

## **EXPLANATORY STATEMENT**

*Australian Meat and Live-stock Industry Act 1997*

*Australian Meat and Live-stock Industry (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018*

### **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, to be complied with by holders of export licences. Paragraph 17(5)(a) of the Act provides that an export licence is subject to orders made under section 17.

### **Purpose**

The purpose of the *Australian Meat and Live-stock Industry (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018* (the instrument) is to amend the *Australian Meat and Live-stock Industry (Standards) Order 2005* (the Standards Order) to impose an additional condition on holders of live-stock export licences in relation to the export of a consignment of sheep by sea.

The additional condition will require the holder of a live-stock export licence to report the shipboard mortality level of a consignment of sheep on a vessel if it reaches 1% or 3 sheep (whichever is the greater of these two). The inclusion of 3 sheep is to ensure that small consignments are not disproportionately impacted. For example, in a consignment of 100 sheep, where one death would be equal to 1%, the mortality level is only reportable after at least three deaths have occurred. The additional condition is intended to ensure that the Department of Agriculture and Water Resources (the Department) has adequate information to monitor sheep welfare during export and determine when further investigation and/or regulatory action is necessary.

Reducing the reportable mortality level is intended to place a greater imperative on live-stock export licence holders to adopt and implement actions that minimise the mortality level of sheep during a voyage. This will, in turn, improve the health and welfare of sheep during export by sea.

The instrument will provide a legal basis for the implementation of one of the recommendations of 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).

### **Background**

The Act is part of the regulatory framework that enables the Department to regulate the export of live-stock from Australia. The Act also provides the basis for achieving specific animal welfare outcomes for live-stock exports.

In April 2018, footage was released showing live sheep in severe heat stress while being transported to the Middle East. The McCarthy Review was announced by the Minister for Agriculture and Water Resources on 10 April 2018 as part of the Government's response to the incident. The McCarthy Review was published on 17 May 2018.

Recommendation 18 of the McCarthy Review was that the reportable mortality level for sheep exported by sea to the Middle East be reduced from 2% to 1%. This instrument will provide a legal basis for this recommendation, and will apply to all sheep exports, not just those to the Middle East.

### **Impact and Effect**

This instrument will require a live-stock export licence holder to provide a report to the Department if the shipboard mortality level of sheep in a consignment reaches 1% or 3 sheep (whichever is the greater of these). A consignment will include all sheep that belong to a licence holder on a particular vessel. The report must be made as soon as possible, and in any event, no later than 12 hours after the incident. The inclusion of 3 sheep as a reportable mortality level is to ensure that small consignments are not disproportionately impacted. For example, in a consignment of 100 sheep, where one death would be equal to 1%, the mortality level is only reportable after at least three deaths have occurred.

The report must include:

- details of the deaths, including the number and the suspected cause;
- factors that may have contributed to the deaths; and
- the current location of the vessel, and if appropriate, its destination and estimated time of arrival.

The current reportable mortality level for sheep is 2% or 3 sheep in accordance with the Australian Standards for the Export of Live-stock (ASEL). Section 3 of the Standards Order provides that the holder of a live-stock export licence must not export live-stock except in accordance with ASEL. Section 4 of the Standards Order provides that nothing in the Standards Order affects any requirement to comply with ASEL that applies to the holder under the *Export Control (Animals) Order 2004* (the Animals Order). The requirement to report under this instrument is in addition to reporting requirements under ASEL.

Reducing the reportable mortality level is intended to place a greater imperative on live-stock export licence holders to adopt and implement actions that minimise the mortality level of sheep during a voyage. This will, in turn, improve the health and welfare of sheep during export by sea.

### **Consultation**

Key stakeholders engaged with Dr McCarthy during his review.

### **Details/ Operation**

Details of this instrument are set out in [Attachment A](#).

This instrument 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](#).

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

**Details of the *Australian Meat and Live-stock Industry (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018***

**Section 1 Name**

Section 1 provides that the name of the instrument is the *Australian Meat and Live-stock Industry (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018*.

**Section 2 Commencement**

Section 2 provides for the instrument to commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 Authority**

Section 3 provides that the instrument is made under section 17 of the Act.

**Section 4 Schedules**

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items on the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1** will insert new section 5 into the Standards Order to make it a condition of a live-stock export licence that the holder of the licence must, if exporting a consignment of sheep by sea, notify the Department if the shipboard mortality level of the sheep in the consignment reaches 1% or 3 sheep (whichever is the greater of these). The inclusion of 3 sheep is to ensure that small consignments are not disproportionately impacted. For example, in a consignment of 100 sheep, where one death would be equal to 1%, the mortality level is only reportable after at least three deaths have occurred.

This section is intended to give effect to recommendation 18 of the McCarthy Review that the reportable mortality level for sheep exported by sea be reduced from 2 % to 1%. The reporting requirement is intended to be in addition to any other reporting requirement that is necessary for a live-stock export licence holder to comply with ASEL under the Animals Order or Standards Order.

Subsection 5(1) will provide that section 5 applies to the export of a consignment of sheep by sea by the holder of a live-stock export licence (the *exporter*) if the vessel transporting the sheep leaves Australia after the commencement of the instrument.

A note to subsection 5(1) refers the reader to subsection 5(5) which sets out the meaning of a consignment for the purposes of section 5.

Subsection 5(2) will provide that an exporter must give a written report to the Department as soon as possible, and in any event, within 12 hours, if the shipboard mortality level of the exporter's consignment of sheep on a vessel (including during loading onto, and unloading from, the vessel) reaches the greater of:

- 1% of the sheep in the consignment, calculated in accordance with subsection 5(3); or
- 3 sheep in the consignment.

A note to subsection 5(2) clarifies that the requirement to report under new section 5 applies in addition to any reporting requirements in ASEL in relation to the sheep.

Subsection 5(3) will set out the formula for calculating whether the percentage of shipboard mortality in the consignment under subsection 5(2) has been reached, which is as follows:

$$\frac{\text{Total sheep deaths in consignment}}{\text{Total number of sheep in consignment}} \times 100$$

Subsection 5(3) will also define the terms ***total number of sheep in consignment*** and ***total sheep deaths in consignment*** for the purposes of this calculation.

Subsection 5(4) will provide that a report under subsection 5(2) must include the following information, provided for in paragraphs 5(4)(a)-(j) respectively:

- the name of the vessel;
- the unique number of the notice of intention to export the consignment given to the Secretary under Part 1A of the *Export Control (Animals) Order 2004*;
- the number of sheep in the consignment that have died on the vessel (including during loading onto, and unloading from, the vessel);
- the suspected cause of the deaths;
- factors that may have contributed to the deaths;
- a description of the actions being taken to manage the health and welfare of the consignment of sheep;
- the location of the vessel at the time the report is given;
- the destination of the vessel and its estimated time of arrival;
- the date the report was written;
- any other information that the exporter considers relevant.

This information is required to ensure that the Department has all relevant information to consider whether it is necessary to take any further action, such as an investigation into the voyage, and to determine whether any further regulatory action needs to be taken in the circumstances.

Subsection 5(5) sets out the meaning of ***consignment***. It provides that a consignment of sheep on a vessel in relation to the holder of a live-stock export licence includes all sheep on the vessel that are permitted to be exported by the holder under the licence. This clarifies that the shipboard mortality level is specific to an individual live-stock export licence holder, not a vessel. This is required because the sheep aboard a vessel may belong to different live-stock export licence holders. The shipboard mortality level is intended to be calculated according to the sheep that belong to an individual holder of a live-stock export licence on a vessel, not necessarily all sheep on a vessel.

**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 (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018***

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 (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018* (the Legislative Instrument) will impose an additional condition on a live-stock export licence relating to the export of sheep by sea. The additional condition will require the holder of a live-stock export licence to report the mortality level of sheep and related information when the shipboard mortality level of a consignment reaches 1% or 3 sheep (whichever is the greater of these).

**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.

**Daryl Quinlivan**  
**Secretary of the Department of Agriculture and Water Resources**