC and Government *to* introduce an industry-formulated accreditation program in the live export trade (ie: LEAP).

LEAP's development has been undertaken by ALEC through a joint industry/government project supported by DPIE Agribusiness funding. Existing industry standards were reviewed and developed into an integrated Australian Live-stock Export Standard, which is the basis of LEAP. A "selfhelp" quality assurance package was also prepared to guide exporters in the preparation of their quality assurance system.

All exporters were invited to participate in workshops as part of industry consultations in the development of the scheme. These were held in WA, Vic, NT, SA, Qld and the ACT, with over 120 people attending overall'. ALEC have written to all exporters advising of the scheme on three separate occasions since mid 1997, and the AMLC have also issued a circular to all live exporters to advise them of LEAP.

At no stage has AMLC been approached by a non-ALEC exporter with objections to the content of LEAP. However, one exporter has objected to the cost of the training kit of \$750 on the basis of it being too expensive.

ALEC has demonstrated the LEAP accreditation scheme has overwhelming industry support. LEAP has been endorsed by DPIE and the Australian Quarantine Inspection Service (AQIS), by other industry peak councils (CCA and SCA), as well as AMLC, and the RSPCA.

The National Consultative Committee on Animal Welfare (NCCAW) has also, been consulted throughout the development of LEAP. NCCAW brings together under an independent expert

chairman representatives of the State and Territory animal welfare units, the National Farmers Federation, the Australian Veterinary Association, the RSPCA, Environment Australia, the National Health and Medical Research Council, the Australian and New Zealand Federation of Animal Societies and the Bureau of Resource Sciences. It acts as an advisory body to the Minister on animal welfare matters of national significance.

The Chairman of NCCAW wrote to ALEC after NCCAWs April 1998 meeting commending ALEC on its efforts in developing LEAP. Further, the Chairman noted that members considered it to be a positive step in addressing animal welfare concerns in the live export trade.

Conclusion and Recommended Option

The recommended option is Option 3.

LEAP will ensure appropriate animal husbandry is practiced in the live export trade to ensure animal welfare and QA goals are achieved.

It is the only option that enables transparent, effective sanctions to be applied to any exporter who may jeopardise the entire trade by not conforming to animal husbandry practices. These practices also ensure that community agreed expectations regarding animal welfare are met. If exporters breach a mandatory condition of LEAP, action will be taken under the Act to have their export license cancelled.

The live animal export industry is prepared to embrace an industry self-management culture in line with the Government's proposed reforms in the red meat industry. LEAP, underpinned by Government oversight, will strengthen future confidence in and the credibility of the industry at a time when the transport of live animals is coming under increasing scrutiny world wide.

It is therefore judged that the net benefits of this proposal far outweigh the costs involved.

Implementation and Review

Under current arrangements, live-stock export licenses are issued for a period of 12 months and expire on 31 October each year. The LEAP program will become mandatory for all persons who have not previously held an export license from 1 July 1998, and for exporters seeking a renewal of a license from 1 November 1999.

LEAP will be owned by Australian Live-stock Exporter's Corporation Ltd (known as LIVECORP), the live-stock export company established as part of the new industry institutional arrangements announced by the Minister. AUS-MEAT Ltd have been contracted as the Service Provider for LEAP.

A LEAP Accreditation and Standards Committee (LASC) has been established to oversee the operation of the scheme and to maintain standards. The Committee consists of representatives from LIVECORP, ALEC, AQIS, DPIE, AUS-MEAT, and AMLC (until 30 June 1998 when it will be abolished).

Industry and Government accept the Australian Live-stock Export Standard, on which LEAP is based, as a "living" document that will be constantly reviewed and changed if deemed necessary. It will be continually monitored and reviewed by LASC at its quarterly meetings, and views as to the continuing appropriateness of individual standards will be sought from industry, Government and welfare organisations including NCCAW on an annual basis.

LASC will implement a system of both desk and field audits of prospective and licensed exporters by the independent auditor, AUS-MEAT Ltd. Where LASC recommends LEAP Accreditation based on this audit information, LIVECORP will issue the accreditation and recommend to AQIS that the

applicant has satisfied the "competency" test under the Act for the issue of a license. Similarly, when LASC recommends the removal of accreditation, LIVECORP will be responsible for making the appropriate recommendations to the licensing authority (AQIS).

Importantly, under the provisions of the revised Regulations, AQIS will be able to independently assess whether an individual exporter continues to meet the "competency- test for holding an export license. This assessment will be based on whether mandatory LEAP standards, including those relating to animal welfare, have been breached. In this way it will be possible for AQIS to initiate action under the Act to cancel an export licence irrespective of whether LIVECORP recommends LEAP accreditation be continued, and to continually monitor the appropriateness of the LEAP standards.

Review mechanisms for affected licensees are contained in the Act including the right to appeal a decision to not issue or revoke an export license, to the Administrative Appeals Tribunal. The Act also specifies such matters as enforcement procedures in relation to export licenses including powers of search and seizure and penalties for exporting without a license.

It is anticipated that a formal review of the LEAP program will be undertaken by DPIE in the medium term to assess its continuing effectiveness.

(B) THE IMPOSITION OF AN APPLICATION FEE

Problem

Implementation and administration of the new licensing scheme within AQIS will incur new expenses, including the hiring of administrative staff, maintenance of a new database, plus some travel and overheads, While the AMLC was administering export licensing, these costs were covered by industry levies. These new costs have to be covered under the new scheme.

Objective

The objective of this regulatory initiative is to fund the export licensing scheme to be administered by AQIS under the Australian Meat and Live-stock Industry Act 1997.

Options

Option 1

Levies could be raised for providing these services.

Option 2

The Act provides that an application fee may be charged for the processing of an export licence application.

Option 3

That no regulations be made under the Act prescribing an application fee and the cost of administering the scheme be absorbed from AQIS's Budget appropriation from Consolidated Revenue as part of its community service responsibilities.

Impact Analysis

Option 1

The imposition of levies to fund the administration of export licensing is not an option as there is no power under the meat reform legislation to impose levies for this purpose.

Option 2

The cost involved for applicants in this option would be \$500 per licence application. This would be regardless of whether the applicant is applying for a meat export licence, a live-stock export licence, or both. The fee will recover the costs of administration, database upkeep, travel etc involved in administering the licensing scheme, and has been substantially reduced by centralising the processing of the two types of licences.

A licence would only last a year, at which time a further M per renewal would then be charged.

Applicants who are already occupiers of meat processing establishments registered under the Export Control Act 1982 would not be charged an application fee as the work involved in processing these applications will be minimal.

This fee is minimal compared to the multimillion dollar turnovers these industries generate. In addition, an application fee will help filter out persons who are not serious about being involved in the industry. Currently, as the AMLC charges no direct fee for a meat or live-stock export licence, licences have been granted to persons who are not exporting, but use the licence as a marketing gimmick.

Option 3

There would be no *cost* to business in this option. However, the effect of this option would be that the costs borne by AQIS in administering this scheme would have to be absorbed from AQIS's existing Budget appropriation. This ,may consequently result in a transfer of some resources away from supervision and inspection of imports or exports, AQIS's core business. Alternatively, this option may necessitate an additional Budget appropriation to AQIS to fund the scheme.

Consultation

The following industry bodies have been consulted in relation to these fees..

- * the Red Meat Advisory Council,
- * the Coat Industry Council of Australia;
- * the Cattle Council of Australia Inc;
- * the National Meat Association of Australia
- * the Australian Meat Council Ltd;
- * the Australian Meat Processor Corporation Ltd;
- * the Sheepmeat Council of Australia;
- * the Australian Livestock Exporters' Council Ltd;
- * the Australian Lot Feeders' Association Ltd
- * Meat and Livestock Australia Ltd;

- * the Australian Livestock Exporters' Corporation Ltd; and
- * Aus-meat Ltd

These bodies will be consulted on any future changes to this fee.

There has been some disagreement in relation to the imposition of an application fee, however most bodies consulted accept that these are necessary for AQIS to administer the scheme.

Conclusion and Recommended Option

The recommended option is option 2 - the imposition of an application fee for an export licence. AQIS is a 100% cost-recovery organisation, and the use of consolidated revenue to fund this program would contradict the policy adopted for by the Commonwealth in relation to provision of quarantine and export inspection services and permits. The costs of checking compliance with the Act and the integrity of applicants will, however, be met out of current Budget appropriations from Consolidated Revenue, as under the Export Control Act 1982, as these services are considered to be part of AQIS's obligations to the community.

AQIS has attempted to make the fee as minimal as possible.

Implementation and Review.

An application for a licence will not be processed unless it is accompanied by the \$500 application fee. This requirement has been drafted into the regulations.

The fee will be reassessed each year to determine whether it is accurately reflecting the value of the resources used to administer the scheme, as are all of AQIS's fees, and will be an-tended accordingly.

Glossary of Acronyms:

The Minister: The Minister for Primary Industries and Energy, the Hon

John Anderson MP

ALEC: Australian Live-stock Exporters Council

AMLC: Australian Meat and Live-stock Corporation

AMSA: Australian Maritime Safety Authority

ANZFAS: Australian New Zealand Federation of Animal Societies

AQIS: Australian Quarantine and Inspection Service

CCA: Cattle Council of Australia

DPIE. Department of Primary Industries and Energy

LASC: Live-stock Accreditation and Standards Committee

LEAP: Live-stock Export Accreditation Program

LIVECORP: Australian Live-stock Export Corporation Ltd

(LIVECORP)

NCCAW: National Consultative Council on Animal Welfare

QA: Quality Assurance

RSPCA; Royal Society for the Prevention of Cruelty to Animals

SCA: Sheepmeat Council of Australia