

## **EXPLANATORY STATEMENT**

### *Australian Meat and Live-stock Industry Act 1997*

### *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East – Northern Winter) 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 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 (Export of Sheep by Sea to Middle East – Northern Winter) Order 2018* (the instrument) is to impose additional conditions on holders of export licences who export sheep between November and April by sea to the Middle East, as defined in circumstances where the vessel on which the sheep are being transported will travel through waters in the Arabian or Red Seas north of latitude 11° N at any time during the voyage. In practice, the order will apply to all voyages to the Persian Gulf and those that travel to, or through, the Red Sea during that time of the year.

These conditions are intended to place a greater imperative on sheep export licence holders to adopt and implement actions that protect the health and welfare of sheep while travelling to the Middle East between November and April.

#### **Background**

The Act is part of the regulatory framework that enables the Australian Government 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 July 2018, in response to the findings of the McCarthy Review, the government introduced the *Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018*, which placed conditions on the export of sheep during May and October.

Due to the ongoing risk of heat stress during the Northern Winter, a number of conditions will continue to be applied.

#### **Impact and Effect**

This instrument prohibits the export of sheep (in the circumstances where this instrument applies) unless the holder of a sheep export licence complies with the conditions it imposes.

The instrument provides that the following conditions must be complied with:

- the minimum pen space allocation of each sheep must be determined by either the table in this Order, or a Heat Stress Risk Assessment Model, whichever provides the largest amount of pen space per animal;
- the pen air turnover of any vessel transporting sheep must be independently verified and records relating to the verification must be made, retained and provided to the Secretary of the Department of Agriculture and Water Resources and to the Australian Livestock Export Corporation Ltd (LiveCorp);
- the vessel must be equipped with automatic live-stock watering systems, the operation of which has been validated by the Australian Maritime Safety Authority (AMSA), and with water receptacles at a height suitable for sheep; and
- approved whistleblower hotline posters must be displayed in accordance with requirements approved in writing by the Secretary.

These conditions are intended to place a greater imperative on sheep export licence holders to adopt and implement additional actions that protect the health and welfare of sheep while travelling to the Middle East between November and April.

### **Consultation**

All live sheep export licence holders were consulted regarding the government's intention to introduce the conditions via an Export Advisory Notice on 5 October 2018. The Australian Livestock Export Council, the Australian Livestock Export Corporation Ltd, registered premises operators and the public were also informed by this notice.

The Office of Best Practice Regulation has been consulted on this instrument and has agreed that it is a continuation of the government's response to the McCarthy review and is covered by the Prime Minister's Regulation Impact Statement exemption of May 2018. A further condition (approved whistleblower hotline posters) is minor in nature and does not require a Regulation Impact Statement. OBPR ID: 24480.

### **Details/Operation**

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

The 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](#).

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

**Details of the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East – Northern Winter) Order 2018***

**Part 1 Preliminary**

**Section 1 Name**

Section 1 provides that the instrument is the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East – Northern Winter) Order 2018*.

**Section 2 Commencement**

Section 2 provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 Authority**

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

**Section 4 Definitions**

Section 4 defines a number of terms for the purposes of the instrument.

***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*.

***Heat Stress Risk Assessment Model*** for a voyage by a vessel transporting sheep means a computer software program that predicts the risk of heat stress mortality of the sheep occurring during the voyage and during unloading from the vessel, taking into account the most recent verified pen air turnover for the vessel.

***independent qualified mechanical engineer*** means a person who:

- (a) has relevant qualifications in relation to the operation of ventilation systems; and
- (b) is not an employee of the holder of a live-stock export licence or the Department; and
- (c) is accredited by the National Association of Testing Authorities or an equivalent or similar organisation.

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

***pen air turnover*** for a vessel means the ventilation rate measured in cubic metres per hour for each square metre of pen space on the vessel, calculated using an industry standard, or equivalent, method.

***registered premises*** has the meaning given by section 7 of the Act.

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

***verified pen air turnover*** for a vessel means the pen air turnover for the vessel, as verified by an independent qualified mechanical engineer using an industry standard, or equivalent, method.

## Section 5 Application of this instrument

Subsection 5(1) provides that the instrument applies in relation to sheep that are exported, or are to be exported from Australia by sea between 1 November and 30 April in the following year in the circumstances set out under subsections 5(1)(a) and 5(1)(b).

Paragraph 5(1)(a) provides that this instrument applies if the vessel transporting the sheep leaves Australia after the commencement of the instrument. This provision means that the instrument does not apply to an export that occurs before the commencement date. This will avoid unintended interaction between this instrument and a condition on a licence or directions given to a licence holder that may have been in place before the commencement of this instrument.

Paragraph 5(1)(b) provides that the instrument only applies if the vessel transporting the sheep will travel, or travels, through waters in the Arabian Sea, or the Red Sea, north of latitude 11°N during any part of the voyage. This provision means that the instrument applies to voyages containing sheep travelling in this geographical area having left Australia during the months of November to April, irrespective of whether the destination of the voyage is a place in the Middle East or if the voyage only passes through this area. In practice, the order will apply to all voyages to the Persian Gulf and those that travel to, or through, the Red Sea during these months.

Subsection 5(2) provides that the instrument applies whether or not the vessel is transporting other kinds of live-stock, in addition to sheep. This will ensure that the conditions imposed by this order to protect the health and welfare of sheep applies to all voyages carrying sheep, irrespective of the presence of other live-stock.

## **Part 2 Export Conditions**

### Section 6 Prohibition of export of sheep

Subsection 6(1) provides that the export of a consignment of sheep to which this instrument applies is prohibited unless the holder of a sheep export licence complies with the conditions in this instrument.

Note 1 after subsection 6(1) provides that the holder of a sheep export licence is subject to the condition that they must comply with this instrument unless an exemption has been granted and is in force under Part 3 of this instrument. It also directs the reader to paragraph 17(5)(a) of the Act.

Note 2 after subsection 6(1) provides that the holder of a sheep export licence may commit an offence if the holder either intentionally or recklessly contravenes a condition of a licence imposed under this instrument. It also directs the reader to subsection 54(3) of the Act, which provides for this offence.

Subsection 6(2) provides that nothing in this instrument is intended to limit a condition or restriction in the Australian Standards for the Export of Livestock (ASEL). The conditions or restrictions in both documents are to be complied with, however, to the extent of any inconsistency between such a condition or restriction and a condition in this instrument, this instrument prevails.

## Section 7 Conditions relating to watering systems

Section 7 provides that the holder of a sheep export licence must, before the sheep are exported, ensure that the pens in which the sheep will be transported are equipped with automatic live-stock watering systems.

Subsections 7(a) and 7(b) provide, respectively, that the automatic live-stock watering systems must have water receptacles at a height suitable for sheep and that details of those watering systems are set out in the record of equipment and arrangements attached to the Australian certificate for the carriage of livestock for the vessel issued by the Australian Maritime Safety Authority under Marine Order Part 43 (Cargo and cargo handling — livestock) 2018.

## Section 8 Conditions relating to approved whistleblower hotline posters

Section 8 provides that the holder of a sheep export licence must, before the export of a consignment of sheep, be reasonably satisfied that posters approved by the Secretary (referred to as ‘approved whistleblower hotline posters’) are displayed in accordance with subsections 8(a)-(c). This provision is intended to ensure that any person who may be concerned that a condition relating to the export of live sheep has been breached, is aware of the government’s live animal export whistleblower hotline that enables that person to report their concerns.

Subsection 8(a) provides that the holder of the sheep export licence must be reasonably satisfied that the approved whistleblower hotline posters were displayed in accordance with requirements approved in writing by the Secretary, on all premises where sheep have been prepared or held after being transported from the farm where they were sourced, and before being loaded onto the vessel on which the sheep are to be transported. In practice, the requirement will be that posters are displayed at premises, such as a registered establishment, and the port where the sheep are loaded onto the vessel.

Subsection 8(b) provides that the holder of the sheep export licence must be reasonably satisfied that the approved whistleblower hotline posters were displayed in accordance with requirements approved in writing by the Secretary, on the vessel on which the sheep are to be transported before they were loaded onto the vessel.

Subsection 8(c) provides that the holder of the sheep export licence must be reasonably satisfied that the approved whistleblower hotline posters continue to be displayed in accordance with requirements approved in writing by the Secretary, on the vessel transporting the sheep until the sheep are unloaded from the vessel.

The note after paragraph 8(c) provides that the approved whistleblower hotline poster and the approved requirements for its display are published on the department’s website (<http://www.agriculture.gov.au>).

## Section 9 Conditions relating to pen air turnover

Subsection 9(1) sets out conditions relating to pen air turnover that the holder of a sheep export licence must comply with before exporting a consignment of sheep.

Paragraph 9(1)(a) provides that the pen air turnover for the vessel on which the sheep are to be transported must be verified by an independent qualified mechanical engineer within the five year period ending on the day before the sheep are to be exported.

Paragraph 9(1)(b) provides that if changes to the vessel have been made since the pen air turnover referred to in paragraph 9(1)(a) was verified, and those changes may affect the pen air turnover for the vessel, the holder of the sheep export licence must ensure that the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer.

Paragraph 9(1)(c) provides that the holder of the sheep export licence must take reasonable steps to satisfy himself or herself that the most recent verified pen air turnover for the vessel is correct. The purpose of this paragraph is to place an obligation on the holder of the sheep export licence to ensure that the verified pen air turnover is current.

Paragraph 9(1)(d) provides that the holder of the sheep export licence must make a record stating the information contained in subparagraphs 9(1)(d)(i-vi). This includes:

- the name of the vessel;
- that the pen air turnover for the vessel has been verified by an independent qualified mechanical engineer within the 5 year period ending on the day before the sheep are to be exported;
- the name and qualifications of the independent qualified mechanical engineer who carried out the most recent verification of the pen air turnover for the vessel;
- the method used to carry out the most recent verification;
- the date the pen air turnover was most recently verified;
- the results of the most recent verification.

Paragraph 9(2)(a) provides that the holder of the sheep export licence must give a written notice stating the most recent verification of the pen air turnover for the vessel and the method used to carry out the verification to the Secretary of the Department of Agriculture and Water Resources.

Paragraph 9(2)(b) provides that the holder of the sheep export licence must give the Australian Livestock Export Corporation Ltd (LiveCorp) a written notice stating the most recent verified pen air turnover for the vessel. This will assist LiveCorp, which manages the Heat Stress Risk Assessment Model.

Subsection 9(3) provides that the notices required by subsection 9(2) must be given as soon as practicable after the most recent verification of the pen air turnover for the vessel has been carried out.

## Section 10 Conditions relating to pen space area for each sheep

Section 10 sets out conditions that the holder of a sheep export licence must comply with relating to the minimum pen space area for each sheep on a vessel during transport.

Subsection 10(1) provides that before the holder of a sheep export licence exports a consignment of sheep in relation to which the instrument applies, the holder must ensure that the pen space on the vessel on which the sheep are to be transported, for each sheep (referred to as “the relevant sheep”) in the consignment, is an area, in square metres, of at least the greater of the value provided for in subsection 10(1)(a) or 10(1)(b). That is, the minimum pen

space for each sheep on a vessel must be determined according to whichever calculation provides the sheep with the largest amount of pen space. This calculation is subject to subsection 10(5), which sets out an additional requirement for determining pen space area for horned rams.

Paragraph 10(1)(a) refers to the value provided in the table in subsection 10(2). Paragraph 10(1)(b) refers to the value produced by the Heat Stress Risk Assessment Model for the voyage, which takes into account the most recent verified pen air turnover for the vessel.

Subsection 10(2) provides the table referred to in Paragraph 10(1)(a).

Subsection 10(3) provides that, for the purposes of paragraph 10(1)(a) and subsection 10(2), the weight of the relevant sheep is to be measured after, or at the time the sheep was transported from the registered premises, where it was prepared for export and before it was loaded onto the vessel.

Subsection 10(4) provides that, for the purposes of paragraph 10(1)(b), the weight used in producing the value for the relevant sheep using the Heat Stress Assessment Model must be the same weight used for the purposes of paragraph 10(1)(a) and subsection 10(2).

Subsection 10(5) provides that if the relevant sheep is a horned ram, the holder of the sheep export licence must ensure that the minimum pen space on the vessel, for each horned ram, is an area in square metres, of at least the greater of the values provided for in paragraphs 10(5)(a) and 10(5)(b) plus an additional 10 per cent of the greater value. This ensures that adequate space is taken into account for horned rams, as they require additional space. The 10 per cent loading is consistent with the requirements of ASEL.

#### Section 11 Power or requirement to do or cause a thing to be done

Section 11 provides that if the holder of a sheep export licence has the power, or is required, under this instrument to do a thing, the holder is taken to have done the thing if the holder causes another person to do the thing on behalf of the holder. A note after section 11 provides an example, that if the holder of a sheep export licence subcontracts to service providers, the holder would be responsible for instructing the provider to comply with this instrument.

### **Part 3 Exemptions**

#### Section 12 Application for exemption

Subsection 12(1) provides that the holder of a sheep export licence may apply to the Secretary at any time for an exemption from one or more provisions of this instrument in relation to a consignment of sheep to which the instrument applies.

Paragraph 12(2)(a) provides that an application must be made in a manner approved by the Secretary. Paragraph 12(2)(b) provides that if the Secretary has approved a form for making an application, an application must include all information required by the form. Paragraph 12(2)(c) provides that an application must set out the basis on which the exemption is sought.

A note after subsection 12(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, and refers the reader to sections 136.1, 137.1 and 137.2 of the *Criminal Code*.

Subsection 12(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 12(2). This makes it clear that the Secretary will not be required to make a decision on an application if it is incomplete (notwithstanding that the Secretary is not obliged to make a decision in any case as provided for in subsection 13(1) of this instrument).

### Section 13 Secretary may decide whether to grant exemption

#### *Secretary may decide whether to grant exemption*

Subsection 13(1) provides that on receiving an application for an exemption under section 12 of this instrument, the Secretary may decide to grant, or not grant, the exemption. If the Secretary does not make a decision, no exemption is given. In this circumstance, the applicant must continue to comply with all provisions of this instrument.

A decision made under subsection 13(1) will not be a reviewable decision. Decisions regarding exemptions from this instrument are based on whether animal health and welfare can be protected if an exemption is granted. The impact of such a decision is not limited to one applicant, and may affect the interests of the entire sheep export sector. As such, a decision to provide an exemption must be solely at the discretion of the Secretary in circumstances the Secretary considers appropriate. Although the decision is not reviewable, an exporter is not prevented from making a new application.

A note after subsection 13(1) provides that an application that does not comply with the requirements under subsection 12(2) of the instrument is taken not to have been made, and refers the reader to subsection 12(3) of the instrument. This means that the Secretary will not be required to make a decision on an application that is incomplete.

#### *Secretary may request further information or documents*

Subsection 13(2) provides that for the purposes of making a decision in relation to an application submitted under section 12 of this instrument, the Secretary may make a written request that an applicant give further specified information or documents relevant to the application. This is in addition to the information or documents required by section 12 of this instrument. This is intended to ensure that the Secretary is able to obtain all relevant information to determine whether it is appropriate to grant an exemption or not.

#### *Grounds for granting exemption*

Subsection 13(3) provides that the Secretary may grant an exemption if satisfied, having regard to any matter the Secretary considers relevant, that it is appropriate to grant the exemption.

Enabling the Secretary to take into account any matter he or she considers relevant will provide the Secretary with the flexibility to determine when it is appropriate to allow an exemption. This reflects the importance of ensuring animal health and welfare is maintained if an exemption is granted, and that the circumstances that must be taken into account will be specific to the consignment to which the exemption relates and may be difficult to foresee.



### *Exemption may be granted subject to conditions*

Subsection 13(4) provides that the Secretary may grant an exemption under paragraph 13(1)(a), subject to any conditions that the Secretary considers are necessary.

Providing the Secretary with the discretion to set any conditions necessary ensures that an exemption that relates to a particular consignment is appropriate to protect the health and welfare of sheep in the consignment. This broad discretion is required as the kinds of conditions that are necessary will be specific to each consignment and may be difficult to foresee.

A note after subsection 13(4) provides that the exemption may be revoked if conditions are not complied with. If an exemption is revoked, a holder of a sheep export licence must comply with all provisions of this instrument.

### Section 14 Notice of decision

#### *Instrument of exemption*

Subsection 14(1) provides that if the Secretary grants an exemption under paragraph 13(1)(a), the Secretary must give the applicant an instrument of exemption. The instrument of exemption must set out any conditions imposed under subsection 13(4).

The instrument of exemption provided for in subsection 14(1) is not intended to be a legislative instrument for the purposes of the definition of legislative instrument provided for in section 8 of the *Legislation Act 2003*. The instrument of exemption will be limited to a consignment of sheep that belongs to an individual holder of a sheep export licence.

#### *Notice of refusal*

Subsection 14(2) provides that if the Secretary decides not to grant an exemption under paragraph 13(1)(b), the Secretary may notify the applicant in writing. Subsection 14(2) further provides that the notice must include the reasons for the decision to refuse to grant the exemption. The Secretary is not obliged to give a notice of decision. If an exemption is not granted, the applicant must continue to comply with all provisions of this instrument.

### Section 15 Effect of exemption

Section 15 provides that if the holder of a sheep export licence is granted an exemption under paragraph 13(1)(a) from one or more provisions of the instrument (referred to as “the exempted provisions”) in relation to a consignment of sheep, the exempted provisions do not apply to the export of that consignment while the exemption is in force.

However, any provision that is not an exempted provision continue to apply to the export of that consignment. An exemption that has been revoked for non-compliance with a condition will cease to apply.

**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 (Export of Sheep by Sea to Middle East – Northern Winter) 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 (Export of Sheep by Sea to Middle East – Northern Winter) Order 2018* (the Legislative Instrument) imposes conditions on holders of an export licence who export sheep by sea to the Middle East, as defined in circumstances where the vessel on which the sheep are being exported between November and April will travel in the Arabian or Red Seas north of latitude 11° N at any time during the voyage. These conditions are intended to protect the health and welfare of the sheep during export.

**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**