

BACKGROUND BRIEF

Animals Australia has commenced legal action in the Federal Court to challenge the legality of the granting of a live sheep export permit by the Secretary of the Federal Department of Agriculture and Water Resources (DAWR).

What is the basis of Animals Australia's legal challenge?

Animals Australia is seeking a Federal Court declaration and other related orders from the Court that the granting of an export permit to Emanuel Exports for a shipment of 58,000 sheep - which departed Fremantle on 6 June 2018 and is destined for Persian Gulf Countries of Kuwait and Qatar - is unlawful.

Why is Animals Australia challenging this export permit?

June is the beginning of the official Middle East Summer, where temperatures can exceed 50 degrees Celsius. The welfare implications of shipping sheep from an Australian winter into such extreme heat and humidity have been well known for decades. However, it is only recently that visual evidence of the routine suffering of animals during these high-risk summer shipments has been made available.

The Australian Veterinary Association has recommended against May to October sheep shipments on the basis of unavoidable suffering from heat stress. The government-commissioned McCarthy live export Review recommended moving to a welfare-based heat stress risk assessment model, rather than the traditional mortality-based model. This would have led to significant stocking density reductions (just to reduce suffering from heat stress, not even to completely mitigate it). Neither recommendation has been implemented.

We believe the weight of scientific evidence is that the required animal welfare standards cannot be met during live sheep export voyages to the Middle East in the Northern summer months, and thus, that this export permit should not have been granted.

Did Animals Australia consider getting an injunction?

Yes. The legal course of action available to Animals Australia is to challenge the decision of the Secretary to grant the export permit. The export permit is granted after animals have been loaded and just before the shipment departs. To mitigate potential welfare implications for the animals, rather than an injunction at this time, we have sought to file an urgent application for an expedited hearing of this matter.

What is the basis of Animals Australia's legal challenge?

There are two grounds that Animals Australia will be submitting in this legal challenge:

1. We believe that the granting of this export permit by a delegate of the Secretary for the Department of Agriculture was unlawful; and

2. We believe that no person within the Department of Agriculture should be making a decision regarding permit applications because any such decision is affected by *apprehended bias*. This is because the Department has made it clear publicly on several occasions that the policy of the Government is to continue the live sheep trade to the Middle East, including during the northern summer period. In light of this, any fair-minded lay observer *might reasonably apprehend* that a decision-maker in the Department of Agriculture – when making a decision about a permit application – *might not be able to* depart from the Government’s policy that the trade is to continue.

What are the regulatory requirements for the granting of an export permit?

Exporting livestock from Australia is a *prohibited activity* under Australian law. It only becomes ‘legal’ to export livestock if certain conditions are met. Key conditions include that:

- a ‘permit’ is applied for and then granted by the Department of Agriculture and Water Resources (DAWR);
- that ‘permit’ is granted by DAWR only if certain conditions are met. These conditions include that the Secretary for the Department of Agriculture, or his delegate, be satisfied that the *health, welfare and physical needs of the sheep will be met and maintained* on an export voyage, and that the *travel arrangements for the livestock will be adequate for their health and welfare*; and
- even if the conditions above are met, the Secretary for the Department of Agriculture, or his delegate, may refuse the permit if: by allowing the sheep to be carried on a ship, there is reason to believe that their health during the voyage will deteriorate.

Specifically, the key tenets of the law can be summarised as follows:

The export of livestock (including sheep) is prohibited by s 1A.01 of the *Export Control (Animals) Order 2004* (Cth) (the **Animals Order**) unless, *inter alia*, an export permit for the export by the exporter is in force.

The Secretary of the Department of Agriculture has power to grant an export permit for livestock only if each of the conditions described in s 1A.30(1) of the Animals Order are met, including:

- (a) the Secretary is satisfied that the Australian Standards for the Export of Live-stock (ASEL) “have been, and will continue to be, complied with” in relation to the sheep, where the ASEL require that the health, welfare and physical needs of the sheep are met and maintained on an export voyage;
- (b) the sheep “are fit enough to undertake the proposed export voyage without any significant impairment of their health”; and
- (c) the travel arrangements for the sheep “are adequate for the health and welfare.”

Even if each of the conditions described in s 1A.30(1) of the Animals Order is met, the Secretary may under s 1A.31(1) refuse to grant an export permit if the permit would, if granted, allow live-stock:

- (a) “to be carried on a ship ... the condition of which there is reason to believe may cause the health or condition of live-stock to deteriorate during an export voyage”; or
- (b) “to be exported by a person whose actions there is reason to believe may cause the health or condition of live-stock to deteriorate during export.”

Hasn't the government increased space for sheep on board?

Reducing stocking density will not prevent heat stress. High stocking densities exacerbate heat stress but are not the cause of it.

How long will this process take?

We have applied to the Federal Court for an expedited hearing. The process is likely to take a number of weeks but this will be determined by the Court's findings on various points of law that will require submissions from all parties. If there is disagreement and a lack of consent or cooperation as between the parties on these issues, then this process will likely take longer.

What are the implications of the outcome?

If the Federal Court determines that the granting of this export permit was unlawful based on the welfare implications of shipping sheep into the Middle Eastern summer, then this may impact on any future decisions made by the Secretary on export permit approvals. This is because we believe that the facts and circumstances specific to the voyage in question are not unique to this voyage, and indeed apply to all high-risk summer shipments to the Middle East.