



Australian Government

Australian Maritime Safety Authority

SUBMISSION IN RELATION TO THE RED MEAT INDUSTRY COMMENTARY ON THE REGULATION OF LIVESTOCK CARRIERS

Introduction

The Australian Maritime Safety Authority (AMSA) has been invited by the Productivity Commission to provide a response to representations in the Red Meat Industry submission to the Commission regarding shipping requirements administered by AMSA.

The Red Meat Industry submission emphasises the 2003 Report of the Livestock Export Review (the Keniry Report) finding that AMSA requirements "lead the world in ship design for livestock exports". This statement was made in the context of there being no specialised international standards regulating the transport of animals on livestock carriers. Hence Australia has led the field in developing national standards, given the importance of the livestock export industry to the Australian rural and regional economy and the community interest in animal welfare aboard ships. These standards are now being used by several overseas administrations to regulate these types of ships carrying livestock from their ports.

AMSA made Marine Orders Part 43, *Cargo and Cargo Handling - Livestock* (MO43) pursuant to the Commonwealth *Navigation Act 1912*, to regulate the conditions for the stowage and carriage of livestock as cargo. These ship-based standards include the size of pens and provision by the ship of livestock services, such as ventilation, lighting, drainage and systems delivering food and water.

The Red Meat Industry submission outlines the regulatory standards applying to livestock carriers. However, there needs to be a distinction made between responsibility for ship safety and pollution prevention standards, for which AMSA is responsible, and standards protecting animal welfare, for which the Australian Quarantine and Inspection Service (AQIS) and the Department of Agriculture, Forestry and Fisheries (DAFF) are responsible. The administration of animal welfare standards includes the requirement for stockmen and veterinarians to be carried aboard certain livestock carriers.

AMSA's pursuit of best practice regulation

AMSA wishes to highlight the extent of industry consultation in the performance of its regulatory role and AMSA's striving to maintain a best practice regulatory process in close liaison with the Office of Best Practice Regulation (formerly the Office of Regulatory Review).

AMSA's establishment legislation, the *Australian Maritime Safety Authority Act 1990*, requires in section 12 that AMSA consult, where appropriate, with government, commercial, industrial, consumer and other relevant bodies and organisations in the performance of its functions and the exercise of its powers. AMSA has established a number of specialised consultative committees to encourage stakeholders with a direct interest in AMSA's work to be consulted in the performance of our functions and powers, particularly our regulatory powers.

In the case of the regulation of livestock cargo, AMSA established a specialist Livestock Advisory Committee (LAC) to provide input and feedback on regulation of livestock carriers. Membership of the committee includes representatives of the Department of Agriculture, Fisheries and Forestry (DAFF), the Australian Quarantine and Inspection Service (AQIS), State Departments of Agriculture, livestock ship owner/operators, livestock exporters, shippers and agents, the Australian Livestock Export Corporation Ltd (Livecorp), the Cattle and Sheep Meat Councils, and the Royal Society for the Prevention of Cruelty to Animals (RSPCA). The Committee includes LiveShip, an independent body representing major ship owners and operators. LiveShip became independent of Livecorp in late 2004.

AMSA consults with the Office of Best Practice Regulation in the making of its Marine Orders as required and in line with the *Best Practice Regulation Handbook*, which applies to all Australian Government regulatory agencies.

Recent dissatisfaction expressed with AMSA's regulatory role

AMSA has consulted closely with the LAC over many years and their views are reflected in the current structure and content of the regulatory framework established by Marine Orders Part 43. Until recently, AMSA understood that its regulation of livestock carriers was appreciated and supported by the members of the LAC, including ship operators and owners.

There seems to have been a recent turnaround in the approach of some ship operators to the established consultative process and they are now critical of regulatory developments that previously were agreed by the LAC. The Red Meat Industry submission confirms that these issues have been raised with the Office of Best Practice Regulation, but without there being consultation with AMSA in a substantive way about these concerns.

AMSA is maintaining a constructive dialogue with all relevant stakeholders and has received support from several individual ship operators, which have publicly endorsed AMSA's regulatory role and have stated that they do not agree with the criticism of the established regulatory regime and regulatory improvements.

The Red Meat Industry submission appears critical of the implementation of the changed regulatory environment since the Australian Government's endorsement of the Keniry report in 2003. However, AMSA's consultations with major stakeholders have indicated support for the revised regulatory regime, including the development in 2004 of the underpinning industry standards by key stakeholders in DAFF's Livestock Export Standards Advisory Committee (LESAC).

Key stakeholders, including those represented in the Red Meat Industry submission, expressed at the time their appreciation of the Australian Government's recognition during this standards development process that the inspection, survey and certification of dedicated livestock ships are highly specialised tasks. There was support for the regulatory oversight of ship design, construction, operation and maintenance under the new standards being retained by AMSA.

Ship operator representatives advised the Government that they understood the need for, and were generally comfortable with, the existing high level of regulatory scrutiny of the ships involved in the export trade. In their view, the continuing uniform and consistent administration by AMSA of Marine Orders Part 43 was the key to future ship planning and investment decisions, not to mention the overall wellbeing of the industry. They considered that the Marine Order provided a comprehensive set of prescriptive requirements that were generally firmly and fairly enforced by AMSA. When considered in conjunction with DAFF's livestock export standards, they felt the regulatory regime more than adequately met the specific needs of shipping interests in the Australian livestock trade.

AMSA's recent regulatory changes in relation to livestock carriers

The Red Meat Industry submission appears to take issue with three regulatory changes made to Marine Orders Part 43 over the past five years. Two of these regulatory changes arose from decisions agreed in the LAC before the implementation of the Keniry report reforms, but which did not come into operation until 2007 and 2008. The third change was in direct response to the development by DAFF of the livestock export standards in 2004, which made redundant the continued coverage of animal welfare standards in AMSA's Marine Order. This proposed change to the Marine Order was clearly signalled by AMSA in its submission to the Keniry review in 2003 and has been reinforced in preceding and ongoing discussions in the LAC and in correspondence with the industry. Following is a more detailed discussion of these three regulatory changes:

Increased redundancy in ships' systems operative from 1 January 2007

The Marine Order was changed in 2002 to provide for increased redundancy in ships' systems by 1 January 2007 with the aim of ensuring shipboard livestock services, particularly ventilation, are maintained at a level necessary for the welfare of the livestock carried aboard ship. The Marine Order also provided a performance-based alternative for a ship operator to demonstrate adequate redundancy in a ship's systems and equipment by supplying to AMSA's Chief Marine Surveyor with a risk analysis of the systems involved.

This regulatory change was primarily in response to several incidents of very high livestock mortality on certain voyages from Australia arising from the failure of ship systems to support the livestock on board. In one instance, over 800 cattle died, representing 75 per cent of the livestock shipment, when the ship's electrical power supply failed to the ventilation system and insufficient air was available to the animals. It can be appreciated these instances are contrary to Australian community standards in relation to the welfare of animals in transit and received considerable attention from animal welfare groups. There was a strong public interest concern

with the high impact of these incidents of the system failure aboard ship and the demand that this be addressed to prevent such incidents in future.

A five-year implementation period was provided to allow existing livestock carriers in the Australian trade to plan and carry out modifications to achieve compliance with the new requirements for additional redundancy in ship systems before 2007. The five-year period also coincided with a ship's normal survey and certification cycle.

Some existing livestock carriers needed to upgrade the redundancy level of their shipboard livestock systems to meet the standards that came into operation in 2007. There were some older livestock vessels, which their owners decided to retire from the Australian trade, although they could be used in overseas livestock trades. Some shipowners also elected to invest in new and more economic vessels or converted vessels to livestock carriers that already met the upgraded requirements, so there was an overall improvement in the standard of vessels servicing the Australian trade by 2007.

The 2002 Marine Order was developed in full consultation with AMSA's LAC. The cost to the industry of this measure was part of the LAC's consideration, along with the considerable community concern with ensuring the humane transport of livestock at sea from Australia.

International environment standards regulating sewage discharge from ships

AMSA is responsible for administration of the Commonwealth *Navigation Act 1912* and *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. The Navigation Act is the main legislation implementing standards covering ship construction and survey, ship safety, crewing, seafarer qualifications, and safe carriage of cargoes. The Protection of the Sea Act implements environment protection standards covering ship operations. The legislation references standards in international maritime conventions primarily promulgated by the United Nations' International Maritime Organization (IMO) and reflecting the international nature of the global shipping industry. Australia is a party to these conventions and hence is obliged to implement these standards into national law.

The IMO's International Convention for the Prevention of Pollution from Ships (the MARPOL Convention) is the major maritime convention providing internationally agreed environment protection standards, which was made by the IMO in the 1970s. It contains six technical annexes dealing with prevention of pollution by ships from oil, bulk noxious liquid substances, harmful substances in packaged forms, sewage, garbage and air pollution respectively.

In September 2003, the MARPOL Convention's Annex IV, *Prevention of Pollution by Sewage*, came into force internationally after gaining the necessary number of acceptances by IMO Member States. Australia acceded to Annex IV in February 2004 and it passed into Australian national law on the commencement in May 2004 of the Commonwealth *Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2003*. AMSA issued Marine Notices in 2003 and 2004 notifying the shipping industry of the prospective implementation by Australia of the new international standards in relation to the discharge of sewage from ships.

Annex IV of the MARPOL Convention required ships to be equipped with a standard discharge connection and a holding tank, an approved sewage treatment plant or an approved sewage comminuting and disinfecting system. These standards applied to livestock carriers and the discharge of drainage from spaces containing live animals.

Consequently, AMSA made amendments to Marine Orders Part 43 to implement these new international environment protection standards in relation to livestock carriers. In accordance with the MARPOL requirements, all livestock carriers of 400 gross tonnage and above were required to be fitted with a sewage system to meet the sewage discharge standards in Annex IV. Ships certified to carry livestock and built or converted prior to September 2003 were given five years to comply with the new standards by September 2008. In addition to its Marine Notices, AMSA also has included the requirement to comply with the new standard on livestock carrier certificates for several years to ensure operators were aware of the need to adequately prepare for the improved environment protection standards.

Again AMSA's LAC was consulted about the changes required to Marine Orders Part 43 to implement these new international standards in relation to livestock carriers.

Removal of animal welfare standards from Marine Orders Part 43 and prevention of high-risk old ships from entering the trade

AMSA's submission to the Keniry review in November 2003 discussed the then complex interaction between the ship safety and operational standards regulated by AMSA under the *Navigation Act 1912* and the animal welfare standards covered by the *Australian Meat and Livestock Industry Act 1997* and *Export Control Act 1982*, administered by DAFF and AQIS. AMSA sought support from the review for the removal of the animal welfare standards, which had been included in Marine Orders Part 43 at the behest of the livestock industry and ship owners and operators. AMSA sought the transfer of these standards to legislation administered by DAFF.

AMSA advised the Keniry review that this change had been discussed with the LAC, which had been presented with proposed amendments to remove these provisions from Marine Orders Part 43 in 2003. The shipping industry and animal welfare representatives on the LAC felt that removal of the animal welfare provisions from the Marine Order would be premature at that stage. They asked AMSA to wait until DAFF had produced its animal welfare regulations to take up these functions and satisfactory operational experience with the new regulatory regime to be administered by DAFF and AQIS.

In December 2004, the Australian Standards for the Export of Livestock (ASEL) came into operation under the DAFF administered *Australian Meat and Livestock Act 1997*. Hence AMSA again sought removal of the animal welfare provisions from its Marine Orders Part 43, as these were covered by the ASEL and did not concern ship safety or pollution prevention, which are within AMSA's regulatory responsibilities.

AMSA originally proposed issuing the revised Marine Order removing the animal welfare provisions in February 2006. However, consultations through LAC with interested parties, the RSPCA and livestock industry representative organizations,

advocated retention of some of these provisions within the Marine Order, particularly those relating to reporting by ships' masters about livestock shipments. AMSA felt the reporting requirement was not required for its ship safety purposes and should be transferred to a DAFF administered regulatory instrument.

AMSA issued a draft of the revised Marine Order in April 2006 for public comment and following feedback from industry parties and DAFF, the final Marine Order was promulgated in December 2006. This retained the ship master's reporting requirement in direct response to representations by the Livestock Exporters Council, DAFF and the RSPCA. DAFF requires this information to comply with its livestock shipment reporting requirements to the Australian Parliament specified in section 57AA of the Commonwealth *Australian Meat and Livestock Industry Act 1997*, and considered continued inclusion of the reporting requirement in Marine Orders Part 43 would be more effective than creating its own regulatory instrument.

The 2006 Marine Order also included the introduction of a sunset clause for older ships, with the proposal that all livestock carriers should be required to comply by 1 January 2011 with the 1981 amendments to the IMO's International Convention on the Safety of Life at Sea (the SOLAS Convention). These SOLAS Convention amendments applied to vessels constructed on or after 1 September 1984 (ie ships affected by the 2011 cut-off date would be at least 27 years old at that date).

After consultation with the industry, including LiveShip, LiveCorp, ship operators and ship owners, no ships were identified in the Australian trade that would be affected by the 2011 cut-off date for older ships. However, one ship operator wanted the cut off date reduced so 20 year old ships would be excluded from the trade, given that the working life of a vessel is around 20 years. The aim of the regulation was to prevent high risk, older vessels entering the Australian livestock trade in future and thereby undermining the established safety and environmental standards of vessels and imposing greater regulatory costs on the Australian livestock exporting industry.

In each of the above three regulatory changes, AMSA has carefully consulted with interested stakeholders and taken account of their views where appropriate. In each instance, a lead-time of many years has been provided to allow for vessels to adapt to the new requirements. In two cases (the MARPOL Convention sewage pollution standards and compliance with the SOLAS Convention standards), the changes reflected the implementation of international shipping standards in line with Australia's commitment to the relevant international treaties.

Alternatives to AMSA regulation of livestock carriers

In relation to consideration of alternative options to regulatory action such as self-regulation, all livestock carriers loading livestock from Australian ports for overseas destinations are foreign flag vessels. Their flag state administration (ie another country's maritime agency) is primarily responsible for ensuring these ships meet international ship safety and environmental standards. As indicated above, there is no international standard specifically regulating the carriage of livestock as cargo. Hence Australia has developed a national regulatory system that applies to foreign flag ships loading livestock at Australian ports. It is not practical or effective in these

circumstances to expect foreign flag ships to implement and enforce a self-regulatory mechanism, in line with Australian community standards for animal welfare.

The effectiveness of self-regulation depends on size and structure of the industry, the ease of entry and exit, the ease of containing externality effects (eg environmental impacts) and the coverage of the industry by reputable industry bodies. In the case of foreign flag livestock carriers, there is no suitably effective shipping industry body and no acceptance of mutual obligations between the several participating shipping companies. There is a large number of purchasers of shipping services within the Australian livestock export industry, which are primarily concerned about price and timeliness of shipment, rather than the safety of the ship or its operational practices in relation to the humane treatment of livestock during the voyage overseas.

The international community generally has rejected self-regulation in shipping and has adopted a regulatory system based on international treaties primarily negotiated through the IMO. AMSA has a longer term goal to encourage international adoption of standards for the seagoing carriage of livestock cargo, which would address some of the concerns of the Red Meat Industry submission with meeting international competition in the global livestock export market.

Meanwhile, the overall aim for AMSA is to ensure that livestock carriers loading animals at Australian ports are operated in a safe, humane and environmentally responsible way, while recognising the importance of the livestock export industry to Australia. This requires a careful balance between the strong Australian public interest with animal welfare, the high impact of an incidence of systems' failure aboard a ship upon the mortality level in a shipment of livestock and maintaining a cost effective regulatory environment.