

KEY ISSUE AREAS

ANIMAL WELFARE RULE SYSTEMS

- national policy process

ROAD TRANSPORT RULES

1. Achieving national uniformity on-the-road
2. Driving time limits and other duties of care
3. 'Chain of responsibility' – regulatory creep and uncertainty

ENVIRONMENTAL REPORTING

1. National Pollutant Inventory – added load
2. Emissions reporting - consultation on why, how

LIVE EXPORT REGULATION COSTS

1. Export rules - 3 year review of benefits-costs
2. Shipping – cause and effect of changes ?

Red Meat Industry

submission (part B)

to the

Productivity Commission

first

Annual Review of Regulatory Burdens on Business

Meat & Livestock Australia
Cattle Council of Australia
Sheepmeat Council of Australia
Australian Lot Feeders' Association
Livecorp
Australian Livestock Exporters Council
Australian Meat Industry Council

July 2007

Submission 1B

The Presiding Commissioner
 Review of Regulatory Burdens, primary sector
 Productivity Commission
 Belconnen ACT 2616

As a major primary, manufacturing and export sector industry, the Red Meat Industry welcomes opportunities to address regulatory issues at levels of principle and detail.

The Industry will make a series of inputs:- Submissions 1A and 1B to the first Annual Review in 2007, and Submission 2 to the Review on Manufacturing and Distributive Trades in 2008. Submission 1A on 8 June 2007, gave an overview of the great mix of rules affecting this industry and developed a number of important points of principle.

These points are reiterated here because they over-arch consideration of all regulation regimes and their effect on business operations.

- As a widespread, multi-participant sector providing food for domestic and world markets, **the red meat industry expects and supports appropriate levels of regulation.** Responsible, consistent and effective standards add stability to the industry and assist ongoing operation in some marketplaces against strong competition.
- **However, regulations of all types warrant ongoing critical review.** Marketplaces, competition and technologies are fast changing. There is need for regulatory reflection and innovation, even during the process of establishing major new regulatory systems.
- **The ‘total weight’ of regulation is a compounding, and serious, issue** that needs to be addressed in these reviews. Each rule alone may appear justified, but the cumulative impact of many regulation regimes plus variations across jurisdictions, is a substantial and real regulatory burden, with effects on motivation, innovation and investment.
- **The onus for proving the need for costly rules should rest with their proponents,** as occurred during NCP. Regulatory Impact Statement systems should ensure this occurs by insisting on proper benefit-cost review. Where possible, the red meat industry has included cost indications and evaluation of impacts, but absence of such data does not negate industry argument. Requiring businesses to prove regulatory impact adds to costs and diverts resources from doing business. *“There just seems to be more and more and more bureaucracy, more and more meetings”*, one leader observed this month.

The industry identified four key issues for examination in this Submission 1B with the view to short-listing as priority areas for reduction of regulatory burdens.

- A. Animal Welfare rule systems [pages 4 to 5]
- B. Road transport rules as applied to this Industry [6 to 17]
- C. Environmental Reporting expectations [18 to 25]
- D. Live Export regulation costs [26 to 36]

That Australia seems incapable of achieving commonsense uniform regulations is a serious concern arising from these investigations – where ‘commonsense’ means rules that vary for a purpose (such as different physical environments) not because of State borders. Global observers must find the ‘nine jurisdictions’ bemusing.¹

Regarding ‘Animal Welfare rule systems’ a major issue is that the single set of regulations needed to participate strongly in global arenas will not be attained.

A long and costly program meetings is underway with the aim of agreeing ‘national standards’. However, experience in animal welfare, and across other major regulation fields with high impact on business, raises concern about effectiveness of outcomes.

National harmonisation in Road Transport is crucial for Australian productivity.

Progress has been much slower than needed. Other issues include potential clashes of emerging road rules and animal welfare duties in field contexts, plus widening lists of parties connected to ‘chains of responsibility’ (a form of ‘regulatory creep’) – with notable non-inclusion of regulator-officers in these chains.

Environmental Reporting is an issue-area with local, national and international expectations. It is vital that regulatory principles examining cost impacts on business generally, and on different types of enterprises, be applied amid the politics. Similarly, in the **Live Export area**, a three year review of the 2004 rule regime, against the ‘six principles of good regulatory process’, is sought for a number of reasons.

In developing this Submission, many materials have been collected and reviewed.^a

Possible Future regulation issues were also discussed with industry researchers and peak councils. Regulatory regimes can deter innovation, for instance by limiting use and/or adoption of R&D results. This could escalate with more complex research and technological advances over the next 5-10 years. Recognising the large sums being invested in R&D, the world-wide pace of research progress in technologies, and lead-times to adjust rules, these Annual Reviews of Regulatory Burden should also ‘look forward’. For the Red Meat Industry, biotechnology and chemical arenas may emerge as bottlenecks to advances in productivity, quality and cost control.² Arguably, for instance, current limits on GMOs are holding back important vaccine research (for cattle health) and investigations of rumen gas modification bacteria.

Red Meat Industry Submission – participants

Meat & Livestock Australia (MLA) – Dr Peter Barnard General Manager EPMS 02 9463 9333

Cattle Council of Australia (CCA) – David Inall Executive Director 02 6273 3688

Sheepmeat Council of Australia (SMCA) – Bernard O’Sullivan Executive Director 02 62733088

Australian Lot Feeders’ Association (ALFA) – Helen Murray Executive Director 02 9290 3700

Livecorp – Cameron Hall Chief Executive Officer 02 9929 6755

Australian Livestock Exporters Council (ALEC) – Ian McIvor Executive Director

Australian Meat Industry Council (AMIC) – Stephen Martyn Executive Director 02 9086 2241

This submission was developed for the Industry through research, consultation and analysis of materials by Dr Sandra J Welsman, Principal, *Frontiers Insight*, BSc, MHE, PhD(Law), FAIM.

^a Materials: Policy statements – to understand stated objectives, direction of regulatory change, expected benefits; plus speeches, parliamentary debates, explanatory notes, reports; Legislation, regulations, guides (from key jurisdictions, not all), regulatory impact statements (RIS), consultation reports; debates about rules, regulator notices, related court cases; Red Meat and other industry interactions with policy and law making process – submissions, comments on regulatory impact statements, letters at Federal, State, local levels; Technical, scientific, economic, societal papers and reports relating to Key Issue areas, plus case examples and information on costs where reasonably available from busy managers.

A. Animal Welfare Rule Systems

On Regulatory Burden. This industry is committed to optimising animal health and welfare at all stages of production and supply, for humanity and commercial reasons. This is seen in the track record of industry husbandry of near 140 million head of cattle, sheep and goats annually. Animal health is integral to industry success.

Animal health and welfare imperatives must balance what consumers expect and are willing to pay for products, with commercial viability of production. Much Australian food is destined for export markets, where Australia is viewed as a single nation that should have one logical set of rules. Yet, at operational level, there are significant variations across States in interpretation of animal welfare needs and circumstances.

In 2007, the need for a framework of baseline animal health and welfare rules is not disputed. *Regulatory policy processes and how rules are applied are the major concern.*

➤ **Even with multiple, costly national forums, differences endure across Australia in implementation of rules.** This is inefficient, has led to problems for industry quality assurance based on national models, and creates uncertainty about undue tightening of requisites in standards now being re-developed, and about their application.

➤ **In global trade and media contexts, Australia and its industries cannot afford ‘rule-harmonisation’ processes that take ten years, and then don’t work.** The *Australian Animal Welfare Strategy (AAWS)* is taking much time and input to progress and history raises concerns about consistency, timeliness and funding of implementation.

Recommendation

It is proposed the Commission nominate this regulatory area for its close review. The AAWS concept, bodies, procedures and rule content warrant critical testing against the 2006 ‘six principles of good regulatory process’.³

This would include: scoping the problem/s; analysing current and planned responses; and for each option (such as levels of prescription) examining benefits/costs, impacts on stakeholders, fit with industry initiatives and research, and addressing questions such as funds for auditing of enterprises and households if proposed in the rules.

Target: To achieve a functioning, viable national animal welfare rule system by 2009.

Context: State and Territory governments have primary responsibility for laws and processes for animal welfare and cruelty prevention. The Federal Government leads trade and international agreements relating to animal welfare and associated matters. As a general principle, any person with animals in their care is responsible for ensuring they protect the welfare of those animals, and seek expert assistance where needed.

This area features longstanding national Committees, including the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ, since 2001 the Primary Industries Ministerial Council PIMC), the Standing Committee on Agriculture and Resource Management (SCARM, now the Primary Industries Standing Committee PISC) and the Animal Health Committee (AHC). There are also many regulators (extending to delegated roles for animal interest groups). see Submission 1A.

Livestock producers and handlers work with a set of 22 SCARM Model Codes of Practice for Animal Welfare, plus Feeding Standards and Guides, developed mostly through SCARM and endorsed by AMCANZ-PIMC [publish.csiro.au/nid/22/sid/11.htm].

While National Model Codes of Practice are ‘intended as a guide for people responsible for the welfare and husbandry of a range of animals’ [DAFF 6.07], when referenced in regulations or orders, they become rules. Most States have incorporated Model Codes into prevention of cruelty legislation,⁴ but other instruments and guides are promulgated,⁵ and different enforcing philosophies are applied by States.⁶ This generates policy and practical difficulties for national sectors that include Model Codes in their QA systems.⁷

Government Departments, the CSIRO and Animal Health Australia come together in the **Animal Welfare Working Group (AWWG)** (an AHC sub-committee) that is ‘responsible for the development of national standards for animal welfare’ with ‘scientific support from government, industry and other stakeholders’. Other entities involved in animal welfare regimes at national level, and their policy statements, guide-lines and activities, add to complexity. These include:

- **National Consultative Committee on Animal Welfare (NCCAW)**: established in 1989 to ‘assess and advise the Federal Government on the national implications of welfare issues, and effectiveness and appropriateness of national codes of practice, policies, guidelines and legislation to safeguard or further the welfare of animals and protect the national interest. The *National Guidelines for Animal Welfare* are over 30 ‘position statements’ on the DAFF website. These ‘represent considered views of NCCAW’.⁸ Some cover Model Code areas.
- **Animal Health Australia (AHA)**: established by Australian governments and major industry sectors, ‘to ensure the national animal health system delivers a competitive advantage and preferred market access for livestock industries’. The AHA *National Animal Health Performance Standards* statement covers ‘six core functions of the national animal health system’ including welfare. The AHA says these are ‘not intended as an additional level of compliance for members already responding to other codes, standards and QA programs’.⁹
- **Australian Animal Welfare Strategy and AAWS Advisory Committee**. The Strategy was ‘developed over five years by the Federal Government with assistance from the NCCAW, in consultation with state and territory governments, industry organisations, animal welfare groups and the public’. It is ‘to provide the national and international communities with an appreciation of animal welfare arrangements in Australia and to outline directions for future improvements in the welfare of animals’.¹⁰ The Advisory Committee was established in July 2005 to develop a ‘robust and inclusive National Implementation Plan’; \$6m is allocated to June 2009.

By late 2005, six Animal Sector Working Groups had drafted action plans. Stocktakes of arrangements had been developed by August 2006.¹¹ The Livestock Inventory noted:¹²

- Concern about State differences in managing their responsibilities
- Absence of an overarching, flexible ‘model’ involving co-regulation and less prescription
- Animal cruelty regulation does not necessarily achieve animal welfare
- In assessing compliance, the confused nature of regulatory, inspection and QA systems.
- Need for clarity of functions and jurisdictions and conflicts of interest.

By June 2006, AAWS actions included an AHA business plan to rewrite the Model Codes to combine ‘national welfare standards’ and industry best practice guides.¹³ In March 2007, AHA announced the start of a ‘whole of chain approach in developing welfare standards’. A Reference Group is now developing the first Australian Welfare Standard (livestock transport). Red meat industry staff are closely involved. By June 2007, a draft is part-prepared – seven years since the renewed focus on harmonisation, two years after AAWS began.

At mid-2007, there are serious concerns in the red meat industry about AAWS progress and whether material advances will be secured once models are handed over for State implementation – for reasons listed above, especially State differences.¹⁴ For industries and businesses, statements on websites are not results.

B. Road Transport Rules and the Red Meat Industry

On Regulatory Burden. The red meat industry, a vital contributor to Australian and regional economies, is arguably the most extensive user of road systems across the nation.

The industry has developed over centuries though substantial, widespread investment. Its high-dependence on the flexibility of road transport is well-evident to governments and agencies. Livestock trucks travel from far-flung paddocks via back-roads to state arterials and national highways. Processed meat and products are trucked from major centres to retailers in every suburb and town. *In 2007, issues include:*

- **Governments unable to achieve sensible uniformity in road transport rules – a backbone to productivity.** Vehicle load variation is a key inefficiency. Volumetric loading is used in Queensland and Victoria; NSW firms are disadvantaged by weight limits for livestock and grain. Most enterprises would support one harmonised system.
- **Regulatory inefficiency costs business directly, especially national innovators,** and diverts resources from work. Costs to industry include monitoring and representation. Community losses include disincentives to invest in some states and regional areas.
- **Reality-checks are needed on practical effects of implementing sweeping rules,** eg. on paddock loading, animal care responsibilities, and livestock driver supply.
- **Chain of responsibility laws** and their application appear to be expanding in scope, yet are not addressing practical questions such as interfaces with regulator-officers.

Recommendations

1. The National Transport Commission and its process, have not achieved the harmonisation of road regulations that this nation requires. Smarter approaches are needed with monetary returns for action by governments and regulators linked to benefits secured for industry and community sectors. COAG should include ‘road regulations’ on its hot-spot agenda with negotiated infrastructure resourcing to ensure standardised national weight, mass and height rules are clearly operating by 2008.

2. Livestock transport should be excised from the scope of the Model Legislation for Heavy Vehicle Driver Fatigue until a specific regulatory impact review based on ‘good regulatory process’ principles is carried out with close consideration of duties of care involved, statistics on accidents, science of livestock transport and of fatigue, and of likely effects of accreditation requirements on current/future driver supply.

3. The Productivity Commission should investigate apparent ‘regulatory creep’ in emerging ‘chain of responsibility’ laws, including analysis of the position of regulator-officers relative to others now nominated in chains of responsibility.

Efficient, cost-effective transport is essential to the Australian economy and the meat industry.¹⁵ Cost effectiveness includes animal care and safe cargo delivery.

Transport among properties, to saleyards, feedlots, to processors and ports optimises the usage of the extensive grazing lands that underlie Australia’s competitive beef, sheepmeat and goatmeat production. Industry research has found stock movement must increase to assist enterprise viability in changing environmental and market situations.

Livestock trucks servicing the industry navigate from distant paddocks, to challenging local and state roads and to variable national highways.¹⁶ In the Northern Territory, for instance, 1.7m cattle graze over 620,000 square km of prime beef country. Of 500,000 head turned off in 2004, 53% were transported to other states, 46% trucked to ports for live export and 1% moved to Territory meatworks.¹⁷

Lot feeding is now a vital part of the production system and feedlots are mostly located at a distance from population centres. Feedlots add much to regional economies,¹⁸ but efficient trucking for livestock transfers and grain deliveries is vital.

Regulations controlling transport of livestock, grain and hay have a significant impact on feedlot cost equations, with flow-on to regional and national economies.¹⁹

Local government authorities... consistently comment [that] local road upgrading... is more than compensated for by the positive outcomes for the region generated by a feedlot[s]... development and maintenance of high quality bitumen sealed roads provides a valuable asset ... safer roads for all types of vehicles to travel on. The development of new feedlots creates the demand for services in regional areas such as medical, hospital, education and local government facilities.²⁰

In a 2006 submission, the Australian Livestock Transporters' Association (ALTA) reinforced that road transport services are "equivalent to about 5% of the basic value of output provided by the meat products industry in 1988–99". ALTA submitted that there are "significant design flaws in the institutional architecture of road transport policy, planning and management in Australia at all levels and across all jurisdictions".²¹

B.1 Achieving national uniformity on-the-road

Despite inter-government promises to standardise road transport rules, regulatory inefficiencies continue to impact on trucking and user business costs nationally.

Current (and likely widening) variation of these rules across States are major concerns. A key issue is regulated weight limits on vehicles designed and loaded for a specific purpose (live-stock or grain carriage). Insights into costs and other impacts include: -

- Volumetric loading (by space not weight) of livestock applies in Queensland and Victoria but in NSW, regulators 'continue to resist all requests for implementation' of a volume based system for purpose-registered trucks (livestock or grain). For transport in NSW and for transport between VIC and Qld, an ALFA survey identifies costs of \$4 to \$9 per head in additional freight and carcass value losses. One feedlot manager says:

"We can not volumetric load, or receive cattle from other states that can volumetric load. If we could volumetric load in NSW we could save on out going freight approx \$186,160 a year. Incoming is ... harder [to assess] ...but I calculate \$47,250."

- Loading is a factor in animal health, welfare in transport and commercial value on delivery. Research supports loading by volume to enable animals to support each other. Queensland DPI&F provides volumetric loading guidance to producers and carriers.

Volume loading in Queensland means that the optimum number of cattle are loaded on a double deck transport. This reduces stress, bruising and deaths during the journey. Volume loading is more cost effective for transporters and producers.²²

- In its study of Fletcher International operations centred on Dubbo, ALTA identified:²³

Fletcher International Pty Ltd at Dubbo is disadvantaged because New South Wales is the only Australian state that does not allow "livestock loading", which involves ensuring livestock are comfortably and securely constrained in the trailers. In New South Wales the weight of livestock loaded on the truck must not result in the gross weight of the truck exceeding proscribed limits.

For a traditional 6 axle articulated semi trailer the ALTA calculates that livestock loading would allow an additional 3 tonnes of livestock to be carried per trip. Given typical trailer weights the additional 3 tonnes of livestock would represent a 14 per cent increase in load. Provided the truck was fitted with ‘road friendly’ suspensions the additional weight per trip would not cause additional road wear and may even result in less road wear.

- Some Australian Meat Industry Council members have vertically integrated farm to feedlot to processor operations. AMIC identifies cost issues with container and livestock weight limits and that NSW regulations affect industry competitiveness and investment decisions. Inconsistency of regulations creates practical issues for any firm transporting across eastern State borders to optimise utilisation of land, supply chains or facilities.²⁴
- Examples presented in a 2004 NSW Parliamentary speech, also reinforced impacts of non-harmonised road transport rules on time use, costs and motivation.²⁵

One major customer of the Northern Co-operative Meat Company advises that ... the use of B-doubles allows a truck to maximise its freight capacity and reduce the per kilogram cost of transportation in a similar ratio. The direct route to truck cattle from Roma to the Casino abattoirs is 670 kilometres, but a B-double has to travel 900 kilometres to get to the same abattoir. If B-doubles were able to use the same route, which they cannot at the moment, the saving per head would be \$19, or \$1,000 per load. The saving would be astronomical if B-doubles could use the direct route, when one considers the number of loads per week that come from Queensland into the Casino abattoirs.

Although Constitutional responsibility for road transport lies with States and Territories, **Australian governments, in theory, have been supporting alignment of road rules through the National Transport Commission** (from 2004) and its predecessor National Road Transport Commission (from 1992). The NTC is charged by inter-government agreement to develop national approaches to road transport regulation – which includes driver and vehicle operations and standards, weights and dimensions.

The NTC mandate is ‘to progress regulatory and operational reform for road, rail and inter-modal transport in order to deliver and sustain uniform or nationally consistent outcomes’. The NTC states that its advances include: www.ntc.gov.au

- Safety reforms: national road rules, vehicle standards, truck and bus driving hours, transport of dangerous goods, driver licensing
- Efficiency reforms: uniform mass limits, uniform national heavy vehicle charges, national standards for restricted access vehicles
- Reforms focussed on compliance outcomes: introduction of ‘chain of responsibility’, vehicle accreditation systems, outcome-focussed sanctions, penalties and enforcement rules
- Environment reforms: tighter vehicle emission standards, cleaner fuel standards with lower sulphur content, lower noise standards.

NTC reforms in progress: review of heavy vehicle driver fatigue and safety; heavy vehicle compliance and enforcement (with tougher laws for overloading, exceeding dimensions and poor load restraint); and performance-based regulation of heavy vehicles. ...

The NTC considers its efficiency reforms to include ‘uniform mass limits’ and standard restricted access rules. All governments agreed on a set of model rules 12 years ago: the Road Transport Reform (Mass and Loading) Regulations 1995, Road Transport Reform (Oversize and Overmass Vehicles) Regulations 1995; and the Road Transport Reform (Restricted Access Vehicles) Regulations 1995.

While each jurisdiction implemented some changes, by early this decade public debate on lack of workable uniformity and its effects was escalating. This included contention in the NSW Parliament around an independent Bill in 2003 and 2004:

The Road Transport Efficiency Bill ... provides a mechanism for the Minister for Roads, after consultation with councils where appropriate, to ensure that New South Wales joins almost every other State in Australia in providing a grain harvest truck loading scheme, livestock loading, and higher productivity trucks. ... Every State in Australia, except New South Wales, has some form of grain harvest truck loading arrangement and livestock loading. Every State in Australia, except New South Wales, has a way of allowing higher productivity trucks to operate within the State.²⁶

However, only in 2006 did a National Transport Commission report bluntly confirm that the 1995 ‘reforms’ were not working in intent or practice. The review by Keatsdale PL identified, in summary, that:²⁷

- Ten years [on], about half of the Mass and Loading and a third of the Oversize and Overmass have been universally implemented in a completely consistent manner. Differences in Oversize and Overmass and Restricted Access Vehicles in three jurisdictions ...[are] ‘significantly inconsistent’.
- **Differences were apparent among stakeholder groups in relation to policy priorities.** Industry supports innovations and developments to promote an efficient competitive heavy vehicle transport industry and firmly believed these should be adopted uniformly with priority to reducing the cost impacts ... arising from complexity of the regulatory regime and administration of the regulations.
- Transport authorities faced the vexed issue of policy development that balanced the objectives of industry with the objectives of public interest, including maintaining public infrastructure, public safety, environmental standards and community amenity.
- The balance between the competing objectives [uniformity, flexibility, competitiveness, efficiency, innovation, infrastructure, safety...] differed. In these circumstances it was not possible to achieve uniform or consistent regulations across jurisdictions [Keatsdale considered].
- Effectiveness of national transport regulatory reforms have been prejudiced by the manner in which the regulations have been implemented at jurisdiction level, and by other factors.

The serious breakdown of the vision of ‘national transport regulatory reforms’ is confirmed by the intensity, persistence and cost of efforts by business to raise issues with governments, politicians, regulators and any reviewers that might listen. Recent years have seen many submissions, and a number of considered proposals for change.

- **May 2005: Submission to NSW Minister For Roads** by NSW Farmers’ Association, Australian Lot Feeders Association, Australian Livestock and Bulk Carriers, Australian Meat Industry Council, and Australian Livestock and Property Agents Association. This proposed changes to basis for defining livestock transport limits under the *Road Transport (General) Act 2005* (NSW). The submission argued :
 - That NSW reliance on axle weight limits poses serious practical problems in field implementation, magnified by ‘chain of responsibility’ rules being introduced.
 - That there are basic difficulties in estimating liveweight of stock cargoes. Industry infrastructure does not generally provide for truck weighing equipment in the field
 - For a regulatory formula based on vehicle dimensions such as deck area; tare weight; and livestock loading densities specified in national animal welfare codes of practice, plus accreditation of industry participants to ensure the integrity of this system.
- **May 2006: ALTA submission to the PC Road and Rail Inquiry** - argued for direct alignment of truck loading rules across States to enable loading of registered purpose specific trucks to volumes suited to their cargo, including welfare of animals in transit. ALTA also observed on regulatory process and sought ‘space’ for ongoing innovation.

Perhaps the most frustrating legacy ... is that industry itself – which over many years, as might be expected, has driven creativity and innovation and cost efficiencies through its own self interest - has been excluded from any meaningful and ready dialogue on transport policy reform. ... gains have been piecemeal and hard won; too often though, the losses have been greater still.

- **January 2006: The 2006 Agriculture and Food Policy Reference Group** (Corish) report expressed concern at the limited success of the National Transport Commission in progressing regulatory reform for road, rail and intermodal transport.

The National Transport Commission should be given powers to enforce uniform and nationally consistent standards, pricing mechanisms and legislative requirements across transport modes, with the aim of minimising regulatory costs to businesses.²⁸

- **June 2007: The National Farmers' Federation submission to this Regulatory Burden review** repeated these frustrations:

...a key to the future efficiency of the national transport network is the need to have uniformity between state transport/road authorities. There are currently ... differences ... in ... header transportation guidelines, livestock loading, varying speed rules, multi-trailer restrictions and general permit thresholds... livestock loading schemes exist in Victoria and Queensland ... With Queensland's road truck weight regulations 2.5 tonnes higher than ... allowed in NSW, Queensland processors gain a 6.3 cent per kilogram cost advantage in exporting to the global market.

June 2007: ALFA input to the NRMA Motoring & Services Better Roads Panel. ALFA again raises Volumetric Loading of Cattle and Livestock, and Weight and Wide Load Issues during Fodder and Hay Transportation. On this ALFA explained:

Regulation of fodder and hay transportation in Australia is administered on a State by State basis. Through a lack of mutual recognition, the rules currently adopted by each State vary considerably making compliance for interstate transporters of these products extremely difficult and frustrating.

The present problem of disparity between States is exacerbated by the fact that some States are in the process of reviewing their regulations generally in isolation from adjoining States.

Without close consultation and cooperation between States and careful consideration of the research available in this area, it is likely that a regulatory system that is impractical and requires reloading of fodder and hay at State borders will be introduced.

Clearly though, the issues do not rest entirely with NSW. Major roads are a Federal infrastructure responsibility, and as some 80% of national freight movement is said to be in and out of NSW, the Federation needs to work with NSW to achieve functional rules across State borders. The NSW Government considers it is 'making progress' on road and trucking regulation (while confirming divergence from national agreements).

In 1995 the [NSW] Government gave up significant revenues through the introduction of the national heavy vehicle registration scheme. In 1996 the Government moved to increase the general access mass limit from 38 tonnes to 42.5 tonnes [and] the length of B-doubles went from 23 metres to 25 metres. In 1998 the mass limit for truck and dog trailers was increased from 42.5 tonnes to 50 tonnes for seven-axle combinations. In 2002 the mass limit for some 19-metre B-doubles was lifted to 55.5 tonnes ... The Government will continue to balance the interests of industry with those of safety and the protection of travel conditions for all road users²⁹

There are suggestions of NSW rules changes to increase road-weight limits based on 3 pillars: Use of Road Friendly Suspension, Route Compliance (Intelligent Access Program using GPS) and Infrastructure Upgrades, particularly bridges. Heavy Mass Limit increases for a 6 axel prime mover from 42.5 to 45.5 tonne (+10%), B-double from 62.5 to 68 tonne (+13%) from 1 July 2006 were mooted – now perhaps September 2007. This would be a useful advance – but does not negate the need to address regulatory differences for national productivity.

It is recognised COAG has increased attention to infrastructure issues during 2006 and 2007. It has been reported that: "COAG has agreed a series of road infrastructure regulation reforms which will deliver substantial productivity and efficiency gains from the road sector".³⁰ However, the focus appears to be road infrastructure pricing. Road transport regulation is *not* listed in the ten regulatory 'hot spots' (where cross-jurisdictional overlap or burdensome regimes seem to be impeding economic growth).³¹

The National Transport Commission has been reasonably effective in some areas but does not appear able to achieve key uniformities for national benefit. There were signs of State non-commitment to ‘agreed’ national rules as early as 1996 – suggesting token involvement by some key groups then, and likely now. At the same time, road transport intensive industries have planned, invested and operated for 12 years, perhaps naively ‘expecting’ that agreements in 1995 promising important and logical uniform regulations, would actually come to pass in a reasonable period.

Arguably, existence of an NTC with long-running programs and committees may be cloaking problems with rules ‘in the field’ – hence roads not being on the ‘hot spot’ list. Some groups consider the NTC should be ‘given more teeth’ to ensure States develop consistent transport standards and procedures, but this is likely not enough.

RULES in PRACTICE

Just as realities sharply intervened in implementation by *governments* of the 1995 ‘national transport regulatory reforms’, practicalities need to be continually considered in shaping rule schemes that are to be applied by business in their day-to-day work. This is so whether the laws are prescriptive (such as driving hours) or conceptual (such as ‘chain of responsibility’).

Reality-checks are needed on the practical effects of implementing sweeping rules on costs, motivation to continue and/or to innovate and deterrence of investment. Examples include farm-loading, interactions with animal care, and truck driver supply.

A number of NTC developed regimes have been agreed by the Australian Transport Council of Transport Ministers and passed to the States for implementation. The Red Meat Industry, among others, has identified issues with the concepts, the rules and their application. These are discussed below.

B.2 Driving time limits and other duties of care

In 1999, the NTC promulgated a ‘Driving Hours Reform Package’. These new laws would apply through Australia, except WA and NT.³² The laws would be implemented by States to ‘improve the safety and efficiency of long distance driving and abolish differing State rules’, would affect trucks over 12 tonnes and commercial buses (more than 9-12 seats) and were to establish three alternatives for managing driving hours:

- A Regulated Hours Scheme.** maximum hours of driving, minimum non-driving and rest periods
- A Transitional Fatigue Management Scheme** to provide drivers in regulated jurisdictions some flexibility in driving hours in return for the adoption of aspects of fatigue management;
- A Fatigue Management Scheme** for operators prepared to demonstrate control over factors leading to driver fatigue.

The prescriptive elements of these rules are well-known to red meat industry business operators. At 1999, the ‘national Regulated Hours Scheme’ required drivers to:

- not drive more than 12 hours nor work (including driving) more than 14 hours in any 24 hour period, nor more than 72 hours driving and/or work in any 7 day period
- have at least 30 minutes rest in any 5.5 hour period
- have at least one 6 hour continuous rest period in any 24 hours
- have at least one continuous rest period of 24 hours in any 7 day period
- keep records of driving time, working and rest.

Transitional Fatigue Management Schemes (TFMS) appear to be available in most States.³³ TFMS enable working/driving for up to 14 hours (two 30 minute breaks and balancing off-times) with driver training, compliance systems, medical checks and audits.

TFMS schemes and driver registration are not well known among red meat industry participants. This suggests the 1999 TFMS rules add limited flexibility and may, in practice, be more useful to major haulage companies than to owner-driver contactors.

On 21 February 2007, the NTC announced Ministers had approved new ‘heavy vehicle driver reform’ for implementation by February 2008. However, it would be difficult to describe these reforms as ‘uniform’. In the context of increased COAG focus on regulation consistency, *the list of jurisdictional exceptions is remarkable.*³⁴ In its statement the NTC emphasised that:

- *key elements of the national Heavy Vehicle Driver Fatigue reform* include: accreditation schemes to manage fatigue risks; a general duty (consistent with OH&S laws); Guidelines for Managing Driver Fatigue; Chain of Responsibility provisions; strengthened record-keeping
- *there will be three scheme options*: Standard Hours (default 12 working hours a day); Basic Fatigue Management (14 working hours a day with accreditation); Advanced Fatigue Management (an accredited risk management approach)
- under new Chain-of-Responsibility laws, everyone in the supply chain must take ‘reasonable steps’ to prevent driver fatigue ... “If your poor business practices endanger the lives of other road users, the book will be thrown at you”.
- opportunity exists for industry to develop workable fatigue management schemes, endorsed by fatigue experts, tailored to their specific needs, such as remote area livestock transport.

These rules generally tighten and limit driver operation. Particular concerns for Red Meat Industry sectors include how these rules fit with animal health duties.

- There is no mention of animals in Model regulations: The *National Transport Commission (Model Legislation - Heavy Vehicle Driver Fatigue) Regulations 2006* includes text to assist States to develop their Road Transport - Heavy Vehicle Driver Fatigue Acts. The models contain no reference to particular livestock but do provide for some flexibility through accredited Advanced Fatigue Management Schemes (AFM).
- The NTC *Guidelines For Managing Heavy Vehicle Driver Fatigue* (A trial document ahead of new HV Driver Fatigue laws), March 2006 also made no mention of animals.

The *Heavy Vehicle Driver Fatigue, Final Regulatory Impact Statement* released in December 2006 does refer to livestock issues based on consultation inputs to an initial RIS during 2003. Industry inputs had argued that the RIS did not consider the ‘impact on the special requirements of the livestock transport industry [and] analysis of the interaction with national legislation on animal welfare in livestock transport’.

The 2006 HVDF Regulatory Impact Statement includes points relating to animal transport, with references to studies, analyses and submissions.³⁵ In particular that:

- The Advanced Fatigue Management option offers livestock transporters greater flexibility than is legally available to them under the existing regime. The trade-off for greater flexibility is entry into the AFM option in the National Heavy Vehicle Accreditation Scheme at, for remote area livestock operators, \$0.9m in set up costs, and \$0.8m recurring costs.
- Under the proposed national AFM model the maximum number of hours of work permitted will be 16 hours in 24.... any extension to hours of work will be treated on a case by case basis with the transport operator required to provide evidence of good risk countermeasures. Livestock operators could seek an exemption but would need to demonstrate that heightened risk could and would be addressed.... with some additional labour costs.

- With respect to animal welfare legislation, the RIS was required to address the regulatory proposal at hand. Since proposed national legislation on animal welfare in livestock transport is not yet developed, 'it would be impossible to accurately consider any interactions with it'.³⁶

During 2006 consultation on this package, the NTC received 31 submissions, including from ALTA, Livestock Transporters Association (Qld), and the Australian Road Train Association. These set out ongoing issues with the regulatory process, including that inputs of three years before had not been acted upon, plus: -

- 'clear safety gains made in the industry through the 1999 regulations have been ignored in favour of a move to an overly-complex regulation, penalty-driven approach'
- flexibility is needed for animal transport around the maximum driving time, or night driving; no attention to loading / unloading times, rest place needs, contingencies
- issues of impact on driver supply including barriers arising from TFMS and AFM.

The Livestock Transporters' Association of Queensland sent a sharp letter on 18 Sept 2006

1. The whole proposal is very shortsighted.
2. ... the economical repercussions in the long term will be disastrous if 10% of drivers leave the industry (as has been suggested). ... more study in this area should have taken place ...
3. There is not enough flexibility in the proposal – not just for driving hours, but the loading and unloading requirements, animal welfare conditions and climatic changes etc., all of which are out of the control of the driver. There will be occasions when the whole allocation of driving hours will be used just loading the cattle. There is not enough scope in the NTC's proposals for these changes. [Need] some inclusion of tending to our cargo (ie. pulling up to check cattle).
4. Rest areas are a serious problem. ... it is not possible to just pull up anywhere, it has to be a stable surface and these areas are not widely available - even on the more densely populated coastal highways, there IS a shortage. It is unreasonable to suggest that when a rest period is due that the driver has to pull over when it could be a considerable distance before a ...suitable area.
5. There needs to be sufficient funds allocated to training and awareness of any new proposal.
6. Our submission to the NTC three years was not acted upon.
7. ... We have to be conscious of welfare the whole time and sometimes that means travelling a few minutes more to complete a journey in order to unload ... This is a realistic decision that we occasionally have to make,, and unfortunately, when this occurs we are damned if we do and
8. Regulations that penalize night driving will affect our industry – there is a very good reason why livestock travel at night.
9. There is too much paperwork and what there is, is too complex. Some of our best drivers are illiterate (bearing in mind that ours is a specialized area and not all drivers are suitable), and we stand to lose these good drivers. The AFM that gives them the flexibility to complete a trip will be too laborious to then fill in the required paperwork.
- 10..The demerit points and penalties is a totally unreasonable and unworkable regime. ... even minor driving hours breaches will result in drivers quickly losing their license for matters that are trivial and have nothing to do with safety. Thus the whole transport industry will lose valuable drivers. This will of course have an enormous economical impact on the whole country if there are a shortage of drivers for the most basic needs. What other industry would receive a fine and demerit points for failing to complete a job or time sheet correctly.
11. There is no such thing as a 'regular run' in our business.
12. [Qld] is so large and diversified it cannot operate efficiently [under] 'the one hat must fit all'.

The Red Meat Industry generally agrees with these concerns. It would appear that over a long and perhaps confusing development time, the last rounds of consultation on the new fatigue laws were rushed into some eight weeks, and were inadequate.

Arguably, in the livestock transport sub-sector, a case has not been made for implementation of such substantial regulatory changes. NTC reliance on 'latitude' being available through AFM provisions (as for TFMS) shows bare reference to daily realities (LTQA letter) and to potential structural change costs to the industry.³⁷

B.3 'Chain of responsibility' - regulatory creep and uncertainty

Chain-of-Responsibility regulation appears to be a unique Australian invention.³⁸

A logic is evident, but there is concern this could well become 'world-class red tape'.

The *Chain of Responsibility principle* is central to NTC compliance reforms. 'Simply stated, this principle is that *all who exercise responsibility for actions or inactions that affect compliance with the relevant requirements should be held legally accountable if they fail to discharge that responsibility*. The Chain of Responsibility principle promotes improved compliance right along the logistics chain and *enables enforcement responses to focus on those who have actually caused or contributed to a particular breach.*' www.ntc.gov.au [6.07]

On recommendation of the National Transport Commission, Australian transport and roads ministers agreed in 2003 to the idea of uniform national legislation to enable parties in the supply chain to be held liable for breaches of road transport laws. A model Compliance & Enforcement Bill with Chain of Responsibility (CoR) provisions was approved unanimously by these ministers,³⁹ and is now being implemented by States and Territories, with variations.⁴⁰ Points from the Second Reading Speech for the NSW Road Transport (General) Bill usefully outline the CoR concept in 2004:⁴¹

- Drivers and operators have been the focus of enforcement action ...[Now] those other parties in the transport chain who by their actions, inactions or demands put drivers and other road users at risk and gain unfair commercial advantages may also be liable.
- All parties in the supply chain need to be aware of road transport law and have active systems in place to manage these risks to minimise the chance of laws being breached.
- Liability for a mass, dimension and load restraint offences will apply unless a defendant can establish that he or she did not know and could not reasonably be expected to know of the contravention and had taken all reasonable steps to avoid a breach, even though he or she may not have been physically involved in the breach.
- *In a departure from the national scheme*, NSW provides a reasonable-steps defence for mass offences for drivers, operators and owners. The model provided this defence only for minor risk breaches. NSW [part] extends the defence to substantial and severe risk.
- The new penalty regime is a better deterrent to those who have been willing to break road transport rules for unfair commercial gain. Penalties will be both administrative and court-imposed. Across-State enforcement and whistleblower protection is included.⁴²

Key elements of the CoR concept were described by the NTC in 2002/2007 as:⁴³

The chain of responsibility laws is designed to apply to all road transport offences, ranging from minor breaches of log book recording to actions contributing to a serious dangerous goods spill.

The principle behind the NTC's chain of responsibility concept is simple: Any party who has control in a transport operation can be held responsible and may be made legally liable. ...

control = responsibility = legal liability

Different parties have sole or shared control of each activity and could be potentially held responsible for breaches of road transport laws. ...a simple road freight transport chain is:

consignor => loader => transport operator => driver => receiver

Liability for an offence will apply even if a person only receives goods, provided he or she knew or ought to have known, they could only have been supplied by breaching a road transport law.

These are major regulatory changes with the intention of challenging businesses to review and adjust their operations, contracting, training and supervision. NTC consultants developed a RIS in 2003 working with an advisory group of departments and regulators, and utilising ‘extensive consultations’.⁴⁴ The RIS found CoR laws would generate a “relatively small increase *in enforcement costs* ... most likely to be outweighed by the benefits of improved compliance” and the “main costs associated with the implementation of the Bill would be related to the changes in compliance and enforcement activity... [including] need to prosecute an increased number of offences in the severe risk category... [and] relating to parties other than drivers and operators”.

While the RIS discussed ‘costs for defendants’ in enforcement action, at no point were impacts on business examined in terms of costs, investments, or uncertainty. Nor were specific sectors such as livestock transport with interfaces to animal needs, assessed.⁴⁵ An alternative ‘business licensing scheme’ was evaluated. It was seen as a possible but heavy-handed regulatory approach’ with practical and competition issues.

Road accident and road damage reduction must be assumed. Few, if any, specific benefits have been explained for businesses. Official guides, webpages, fact sheets and other publications since 2003 focus on responsibilities and ways to achieve compliance.⁴⁶

Some groups, such as the Federal Chamber of Automotive Industries, are implementing subsidiary rules, a Chain of Responsibility Code and Guidelines plus an Industry Code of Practice ‘to assist signatories towards taking advantage of a reasonable steps defence’.

The aim of the NTC ‘reasonable steps defence’ is to ‘extend fairness especially to parties along the chain not closely involved in the transport activity’:⁴⁷

Drivers and operators can access this new defence for a minor risk breach of these requirements when an unforeseeable breach occurs, despite their best endeavours to prevent such a breach. ... it does not give those taking ‘short-cuts’ an unfair advantage over those doing the right thing. Essentially, the minor risk breach level covers the ‘grey area’ where fairness warrants latitude.

... for consignors, loaders and packers for breaches of the heavy vehicle mass and loading laws this defence is not limited to minor risk breaches because consignors, loaders and packers will not always exercise control over all on-road operational matters – such as the choice of vehicle, entire load carried or adequacy of load restraint. ... the defence in its application to these off-road parties is broader than that proposed for drivers and operators; although in practice, its scope will depend on what is regarded as ‘reasonable’ in the circumstances of each individual case. ... **consignees will not be liable if they have unwittingly contributed** to the offence. However they will be held accountable if they have ‘knowingly or recklessly’ induced or encouraged a mass dimension or load restraint breach, for instance, by paying for goods in excess of legal payload. *NTC fact sheet 2003*

However, the recent *Model Heavy Vehicle Driver Fatigue Regulations 2006*, list of those within the ‘chain of responsibility’ appears both more absolute and wider in scope than indicated by the initial concept (“*those who have actually caused or contributed to a particular breach*”) or suggested as targets in the quote above.

- The Model Regulations 2006 specify in addition to the truck driver, the following:⁴⁸
 - the employer of the driver of the vehicle; the prime contractor of the driver; the operator of the vehicle; the scheduler of goods or passengers for transport by the vehicle, the scheduler of its driver; the consignor of goods for transport by the vehicle;
 - the consignee of goods for transport by the vehicle (but not a person who merely unloads the goods); the loading manager of goods for transport by the vehicle; the loader of goods on to the vehicle; and the unloader of goods from the vehicle.

This expanding list, coupled with greater powers and discretions given to a range of regulator-officers, appears to be a manifestation of ‘regulatory creep’ - ‘one of the factors leading to layers of red tape winding their way around businesses and the public’. Here a ‘creep’ is seen within a series of regulatory instruments developed over a number of years. These regulations will set a tone for enforcement by agencies - intentionally so as indicated by layers of possible cautions, penalties and sanctions.

Over-zealous interpretation of regulations is a hidden menace...[in] *Avoiding Regulatory Creep* the [UK panel] accused politicians of failing to control the level of bureaucracy imposed on business once legislation had been passed by parliament and accused civil servants of ‘enforcement activity that can lead to a fear factor that induces over compliance in those being regulated’.⁴⁹

Regulator-officer interpretations of the chain of responsibility and other aspects of the new road rule regimes will impact on the conduct of businesses. Regulators will be guided by political and administrative leaders, and by the courts, but personal variances in interpreting the ‘onus’ on various industry participants are quite likely. Under the model Compliance and Enforcement laws, an onus is placed on off-road parties (eg. consignors, consignees) to demonstrate they had systems in place to achieve loads that comply. There are few cases interpreting what this may mean.⁵⁰

So, in addition to undesirable effects of ‘regulatory creep’, commercial initiative will be constrained by uncertainty about how regulators and tribunals will deal with diffuse questions of responsibility.⁵¹ **In the meat industry, the first practical truck weighing location is likely to be a feedlot, saleyard, abattoir or highway weigh-station.**

Assuming sites have compliance policies, and are not encouraging rule-breaking, key questions arise about what might eventuate in practical situations, such as:

i) **Farm loading:** In distant yards, a property owner and truck driver together load up cattle and sheep, without scales.⁵² They discuss the last six cattle and decide they would fit. After 100km the fully laden truck passes through a weigh-station, but 300km further is checked and told it is overweight. It still has 200km to travel to a feedlot. What can the driver do? Are the weigh-stations in the chain?

ii) **Receival:** A livestock truck is loaded with cattle in the paddock to safe fit, but is overweight on arrival at a NSW feedlot. RTA officials last week told the feedlot manager to ‘turn away’ such trucks. What allocation of responsibility if the feedlot manager rejects the loaded truck and the driver has an accident? And/or if animal welfare is compromised? What if the truck is overloaded with grain and the driver has been travelling 10+ hours? What if the load is sheep, arriving at a city abattoir?

iii) **Feedlot loading:** Trucks from a major transport company arrive at a feedlot to collect cattle for transfer to a plant six hours away. While chatting, a stockman feels one contract driver was on the road ‘all night’. The stock are fully loaded.

Notably, these scenarios involve Government officers – persons not listed on ‘chains of responsibility’ in regulations, nor in NTC or State guides. Given routine interactions with regulators by many in the red meat industry, a clearer understanding of regulator and inspector accountabilities in a chain of responsibility is needed.

A ‘reasonable steps defence’ might apply to aspects of these scenarios. But in all cases, an overriding question is the practicality of the rules in everyday circumstances basic to the industry – and whether these new laws will become an ‘unnecessary burden’ on red meat industry business productivity and competitiveness.

C. Environmental Reporting expectations

On Regulatory Burden. Environmental regulations impact on meat businesses and operations along the supply chain, increasing costs. The industry recognises its environmental stewardship responsibilities and aims to work with governments and stakeholders to achieve balanced, commercially viable, protection systems.

However, the industry faces considerable and growing competition in domestic and world marketplaces. The costs and return balance of investment in Australian meat enterprises, especially feedlots and processing plants, becomes more finely balanced each year. Regulatory changes that add to costs or divert time affect this balance and influence decisions on maintaining or building establishments. *In 2007 issues include:*

- **Operational uncertainty from ‘raising the bar’ for environmental requirements** – through new specifications at reviews, conservative interpretation of rules in different regions, and cautious exercise of local discretions (forms of regulatory creep).
- **Ongoing reporting for the National Pollutant Inventory with limited apparent use for data collected.** The NPI began in 1998. Industry participants are still unclear on how data is being utilised. Public and industry uses and benefits are not evident.
- **NPI expansions plus greenhouse reporting requirements.** Higher cumulative load of regulations, more costs, plus limitations on measurement technology.
- **Costs of engagement:** multiple expensive meetings add to industry costs with limited response, especially in emerging regulatory arenas such as emissions trading.

Recommendations

- 1. Australia’s goals for ongoing, value-adding investment depend, in part, on certainty in environmental management requirements.** Now environmental controls are established, regular and candid review of national, regional or local pressures to ‘raise the bar’ at policy and practical levels (‘regulatory creep’) is needed.
- 2. After nine years, it is time to seriously test imputed benefits of the National Pollutant Inventory** and to closely examine the full cost/return equation.
- 3. The logic and thresholds of reporting requirements should be critically reviewed.** Better quality, less costly information could be obtained by estimating from aggregate numbers for enterprises beyond households, vehicles and farms.
- 4. Expansion of reporting requirements should be deferred.** Objective cost-benefit review of current and proposed schemes is needed first. New systems, if any, should be properly developed and accurate measurement technologies need to be available.

A decade of economic growth may be camouflaging the need for vigilance to ensure balance in regulatory systems impacting on business costs and innovation. Questioning of rules, and ensuring benefits are being secured, is especially important in established regulation areas, such as environmental control.

Government promises to manage the environment so ‘Australia’s natural resources are made available for economic activity’ on a sustainable basis, depend fundamentally on business investment for fulfilment.

Australia is committed to sustainable industry development. The environment is managed so that Australia's vast natural resources are made available for economic activity on a sustainable and viable basis. This has been a key factor in Australia's consistently strong economic performance. Australia's environmental management is described by the OECD as a partnership approach. It uses a mix of regulatory, economic and voluntary instruments, with voluntary measures and agreements between governments, industry and community groups playing a central role.

Under the Australian constitution, the responsibility for natural resource management and planning rests primarily with the governments of the States and Territories. ... State governments have responsibility for a substantial component of environmental legislation, with areas of responsibility defined in inter-governmental agreements. INVEST AUSTRALIA fact sheet 6.2007

State pollution control regulations are long-established. State governments apply measures such as the still debated, 'precautionary principle', 'polluter pays principle', 'user pays principle' and the 'product stewardship principle'.

Most in industries that generate 'externalities', like feedlots, understand these rules and address them in accreditation QA programs, such as the National Feedlot Accreditation Scheme, which references a National Code on environmental practices.

The *National Beef Cattle Feedlot Environmental Code of Practice* 2000 was developed by the feedlot and cattle industry in consultation with State authorities and endorsed by then Ministerial Council and Committee (AMRCANZ, SCARM).⁵³ The Code "specifies environmental performance objectives, operational objectives and practices that provide ways of achieving compliance with the environmental duty of care [and] provides the community and regulatory authorities with a means by which they can assess the industry's performance".⁵⁴ Multiple factors must be monitored and measured.⁵⁵

Code of Practice - Environmental Parameters to be monitored by ALL feedlots

- Feedlot Operations – day-to-day operations, including: incoming and outgoing stock numbers; pen cleaning activity; areas used for effluent and manure application and the rates of application; amount of manure removed; stock deaths and associated disposal.
- Climate – rainfall statistics.
- Soils – details of the soil content of manure and effluent utilisation areas.
- Effluent Management – chronological details of overflow and analysis of discharge.
- Complaints – feedlots must maintain a register of all complaints received regarding the impact of their lot feeding facilities. This register must include: all responses and any measures taken to redress any perceived problems ...

Depending on the size of the operation, the particular site and any recurring trends, the feedlot may also be required to record:

- Climate – wind, temperature and humidity.
- Effluent – chemical composition.
- Manure – chemical composition.
- Surface Water – upstream and downstream.
- Groundwater – biochemical and microbiological status.
- Soils – bulk density and composition.
- Staff training – names and duty statements.

The National Feedlot Accreditation Scheme (NFAS) is overseen by the Feedlot Industry Accreditation Committee (FLIAC) which has members from governments and industry. To be accredited a feedlot operator must:-

- Have documented procedures, developed specifically for the feedlot, which meet the requirements of industry standards (including for animal welfare, environmental management, stock ID, chemicals, feed).

- Maintain records of compliance, and undergo a third party audit (by AusMeat) of these procedures, records and facilities at the feedlot.
- Have environment management procedures that address the *National Beef Cattle Feedlot Environmental Code of Practice* to achieve documented environmental objectives, performance indicators, operational practices and monitoring programs.
- Feedlot managers must be aware of and adhere to their environmental legislative requirements and employees must be aware of and adhere to their environmental management responsibilities through adequate training. Environmental performance is reviewed on an annual basis or as required by the regulatory authority.

Variation in State regulations and interpretation: The Queensland Department of Primary Industries and Fisheries (DPI&F) operates an Environmental Regulation Program for intensive livestock industries under the *Environmental Protection Act 1994*. The Program assesses new and expanding feedlots, develops conditions to ‘prevent adverse environmental impacts’, then monitors performance of premises and investigates any environmental complaints about intensive animal facilities.

Queensland codes of practice and manuals are developed by working with local industry, including a Reference Manual for the Establishment and Operation of Beef Cattle Feedlots in QLD. In contrast, the *Guidelines for Establishment and Operation of Cattle Feedlots in South Australia 2006*, utilise the National Beef Cattle Feedlot Environmental Code of Practice, Queensland’s Reference Manual and the NSW Feedlot Manual as sources. WA’s 2002 Guide also brings in various codes.⁵⁶ All these documents are regulatory, as are varying interpretative instructions from officers.

SA Guidelines confirm environmental monitoring expectations are determined by the feedlots with authorities, on a site by site basis and that ‘when a licence is issued under the *Environment Protection Act 1993*, it will contain conditions for its ongoing operation and management. These may include conditions for ongoing monitoring and reporting of environmental factors’. National Code provisions for planned monitoring also apply if the feedlot is NFAS accredited (these should align with State requirements).

“All feedlots should have a planned program of monitoring and recording activities in the feedlot to prevent or minimise breakdowns which have the potential to cause environmental harm or animal welfare problems... Key parameters will vary with the size of the feedlot ...could include rainfall, feeding regimes, pen cleaning patterns, cattle turnover, sickness, deaths, local complaints.

Where feedlots, in the opinion of the Local Council or relevant State agency, are causing objectionable pollution or cruelty to animals, or are located at a sensitive site they should be subject to additional requirements for on-going monitoring and control. Monitoring of ground-waters for the build up of nutrients may be necessary.” *South Australia Guidelines 2006*

Testing and monitoring requirements can be substantial. For example, SA requires odour assessment using Odour Source Modelling, then ongoing measurement using the Australian standard Stationary Source Emissions-Determination of odour concentration by dynamic olfactometry AS4323.3:2001.

Specific and strict environmental monitoring and reporting conditions are illustrated by the NSW Department of Planning assessment and approval in 2006 of a major new feedlot (up to 80,000 head) near the Victorian border. Conditions included effluent, wastewater and groundwater monitoring and reporting.⁵⁷

Issues can then arise with interpretation of regulations and policies. Some feedlot managers are concerned by variation and discretion in applying environment rules.

In some regions these ‘individualities’ appear stronger. Feedlot managers are observing increasing inconsistency in ways regulators are applying regulations and subsidiary requirements for annual environment reports, for environmental impact statements for expansions or modifications, and new requirements for approval.

Pollution reduction program for the feedlot as part of EPA changing our licence will cost us over \$1,000,000. We are hesitant to assess expansion due to an EIS costing \$800,000 to \$1,200,000. Plus the disjointed process of applications, to the EPA, Local government and Dept of Lands.

A survey of feedlot managers found ‘a serious lack of harmonisation’ with suggestions that this related to a lack of technical or scientific expertise by regulatory personnel.

They appear to be adopting a precautionary principal approach to their work and effectively ‘lifting the bar to make sure of compliance’ [for example] ‘the bar’ has been raised on an ongoing basis creating significant added capital costs during feedlot expansion. Costs [over] \$750,000 have been experienced in some feedlots at a single site.

In a highly competitive marketplace, a multi-million dollar turnover feedlot turnover may have profit margins in the order of \$25-\$30 *per animal*. Input costs are constantly calculated against market prices and operations adjusted – all costs must be contained.

Each business decision, from capital investment to meet changed requirements, to an additional staff member, can be a turning point for a feedlot operation.

For example, as well as employing a Quality Officer for monitoring and recording environmental and other measures, sizeable feedlots currently need to expend \$20,000-\$50,000 a year on environmental consultants – more in licence renewal years.

Investment business cases include assessment of regulatory costs from experience and professional advice on statutory requirements. Later conservative interpretation of rules by regulators, and cautious exercise of local discretions (forms of regulatory creep) can skew the financials of a feedlot operation with accumulating impacts over time.

Such patterns of conduct lift the ‘regulation risk’ within investment decisions.

From a recent survey, current problems appear to be higher in NSW and Queensland where Local Government officers have final consent and, some consider that, “due either to lack of technical ability or politics, [they have set] ludicrous conditions for licence approval”. While ‘officer ‘discretion sounds flexible and responsive when crafting rule systems, (and in much regulatory theory), it is indicative of frustrations and regulatory problems in the industry that, after years of interactive experience, ...

... the large majority of feedlots believe that the discretionary approach is only being used by regulators for their over-cautious purposes and feedlots would be greatly assisted through having guidelines and reporting parameters in black and white and which are prescriptive.

Managers advocate the Victorian model, which uses agreed feedlot guidelines and codes of practice, accreditation, as well as stipulated buffer zones based on lot size.

This raises a side question of how, in increasingly standardised and national regulation systems, does Australia ensure innovation in rule making? Processes for comparing regulation systems, experiences and effect, with those of world innovators, including developing economies, appear important to future Australia.

Additional requirements to report to various authorities also increases costs – directly and indirectly. In particular, growing demands from national programs – the National Pollutant Inventory and Greenhouse Gas monitoring – as discussed below.

C.1 National Pollutant Inventory – adds to the load

The National Pollutant Inventory (the first National Environment Protection Measure), was agreed by Federal, State and Territory governments in 1998. Australia's NPI is a 'pollutant release register', one of a number of such registers now worldwide.⁵⁸

The NPI website explains that the NPI :-

- **'aims to provide Australians with information on types and amounts of pollutants being emitted in their community'.**
- is a 'publicly accessible database with information on the types and amounts of substance emissions to the Australian environment'
- emissions to air, land and water are estimated by facilities each year and the NPI estimates aggregate data for some 'diffuse sources' eg. motor vehicles and farms.
- facility data was first published on the NPI web site on 31 January 2007 – the eighth NPI reporting year. Since 1999, the number of facilities reporting to NPI has trebled. Facilities reported on 86 of the 90 NPI substances from 3,890 facilities of all types.

Reporting requirements affect feedlots exceeding set threshold emission levels

ie. about 140 head (a very small feedlot, and less cattle than carried on more than 70% of beef specialist farms, see Submission 1A), as well as meat processing plants. The added paperwork and costs are significant to all such firms in tight global markets.

State laws set the reporting requirements on facilities. The South Australian Feedlot Guidelines explain the NPI system in industry terms.⁵⁹

- The NPI is a database designed to record the types and amounts of certain substances being emitted to the air, land and water. [From 1998], larger Australian facilities have been progressively required to estimate and report annually their emissions for the NPI.
- Estimates of emissions from smaller industry, households and everyday activities are made by State and Territory environment agencies and are also listed on the database.
- Industries for which an Industry Handbook has been published are required to report on emissions. An industry Handbook consists of the NPI Guide and one or more Emission Estimation Technical Manuals. An Intensive Livestock (Beef Cattle) Handbook has been published and an EET Manual for Intensive Livestock, Beef Cattle.
- If a feedlot: uses more than a set amount of one or more substances on the NPI reporting list; or consumes more than a specified amount of fuel or electric power; or emits more than a set amount of nitrogen or phosphorus to water, the feedlot is required to estimate and report emissions of those substances to the SA Environment Protection Authority.
- Ninety (90) substances are currently listed for reporting. npi.ea.gov.au/about/list_of_subst.html. Category 1 contains a broad range of substances... typically present in materials used for production purposes. If the feedlot facility uses 10 tonnes or more per year of a Category 1 substance, an emission estimation of that Category 1 substance must be reported – based on usage rather than emission. Some Category 1 substances are also Category 2a or 2b and so have more than one threshold. *Emissions from all sources must be reported if any one threshold is tripped.*

The NPI EET Manual for feedlots (58 pages),⁶⁰ and National Pollutant Inventory Guide (40 pages),⁶¹ provide further details on reporting requirements, substance thresholds, and emission estimation techniques. [www.npi.gov.au/nrt/index]. The NPI provides a series of reporting tools to assist annual returns – but the tools it seems cannot be used in NSW!

The NPI requirements add demands on top of usual monitoring (outlined above). The SA Guidelines indicate ‘a beef feedlot potentially has NPI reporting requirements associated with three reporting thresholds’ with Category 1 as the trigger:⁶²

- Category 1 Ammonia from animals. Substances listed under categories 1 and 1a have limited use as inputs to a cattle feedlot. The minor quantities of chemicals used for cleaning and veterinary purposes are unlikely to exceed the 10 tonnes per year trigger level for reporting. Most feedlots, however, are likely to trigger the reporting requirement for ammonia. *In general if the capacity of a feedlot exceeds 122 SCU, the ammonia threshold of 10 tonnes per year will be exceeded.*

For beef feedlots, NPI brings red tape issues and costs, that need to be gauged against usefulness of the data. If data collection has strong purpose, and the material is useful to communities and industries then the costs may be warranted. However, feedlot sector participants are convinced this is not the case.

The NPI commenced in 1998. How is the data being applied? If there are identifiable public and industry benefits, how are these measured and publicised?

The 2005 review of the NPI has been obtained. It was commissioned by the National Environment Protection Council (unusually, a statutory body of Ministers from each jurisdiction with law making powers under the *National Environment Protection Council Act 1994*). The review assessed whether the NPI was delivering all it might to jurisdictions, NPI operation, room for improvement, and international experience.⁶³

A key NPI review finding was that there was a philosophical issue to be resolved on the purpose of the NPI. Would it be ‘an instrument of environmental management and performance assessment’ (requiring more funding for quality data and more extensive data sets from industry), or become ‘a general tool for raising public and industry awareness. *It is not clear this question has been addressed, Either direction would mean different cost and return inputs in any genuine assessment.*

- At 2005, two objectives were being met. The database was established and populated with information, and [the report said] was being used in decision making by various groups. It was ‘too early’ to assess any waste and pollution reduction.
- Cost to industry for reporting was estimated at \$3,000 per facility, costs to governments about \$640 per facility; industry/government cost ratio at 4.7.

Yet, NPI reporting requirements are expanding. The Council apparently agreed in July 2005 to develop a variation to the National Environment Protection Measure (NEPM). Transfers (from site to site) are included in the 2006 variation and will need to be measured at a cost. Following an April 2007 COAG decision, greenhouse gas emissions reporting will also be added to the NPI requirements [below].

The reality for this industry is that there are direct costs to businesses, as confirmed by the 2006 Regulatory Impact Statement. But returns are little or nil – especially noting how few in the community know of NPI. This point from the 2006 RIS is disputed.⁶⁴

Estimated costs for industry are an initial cost increase of \$2,800 per facility (total costs of \$10.4m) with on-going costs of \$1,400 [a year] per facility... benefits to industry of reporting transfers include building trust with community by demonstrating they have ‘nothing to hide’, greater corporate knowledge of self and competitors and the ability to showcase good performance.

After nine years, it is timely to return to first principles and seriously test imputed benefits. As a meat industry leader has observed: *Our industry works hard at building trust with the community, and the NPI is not part of that effort.*

Policy expansions of NPI may provide more data to government, but enterprise concerns must warrant attention. In the context of this review of regulatory burden on business, critical questioning of expanding new regulatory regimes is as vital as it is for long embedded rule systems.

The feedlot sector has raised issues with the National Environment Protection Council and the Federal Government on a number of occasions during 2006 and 2007, through meetings in Canberra, and in writing.⁶⁵ If Australian governments are serious about red tape, these issues should be properly considered before NPI expansions are enacted.

- **Small size of feedlots exceeding threshold emission levels.** The NPI threshold levels are mainly determined by an emission factor for ammonia attributed to an cattle unit (SCU, 600kg). ALFA has achieved some reduction of the factor in negotiation. Even so, the reporting threshold is reached at an average 143 head, a very small feedlot. In Victoria, only feedlots of more than 1,000 head require a formal planning permit. The small size lends weight to an aggregation argument (many farms carry more SCU).
- **NPI-NEPM requires reporting relating to 1 million cattle in feedlots** while for 26 million grazing cattle estimates are made from aggregate numbers in a region. ALFA argues quality and usefulness of data would be improved by utilising more complete ALFA cattle statistics to accurately calculate emissions by regions and states.
- **Privacy of establishment details.** Internet records include names, telephone and locations raising privacy and biosecurity risks.

C.2 Emissions measurement – consultation on why and how

The NEPM variation is being expanded after decisions in April 2007 that the National Pollutant Inventory should be used for implementing mandatory greenhouse gas emissions and energy reporting. A separate process floated in 2006 was criticised for duplication. The extra requirements in an interim NPI system will start by July 2008.

This fast track development of an interim greenhouse gas reporting approach appears to give little regard to cumulative requirements on industry enterprises.

Statements that such changes are ‘a fundamental pre-requisite of any emissions trading scheme’,⁶⁶ make it difficult for any industry to make inputs on either principles or detailed concerns.

Nevertheless, in a series of communications, ALFA has raised a number of issues in relation to emerging initial requirements for Greenhouse Gas Emission monitoring and reporting. These include pointing out two levels of potentially higher regulatory burden on red meat businesses: (i) costs of extra poorly-based reporting requirements, and (ii) the costs on industries and governments of implementing an interim process, then needing to start again for a purpose built system.

If governments have over-arching concerns about ‘unnecessarily burdensome regulation’ and impacts on costs, innovation and investment decisions, then points such as the following need attention (this would involve sectors in more work too):

- greenhouse gas emission reporting by agricultural businesses should be suspended until reliable and cost-effective mechanisms for recording and reporting are developed
- reporting should be aligned with industry and government programs including QA systems – requirements for multiple reporting advantage no-one

- benchmarking and reporting should be required on a whole of industry or sector basis, with reporting by individual enterprises on a voluntary basis (commercial elements of future greenhouse trading may influence this)
- there is need for balance and sensitivity to variable factors in climate, environment and similar in assessing emissions.

The red meat industry is also increasingly concerned about consultation processes and effectiveness – and this area provides examples of the problems. Industry concern appears well-justified given promises by government in other quarters to ensure responsiveness, red tape reduction, streamlining and to encourage business investment.

Industry participants point out (and their schedules demonstrate) the numerous time-consuming and expensive committees and rounds of meetings. Pressures on working commercial sectors and organisations trying to keep up with, contribute to, and pursue debate with well-resourced policymaking and regulation authorities are fast escalating.

At crunch points industries are racing to provide inputs – often without back-up work. For example:

The last minute inclusion of this proposal which resulted in only 1 working day available between the hastily convened five day national public briefing round (concluded Friday 18th May 2007) and the date to lodge written submissions (closed Monday 21st May 2007 with a 24 hour extension then granted) is highly inappropriate. The process is simply unfair to parties such as the lot feeding sector, which, as a national peak industry council, must consult with members on these matters which have significant ramifications for our industry. *ALFA letter to NEPC May 2007*

Consequences of such consultation stand-offs are seen starkly when industry receives bureaucratic replies to later submissions about working-level issues.

Genuine concern about red tape reduction and indeed, achieving quality outcomes, would suggest all inputs by industry should be carefully considered – rather than being quickly rejected by resort to ‘legalities’ embedded by prior rushed processes.

As a classic example [underline added]-

The IWG appreciated the offer of using your quarterly data collection to help meet the requirements of NPI reporting. However, from a practical perspective the IWG was not able to work out how this data could be reconciled with the legal need for individual facilities to report to the NPI. If ALFA was able to report individual facility data to the NPI, then it is possible that a reporting system could be developed. If ALFA wishes to propose a solution to this, we would be delighted to consider it further. *Chair NPI Implementation Working Group Department of the Environment and Heritage 27 February 2006 (to ALFA)*

D. Live Export Regulation Costs

On Regulatory Burden. Exporters, backed by technology, research, and driven by business, community and market expectations have worked hard over a decade to develop a world leading industry.

However, in global markets competitive threats build quickly. For this sector, like all others, ongoing critical review of regulation regimes is needed to achieve effective benefit-cost balance and to encourage investment and innovation. *2007 issues include:*

- **Escalating regulation costs for live export:** complex systems, increasing charges, duplication and inefficiencies, concerns about expertise and uncertainty in administering a Canberra centralised assessment and inspection regime, undermined regional capacity.
- **Little or no evidence of improved outcomes** or risk management under new rules.
- **Assessments of cost impacts, performance effects and community benefit have not been undertaken** during regulation reviews or revisions from 2004 to 2007.
- **Directions of regulatory change are contrary to best practice principles** including co-regulation, outcomes based regulation and streamlining.
- **Indications that regulations cut-across responsible business development** including accredited operation systems, innovation and full risk management by firms.
- **Increasing prescription in ship certification rules** – without clear reason as Australia leads world practice. Changes to rules without critical evaluation of cost or competition effects on doing business for shippers, exporters and livestock industries.

Recommendation

A bottom-line question for governments, this industry and stakeholders is whether ‘performance’ in terms of animal welfare outcomes and confidence in risk handling has been advanced by the new 2004 regulations for livestock export and shipping?

The next questions are whether benefits identified do reasonably offset substantial additional costs to the sector and supply chain businesses, and can changes be made to balance this equation more evenly across the sector and the community?

It is recommended the Productivity Commission nominate this regulatory area for a critical ‘case study’ review involving all parties. The review would objectively examine these questions and scrutinise the regime against the ‘six principles of good regulatory process’ – with the aims of significantly reducing ‘red tape’ and centralised, prescriptive regulation and improving overall outcomes for industry and community.

D.1 Export rules – 3 year review of benefits-costs needed

The regulatory system for Australian live exports was restructured during 2004 following the Livestock Export Review 2003 (Keniry report).⁶⁷ That review was carried out over 10 October to 23 December 2003 against a backdrop of an incident in sheep export to the Middle East that received considerable media coverage.

Substantial industry work to identify and address issues through codes of practice and research was less visible. Longstanding industry members consider many points in the report reflected industry initiatives in hand. The 2003 Review did acknowledge that:

... through the concerted efforts of industry and government over the past few years there have been significant improvements in the trade, including in the welfare and treatment of animals along the whole of the export chain.

Even so, major changes were recommended. Regulation was moved from an industry based quality assurance process (LEAP, the Livestock Export Accreditation Program initiated by the Australian Livestock Exporters Council and conducted by AusMeat) and coupled with AQIS inspection and approvals, to a fully government-run process.

The report recommends an enhanced role for AQIS in standards setting and quality assurance. ... 'However, the Keniry Report makes it quite clear that some of these recommendations will add to industry costs and that industry will be required to bear these costs'. Minister Truss, Jan 2004.

Developments over 2004 to 2007 include:

- Many Federal rule changes prescribed with varying degrees of industry involvement. The layered regulatory scheme under the *Australian Meat and Live-stock Industry Act 1997* is shown in Submission 1A and discussed at points below.
- With considerable investment in supply chains, facilities, ships and market contracts, the sector aligned with rules being introduced, although changes were counter to trends to co-regulation, were less outcomes based, and clearly added to costs.
- The importance of the live export industry to Australian livestock production and selling systems has been reinforced.⁶⁸

The livestock export trade is of great importance to regional and rural Australia and vital to the red meat industry. ... Live exports are a legitimate trade providing farmers with a valuable alternative to domestic slaughter. ... if the live trade ceased, the drop in sheep and cattle prices and the loss of revenue to our producers and their regional communities would be quite significant. ... The trade creates in order of 9,000 jobs in rural and regional Australia - jobs for ancillary suppliers and services such as livestock agents, transport operators, exporters, stevedores and shipping companies. It also benefits feedlot operators, fodder and chemical suppliers, veterinarians, sale-yards, stockmen, port authorities, ... mustering services and the finance and insurance sectors. www.daff.gov.au

- Live animal delivery rates from 2003 to 2006 have been over 99% for sheep and over 99.8% for cattle [Livecorp/AMSA].⁶⁹ This table shows industry-based performance advances from 1996,⁷⁰ and that rates after new rules from 2005 were the same as 2003-2004.

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Cattle %	99.63	99.84	99.66	99.69	99.82	99.82	99.77	99.89	99.90	99.86	99.82
Sheep %	97.52	98.82	98.66	98.82	98.86	98.75	98.76	99.01	99.24	99.05	99.11
Goats %	97.97	97.76	96.37	97.47	98.27	97.70	98.39	99.22	99.12	99.23	99.49

- And, Governments (Federal/State) have reinforced commitments to 'reduce red tape', and to address unwarranted regulation impacts on business costs, competitiveness, performance and innovation. Federal public sector leaders have strongly committed to reduce red tape in its own workings,⁷¹ and have reinforced the need for 'continuous improvement' in public sector operations.⁷²

The Red Meat Industry recognises the sensitivity of live export and that attention to animal welfare is vital along the supply chain – for humanity and commercial reasons. However, Australia’s live export businesses (producers, agents, shippers) must perform in an increasingly competitive world arena to supply livestock to markets. ‘Principles of good regulatory process’ need to be in operation in this sector, as much as elsewhere.

It is over three years since the Live Export Report. Objective, inquiring review of the regulation regime is timely, with attention to impact on costs, innovation and performance factors – including animal welfare and risk management outcomes.

Regulatory developments since 2003 plus industry experiences and views on these systems and issue areas are outlined below.

Live export rule changes – key elements

The Federal Government accepted many Live Export Review recommendations in 2004. In particular, the Department would license exporters and develop livestock export standards. AQIS would provide overall supervision (with shipping standards continuing as an AMSA role). Where recommendations were modified, the government stated that decisions would be made on risk assessment and management bases.⁷³

The major changes came into effect on 1 December 2004 through revisions to the **Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998**. The current version commenced on 1 July 2005. Key changes in 2004-2005 *include*:

Nominating the ‘standards body’ - bodies responsible for setting standards for meat or livestock for export to be: for meat export - AUS-MEAT Ltd; and for live-stock export - the Department of Agriculture, Fisheries and Forestry (which includes AQIS as a DAFF agency).

A live-stock export license application must be accompanied by

(a) an operations and governance manual for the live-stock export business, or proposed live-stock export business, that sets out how the business will operate and be governed, including information about the following aspects of the business:

- (i) how the operations of the business will comply with the Australian Standards for the Export of Live-stock
- (ii) the organisational structure of the business,
- (iii) people management and staff training
- (iv) risk management,
- (v) records management
- (vi) compliance strategy and review

(b) a criminal history check, from the Australian Federal Police, for the applicant (if an individual) and for each person in management and control of the live-stock export business or proposed live-stock export business

(c) if the applicant (whether an individual or a body corporate) operates, or intends to operate, the live-stock export business in partnership:

- (i) the partnership agreement; and
 - (ii) an audited statement of the assets and liabilities of the partnership business, and an audited statement of the profit and loss account of the partnership business, for the previous financial year
- (d) an audited statement of the applicant’s assets and liabilities, and an audited statement of the applicant’s profit and loss account, for the previous financial year.

The **Export Control (Animals) Order 2004** sits beneath the Regulations. The current Order, 21 November 2006, includes a general reader guide to key steps. To quote:

Briefly, the administrative steps in the process of an export of live-stock by sea are as follows:

- **the exporter gives the Secretary a notice of intention to export (NOI) and a consignment risk management plan (CRMP) for the export**
- the Secretary approves the NOI and CRMP, [then] the exporter sources the live-stock
- the live-stock are treated and tested in accordance with the Australian Standards for the Export of Live-stock and the importing country's requirements
- the live-stock are held in pre-export quarantine or isolation at registered premises in the way that, and for as long as, the importing country requires
- before, during or after treatment and testing, the live-stock are assembled at registered premises
- after the live-stock are assembled at the registered premises, and before they leave, the exporter arranges for them to be inspected by an AQIS authorised officer (a health certificate is prepared ... if required by the importing country ... but is not issued till an export permit is issued)
- an AQIS officer then issues a permission to leave for loading, which authorises the exporter to take the live-stock from the registered premises and load them on board a ship for export
- the live-stock are loaded in accordance with the approved travel and loading plan, the health certificate is issued and an export permit issued.

Each step in the process is conditional on all the previous steps having been properly carried out. The export of live-stock by sea is prohibited unless the export permit is issued (Order s 2.02)

An inter-government *Australian Position Statement on the Export of Livestock* now provides a framework and 'explains' the mix of rules, standards, codes, responsibilities. While not formal law, it is referenced in Standards and 'sets' expectations for all sectors.

The Australian Standards for the Export of Livestock (referred to in the Regulations and Order) are detailed rules that appear to cross many other codes and rules [refer Part C of this report] and do at times reference other regulations. The standards are:⁷⁴

1. Sourcing and on-farm preparation of livestock
2. Land transport of livestock for export
3. Management of livestock in registered premises
4. Vessel preparation and loading
5. On-board management of livestock
6. Air transport of livestock.

The regulations, order and standards are Federal laws, with the Regulations subject to possible Parliamentary disallowance. Provisions in these laws also enable DAFF and AQIS officers to issue detailed instructions, to businesses as Conditions, or to the sector as **Export Advisory Notices (EAN)**. AQIS has issued 25 EAN since January 2006. These range from new instructions, to explanations, to facilitating enhancements.⁷⁵

The Australian Standards for Export of Livestock (ASEL) are quite prescriptive, even though each is prefaced with a short list of 'required outcomes'. Much (not all) of the detail in the ASEL is accepted by the sector. The ASEL are seen as similar to industry developed 'Australian Livestock Export Standards' operative before December 2004.

There are concerns with costs and impacts of elements of the Regulations, Order and Standards including AQIS exercise of discretions, and ways rules are interpreted and applied [refer below]. Workability of formal and informal processes for discussing rules and their application is also an issue. While DAFF has outlined the Departmental understanding of processes used in development of the current ASEL v2.1,⁷⁶ sector representatives and businesses have felt somewhat inhibited from participating frankly.

Impacts on costs of livestock exporting

Assessments of cost impacts, performance effects and whole community benefit do not appear to have been undertaken at any stage of the regulation revisions – government commitments to scrutiny of regulations affecting business notwithstanding.

The 2003 Review forecast that its recommendations would increase industry costs, however the report does not include comparative cost calculations, or a relating of costs to projected improvements in various measures of live export performance.

The major 2004 Regulation amendment (which might be seen to include the Order and ASEL) was accompanied by an Explanatory Statement. This contained a short ‘regulation impact statement’ which identified the ‘problem’ to be addressed as of Industry (Livecorp and by extension AusMeat as manager of LEAP):

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.

Regulatory Impact Statements for the 2004 Order or the ASEL could not be located in searches of DAFF and ComLaw websites, even though these rules would impact on a range of businesses and could not be construed as ‘of a minor and mechanical nature’.⁷⁷

The Departmental analysis of the recommended Option B is recorded below. Option B was said to have ‘broad stakeholder support’. It would be implemented on 1 December 2004 and would “be subject to ongoing monitoring and review”.⁷⁸

DAFF Explanatory Note 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 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.

Notably, the assessment focussed on cost-to-government and ensuring recovery of those costs by DAFF and AQIS as they would rise with procedural changes. That industry costs would rise was noted and licence fees were mentioned, but likely extent of direct, structural and flow-on cost increases, and the relating of these to expected improvement in performance, productivity or trade, were not addressed at all.

Periodic consultation has occurred over 2004 to 2007 mainly through committees: -

- **LESAC** – Livestock Export Standards Advisory Committee (DAFF and ASEL)
- **LEICC** – Livestock Export Industry Consultative Committee (AQIS and compliance)

However, in the circumstances of 2003-2004 and since, the sector has felt there is limited room to debate the form or detail of regulations under development, even as businesses were observing ‘huge increases in government inspection and bureaucracy’.

Notes of various Committee and representational meetings illustrate the scope and depth of concerns relating to the rules and regulatory processes and their application, and continuation of issues over a number of years.

Discussions for this review elicited more candid observations on regulatory cost increases and burdens. These reflect particular experiences but are useful indicators of effects (including cumulative pressure) of rules on sector participants. Concerns include:

- New rules require that AQIS Canberra assesses and approves Governance and Operations Manuals (from livestock exporters), Consignment Risk Management Plans (CRMPs) for each proposed shipment, and Operations Manuals for registration of premises to hold and prepare animals for export. *There are serious concerns about the availability and capability of AQIS Canberra staff to properly assess these, and to participate in timely discussions on questions arising.* Staff turnover seems high. Continuity is an issue (especially noting ‘prior performance’ and ‘improvement’ tests).
- At an AQIS charge rate of \$208 an hour (\$52 for 15 minute units) ie. \$1,456 per 7 hour day,⁷⁹ experienced, capable and efficient assessors are reasonably expected.
- Costs of compliance have risen significantly. There is ‘double the paperwork’ and of office time needed for preparation of regulatory information. As well as charges for document processing (eg. 27 hours for an average CRMP), audit and inspection frequencies have increased, as have record keeping requirements by all parties in the chain. AQIS can also require additional stockmen or a vet on some shipments.
- Enterprises need higher staffing to interact quickly with AQIS Canberra requirements (part duplicating local AQIS interactions), plus trips to Canberra for briefings and discussions. 50% of management staff time is spent on compliance – a one page NOI can now be 30-40 pages of NOI and CRMP, often repeating the same material each time. The sector overall is increasing policy and representation staffing.
- Exporters can spend six months organising markets, vessels, livestock, transport, inspections and treatments, against tight and costly windows for ships, wharves etc. Previously, exporters could work with regional AQIS staff (SLEVOs) to develop action plans that suited the circumstances. Now, ‘uncertainty risk’ overlays operations and adds pressures; and ‘work around’ costs can be high.
- The new arrangements are seriously underutilising the capacity and experience of AQIS SLEVOs – one of the greatest resources the industry has, and at risk of being lost.

- A large consignment can take up to two months to organise. Consignment Risk Management Plans are submitted well before the departs in fact they are required before sourcing begins but this is basically impractical as large consignment exporters usually buy animals especially sheep continually. As the dispatch date gets closer so the commercial impact of change increases. The bulk of regulatory effort occurs in the last few days where change has a commercially significant impact leaving little room for negotiation or appeal against regulator decisions which threaten to halt loading. Lack of expertise of the regulator and consequent poor decision making at this juncture can add significant cost to the consignment. This is a legacy of the transfer of authority from the hands on AQIS regional vet (SLEVO) to Canberra where expertise is not always sufficient.
- Requirements for vets to accompany shipments are uncertain, and can be a significant cost impediment in developing new markets, or in servicing small quantity customers. There is no formal appeal process on vet instructions, which can be close to voyage.

Notes: The 2003 report recommended vets be required on all voyages of more than 10 days and also a random 10% of other voyages. The Minister's 2004 response modified this because of likely shortage of vets. AQIS would have the discretion to require a vet on board (among other conditions) based on AQIS assessment of risk.

EC (Animals) Order 2004 says : For the purpose of deciding whether or not to impose a [Vet] requirement (1), the Secretary may take into account any relevant matter including: (a) relevant importing country requirements (b) exporter's record as an exporter of live-stock; and (c) the condition of the vessel on which the live-stock are to travel; and (d) the weather and time of year; and (e) the kind of live-stock being exported; and (f) market considerations.

In January 2007, the AQIS Manager, Live Exports issued an Export Advisory Notice stating that an AQIS accredited veterinarian would be required to accompany consignments for (but not limited to) – all vessel trips to or through the Middle East, new or altered vessels, exports to a new markets, where mortality incidents on previous shipment, at random over two years.

- Competition for providing export services has lessened. Over 80 exporters were registered by Livecorp in 2004, about 60 applied for DAFF licenses in 2005, and there are 30-35 active in 2007. Lower competition can affect industry costs and innovation.

For some exporters, particular costs have 'jumped' as a result of the new regulatory regime and instructions to industry and/or enterprises. For example:

- Smaller vessels shipping back and forth to Australia were used for lower numbers of animals for specialised markets. These often had accommodation for a stockman, but not for a veterinarian as well. Possible on-board vet requirements reduced industry options to use these vessels. A number have relocated to work in European waters.
- A vet on board can cost \$20,000 per 18 day shipment (including return business class airfares). This plus other costs has made air transport for small consignments 'viable'.
- 'The current AQIS charging system is incredibly expensive. Vets are useful on cattle voyages, but I could put 2-4 additional trained stockmen on sheep ship for the costs of the vet – with better outcomes. At times the new rules compromise animal welfare.
- ASEL Standard 3 prescribes a new rule: "the location of the registered premises, used for inspection for 'leave for loading' must not be more than eight (8) hours journey time from the port of embarkation". Reasons are not given but this rule meant some exporters had to change preparation facility or port, at times at costs of \$50,000+ per shipment.⁸⁰

Effects on performance and innovation

Impacts of regulations on industry and business performance, on capacity for innovation and motivation to invest should be closely considered in evaluating regulatory regimes. Governments argue that effective regulation should ‘improve’ industry performance, on average across businesses, to the net socio-economic benefit of the community.

For Australia’s livestock export sector, baseline measures (delivery of live animals) indicate little change in the already high industry performance since 2004 [above].

A number of sector members have observed on deeper aspects of benefit/cost balance.

- While the new ASEL are similar to the former industry standards, there are now many government and non-government groups ‘involved in the kitchen of the industry’ including State Governments (prior role was for notifiable diseases, animal welfare) but no identifiable lift in industry delivery performance, just costs.
- Ship Masters are required to report mortalities [Marine Order 43]. AQIS investigates if higher than reportable level, lists these six-monthly for Parliament. Investigations can be costly and ‘I’m not sure AQIS generally finds anything’ (given the overall high track record). All conditions then imposed add costs,⁸¹ likely with little result or return. ‘What is the point of imposing a penalty on the ‘next voyage’ when 1 or 2 voyages have already sailed between the investigation and the ‘penalty’?’
- Our company had developed ISO accredited systems for operations including a ‘livestock chain manual’ which was ISO accredited and audited. It was outcome and result driven, with paperwork developed to provide a flow of instructions, checklists and record keeping for operators along the chain. Could implement innovations at any stage with an improvement request under the ISO system. This gave us operational and marketplace advantages especially exporting, say, to Japan. With the new government regulations we were running two processes – extra work for Manuals, NOIs, CRMPs and records. We could not use both, so dropped the ISO system and accreditation. Have discussed ISO with AQIS but seems ‘too hard’.
- Live exporting is a very variable business, involving large sums of money and investment. On one shipment, the exchange rate, livestock prices, the weather and shipping will all go well and we will make good money. On other shipments, just before sailing the exchange rate can change, or weather in Queensland will affect stock prices, and we will lose money on that shipment – but we must fill contracts, there are other suppliers – competitor countries. Our approach is to look to control costs on every aspect of the business – we must do that all the time – and the compliance and AQIS costs have jumped too much under the new system.

D.2 Shipping – cause and effect of changes?

Issues relating to the welfare of animals on board ship, during an export journey, come within the responsibility of AMSA, which administers the Navigation Act 1912 and Part 43 of the Australian Commonwealth Marine Orders. These contain provisions relating to ship design, fodder and water supplies, the number of animals that may be carried and their stocking density, and the design and arrangement of pens and care of livestock on board.

AMSA’s requirements already lead the world in ship design for livestock exports. Further enhancements to the AMSA standards, proposed for introduction in 2006, will mean that many ships currently in the trade will be retired. This should leave a more modern and efficient fleet available for use in the Australian export trade. *Livestock Export Review 2003* ⁸²

‘The Master of the Vessel assumes overall responsibility for the management and care of the livestock during transport on the vessel’.⁸³ This is based on international law and is specified in the regulatory regime developed by the Australian Maritime Safety Authority (AMSA) particularly Marine Orders Part 43. Features of this regime *include*:⁸⁴

- **Australian Maritime Safety Authority [AMSA]** is a ‘largely self-funded government agency with the charter of enhancing efficiency in delivery of safety and other services to the Australian maritime industry’. Key legislation: *Australian Maritime Safety Authority Act 1990*, *Marine Navigation Levy Act 1989*, *Navigation Act 1912*, *Shipping Registration Act 1981*. Rules under the *Navigation Act* include *Navigations (Orders) Regulations 1980*.
- AMSA is responsible for implementing International Maritime Organization convention requirements for all safety related aspects for marine carriage of all types including bulk liquid and solid cargoes, dangerous goods, general cargoes, containers, and cargo lifting gear. These are reflected as appropriate in the Marine Orders.
- **Marine Orders Part 43 - Cargo and cargo handling – livestock**, ‘makes provision for the certification of ships engaged in the carriage of livestock cargoes and specifies requirements concerning the stowage and carriage of such cargoes for the safe operation of ships’. This Order is signed into law by the AMSA Chief Executive Officer and lodged on the Federal Register of Legislative Instruments.⁸⁵
- The latest, Version 6 of 2006 was issued on 2 November 2006 and came into operation on 1 December 2006. Its 70 pages prescribe rules for construction and modification of vessels, pens, facilities, managing livestock, fodder, inspections, records and reporting. Unusually for international maritime trade, these requirements are imposed on all ships (regardless of country of registration) exporting from Australian ports.
- **Marine Orders Part 43 refer to 20 other rule sets:** Australian Standards for the Export of Livestock (ASEL), Export Control (Animals) Order 2004, *Export Control Act 1982*, *Livestock Disease Control Act 1994* (Vic), *Animal Health Act 1995* (Tas), International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention, MARPOL 73/78, ‘the Convention’ in the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, SOLAS (the Safety Convention as defined in the Navigation Act), Navigation (Orders) Regulations, *Australian Meat and Live-stock Industry Act 1997*, *Administrative Appeals Tribunal Act 1975*, the Record of Equipment and Arrangements, Marine Orders Part 31, Cargo Ship Safety Construction Certificate, Australian Standard AS/NZS 61241.10 (IEC 61241-10), Australian Standards AS 2381.1 and AS/NZS 61241.14 (IEC 61241-14), Australian Standard 1074, Marine Orders Parts 32 and 44, Animal Welfare Standard N.8, Transport of livestock across Bass Strait (Tas).

Since 2003, the number of live-stock export ships working in Australian waters has fallen significantly, reducing competition. Shipping has been affected by rule changes such as on-board vets and new AMSA rules, plus fuel and exchange rate dynamics. A number of ships that have “gone off the Australian run due to increase in regulation end up on the South American or Chinese run supplying livestock from competitors”.

Year	2001	2002	2003	2004	2005	2006
Live Export Ships (Livecorp data)	44	42	41	35	26	23

AMSA MO Part 43 has been amended a number of times since 2000 culminating in the new regime from December 2006. **Yet in 2003, the Keniry report observed that ‘AMSA’s requirements already lead the world in ship design for livestock exports’.** It noted rules from 2006 would mean ‘many ships currently in the trade will be retired’.

These foreseeable major effects of changes to the Order would suggest that Regulatory Impact Statements would be essential. Available documents indicate otherwise – or that there is confusion among regulators. The 2006 Explanatory Notes to the Order state:⁸⁶

The Office of Regulation Review (ORR) has also been consulted. ORR advised that a Regulatory Impact Statement was not mandatory for the proposed changes.

However, the Office for Regulation Review (ORR), in a 14 June 2006 reply to a letter from LiveShip advised that:

At the Commonwealth level, the preparation of a RIS is mandatory for all reviews of existing regulation, proposed new or amended regulation and proposed treaties involving regulation which will directly affect business, have a significant indirect effect on business, or restrict competition. When RISs are required, the Government has decided that they must be examined by the ORR ...

With respect to Marine Order Part 43 ‘Cargo and Cargo Handling - Livestock’ ... a RIS for this matter was prepared. Whilst the ORR now reports publicly on compliance with RIS requirements for all Bills, delegated instruments and ... at the time that Marine Order Part 43 was tabled in parliament the ORR did not at that time publicly report on compliance of all legislative instruments. Therefore we are unable to advise you on whether the RIS for the abovementioned Marine Order met the Government’s adequacy criteria and standards. Therefore I suggest that you contact the Australian Marine Safety Authority (AMSA) directly for this information.

Further inquiry in June 2007 to the Corporate Secretary AMSA seeking a copy of Marine Order Part 43 Regulatory Impact Statement, elicited no reply, suggesting there is no RIS.

Particular concerns of ship owners/operators, many represented by LiveShip, include:

- Increasing severity of regulations and associated higher costs when benchmarked against world practices and ships trading as competitors in world markets.
- In 2006, Marine Order Part 43 was amended to introduce set phase out dates for ships constructed before 1 September 1984. [Provisions 10.5.2 and 10.6.2(h) – there is no comment on this effect in the AMSA Explanatory Statement].
- Requirements for more complex electrical power supply and animal effluent drainage arrangements applicable to existing ships from 2004 [Order Appendix 4, provision 1, details in 3.2.2, 6.1, 6.6 and 6.7]
- AQIS mandating an industry developed heat stress risk assessment model in the ASEL (Australian Standards for Export of Livestock) which are referenced in the MO.

In April 2006, LiveShip wrote to the Office of Regulation Review expressing rising concern in the shipping sector and its dependent industry groups that **AMSA regulatory change was rolling forward with inadequate over-arching analysis of impacts on businesses.**

LiveShip stressed (this not addressed in the ORR reply) “the ‘compelling need’ for change to current legislation is properly demonstrated, an associated cost benefit and industry capacity analysis is completed; and appropriate transition arrangements are agreed before any draft amendments are finalised”. LiveShip considers has not been occurring:

In reviewing the latest draft of this Marine Order on [AMSA’s] website, LiveShip members have noted that it is now intended that certain existing ships will now be phased out from the end of 2010 ...there is broad agreement to the intent of these provisions, as the ships to which they apply are in many cases nearing the end of their anticipated working life. ...however ...adoption of an arbitrarily determined phase out date, rather than a staged transition period using a risk

management approach based on an individual ship's ongoing physical condition, satisfactory safety and cargo delivery record, would have been preferred by most LiveShip members, even though probably more challenging to administer. There is... a wider concern arising from the way in which the development of these amendments to the Marine Order applying to existing ships has been done since 2004. Taken singly, although each amendment and proposed amendment can be met by affected owner/operators, when these changed requirements are considered cumulatively and in combination, there is the potential for a significant inadvertent cost impost.

Where, and why, did the 2002-2006 rule changes for livestock vessels originate?

Various public reports do not explain the need for rules of such major industry effect.

- During 2002, a Ministerial Independent Reference Group (IRG) including AMSA officers examined the live export supply chain including stock selection, transport, feedlot management, load-out supervision, third party veterinarian verification, ship-board management including stock densities, to the port of destination. Issues with shipboard animal management were noted but not issues with ship structures or age.⁸⁷
- As the Keniry report observed in 2003 after AMSA briefing - "AMSA's requirements already lead the world in ship design for livestock exports."
- The 2006 Alliance Resource Economics benchmarking study identified Australia has the world's highest livestock export standards in terms of: Coverage (of species and phases of transportation), and Capacity to deliver acceptable animal welfare outcomes. This study concluded Australian standards "should be considered 'high quality' and they do not require immediate or drastic revision".⁸⁸

Searches have located no regulatory, safety or community benefit/cost analysis on ship phase-out prescription based on ship age. Best practice regulation would support Live-Ships' 'staged transition period using a risk management approach based on [each] ship's ... physical condition, satisfactory safety and record'.

Notes and References

¹ As do many in Australian industries operating in competitive global marketplaces that 'see' Australia only as a single, moderate sized, economy. It seems discussion rolls on over decades but inefficiencies endure. For example: In October 2005, the Productivity Commission organised another forum (Productive Reform in a Federal System) to discuss key national issues in advance of the CoAG meeting in February 2006. While the National Transport Commission (NTC) presented a paper entitled *Regulatory reform in land transport*, it is notable that jurisdictions had ostensibly agreed to 'uniform heavy vehicle road rules' back in 1995. Signs of non-alignment appeared in 1996, and were reported by the NTC in 2005 [see section B].

² As indicated in: Safemeat: *Red Meat and Livestock Industry Biotechnology Policy*, June 2006.

³ Refer also Red Meat Industry submission 1A. The 'six principles of good regulatory process' were put forward in the Regulation Taskforce, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*. Report to the Prime Minister and the Treasurer. These principles were endorsed in the Australian Government, *Report of the Taskforce on Reducing Regulatory Burdens on Business - Final Government Response*. Canberra, August 2006 – with new Federal arrangements operative from November 2006. COAG endorsed eight principles for 'Maximising the Efficiency of Regulation' in its April 2007 *COAG Regulatory Reform Plan*.

⁴ Sheill, *Animal Welfare Inventory* - Report to AAWS Livestock Production Working Group, 2006.

⁵ In Queensland for instance, SCARM Animal Welfare Model Codes are clearly pictured and referenced on Department of Primary Industries and Fisheries' webpages. In Western Australia, the "Code of Practice for the Transportation of Cattle in Western Australia is based on the Code Of Practice For The Welfare Of Animals Cattle produced by the Livestock Transporters Association of Western Australia (Inc). The original Welfare Code was based on an extensive Australia wide survey of all Codes of Practice and the technical and practical experience and knowledge of the Executive and members of the Association" [WA Code at 3.4.07, at June 07]. However, the Code of Practice for Sheep in Western Australia, April 2007, is *The Code of practice for sheep in Western Australia* is "based on The Australian Model Code of Practice for the Welfare of Animals – Sheep and has been adapted for use in Western Australia".

⁶ Across States, different types of departments are nominated to manage animal welfare legislation. This creates issues at policy levels (Ministers and executives attending Councils and Committees, through to philosophy behind application of rules. Most States delegate responsibility to their Departments of Agriculture, though Environment and Local Government Departments also feature.

⁷ For instance, the National Feedlot Accreditation Scheme (NFAS) requires that relevant animal welfare laws and codes must be met. AusMeat audits for ongoing accreditation are realistically based on SCARM national Model Codes. Regulatory inefficiencies and costs arise when different or additional rules apply under State laws or guides. This is compounded by 'interpretations' that 'raise the bar'. [see also section C]

⁸ Following review in 2006, the Federal Minister has agreed to continue the NCCAW until the conclusion of the AAWS implementation period on 30 June 2009, when an Australian Animal Welfare Council may be established. The Chair of the AAWS Advisory Committee, has been appointed Chair of the NCCAW. The DAFF website says the NACAW Guidelines 'represent considered views of NCCAW developed in consultation and may not be the view or policy of the Australian Government'.

⁹ Animal Health Australia (2005) *National Animal Health Performance Standards* (Version 3). Canberra. The six core functions are: Consumer protection, Trade and market access, Disease surveillance, Endemic disease management, Emergency response, and Livestock welfare. 'Version 1 of the standards was developed by AHA in 2001 following extensive consultation with all stakeholders. In 2001, SCARM and ARMCANZ agreed these provided a sound basis for further improvement. AHA has worked with Committees to produce version 2 (2002) and an enhanced version 3 (2005). animalhealthaustralia.com.au

¹⁰ Commonwealth Government, *The Australian Animal Welfare Strategy*, 2005 (35pages). Refer also: <http://www.daff.gov.au/animal-plant-health/welfare/aaws>.

¹¹ The Stocktakes: Livestock and Production Animals; Animals used in Work, Sport, Recreation ...; Animals in the Wild; Aquatic Animals; Companion Animals, Animals used in Research and Teaching. A consolidated report commissioned by DAFF (August 2006) summarises 'current animal welfare arrangements' including across sectors, 'gaps, weaknesses and risks in the current arrangements', 'priorities for future action'. <http://www.daff.gov.au/animal-plant-health/welfare/aaws/stocktake>

¹² *Animal Welfare Inventory Report to AAWS Livestock Production Working Group*, Shiell, VRS 2006

¹³ These actions were noted in the Animal Welfare Inventory – Livestock, above.

- ¹⁴ An example, a prosecution in Western Australia. In November 2005, WA police laid animal cruelty charges against a live export company for allegedly breaching the WA Animal Welfare Act during a shipment of sheep in 2003. The shipment had received all required approvals before export under Federal laws. The matter was heard by a magistrate in February 2007. Judgement not yet provided.
- ¹⁵ "Efficient freight infrastructure is of particular importance to Australia, given its dispersed population and production centres. Current pricing and regulatory arrangements are hampering the efficient provision and productive use of road and rail infrastructure." Productivity Commission *Road and Rail Freight Infra-structure Pricing*, Dec 2006.
- ¹⁶ From the Engineers Australia, *2005 Australian Infrastructure Report Card*. "In 2001, ratings for roads ranged from C to D. The ratings today are: national roads C+, State roads C, and local roads C-, all marginally improved since 2001. Overall, national roads are only adequate, despite upgrade work on the eastern seaboard. State roads vary greatly in quality ... Rural roads have not improved, although the "Roads to Recovery" program ... is making a difference."
- ¹⁷ NT Cattlemen's Association, March 2007 www.ntca.org.au/
- ¹⁸ Yates, Sparke, Morison, Hughes, 2002, *The Impact Of Feedlot Investment*, Report for MLA.
- ¹⁹ Other agricultural industries are also substantially affected by transport regulations and costs. For example: "Freight is a key cost and profit driver of the forest and forest products industry with higher payloads, quicker journeys and increased utilisation of fleet assets most important. For the forest and forest product sector in Australia, haul cost across mill inputs and outputs averages about 23% of product price and ranges from 12% for paper to 37% for chip export. ... Access to more efficient road haulage with B doubles and higher mass limits is seriously constrained by the gazetting of too few roads. B-double use is only about 35% for inputs and 44% for outputs from the forest and forest products industry." *Transport issues for the Australian Forest & Forest Products Industry*, Industry HoR submission, 2005.
- ²⁰ From ALFA submission to NRMA Motoring & Services Better Roads Panel, at June 2007.
- ²¹ ALTA, 2006, *Carrying a competitive economy into tomorrow - Getting road freight pricing, investment in roads and regulations right for Australia's future*, Submission to Productivity Commission Inquiry into Road and Rail Freight Infrastructure Pricing.
- ²² Queensland Department of Primary Industries & Fisheries, *Cattle transport - Loading strategies for road transport*, 17 August 2006.
- ²³ ALTA 2006, above.
- ²⁴ AMIC paper for discussion with the NSW Government, November 2005.
- ²⁵ Torbay, Second Reading, Road Transport Efficiency Bill, resumed 26 February 2004. NSW Hansard.
- ²⁶ Torbay, speech, Road Transport Efficiency Bill, 18 Sept 2003. The Bill was defeated on 26 Feb 2004.
- ²⁷ Keatsdale PL, *Review of Heavy Vehicle mass and loading, oversize and overmass, and Restricted Access Regulations*, for the National Transport Commission, May 2006.
- ²⁸ Corish report, *Creating our Future: agriculture and food policy for the next generation*. Report by the Agriculture & Food Policy Reference Group to the Minister for Agriculture, Fisheries & Forestry, Jan 2006
- ²⁹ Parliamentary Secretary Stewart, Road Transport Efficiency Bill debate, 19 February 2004.
- ³⁰ COAG, Australia's Infrastructure - National Overview Report, April 2007. *National Reform Agenda - Competition Reform* & COAG response to PC report on Road and Rail Infrastructure Pricing. April 2007.
- ³¹ *COAG Regulatory Reform Plan*. April 2007 and statements through 2006.
- ³² NTC - Bulletin (1999 04) Driving Hours Reform Package. www.ntc.gov.au
- ³³ June 2007: NSW http://163.189.7.150/heavyvehicles/regulations/tfms_operation.html; Vic www.vicroads.vic.gov.au/ SA: www.transport.sa.gov.au/freight/road/national_driving_hours/fatigue.asp
- ³⁴ NTC News 21.2.07. www.ntc.gov.au. "NSW and Victoria plan to reduce working-limits for Advanced Fatigue Management (AFM) and rejected the special 'rest areas' defence for short breaks in Standard Hours. Victoria did not support the provision for (longer) 'split rest' under Basic Fatigue Management. Victoria intend to exclude a 'reasonable steps' defence for drivers and operators for heavy vehicle driver fatigue offences consistent with the approach adopted by the State for implementation of the Compliance & Enforcement Bill. Existing regulatory arrangements applying to the bus sector in NSW will remain in place. WA will continue to operate under local OH&S laws, while noting alignment with key aspects of the fatigue reform. [ACT] flagged an intention to retain its exemption and existing administrative arrangements."
- ³⁵ NTC, Heavy Vehicle Driver Fatigue Final Regulatory Impact Statement, Dec 2006. Referring also to a study report NTC (2006). Performance Monitoring of Remote Areas Livestock Transporters, July.
- ³⁶ National Model Codes for Livestock Transport are long established and in operation. Refer section A.

- ³⁷ The emerging Heavy Vehicle Driver Fatigue legislation could prompt substantial driver and transport changes, even though sectors in the Red Meat Industry will endeavour to offset this by accreditation of Advanced Fatigue Management Schemes. The Northern Territory Cattlemen's Association has already moved to design research for 'a driver fatigue management scheme for remote area livestock transport operators that will improve safety while preserving cattle industry viability'.
- ³⁸ Internet searches for 'Chain of Responsibility' predominantly locate Australian road laws and guides. There is no indication that the concept is an internationally established legal principle.
- ³⁹ Road Transport Reform (Compliance and Enforcement) Bill - Approved 3 November 2003.
- ⁴⁰ NSW: Road Transport (General) Act 2005 and regulations, also Compliance and Enforcement Fact Sheets for all parties www.rta.nsw.gov.au/heavyvehicles/downloads/hv_ce_factsheets_dl1.html. Victorian legislation came into force 1 Sept 2005 backed by inspection and search powers enacted 2003. www.vicroads.vic.gov.au/Home/HeavyVehicles/. In South Australia the model legislation came into effect on April 30 2007 through amendments to the Road Traffic Act 1961, Motor Vehicles Act 1959, Summary Offences Act 1953. Queensland considers it 'already has many of the proposed reforms in existing legislation for example chain of responsibility. New law is underway. transport.qld.gov.au/
- ⁴¹ NSW Legislative Assembly Hansard, Road Transport (General) Bill, Second reading, 8 Dec 2004.
- ⁴² eg. the RTA may issue include warnings and improvement notices, which identify improvements a business can make to its systems to ensure compliance. Courts can make intervention orders, licensing sanctions, prohibition orders, commercial benefits penalties.
- ⁴³ This outline was placed on the NTC website in 2002, and was still in place on the site in June 2007.
- ⁴⁴ Model Road Transport Reform (Compliance and Enforcement) Bill *Regulatory Impact Statement* 11.03.
- ⁴⁵ The RIS does not mention 'business cost', 'innovation' or 'investment'. It includes a few commercial references. eg. p 48: " the penalties that may be levied could be substantially in excess of those available under the fines arrangements. This means that the sanctions regime can deal effectively with the illegal profits that can be earned through systematic non-compliant behaviour, preventing fines being considered simply as an 'expense'."
- ⁴⁶ eg. Queensland Government, *Chain of Responsibility (COR) Forum Workshop Report - A First Step in Preparation for the Introduction for the Compliance and Enforcement Bill*, Feb 2006.
- ⁴⁷ NTC Fact Sheet April 2003: *New Laws Make All Accountable - Revised Road Transport Reform (Compliance and Enforcement) Bill Absolute liability and the reasonable steps defence.*
- ⁴⁸ National Transport Commission (Model Legislation – Heavy Vehicle Driver Fatigue) Regulations 2006. See also the Notes: (1) It is the performance of any of these functions, whether exclusively or occasionally, that determines whether a person falls within any of these definitions, rather than their job title or contractual description. (2) A person may be a party in the chain of responsibility in more than 1 capacity. eg. A person may be an employer, operator and consignor at the same time in relation to a driver and be subject to duties in each of the capacities. Note Section 147 of the C&E Act also provides that a person may be liable for a breach in one or more capacities under the chain of responsibility.
- ⁴⁹ Referring to the UK Better regulation Taskforce 2004 report, *Avoiding Regulatory Creep*. Management-Issues (2004), Regulation: the phantom menace, 21 Oct, www.management-issues.com [2.06]
- ⁵⁰ The Dodemaide Transport decision handed down on 16 March 2007 by the Horsham Magistrates' Court is the first substantial case. Charges appear to have been limited to the company and employees.
- ⁵¹ Under the NSW laws now operative: The consignor/dispatcher "must make sure that your delivery request doesn't require a truck driver to: Transport goods that go beyond vehicle dimension or mass limits. Inappropriately secure the load. Exceed the permitted number of driving hours. Fail to have minimum rest periods. Exceed the speed limits." The Heavy vehicle driver "must maintain current obligations to make sure: The vehicle does not exceed dimension or mass limits. The load is appropriately restrained. All required equipment is properly fitted to the vehicle. Required rest breaks are taken and driving hours regulations and speed limits are observed. Safe and responsible driving behaviour is demonstrated at all times." http://163.189.7.150/heavyvehicles/complianceenforcement/ce_chain.html [6.07]
- ⁵² Accurate weighing equipment is not widespread on farms, and weight estimation is unreliable particularly when added across numbers of animals, and in changing climatic conditions eg. damp wool.
- ⁵³ In 1997, SCARM promulgated the *National Guidelines for Beef Cattle Feedlots in Australia*, which is at times referred to by State regulators as "the principle reference document for the establishment and operation of cattle feedlots throughout all States of Australia". www2.dpi.qld.gov.au/environment/1222.html
- ⁵⁴ *Guidelines for Establishment and Operation of Cattle Feedlots in South Australia*, 2nd Edn, Feb 2006.
- ⁵⁵ MLA, tips & tools - *The National Beef Cattle Feedlot Environmental Code of Practice* 2000

⁵⁶ *Guidelines for the Environmental Management of Beef Cattle Feedlots in Western Australia*, July 2002 “These ... should be used in conjunction with the National Guidelines for Beef Cattle Feedlots in Australia (SCARM, 1997) and National Beef Cattle Feedlot Environmental Code of Practice (MLA, 2000). The National Guidelines provide additional information on acceptable standards for the establishment, operation and environmental management of feedlots in Australia.”

⁵⁷ *Major Project Assessment: Moira Station Cattle Feedlot*, Director-General Environmental Assessment Report, Section 75I of *Environmental Planning and Assessment Act 1979*, March 2006. Requirements included: an Effluent Irrigation and Wastewater Management Plan prepared in consultation with the DNR and DEC to manage liquid and solid waste issues, including monitoring of soil, water, nutrient and salt levels; plus, a detailed groundwater monitoring program in consultation with the DNR and DEC which will monitor any potential groundwater impacts during the operation of the project and implement further management measures should any impacts occur.

⁵⁸ Pollutant Release and Transfer Registers are operative in many countries. Australia’s NPI does not (as yet) record transfers. These registers trace to Principle 10 of the Report of the United Nations Conference on Environment and Development, 1992 (Agenda 21) to which OECD Member countries are subscribed.

⁵⁹ *Guidelines for Establishment and Operation of Cattle Feedlots in South Australia* 2nd Edition, Feb 2006

⁶⁰ *NPI Emission Estimation Technique Manual for Intensive livestock beef cattle* Version 3.1 May 2007

⁶¹ *National Pollutant Inventory Guide*, September 2006 version 3.2 (v1, 1998).

⁶² An SCU is a Standard Cattle Unit, an animal about 600kg. Category 2 is Emissions to air associated with fuel combustion. Category 3 is Total Nitrogen and Total Phosphorus releases to surface water.

⁶³ Environment Link and associates, *Review of the National Pollutant Inventory*, final report April 2005.

⁶⁴ Draft Variation to the National Environment Protection (National Pollutant Inventory) Measure Impact Statement, June 2006.

⁶⁵ Correspondence includes: DAFF Executive Manager to DEH First Assistant Secretary 4 October 2006. Chair NPI Implementation Working Group to ALFA 23 February 2006. ALFA to National Environment Protection Council 22 May 2007 (on greenhouse gas reporting). ALFA to COAG Climate Change Group PMC re: Greenhouse energy and reporting regulatory impact statement, May 2007.

⁶⁶ Draft Variation to National Environment Protection (National Pollutant Inventory) Measure Impact Statement, 2006. In rapidly progressing this changed of vehicles the NEPC working group referenced back to evaluation of greenhouse gas reporting in the 2006 Regulatory Impact Statement.

⁶⁷ *Livestock Export Review* (Keniry report) Report to the Minister for Agriculture, Fisheries & Forestry. Dec 2003.

⁶⁸ Hassall & Associates (2006) *The Live Export Industry: Value, Outlook and Contribution to the Economy*.

⁶⁹ The 2003 Review noted that ‘overall sheep mortalities have declined from 1.34% in 1999 to 0.79% for the year to September 2003; cattle mortalities ... declin[ed] from 0.34% in 1999 to 0.11%’ in 2002. Further, AMSA records from 1999 to 2002 showed between 1% and 6% of voyages resulting in reportable mortality incidents for cattle or sheep. See also: www.daff.gov.au/animal-plant-health/welfare/export-trade/mortalities.

⁷⁰ An industry commissioned study by State Departments of Agriculture [Norris et al (2003), *Aust Vet J* 81:3] found “cattle have a low risk of death during sea transport from Australia”. The study was part of the industry response to cattle deaths on a Middle East voyage in 1998. Other industry responses included: “reduced stocking rate during winter months and body weight restrictions on voyages from ports south of 26’ latitude, ... at least one trained stockperson to accompany all cattle voyages, investigation of any voyage with a death rate above 1%, and funding of a substantial research program to improve the welfare and management of cattle before and during live exports”.

⁷¹ Management Advisory Committee, *Reducing Red Tape in the Australian Public Service*, Report 2007; P Shergold, Speech at the Management Advisory Committee’s joint launch of the ‘Red Tape Report’, Feb 2007: “There has been a tendency by governments and, let me be explicit, the public administrations who serve them, to regulate any public policy problem into shape – whether it’s access to water, the preservation of the environment or the layout of a hair dressing salon. While regulation has its place ... there may be far less intrusive and more cost-effective ways of achieving the public good than introducing another law or imposing another regulation.”

⁷² “The APSC [Australian Public Service Commission] and the ANAO [Australian National Audit Office] have complementary ... roles in scrutinising public administration in Australia, and in ensuring that our accountability standards remain high – thereby providing assurance that the APS [Australian Public Service] is efficient and ethical and focussed on continuous improvement ...” Lynelle Briggs, Public Service Commissioner, speech 29 Nov 2005.

⁷³ Livestock Review Report 2003 - Summary of Government response to report recommendations 2004.

⁷⁴ For copies: <http://www.daff.gov.au/animal-plant-health/welfare/export-trade/v2-1>.

⁷⁵ EAN during 2006 include: Export of Goats, Treatment of Horned cattle, Minimum time in Registered premise, Streptomycin withdrawal, AMSA Clearances, Changes to the Orders relating to airfreight, AQIS Fee increase, Version 2 ASEL, Re-Issue of Health Certificates, Submission of NOIs. In 2007 include: Vets on ships, Export of Heavy Bulls, Japanese Feeder Cattle, Airfreight Checklist, Provision of End of voyage reports.

⁷⁶ <http://www.daff.gov.au/animal-plant-health/welfare/export-trade/v2-1/more>

⁷⁷ Contrast an Explanatory Statement with the Export Control (Animals) Amendment Order 2005 (No. 4) on treatment of animals at sea, indicated some consultation with industry and that: 'The Office of Regulation Review was consulted and advised that as the changes are of a minor and mechanical nature a Regulation Impact Statement is not required.'

⁷⁸ Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 286, Explanatory Statement, Issued by the authority of the Minister for Agriculture, Fisheries and Forestry. Option A was 'continue co-regulatory arrangements', Option C was 'all industry regulation'.

⁷⁹ AQIS Export Advisory Notice number 2006-10, 23 August 2006, New Animal Export Fees.

⁸⁰ Animals transported for ship loading have been prepared and checked for health. Eight hours is a tight prescription. For instance, MLA research has confirmed Model Code of Practice for the Land Transportation of Cattle travel time limits of 36 hours with option to extend to 48 hours (if animals are not displaying signs of fatigue, thirst or distress) is acceptable on animal welfare grounds. MLA R&D 2006 Livestock Road Transport Practices Milestone report.

⁸¹ Examples of conditions set for future shipments: extra holding days before loading, AQIS vet on board, 10% extra space per animal, lower animal weight limits, 'additional space above the ASEL', additional accredited stockmen.

⁸² *Livestock Export Review 2003* (Keniry report) A Report to the Minister for Agriculture, Fisheries and Forestry. p22

⁸³ The Australian government laws set out in the Export Control (Animals) Order 2004 and ASEL (Vessel preparation and loading, On-board management of livestock) "cover only the exporter, AQIS-accredited veterinarians, the registration of premises, and processes relating to the livestock export trade": *Australian Position Statement on the Export of Livestock*, www.daff.gov.au/animal-plant-health/welfare/export-trade/pos-statement.

⁸⁴ From the AMSA website www.amsa.gov.au, and from review of AMSA regulations and associated documents.

⁸⁵ Subsection 425(1AA) of the *Navigation Act 1912* delegates the regulatory role by providing that AMSA may make orders on any matter for which provision may be made by regulation.

⁸⁶ Explanatory Notes, Marine Orders Part 43 (Cargo and Cargo Handling Livestock) Issue 6 Order No 13 of 2006 p1.

⁸⁷ *A Way Forward for Animal Welfare: A report on the Livestock Export Industry* by the Independent Reference Group, Oct 2002. www.daff.gov.au/animal-plant-health/welfare/reports/livestock

⁸⁸ Alliance Resource Economics (2006) *World Livestock Export Standards - A comparison of development processes, systems and outcomes achieved*. MLA.