

EXPLANATORY STATEMENT

Australian Meat and Live-stock Industry Act 1997

Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East – Northern Summer) Order 2020

Legislative Authority

Paragraph 17(1)(a) of the *Australian Meat and Live-stock Industry Act 1997* (the Act) provides that the Secretary may, by legislative instrument, make orders, not inconsistent with the regulations, to be complied with by holders of export licences. Paragraph 17(5)(a) of the Act provides that an export licence is subject to the condition that the holder of the licence must comply with orders made under section 17.

Purpose

The purpose of the *Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020* (the Northern Summer Order) is to prohibit the export of live sheep from Australia on a vessel travelling by sea between 1 June and 14 September inclusive, if the intended voyage were to travel through waters in the Arabian Sea, or the Red Sea, north of latitude 11° N at any time during the voyage.

This order further prohibits the export of live sheep from Australia to Oman on a vessel travelling by sea between 8 May and 14 September inclusive, and from Australia to Qatar on a vessel travelling by sea between 22 May and 22 September inclusive.

This order provides additional conditions relating to the number of ports where a vessel may dock. Voyages entering applicable waters on or after 1 June, or which leave Australia between 15 September and 30 September must only unload live-stock at no more than 2 ports.

This order provides that the length of wool on each sheep is 25 millimetres or less and the that body condition score for each sheep is 2 or 3, as specified in the Australian Standards for the Export of Livestock (ASEL). Further conditions require exporters to monitor the relative humidity and wet bulb temperature on vessels transporting live sheep and to provide the Secretary with a written report of each record of the relative humidity and wet bulb temperature within 5 days after the end of the voyage.

Background

In April 2018, footage was released showing live sheep in severe heat stress while being transported to the Middle East during the 2017 Northern Hemisphere summer. The government commissioned the *Independent Review of Conditions for the Export of Sheep to the Middle East during the Northern Hemisphere Summer* by Dr Michael McCarthy (the McCarthy Review), which was published on 17 May 2018. Following recommendations from this review, particularly that ‘industry should move from a risk assessment based on mortality to a risk assessment based on welfare’, and recommendations from an independent Heat Stress Risk Assessment (HSRA) review technical assessment panel, the department commenced a regulation impact statement (RIS) process. This RIS analysed the economic,

social and regulatory impacts and benefits of 3 policy options for live sheep exports to, or through, the Middle East during the Northern Hemisphere summer and involved extensive consultation with various stakeholders, as well as being informed by the best available science and evidence.

The Northern Summer Order is the legislative framework for the implementation of policy recommendations from the RIS process. Legislation specific to live sheep exports over the 2019 Northern Hemisphere summer period (the *Australian Meat and Live-stock Industry (Prohibition of Exports of Sheep by Sea to the Middle East – Northern Summer) Order 2019*) has now expired. The Northern Summer Order will prohibit trade during the hot months of June to mid-September inclusive in 2020 and in subsequent years, with extended periods for the hotter locations of Qatar and Oman, and have additional conditions to manage heat stress risk in exported sheep. The wool length and body condition requirements will ensure that the sheep selected for export a high risks times will be best able to withstand the effects of high temperatures and the restrictions on the number of unloading ports will reduce the exposure of sheep to higher temperatures on board vessels at port. The monitoring requirements will ensure that review of exporters' performance.

Impact and Effect

This instrument will prohibit holders of sheep export licences from exporting live sheep from Australia to the places discussed above from 1 June to 14 September (inclusive), with extended periods for Qatar and Oman, if the intended voyage were to travel through waters in the Arabian Sea or Red Sea, north of latitude 11° N at any time, and will have additional conditions for managing heat stress risk in exported sheep. This will improve the welfare of sheep exported to these places during these periods.

Consultation

The Department of Agriculture, Water and the Environment has consulted widely in making its policy decision. The department considered recommendations from the McCarthy Review, the HSRA review technical reference panel, public submissions to the draft RIS and policy options discussion paper. Scientific analysis was considered including climatological analysis by the Bureau of Meteorology (2019), data provided by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), and voyage reports from Australian Government Accredited Veterinarians (AAVs) and Independent Observers (IOs) on board vessels during 2018 and 2019 Northern Hemisphere summer months.

Feedback on the policy options was received by formal submissions and during meetings with industry stakeholders. Sheep farmers and the live export industry could be affected by the limited period sheep can be turned off to live exports each year. Farmers, particularly those in Western Australia, will have reduced flexibility in their farming practices and marketing options. There is also a risk that a further animal welfare incident (comparable to the incidents in 2017 on board the Awassi Express) will cause significant harm to the sustainability of live animal exports. Welfare based non-government organisations primarily supported managing heat stress in sheep by prohibiting exports to the Middle East for the whole six months of the Northern Hemisphere summer or by ceasing the trade altogether.

Details/Operation

Details of the Order are set out in Attachment A.

The Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Order is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020*

Part 1 Preliminary

Section 1 Name

Section 1 provides that the name of the instrument is the *Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020* (the Order).

Section 2 Commencement

Section 2 provides that the Order commences on the day after it is registered.

Section 3 Authority

Section 3 provides that the authority for making the Order is section 17 of the *Australian Meat and Live-stock Industry Act 1997*.

Section 4 Definitions

Section 4 provides definitions for a number of terms for the purposes of the Order. The section provides that:

‘Act’ means the *Australian Meat and Live-stock Industry Act 1997*.

‘Australian Standards for the Export of Livestock’ means the *Australian Standards for the Export of Livestock (Version 2.3) 2011*. A note after the definition states that in 2020 this document could be viewed on the website of the department (<http://www.awe.gov.au>).

‘live-stock export licence’ has the meaning given by section 7 of the Act.

‘sheep export licence’ means a live-stock licence granted under Part 2 of the Act to export sheep from Australia.

Section 5 Application of this instrument

Subsection 5(1) provides that the Order applies in relation to the holder of a sheep export licence.

Subsection 5(2) further provides that to avoid doubt, the Order applies in relation to a vessel transporting sheep where more than one type of live-stock is transported on a vessel.

Subsection 5(3) provides that nothing in the Order is intended to limit a condition or restriction in the Australian Standards for the Export of Livestock to which the export of sheep is subject. However, the subsection further provides that to the extent of any inconsistency the Order prevails.

Part 2 - Export conditions

Section 6 – Prohibition of export of sheep to Oman between 8 May and 14 September

Section 6 provides that the holder of a sheep export licence must not export a consignment of sheep from Australia to Oman by sea on a vessel that leaves an Australian port between the start of 8 May in a year and the end of 14 September in that year.

Section 7 – Prohibition of export of sheep to Qatar between 22 May and 22 September

Section 7 provides that the holder of a sheep export licence must not export a consignment of sheep from Australia to Qatar by sea on a vessel that leaves an Australian port between the start of 22 May in a year and the end of 22 September in that year.

Section 8 – Prohibition of export of sheep between 1 June and 14 September

Section 8 provides that the holder of a sheep export licence must not export a consignment of sheep from Australia by sea on a vessel that leaves an Australian port between the start of 1 June in a year and the end of 14 September in that year, and that will travel, or travels, through waters in the Arabian Sea, or the Red Sea, north of latitude 11°N at any time during its voyage.

Section 9 – Conditions relating to number of ports where vessel may dock

Section 9 provides that the holder of a sheep export licence must not export a consignment of sheep from Australia by sea on a vessel that will travel, or travels, through waters in the Arabian Sea, or the Red Sea, north of latitude 11°N at any time during its voyage, and:

- that leaves an Australian port before 1 June in a year and enters those waters on or after 1 June in that year; or
- that leaves an Australian port between the start of 15 September in a year and the end of 30 September in that year;

unless the vessel will dock at no more than 2 ports to unload sheep, or any other live-stock from the vessel, or for any other purpose.

Section 10 – Conditions relating to condition of sheep and pens on vessel

Subsection 10(1) provides that the holder of a sheep export licence must not export a consignment of sheep from Australia by sea on a vessel that will travel, or travels, through waters in the Arabian Sea, or the Red Sea, north of latitude 11°N at any time between the start of 1 May in a year and the end of 31 October in that year unless the conditions in section 10 are complied with.

Subsection 10(2) provides that the holder must ensure that the length of the wool on each sheep in the consignment is 25 millimetres or less and that body condition score for each sheep in the consignment is 2 or 3, as specified in Table A1.1.1 of the Australian Standards for the Export of Livestock.

Subsection 10(3) provides that if the vessel on which the sheep are to be transported is 140 metres long or less, the holder must ensure that the relative humidity and wet bulb

temperature in at least 2 representative pens on each deck of the vessel is automatically measured and recorded every 20 minutes during the voyage. Paragraph 10(3)(b) provides that if the vessel has more than one hold on a deck in which sheep are being held, at least one measurement and recording must be taken in each hold on that deck

Subsection 10(4) provides that if the vessel on which the sheep are to be transported is longer than 140 metres, the holder must ensure that the relative humidity and wet bulb temperature in at least 3 representative pens on each deck of the vessel is automatically measured and recorded every 20 minutes during the voyage. Paragraph 10(4)(b) provides that if the vessel has more than one hold on a deck in which sheep are being held, at least one measurement and recording must be taken in each hold on that deck.

Subsection 10(5) provides that holder must ensure that a written report of each record made under subsections (3) or (4) (as the case requires) is given to the Secretary, by electronic means, within 5 days after the end of the voyage. Subsection 10(5) further provides that the report must also state the location of each device used to take measurements and make records and the time each record was made.

Part 3 - Exemptions

Section 11 – Application for exemption

Subsection 11(1) provides that holder of a sheep export licence may apply to the Secretary at any time for an exemption from one or more provisions of the Order in relation to a consignment of sheep.

Subsection 11(2) provides for the manner the application must be made, including that it must set out the basis on which the exemption is sought. The Note after subsection 11(2) provides that a person may commit an offence if the person makes a false or misleading statement in an application or provides false or misleading information or documents. It also directs the reader to sections 136.1, 137.1 and 137.2 of the *Criminal Code*, which provides for this offence.

Subsection 11(3) provides that an application is taken not to have been made if the application does not comply with the requirements referred to in subsection 11(2) for the application.

Section 12 – Secretary may decide whether to grant exemption

Subsection 12(1) provides that the Secretary may decide whether to grant the exemption or not grant the exemption.

A decision to grant or not grant an exemption is about determining whether, in the circumstances of the case, it is acceptable to exclude a consignment of sheep from the requirements of the instrument. The decision-maker may grant an exemption if he or she is satisfied that the matters in subsection 12(3) are met. It is anticipated that exemptions will only be granted in exceptional circumstances.

Decisions about whether to grant or not grant an exemption are expected to be based on whether animal health and welfare can continue to be protected if an exemption is granted.

The impact of a decision to grant an exemption may also have implications beyond the interests of the individual exporter, including adversely impacting trading partners' confidence in the Australian Government's regulatory oversight of exported goods. This in turn may adversely affect the interests of the live animal export industry. In such circumstances, the decision-maker may consider that it would not be appropriate to grant the exemption.

Decisions made under subsection 12(1) are not suitable for merits review as, due to the particular circumstances in which such decisions are made, there would be no appropriate remedy that could be conferred by the decision-maker. As it is anticipated that decisions made under subsection 12(1) will be made with reference to a specific consignment of sheep and that that consignment will be exported in a relatively short period of time, it is expected that the decision would only operate for such a short period of time that its effect would be spent by the time of the completion of the review.

Subsection 12(2) provides that for the purpose of making a decision in relation to the application, the Secretary may request the applicant to provide further information or documents relevant to the application.

Subsection 12(3) provides the grounds for the Secretary to grant the exemption.

Subsection 12(4) provides that an exemption may be granted subject to conditions that the Secretary considers are necessary. The exemption may be revoked if the conditions are not complied with.

Section 13 – Note of decision

Subsection 13(1) provides that if the Secretary decides to grant an exemption under paragraph 12(1)(a), the Secretary must give the applicant an instrument of exemption, including any conditions imposed under subsection 12(4).

Subsection 13(2) provides that if the Secretary decides not to grant an exemption under paragraph 12(1)(b), the Secretary may notify the applicant, in writing, of the decision. The notice must include the reasons for the decision.

Section 14 – Effect of exemption

Section 14 provides that if the holder of a sheep export licence is granted an exemption from one or more provisions of the Order in relation to a consignment of sheep, the exempted provisions do not apply in relation to the export of that consignment while the exemption is in force.

However, any provision that is not an exempted provision will continue to apply to the export of that consignment. Also, if an exemption is revoked it will cease to apply to that consignment.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020* (the legislative instrument) prohibits the holder of a sheep export licence from exporting a consignment of live sheep from Australia on a vessel travelling by sea to Oman on a vessel that leaves an Australian port during the period between 8 May and 14 September inclusive in that year; to Qatar on a vessel that leaves an Australian port during the period between 22 May and 22 September inclusive in that year; and during the period between 1 June and 14 September inclusive in that year if the intended voyage will travel or travels through waters in the Arabian Sea or the Red Sea, north of latitude 11° N. The legislative instrument also provides for additional conditions for managing heat stress risk in exported sheep by improving the travelling conditions and welfare of sheep being exported to certain parts of the world in the hottest times of year for those places.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Andrew Metcalfe AO
Secretary of the Department of Agriculture, Water and the Environment