

Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1) 2004 No. 286

Statutory Rules 2004 No. 286

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

Australian Meat and Live-stock Industry Act 1997

Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1)

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

Subsection 12(1) of the Act provides that the Secretary to the Department of Agriculture, Fisheries and Forestry must not grant a licence to export meat or live-stock from Australia unless satisfied that *inter alia* the applicant is a person or body corporate of integrity, competent to hold a licence, and of sound financial standing. Subsection 12(2) of the Act provides that the regulations may prescribe the matters to which the Secretary must have regard for the purpose of satisfying himself or herself about the matters referred to in subsection 12(1) of the Act.

The *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998* prescribe a range of matters for the purpose of the Act.

The purpose of the *Australian Meat and Live-stock Industry (Export Licensing Amendment Regulations 2004 (No. 1)* ("the Amendment Regulations") is to give effect to the Government's Response to the Keniry Report into Live-stock Exports announced by the Minister for Agriculture, Fisheries and Forestry on 30 March 2004. The Amendment Regulations separate the requirements for meat export licences from the requirements for live-stock export licences to increase government regulation of the live-stock export trade. The Amendment Regulations improve the application and approval processes for live-stock export licences and enable government to set and assess standards in relation to live-stock exports.

Details of the amendments are set out below:

Regulation 1 - Name of Regulations

Regulation 1 is a formal provision specifying that the Amendment Regulations may be cited as the *Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides that the Amendment Regulations commence on the commencement of Schedule 1 to the *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004*. Schedule 1 to the *Agriculture Fisheries and Forestry Legislation Amendment (Export Control) Act 2004* amends the *Australian Meat and Live-stock Industry Act 1997* ("the Act") and the *Export Control Act 1982* to increase government regulation of the live animal export trade. The effect of regulation 2 is to implement the Amendment Regulations at the same time as the new measures under the *Agriculture Fisheries and Forestry Legislation Amendment (Export Control) Act 2004*.

Regulation 3 - Amendment of Regulations

Regulation 3 provides that Schedule 1 to the Amendment Regulations amends the *Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998* ("the Principal Regulations").

Schedule 1 - Amendments

1. Item 1 inserts a new heading before regulation 1 entitled "Part 1 Preliminary". This amendment is stylistic only and assists readers in understanding and using the Regulations.
2. Item 2 replaces the reference to "the Australian Livestock Export Corporation Ltd" with "the Department of Agriculture, Fisheries and Forestry" in the note under the definition for "standards body" in subregulation 3(1) of the Principal Regulations. The purpose of this amendment is to advise readers that the Department of Agriculture, Fisheries and Forestry ("the Department") will replace the Australian Livestock Export Corporation Ltd as the relevant standards body responsible for setting standards in relation to live-stock exports.
3. Item 3 inserts a new provision, regulation 3A, after regulation 3 providing that buffalo, camelids and deer are prescribed for the definition of live-stock in section 3 of the Act. The purpose of this amendment is to increase government regulation of live-stock exports by requiring exporters of deer, camelids and buffalo to apply for a live-stock export licence. The effect of this amendment will be that current holders of live-stock export licences who wish to export deer, camelids and buffalo will need to apply to the Secretary to vary their licences to include the additional species in accordance with the new regulation 18 of the Principal Regulations (see item 30, below).
4. Item 4 removes references to "Australian Livestock Exporters' Council Ltd" and the "Australian Livestock Export Corporation Ltd" in regulation 5 of the Principal Regulations. Regulation 5 lists the prescribed industry bodies for the purpose of section 9 of the Act. This amendment gives effect to item 3 of Schedule 1 of the *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004* which removes the requirement in section 9 of the Act for the Secretary to have regard to any broad policies developed jointly by prescribed industry bodies when exercising his or her powers under the Act in relation to live-stock export licences and live-stock export quotas. Essentially, this amendment would allow the Secretary to exercise his powers under the Act in relation to live-stock export licences without having regard to broad policies of prescribed industry bodies relating to live-stock exports.
5. Item 5 inserts a new heading entitled "Part 2 Meat Export Licences" and a new provision, regulation 5A, stating that the new part applies only in relation to meat export licences. The new heading and the new provision assists readers in separating the requirements relating to meat export licences from the new requirements relating to live-stock export licences.
6. Item 6 substitutes a new heading for regulation 6 of the Principal Regulations to confirm that the requirements for an application in regulation 6 apply only in relation to meat export licences. The new requirements for applications relating to *live-stock* export licences are set out in the new regulation 14 (see item 30, below).
7. Item 7 replaces the reference to "an export" licence with "a meat export" licence in regulation 6(1) of the Principal Regulations to confirm that the requirements for an application in regulation 6 apply only in relation to meat export licences.
8. Item 8 is a technical amendment to the note under paragraph 6(1)(b) of the Principal Regulations. The purpose of this amendment is to correct the cross-reference to the definition of "person in management and control" in subregulation 3(1) of the Act and to replace the abbreviated references to "subregulation" and "section" with the respective words in full.

9. Item 9 deletes paragraph 6(1)(c) of the Principal Regulations to remove the ability for applicants to submit single applications for both meat and live-stock export licences. The purpose of this amendment is to ensure that applicants apply separately for meat and live-stock export licences so that an application for a meat export licence does not constitute an application for a live-stock export licence.
10. Item 10 removes all references to "or live-stock" in paragraphs 6(1)(d) and (e) of the Principal Regulations. As above, this amendment confirms that the requirements in regulation 6 apply only in relation to meat export licences.
11. Item 11 is a technical amendment to the note under paragraph 6(1)(e) of the Principal Regulations. The purpose of this amendment is to replace the abbreviated reference to "subsection" with the word in full.
12. Item 12 deletes the reference to "or live-stock" in paragraph 6(3)(b) of the Principal Regulations. The purpose of this amendment is to confirm that the requirements in regulation 6 apply only in relation to meat export licences.
13. Item 13 is a technical amendment to the note under paragraph 6(4) of the Principal Regulations. The purpose of this amendment is to replace the abbreviated reference to "section" with the word in full.
14. Item 14 removes all references to "or live-stock" in paragraph 6(6)(b) of the Principal Regulations. As above, this amendment confirms that the requirements in regulation 6 apply only in relation to meat export licences.
15. Item 15 removes all references to "or live-stock" in paragraph 6(6)(c) of the Principal Regulations. As above, this amendment confirms that the requirements in regulation 6 apply only in relation to meat export licences.
16. Item 16 inserts "under regulation 7" after the word "payable" in subregulation 6(7) of the Principal Regulations to clarify that the application fee payable for a meat export licence is set out in the existing regulation 7.
17. Item 17 omits subregulations 7(1) and (3) of the Principal Regulations as the application fee for live-stock export licences is set out in the new regulation 14 (see item 30, below) and applications for meat and live-stock export licences require separate payment of fees.
18. Item 18 replaces "also" with "however" in subregulation 7(4) of the Principal Regulations. This amendment is grammatical only and consequential to the amendment in item 17 (above).
19. Item 19 replaces "licence or a live-stock export licence," with "licence," in subregulation 7(4) of the Principal Regulations to confirm that the provision applies only in relation to meat export licences.
20. Item 20 removes all references to "or live-stock" in paragraph 8(a) of the Principal Regulations to confirm that regulation 8 applies only in relation to meat export licences. The matters which the Secretary must have regard to when satisfying himself or herself about a matter mentioned in subsection 12(1) of the Act when granting a live-stock export licence are set out in the new regulation 16 (see item 30, below).
21. Item 21 replaces the reference to "[a]n export" licence with "[a] meat export" licence in subregulations 9(1) and (2) of the Principal Regulations to confirm that the conditions in subregulations 9(1) and (2) apply only in relation to meat export licences. The conditions applying to live-stock export licences are set out in the new regulation 18 (see item 30, below).

22. Item 22 deletes the reference to "or live-stock" in subregulation 9(2) of the Principal Regulations to confirm that the conditions in subregulation 9(2) do not apply in relation to live-stock export licences.

23. Item 23 deletes subregulation 9(3) of the Principal Regulations, which provides that a live-stock export licence is subject to the condition that the holder must have regard to mandatory animal welfare requirements prescribed by the relevant standards body. This provision is no longer necessary as it will be a requirement of a live-stock export licence that the holder of the licence complies with the Australian Standards for the Export of Live-stock ("the Standards") which will include standards relating to animal welfare requirements.

24. Item 24 replaces the reference to "[a]n export" licence with "[a] meat export" licence in subregulation 9(4) of the Principal Regulations to confirm that the conditions in subregulation 9(4) apply only in relation to meat export licences.

25. Item 25 is a technical amendment to the note under paragraph 9(4) of the Principal Regulations. The purpose of this amendment is to replace the abbreviated references to "section" and "subregulation" with the respective words in full.

26. Item 26 replaces the reference to "an export" licence with "a meat export" licence in subregulation 10(2) of the Principal Regulations to confirm that prescribed events and circumstances listed in subregulation 10(2) apply only in relation to meat export licences.

27. Item 27 removes all references to "or live-stock" in paragraphs 10(2)(a), (2)(e), and 4(c) of the Principal Regulations to confirm that these provisions apply only in relation to meat export licences.

28. Item 28 replaces the general reference to "a licence" with "a meat export licence" in subregulation 11(1) of the Principal Regulations to confirm that the requirements in regulation 11 for renewal of licences applies only in relation to meat export licences.

29. Item 29 is a technical amendment to the note under subregulation 11(2) of the Principal Regulations. The purpose of this amendment is to clarify that the reference to the application fee in subregulation 11(1) is a reference to the fee for a meat export licence. The amendment also replaces the abbreviated reference to "regulation" with the word in full.

30. Item 30 inserts a new part entitled "Part 3 Live-stock Export Licences" after regulation 11 in the Principal Regulations. This part sets out the requirements in relation to live-stock export licences.

Part 3 Live-stock Export Licences

12. Application of Part 3

The new regulation 12 provides that the new Part 3 applies only in relation to live-stock export licences. This provision clarifies that the new arrangements do not apply to meat export licences.

13. Definition for Part 3

The new regulation 13 defines "Australian Standards for the Export of Live-stock" as a document of the same name published by the Department and in force on 1 December 2004.

14. Application for live-stock export licence

The new regulation 14 sets out the requirements for an application for a live-stock export licence. The new subregulation 14(1) confirms that the application must be in a form approved by the Secretary and must set out the name, address and date of birth of the applicant and all persons in management and control of the live-stock export business, the type of live-stock that the applicant proposes to export and the proposed mode of transport. The note under paragraph 14(1)(c) confirms that the Secretary may grant a live-stock export licence for a particular type of live-stock only or a particular mode of transport in accordance with subsection 33(3A) of the *Acts Interpretation Act 1901*.

The new subregulation 14(1) also requires information regarding the criminal history of the applicant in accordance with current requirements under the Principal Regulations and information regarding the business structure or proposed business structure of the applicant. This information is required by the Secretary for the purpose of assessing integrity and financial standing in accordance with section 12 of the Act. The information will be collected and used in accordance with the information privacy principles in the *Privacy Act 1988*.

The new subregulation 14(2) provides that, if the applicant is a body corporate, the application must set out the applicant's Australian Company Number if applicable and information regarding the foreign ownership or control of the applicant if the applicant is a subsidiary of, or is under the direction or financial control of, a foreign corporation, authority or organisation.

The new subregulation 14(3) requires applicants to include a declaration in the application declaring that the information in the application is true in every material detail and that the person signing the declaration knows that the deliberate or reckless provision of false or misleading information to the Secretary is an offence.

The new subregulation 14(4) provides that the application must be accompanied by a copy of an operations and governance manual for the live-stock export business; a criminal history from the Australian Federal Police for the applicant (if an individual) and for each person in management and control of the business; the partnership agreement and financial documents relating to the partnership if the applicant operates or intends to operate the live-stock export business in partnership; and audited statements of the applicant's assets and liabilities and profit and loss account for the previous financial year. Noticeably, it is no longer a requirement of an application for a live-stock export licence that applicants provide a copy of their accreditation certificate issued by the relevant standards body. This is because the Department, as the new relevant standards body, will not accredit applicants for live-stock exports. Instead, the Secretary will consider whether the applicant's operations and governance manual sufficiently demonstrates the applicant's ability to meet the Standards determined by the Department.

The new subregulation 14(5) of the Regulations provides that the application must be submitted with the lodgement fee specified in the new regulation 15.

15. Application fee

Subsection 11(1) of the Act provides that an application for an export licence must be made in accordance with the regulations. In addition, subsection 11(2) of the Act provides that an applicant for an export licence must pay the prescribed fee in respect of the application when the application is lodged or at any later time permitted under the regulations.

The new regulation 15 sets out the prescribed fee for a live-stock export licence. The new subregulation 15(1) provides that the application fee comprises three components. The first component is a lodgement fee of \$300 for the initial cost of processing the application. This component is based on the cost of examining an application over an average of two hours to determine whether the application is complete and ready for assessment. The second component is the cost of an assessment by an external vetting agency of the integrity of the applicant, the integrity of each person in management and control, and the financial standing of

the applicant. This component of the application fee will be notified to the applicant in accordance with the new subregulation 15(2). The exact amount cannot be specified in the Principal Regulations, as the Department is yet to engage an external vetting agency to conduct the assessments. Finally, the third component is an assessment fee calculated at the rate of \$75 per half hour for the cost of assessing whether the Secretary may grant a live-stock export licence and any inspection, evaluation or demonstration undertaken by an authorised officer or other appropriately qualified person nominated by the Secretary.

The new subregulation 15(2) provides that the Secretary must notify the applicant of the amount of the external vetting agency component either on the application form approved by the Secretary or by written notice when the application is lodged. If the applicant is notified by written notice, paragraph 15(2)(b) provides that the Secretary must obtain the applicant's agreement to proceed with the application. The purpose of this provision is to allow the applicant to withdraw the application if the applicant is not willing to pay the amount of the external vetting agency component.

The new subregulation 15(3) provides that external vetting agency component and the assessment component are payable by the applicant after the application is lodged but before the licence is granted. The purpose of this provision is to ensure that the Department recovers the cost of processing and approving an application before granting a live-stock export licence.

16. What the Secretary must have regard to

The new regulation 16 prescribes a range of matters that the Secretary must have regard to for the purpose of satisfying himself or herself about matters referred to in subsection 12(1) of the Act. Subsection 12(1) of the Act provides that the Secretary must not grant an export licence unless satisfied that the applicant is a person or body corporate of integrity, competent to hold a licence and of sound financial standing. In addition, the Secretary must be satisfied that each person in the management and control of the export business is a person of integrity, that the applicant is, and is likely to continue to be, able to comply with the conditions on the licence and the granting of the licence to the applicant would not, for any other reason, be contrary to the interests of the industry.

The new subregulation 16(1) incorporates existing prescribed matters with new prescribed matters in an attempt to ensure that the Secretary has regard to relevant information for the purpose of satisfying himself or herself under subsection 12(1) of the Act. The matters include: the criminal history of the applicant; the deliberate or reckless provision of false or misleading information by the applicant or any other person in management and control; the financial position and performance of the applicant (whether an individual or body corporate) for the previous financial year; the applicant's ability to comply with Standards set by the new relevant standards body; any assessment made by an external vetting agency about the integrity and financial standing of the applicant (including the integrity of each person in management and control); and the results of any inspection, evaluation or demonstration of the operations of the applicant's business conducted or observed by an authorised officer or other appropriately qualified person nominated by the Secretary.

The new subregulation 16(2) provides that the Secretary may: ask the applicant for further information; give information to an external vetting agency to assess the integrity and financial standing of an applicant (including the integrity of each person in management and control of the business); arrange for an authorised officer to inspect and evaluate the applicant's premises, facilities, equipment and transport vehicles; arrange for an authorised officer to observe a demonstration of the operations of the applicant's business, and arrange for an appropriately qualified person to participate in any inspection, evaluation or demonstration.

17. Approval of operations and governance manual

The new regulation 17 confirms that the grant of a live-stock export licence to a person is approval of the operations and governance manual submitted by the person with the application. The purpose of this provision is to confirm that there is not a separate approval process for an operations and governance manual.

18. Further conditions to which licences are subject

The new regulation 18 prescribes conditions to which licences are subject in accordance with section 15 of the Act. The new subregulation 18(1) provides that a live-stock export licence is subject to the conditions that the holder has an approved operations and governance manual that demonstrates compliance with the Standards, that the holder must not export live-stock except in accordance with the Standards and that the holder must update the operations and governance manual by variation under the new regulation 19 if there is a change to the way in which the operations of the business comply with the Standards.

The new subregulation 18(2) allows holders of live-stock export licences granted before 1 December 2004 until 1 January 2005 to apply to the Secretary to replace quality assurance systems with operations and governance manuals. The purpose of this provision is to ensure holders of live-stock export licences are given sufficient time to comply with the new requirements.

The new subregulation 18(3) provides that live-stock export licences are subject to the conditions that holders permit authorised officers or other appropriately qualified persons nominated by the Secretary to audit the holder's operations and governance system, provide any assistance during the audit, produce any records or documents and comply with any reasonable request to take action to correct any deficiencies. This provision is necessary to ensure the ongoing competency and compliance of holders of live-stock export licences.

The new subregulation 18(4) outlines the method in which holders of live-stock export licences must inform the Secretary of prescribed events and circumstances specified in the new regulation 20.

The new subregulation 18(5) confirms that any reference in the Regulation to an approved operations and governance manual includes reference to manuals that have been changed or manuals that have replaced quality assurance systems where the change or replacement has been approved in accordance with the new regulation 19.

19. Variation of licence

The new regulation 19 sets out the requirements for varying live-stock export licences. Subregulation 19(1) lists a range of variations that require approval by the Secretary. These include changes to the approved operations and governance manual, the type of live-stock exported under the licence, the mode of transport used to export the live-stock, the management and control of the business and the structure or membership of the business.

The new subregulation 19(2) outlines the requirements for making an application for variation of a licence. The effect of this provision is to enable applications for variations to be made in largely the same way as applications for licences.

The new subregulation 19(3) provides that the Secretary must satisfy himself or herself about, and have regard to, those matters relevant to the variation that the Secretary would be required to be satisfied about, and have regard to, if the variation had been part of the application for the licence. The purpose of this provision is to ensure that the Secretary applies the same rigour to approving a variation of a licence as deciding the grant of a licence.

The new subregulation 19(4) confirms that the same components of the application fee specified in paragraphs 15(1)(b) and (c) apply to the cost of assessing an application for variation of a licence.

The new subregulation 19(5) provides that, if the Secretary refuses to approve a variation of a licence, the Secretary must notify the holder of the licence in writing of the refusal.

The new subregulation 19(6) confirms that a holder of a licence may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary to refuse to approve an application to vary a licence.

20. Events of which licence holder must inform Secretary

The new regulation 20 deals with events and circumstances prescribed for the purpose of section 16 of the Act. The new subregulation 20(1) provides that 7 days is the prescribed period of time within which holders of live-stock export licences must advise the Secretary about any prescribed event or circumstance that has occurred. These events and circumstances are prescribed in the new subregulations 20(2), (3) and (4). They include the conviction of an offence by a licence holder or a person in management and control of the business, a court order or voluntary resolution to wind up, and bankruptcy.

21. Renewal of licence

The new regulation 21 sets out the requirements for the renewal of live-stock export licences. The new subregulation 21(1) confirms that an application for renewal must be made in the same way as an application for a new licence. Similarly, the new subregulation 21(2) provides that the application fee for renewal is the same as the application fee for a new licence.

Part 4 Miscellaneous

The new Part 4 comprises regulations 25, 26 and 27. These regulations simply remake the existing regulations 12, 13 and 14, but have been renumbered to accommodate the new provisions dealing with live-stock export licences.

Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1)
Regulation Impact Statement

1. BACKGROUND

1. The export of live-stock is an important and growing trade for Australia, providing farmers with a valuable alternative market to exports of chilled and frozen meat products. In 2003, exports of sheep, cattle and goats contributed approximately \$0.8 billion to the Australian economy, supporting about 9000 jobs across Australia in feed-mills, the transport industry, sale-yards, export feedlots and at ports. Approximately 400 consignments were exported in 2003, from 14 ports around Australia. Export licences are required for the export of sheep, cattle and goats. There are approximately 90 licensed live-stock exporters.

The Keniry Report into Live-stock Exports

2. On 10 October 2003, the Minister for Agriculture Fisheries and Forestry, the Hon Warren Truss, MP, commissioned an independent review of the live-stock export industry, chaired by Dr John Keniry. This followed increasing community criticism over the live animal export trade culminating in the rejection by Saudi Arabia of 57 000 sheep on board the *Cormo Express* in August 2004. The Keniry Report into Live-stock Exports highlighted serious problems with current regulatory arrangements for the live-stock export trade including the lack of a national standards covering all activities along the export chain and industry governance issues.

3. The Government's Response to the recommendations of the Keniry Report into Live-stock Exports, including those recommendations relating to requirements for live-stock export licenses, was announced on the 30 March 2004. Specific background information was provided in the Regulation Impact Statement prepared for the Government's consideration of the recommendations of the Keniry Report.

Current system for licensing under the AMLI Act

4. All exporters of prescribed live-stock are required to be licensed under the *Australian Meat and Live-stock Industry Act 1997* ("the AMLI Act"). Currently, live-stock is defined under the AMLI Act to include cattle, sheep and goats.

5. The specific requirements that exporters need to satisfy in order to obtain and maintain a license to export live-stock are set out in the AMLI Act and the *Australian Meat and Live-stock (Export Licensing) Regulations 1998* ("the Regulations").

6. Except for licences issued in the same name as that of the occupier of an establishment registered under the *Export Control Act 1982*, for which no fee is applicable, the annual export license fee is set at \$500.00 and is payable annually on application. If the exporter requires a licence for both meat and live-stock, only one \$500.00 charge applies.

7. Subsection 12(1) of the AMLI Act provides that the Secretary must not grant an export licence unless satisfied that the applicant is a person or body corporate of integrity, competent to hold a licence and of sound financial standing. In addition, subsection 12(1) states the Secretary must be satisfied that each person in the management and control of the export business is a person of integrity, that the applicant is, and is likely to continue to be, able to comply with the conditions on the licence and the granting of the licence to the applicant would not, for any other reason, be contrary to the interests of the industry.

8. Currently, exporters cannot make an application for a licence without a certificate of accreditation from the prescribed industry standards body - the Australian Livestock Export Corporation Limited ("Livecorp"). Livecorp accredits live-stock exporters and issues accreditation certificates under the Livestock Exporter Accreditation Program ("LEAP"). To become accredited

under the program, exporters need to establish quality assurance arrangements that achieve the minimum standards set out in the revised Australian Live-stock Export Standards ("ALES"). These standards cover all operational and management activities from issue of instruction, purchase of live-stock and the shipment of live-stock aboard the export vessel (ship or aeroplane). ALES are developed, published and managed by Livecorp.

Regulatory environment

9. The *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004* amends the AMLI Act and the *Export Control Act 1982* to increase government regulation of the live animal export trade. The *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004* received royal assent on Tuesday 29 June 2004 and will commence on proclamation. It provides the basis for the Government's decisions that:

- export licensing approval arrangements be changed so that the assessment as to whether an applicant meets the requirement of competence is undertaken by government and not dependent on an industry accreditation process; and
- the licensing appraisal by government includes consideration of the history of the exporter under the *Export Control Act 1982*, and whether the exporter has a risk management system in place to meet the new standards applying to live-stock exports.

10. The proposed amendments to the Regulations reflect the Government's intention to have sole responsibility for live-stock export licences. The Department of Agriculture, Fisheries and Forestry ("the Department") will assume full responsibility for setting and assessing standards for live-stock export licences and all references in the legislation to industry's involvement in these processes will be removed.

Proposed amendments will not affect the red meat industry

11. The Regulations apply to both meat and live-stock export licences. However, it is the Government's intention to amend only those requirements in relation to live-stock export licences. Applicants will need to apply separately for a meat and live-stock export licence, as the criteria for assessing them will be different.

Proposed system for licensing

12. In addition to the requirement for exporters of cattle, sheep and goats to hold a licence under the AMLI Act, it is proposed that exporters of deer, buffalo and camelids also be required to hold an export licence. This reflects the recognised risks involved with transporting and handling these species and a history of adverse animal welfare incidents. Current holders of live-stock export licences who wish to export deer, buffalo and camelids will be required to apply to the Secretary to vary their licences to include the additional species.

13. The existing core requirements (competency, integrity and financial standing) will continue to apply for the grant of an export licence:

- Competency will be assessed on the basis of an applicant's "operations and governance manual" (which must be submitted with the applicant's licence application) and on-site monitoring of export activity. The operations and governance manual must sufficiently demonstrate the applicant's ability to meet the new Australian Standards for the Export of Live-stock ("the Standards") and the licence will be subject to the condition that the holder must not export live-stock except in accordance with the Standards;
- Integrity and financial standing will be assessed on the basis of documentation and declarations provided by an applicant and reviewed by an external vetting agency.

14. In addition, the amendments under the *Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004* will allow the Secretary to take into account any associations an applicant may have and his/her history of compliance under the *Export Control Act 1982* in deciding whether the applicant is suitable to hold a live-stock export licence.

15. The application fee for a live-stock export licence is set to recover the full cost of approving an export license and will have the following components:

(a) A fixed non-refundable lodgement fee for the initial cost of processing the application. This component is based on the cost of examining an application over an average of two hours to determine whether the application is complete and ready for assessment;

(b) An 'at cost' fee for the review of integrity and financial documents by an external vetting agency (i.e. an assessment of the integrity of each person nominated on the application as being in management and control of the live-stock export business; and an assessment of the financial standing of the applicant); and

(c) A 'fee- for-service' for the time taken by the Department to assess and make a decision on the application having regard to the recommendations of the external vetting agency (eg assessing the governance and operations manual for whether the required standards can be met and any on-site inspection, evaluation or demonstration of the operations of the applicant's live-stock export business).

16. If the holder of an export licence wishes to change the approved governance and operations manual an application must be made to the Secretary for approval of a variation of their licence. An assessment of the variation of the governance and operations manual and therefore variation of a licence will attract a 'fee for service'.

2. PROBLEM

17. The Keniry Report into Live-stock Exports identified serious problems with the current arrangements for regulating the live-stock export trade, and in particular the imposition of responsibility for accrediting exporters and setting export standards on the industry body representing live-stock exporters ("Livecorp"). Livecorp's administration of industry quality assurance is seen as inadequate with insufficient audit and sanctions policies for non-compliance.

18. The number of active live-stock exporters is small, dominated by five major companies exporting sheep and about twenty regular exporters of cattle. Livecorp is predominately funded from the voluntary levies of these major exporters. As a result Livecorp is exposed to potential conflicts of interest, real, or perceived, as it discharges its responsibilities as the industry standard setting and accreditation body.

3. OBJECTIVES

19. The objectives of the proposed amendments to the Regulations are to ensure in a cost effective manner that every exporter holding a live-stock export licence is suitable to hold such a licence and that licence holders export live-stock in a manner that meets minimum animal health and welfare standards.

4. OPTIONS

20. The following options are available:

Option A: Continue with the current government and industry co-regulatory systems.

Option B: Amend the current Regulations to give effect to the Government's Response to the Keniry Report into Live-stock Exports so that government has sole responsibility for setting and assessing standards for live-stock export licences.

Option C: Self-regulation by the live-stock export industry with the industry having sole responsibility for the assessment and granting of live-stock export licences.

The proposed options

21. The options that have been considered as possible are discussed below:

Option A: Continue with the current government and industry co-regulatory systems.

Advantages

- No additional development or implementation costs to government or industry.

Disadvantages

- Option A does not implement Government's Response to the Keniry Report into Live-stock Exports; and
- Problems highlighted by the Keniry Report into Live-stock Exports will continue including:
 - the potential for conflicts of interest within the live-stock export industry;
 - the potential for further adverse incidents (eg high mortality voyages) due to inadequate assessment of the suitability of export licence holders;
- Dissatisfaction from the producer and animal welfare stakeholders who support the recommendations of the Keniry Report and the Government's decision.

Option B: Amend the current Regulations to give effect to the Government's Response to the Keniry Report into Live-stock Exports so that government has sole responsibility for setting and assessing standards for live-stock export licences.

Advantages

- Greater level of assurance to community and overseas trading partners about the suitability of exporters to hold live-stock export licences than the current co-regulatory model;
- Option B removes the potential for conflicts of interest within the live-stock export industry and ensures that standards and obligations are applied consistently and transparently; and
- Option B reflects strong support for the recommendations of the Keniry Report into Live-stock Exports from producer and animal welfare stakeholders.

Disadvantages

- Potential for increased costs to government and the live-stock export industry; and
- Increased responsibility and accountability for the government.

Option C: Self-regulation by the live-stock export industry with the industry having sole responsibility for the assessment and granting of live-stock export licences.

Advantages

- Low direct costs for government.

Disadvantages

- Option C does not implement Government's Response to the Keniry Report into Live-stock Exports;
- Option C exacerbates the potential for conflicts of interest within the live-stock export industry;
- Option C fails to demonstrate to producer and animal welfare stakeholders that the live-stock export industry is operating in an open and transparent manner;
- Option C compounds the potential for further adverse incidents (eg high mortality voyages) due to inadequate assessment of the suitability of holders of live-export licences; and
- Option C ignores the dissatisfaction of producer and animal welfare stakeholders with the current co-regulatory arrangements who broadly support the recommendations of the Keniry Report into Live-stock Exports

5. IMPACT ANALYSIS

Who is affected by the problem?

22. Groups affected by the problems associated with regulating the live-stock export trade and solutions are:

- Australian live-stock producers
- Australian live-stock exporters
- Livecorp
- Meat and Livestock Australia
- Sheepmeat Council of Australia
- Cattle Council of Australia
- Goat Industry Council
- The Australian Alpaca Association
- Australian Buffalo Industry Council
- Deer Industry Association of Australia
- Central Camel Association of Australia
- Animal welfare groups
- Department of Agriculture, Fisheries and Forestry

- Department of Foreign Affairs and Trade

23. Options A and C do not address the problems highlighted in the Keniry Report into Live-stock Exports and do not implement the Government's Response.

24. Option B addresses the problems highlighted by the Report and implements the Government's Response. There may be greater costs involved with Option B. These costs would arise from the need to increase resources within Government to assess each exporter's operations and governance manual and audit exporter's compliance with their manuals. However this cost will be recovered from the exporter. It is expected that the increase in licensing fees paid to the Department will be comparable to the current fees paid by exporters to Livecorp for accreditation under LEAP. There will also be an increase in cost for those who export both meat and live-stock as licences for both will be assessed on different criteria and the cost will be recovered separately.

6. CONSULTATION

25. The Department has undertaken both formal and informal consultation with all major stakeholders:

- During February 2004, the Department met with the major stakeholders to obtain their response to the recommendations of the Keniry Report into Live-stock Exports. The meetings did not identify any alternate specific mechanism that might be adopted to implement the Report's recommendations;
- The Department outlined the proposals at the Live Export Industry Consultative Committee Meetings of 19 May 2004 and 21 July 2004;
- The Department discussed the proposals with relevant producer groups and exporter associations that would be directly affected by the changes to legislation; and
- The Department met with Livecorp on a number of occasions to discuss the proposals, most recently on 12 August 2004.

26. With the exception of Livecorp, no producer groups or exporter association expressed any concerns relating to the amendments to the Regulations.

27. Livecorp's reservations relate to whether exporters will continue to choose to seek accreditation under LEAP when the accreditation will no longer be mandatory for the grant of a live-stock export licence and how this might affect their financial viability. However, the Government has decided that Livecorp should be the prescribed industry body under the AMLI Act to receive a statutory levy for research and development and marketing activities.

7. CONCLUSION AND RECOMMENDED OPTION

What is the preferred option?

28. Option B is the preferred option.

29. Stakeholders broadly support the Government's decision in relation to the live-stock export industry. Implementation of the Government's Response to the Keniry Report will restore confidence in the trade through increased regulation in relation to live-stock export licences. Options A and C do not incorporate the Government's decisions on the recommendations of the Keniry Report with respect to licensing. These options would invite widespread criticism from producer and animal welfare stakeholders and may jeopardise the continuation of the trade.

8. IMPLEMENTATION

30. The new arrangements will be implemented on 1 December 2004 and will be subject to ongoing monitoring and review.