

BEEFING UP THE STANDARD: THE RAMIFICATIONS OF AUSTRALIA'S REGULATION OF LIVE EXPORT AND SUGGESTIONS FOR REFORM

KATRINA J CRAIG*

In Australia, animals intended for human consumption are first required to be 'rendered insensible' (stunned) and then slaughtered before they regain consciousness. However, research has shown that it is common practice in international slaughterhouses to condone methods that prolong the slaughtering process and torture the animal prior to its death. This paper is directed at illustrating the way in which the standards that ensure a relative degree of welfare for Australian animals are foregone once livestock reaches foreign ports, as the current export standards only ensure the consideration of the animals' welfare whilst in Australian jurisdiction. Consequently, altering the methods utilised by Australia to export live animals may increase levels of animal welfare, while simultaneously boosting employment opportunities within the Australian agricultural industry. This paper examines proposals for future reform of Australia's live export industry while alternatives, such as the supply of chilled meat, are suggested. It is concluded that the welfare of Australian livestock needs to be maintained from birth to slaughter. Accordingly, current policy requires a reform of the way in which live export is regulated to ensure the future welfare of livestock, maintain the economic strength of the Australian livestock industry and increase employment opportunities for those involved in the international distribution of livestock.

I INTRODUCTION

Australia is a leading supplier of high quality livestock to approximately 28 countries around the world.¹ Many of these importing countries do not possess the resources, environmental conditions or geography to successfully produce adequate numbers of livestock to satisfy their population.² As such, it is suggested that Australia's agricultural trade industry assists these regions by exporting livestock for food production and breeding, as well as in the form of chilled or frozen meat products.³

* LLB (Hons) (Qld), BPsySci (Qld), GradDipLegPrac (Qld)]; Solicitor of the Supreme Court of Queensland and the High Court of Australia; candidate for Master of Philosophy, in Animal Law and Welfare, at the University of Queensland.

¹ Meat and Livestock Australia, *Livestock Production: Transportation* (2012) <<http://www.mla.com.au/Livestock-production/transport>>.

² Meat and Livestock Australia, *Animal Health, Welfare and Biosecurity* (2012) <<http://www.mla.com.au/Livestock-production/Animal-health-welfare-and-biosecurity>>.

³ Department of Agriculture, Fisheries and Forestry, *Live Animal Export Trade* (2013) <<http://www.daff.gov.au/animal-plant-health/welfare/export-trade>>.

In addition to providing global importers with high quality meat, Meat and Livestock Australia (MLA) asserts that the Australian livestock industry also supports thousands of farming families by employing 13,000 people across rural and regional Australia and contributing \$1.8 billion to the national economy.⁴ It is further claimed that the international live export trade underpins the prices for numerous livestock producers across Australia by ‘providing an additional market’ to which these products may be sold.⁵

However, recent investigations into the welfare of Australian livestock, upon arrival at international destinations, have revealed that exported animals are often paying a devastating price for the national profit generated by the industry.⁶ These investigations have documented many instances of unnecessary suffering, ill-treatment, and cruel methods of slaughter of Australian livestock upon arrival at the various international importing destinations.⁷ This highlights that the welfare of these animals is rarely regulated, or considered, as a priority by the importing countries.

This paper does not review Australia’s commitment to, or regulation of, livestock welfare during the processes of domestic husbandry and handling. Rather, it illustrates the way in which Australian animal welfare regulations are limited once livestock reach foreign ports, where the standards of animal care are comparatively lower. Further, this paper purports that in order to achieve higher welfare standards for livestock, while maintaining Australia’s international trade relationships, profitability and employment opportunities, the chilled meat trade should replace the live export industry to all countries where that it is possible. In instances where it is not viable to supply chilled or frozen meat, livestock should be supplied by attaching standards, compliant with the Office International des Epizooties (OIE)⁸ guidelines, to the animal rather than the geographical location.

This paper will commence with an overview of Australia’s regulation of the live export of farmed animals, focusing on the political consequences of the current policy, particularly with regard to the recent Indonesian and Egyptian live export bans. Subsequently, the welfare of Australian livestock will be considered in the context of the cultural preference for freshly slaughtered meat. Before the implications of Australia’s live export trade on the welfare of farmed animals is assessed, the justifications for continuing the live export trade will be highlighted with reference to the ‘halal’ standards required by Islamic importers. Following this, the future of Australia’s live export trade will be evaluated, focusing largely on the ethical grounds that justify a revision of Australia’s current approach to this issue. Proposals for future reform will then be examined and alternatives to live export, such as the supply of chilled and frozen meats, will be proposed. It will then be concluded that the welfare of Australian livestock needs to be maintained from birth to slaughter, regardless of their geographic location. Consequently, the current policy requires reform to ensure the future welfare of livestock, maintain the strength of the Australian economy in this industry and increase employment opportunities for those involved in the distribution of livestock, both domestically and internationally. These proposed changes will ensure that livestock are treated as sentient beings rather than mere commodities for profit, without foregoing the livelihood and wellbeing of Australia’s export industry and its contributors.

⁴ Meat and Livestock Australia, *About the Red Meat Industry* (15 February 2013) <<http://www.mla.com.au/About-the-red-meat-industry/Livestock-exports>>.

⁵ Ibid.

⁶ Department of Agriculture, Fisheries and Forestry, *Live Animal Export Trade* (2012) <<http://www.daff.gov.au/animal-plant-health/welfare/export-trade>>.

⁷ Ibid.

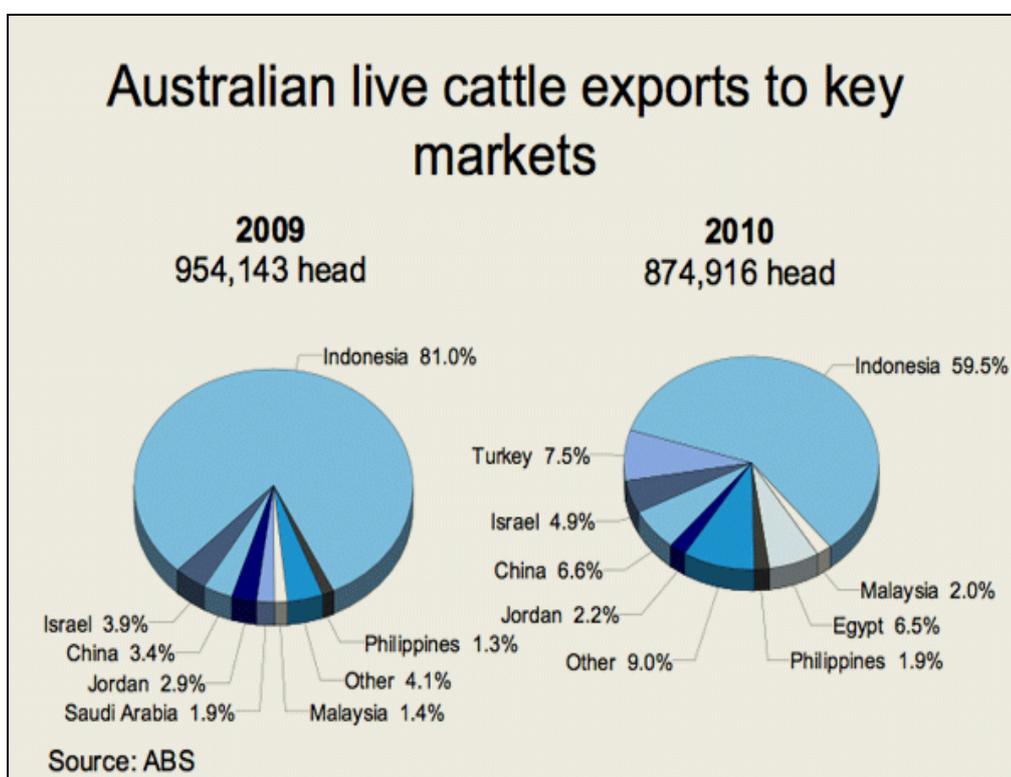
⁸ Also known as the World Animal Health Organisation.

II THE AUSTRALIAN LIVE EXPORT PROCESS

This section of the paper will present an overview of Australia's current regulation of the live export of farmed animals. The overview will illustrate the process by which Australian livestock are transported from their respective farming stations to foreign ports. It will be highlighted that, upon arrival at these foreign ports, the livestock are no longer protected by Australian law or regulation. It will further be noted that, as a result of this lack of regulation, Australian livestock are often subjected to cruel, and unnecessary, practices of transportation, handling and slaughter.

In 2009, approximately 3.56 million sheep and 954,143 cattle were exported live from Australian ports.⁹ A large proportion of Australian sheep are shipped to the Middle East, with Saudi Arabia being the main importer.¹⁰ Meanwhile, ports closer to Australian shores, such as those in Indonesia, import the majority of live cattle.¹¹ Figure 1 below¹² illustrates the primary importers of Australian beef livestock in recent years.

Figure 1



Many Australian export companies are funded by the Federal Government through statutory levies.¹³ Such corporations also have a Statutory Funding Agreement with the Federal Government detailing accountability and other obligations of the exporting company.¹⁴ When

⁹ Meat and Livestock Australia, above n 2.

¹⁰ Ibid.

¹¹ Michael Caulfield, 'Live Export of Animals' in Peter Sankoff and Steven White (eds) *Animal Law in Australasia: a new dialogue*, (Federation Press, 2009) 153-173.

¹² Australian Bureau of Statistics via 'Future Beef', *Livestock Markets*, (2013) <<http://futurebeef.com.au/topics/markets-and-marketing/live-export/Z>>.

¹³ LiveCorp, *Facts and Stats* (2013) <http://www.livecorp.com.au/Facts_and_Stats.aspx>.

¹⁴ Ibid.

exporting livestock from Australia, there are several processes with which companies must comply at each stage of the exportation process.¹⁵ All exporters are required to have a licence and each export needs a permit to gain approval for release from customs.¹⁶ Without this export permit, the livestock consignment cannot leave Australia. Failure, by an exporting company, to abide by Government orders under the *Australian Meat and Livestock Industry Act 1997* (AMLI Act) can result in the loss of licence.

Additionally, each proposed export must obtain Government approval for the export destination and relevant contingency planning.¹⁷ The selected livestock are subsequently transported to feedlots for pre-shipment quarantine where they remain for at least one week prior to loading.¹⁸ At these feedlots, the animals are commonly inspected by a veterinarian from the Australian Quarantine and Inspection Service (AQIS) who must issue a 'permit to leave for loading' prior to the consignment being transported to the docks.¹⁹ The livestock are then transported via trucks to the selected ports where they are loaded onto the vessels. These vessels are often bound for the Middle East or Asia,²⁰ where animal welfare standards are comparatively lower to Australian standards or non-existent.²¹

Livestock destined for the Middle East are accompanied by up to five independently accredited company stock workers and a third party veterinarian.²² It is noted by the author that the ratio of five stock workers and one veterinarian charged with the care of 100,000 livestock hardly falls in favour of animal welfare. Nevertheless, whilst onboard export vessels, the livestock are cared for to a standard which ensures that the majority of the animals survive the journey to foreign destinations.²³ All shipping vessels are required by the Australian Maritime Safety Authority (AMSA), under Marine Order 43, to be equipped with continuous food and water supplies for livestock. All vessels on long voyages are equipped with facilities to produce their own fresh water while at sea.²⁴ The Australian Standards for the Export of Livestock stipulate the quantity of water required for the differing species of livestock. Prior to disembarking from Australian shores, the quantity of food and water on board is examined by the AQIS before a health certificate may be issued.²⁵

Journeys transporting livestock via airfreight are controlled by the International Air Transport Association (IATA) Live Animal Regulations and are also governed by the Australian Standards for the Export of Livestock.²⁶ 'Trigger Levels' are utilised to regulate mortality rates of livestock during such voyages.²⁷ These levels are part of the AMSA Marine Order 43 and, if reached, require the ship's master to report to the AMSA before an investigation is instigated into causation.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Meat and Livestock Australia, above n 2.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ As illustrated in Figure 1 above.

²¹ United States Department of Agriculture, *Beef...from Farm to Table*, (2012) <http://www.fsis.usda.gov/factsheets/beef_from_farm_to_table/index.asp#2>.

²² Meat and Livestock Australia, above n 2.

²³ Ibid; it takes on average, three weeks to ship Australian livestock to the Middle East.

²⁴ LiveCorp, above n 14.

²⁵ Meat and Livestock Australia, above n 2.

²⁶ Ibid.

²⁷ Mortality rates: Sheep 2%, Beef (long voyage 1% and short voyage 0.5%).

Upon their arrival at the foreign ports, the animals are offloaded into international feedlots where they are distributed to slaughterhouses and residential homes.²⁸ In an effort to illustrate their commitment to the welfare of Australian livestock, MLA has stipulated that producers of livestock must consider the five freedoms for animals and recognise the need to incorporate them into export management plans.²⁹ These five freedoms are borne from the RSPCA's belief that there are basic, fundamental principles to which animals should be entitled to, namely: freedom from hunger and thirst; freedom from discomfort; freedom from pain, injury and disease; freedom to express normal behaviour; and freedom from fear and distress.³⁰

As a result of these guidelines, MLA purports that on average, over 99% of all Australian animals arrive 'fit and healthy' at their port of destination.³¹ However, Australian organisation 'Live Export Shame' (LES) asserts that these claims are used in an effort to misguide public perception of the live export trade.³² While LES agrees that Australia leads the world in the greatest number of sentient animals being exported overseas, they note that Australia also leads the world in causing massive 'suffering, cruelty and brutality to millions of animals every year' through the current regulation of the livestock trade.³³ Moreover, these guidelines are not mandatory. It may be sufficient for companies to merely consider these standards, rather than strictly abide by them, before exporting livestock.³⁴

Once offloaded at international ports, livestock are beyond the jurisdiction of Australian law.³⁵ Consequently, the Australian Government is unable to ensure that livestock are handled or slaughtered in accordance with Australian standards. Research has indicated that inhumane slaughter and handling practices that would be considered to be in breach of Australian laws, are common among importing countries.³⁶

Evidence has also illustrated that international buyers of livestock will often transport their purchases in car boots or on roof-racks in temperatures exceeding 40°C.³⁷ In some instances, sheep are herded into slaughtering facilities before being individually dragged to the slaughter area where their throats are cut and they are left to 'bleed out' over a drain.³⁸ Additionally, cattle's tendons may be slashed and their eyes gouged before their throats are cut without prior stunning. In Australia, these practices are illegal and the slaughter of all livestock is strictly regulated.³⁹

²⁸ Live Export Shame, *World's Best Practice in Live Export – just what does this mean?* (2012) <http://www.liveexportshame.com/worlds_best_practice.htm>.

²⁹ Meat and Livestock Australia, above n 3.

³⁰ RSPCA Australia, *Five Freedoms for Animals* (2009) <<http://kb.rspca.org.au/entry/318>>.

³¹ Ibid.

³² Live Export Shame, above n 29.

³³ Ibid.

³⁴ Ibid.

³⁵ Ban Live Export, *About Live Export* (2012) <<http://www.banliveexport.com/>>.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

III THE POLITICAL CONSEQUENCES OF AUSTRALIA'S LIVE EXPORT INDUSTRY

The previous section of this paper provided an overview of the process by which Australian livestock are transported from their respective farming stations to foreign ports. It was noted that, due to the inability to apply Australian welfare standards upon arrival at these foreign ports once the livestock are in the control of the importing countries, Australian livestock are often subjected to cruel and unnecessary practices of transportation, handling and slaughter. This section of the paper focuses on the political consequences of the current policy and the effect it has had on the livestock, the agricultural industry and the importing countries. In particular, this section presents a case study involving the Indonesian live export ban of 2011 and briefly reviews the recent Egyptian Live Export Ban of 2013, highlighting the consequential repercussions suffered by both the industry and the animals as a result of these abrupt interdictions.

In recent years, there have been a number of investigations, reports and media releases regarding the cruel methods utilised by international abattoirs during the slaughter of Australian livestock for human consumption.⁴⁰ Arguably the most confronting, and widely viewed by the Australian public, was an explicit exposé broadcast on the Australian television news program 'Four Corners' in 2011.⁴¹ This report featured graphic footage of Australian livestock being mistreated during processing at several Indonesian abattoirs and highlighted a distinct lack of consideration for animal welfare standards.⁴² The public reaction to this report was immense. In three days 200,000 Australians joined the 'GetUp petition' directed towards persuading the Federal Government to ban live export.⁴³ In response to this overwhelming public reaction, the Federal Government temporarily suspended the live cattle trade to Indonesia.⁴⁴

A *The Indonesian Live Export Ban of 2011*

Indonesia is Australia's most significant live beef export partner.⁴⁵ The ban on Indonesian live export began in June 2011 and lasted approximately four weeks. The implementation was so sudden that organisations involved in the livestock industry suffered significant consequences due to the lack of time available to implement contingency plans.⁴⁶ This ban was the Government's reaction to public pressure, political influence and significant lobbying by animal advocacy groups.⁴⁷ Minister for Agriculture, Mr Joe Ludwig, believed that while

⁴⁰ Ibid.

⁴¹ Australian Broadcasting Corporation, *A Bloody Business* (2011) <http://www.abc.net.au/4corners/special_ed/20110530/cattle/>.

⁴² Anne Worthington 'Live exports to shamed abattoirs suspended' *Australian Broadcasting Corporation News* (online) 1 June 2011, <<http://www.abc.net.au/news/2011-05-31/live-exports-to-shamed-abattoirs-suspended/2738896>>.

⁴³ Ban Live Export, above n 26.

⁴⁴ Malcolm Farr 'Cattle industry reeling over live export ban to Indonesia' *News.com.au* (online) 8 June 2011, <<http://www.news.com.au/business/cattle-industry-reeling-over-live-export-ban-to-indonesia/story-e6frfm1i-1226071368446#ixzz1ajiQUOPq>>.

⁴⁵ Contributing \$319 million to the Australian economy and importing 59.5% of the country's cattle in 2010 according to Bill Farmer, 'Independent Review into Live Export Trade -Australia Indonesia Business Council' on *Minister for Agriculture, Forestry and Fisheries* (June 2011) <http://www.maff.gov.au/media_office/media_releases/media_releases/2011/june/mr-bill-farmer-ao-to-conduct-independent-review-into-live-export-trade>.

⁴⁶ Farr, above n 45.

⁴⁷ Ibid.

the Government's response was focused on animal welfare issues, the sustainability of the live export industry was in jeopardy following the sudden ban.⁴⁸ Similarly, Senator Barnaby Joyce of the National Party claimed that the ban of live exports to Indonesia 'could wreck the livelihood of beef producers and transporters here, as well as meat suppliers in Indonesia'.⁴⁹ Further, Mr Warren Truss of the National Party stated that it was clear the Government had no contingency plan for the cattle industry following the sudden ban.⁵⁰ Conversely, Independent Senator Nick Xenophon stated that the ban was evidence that 'the Government has finally listened to the Australian people that they do not support such cruel and inhumane treatment of animals.'⁵¹

The sudden ban also had devastating effects on many of the livestock that were preparing for the voyage to Indonesia. An Australian cattle station owner reported that he would be forced to begin shooting his stock as he could no longer afford to support them due to the ban.⁵² The Federal Opposition stated that this case was evidence that the live export ban was causing significant animal welfare issues in Australia.⁵³ However, Senator Ludwig countered that the cattle station owner could access emergency funds if needed.⁵⁴ Further, chief executive of the RSPCA Heather Neil stated that 'no cull should be necessary of cattle in Australia' if the pastoralists were accessing and investigating the financial assistance and support available to them during the ban.⁵⁵

Exactly one month after its commencement, Senator Ludwig announced that the Government had lifted the ban.⁵⁶ However, trade did not resume immediately due to the introduction of a revised Industry Action Plan (IAP) that required exporters to obtain new permits and increase their monitoring of livestock.⁵⁷ Under this new system, exporters were obliged to track their livestock to ensure that they are slaughtered in approved abattoirs. Additionally, the Indonesian abattoirs were to be subjected to independent audits to ensure their processes satisfied international standards.⁵⁸

Senator Ludwig assured the public that the permits and independent audits would compel exporters to guarantee higher welfare standards for the cattle.⁵⁹ Mr Ludwig stated that 'these strict new conditions have been written into all export permits' and that 'permits will only be issued to those exporters who can demonstrate that this will be the case.'⁶⁰

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Bronwyn Herbert 'Cattle cull shines live export ban in political spotlight' *Australian Broadcasting Corporation News* (5 July 2012) <<http://www.abc.net.au/pm/content/2011/s3261734.htm>>.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Steven Scott 'Live Export Ban Lifted...with a catch' *Courier Mail* (7 July 2012) <<http://www.couriermail.com.au/business/live-export-ban-lifted-says-agriculture-minister-joe-ludwig/story-e6freqmx-1226089173962>>.

⁵⁷ Herbert, above n 53.

⁵⁸ Australian Government Live Exports, *Livestock export supply chain regulatory approach* (2011) <http://liveexports.gov.au/__data/assets/pdf_file/0005/1955624/supply-chain-assurance-and-welfare-standards-080711.pdf>.

⁵⁹ Ibid.

⁶⁰ Scott, above n 57.

The Greens Party condemned the resumption of the live export trade, maintaining that the new permit system was inadequate as it did not require animals to be stunned prior to their slaughter.⁶¹ While international guidelines do not stipulate that cattle must be stunned before slaughter, Mr Ludwig affirmed that exporters would be 'urged to encourage the use of stun guns in overseas abattoirs'.⁶²

Animals Australia (AA) has postulated that merciless treatment will continue under the recently introduced IAP. Consisting of three fundamental elements, namely to increase the use of restraint boxes, to advance the use of stunning in five Indonesian abattoirs and a 'desired outcome' to satisfy OIE standards by 2015, these proposals are not new and have previously failed to ensure the welfare of Australian livestock.⁶³

The Keniry Report, released in early 2004, contained eight suggestions for future reform of the live export trade. While these recommendations had the potential to improve the practices involved with Australia's live export trade, the RSPCA highlighted that these proposals were not binding on the industry and acted as mere 'ideas' for bettering the animal welfare standards during live export.⁶⁴ As such, the RSPCA currently contends that 'there remain inherent problems in the long distance transport of animals and animals often suffer severe cruelty at their destination'.⁶⁵ Therefore, as the recommendations are purely suggestive, not legally binding and do not protect livestock upon arrival at foreign slaughterhouse, it is unlikely that the IAP will achieve adequate results.

On 18 August 2011 two bills were introduced to the Australian House of Representatives: the 'Live Animal Export Restriction and Prohibition Bill 2011' by Mr Andrew Wilkie, the Independent Member for Denison, and the 'Live Animal Export (Slaughter) Prohibition Bill 2011' introduced by Greens Member for Melbourne, Mr Adam Bandt.⁶⁶ These Bills sought to cease Australia's live export trade but were both denied by the House of Representatives.⁶⁷ Despite their rejection, Ms Siobhan O'Sullivan, a research fellow from the School of Social and Political Sciences at the University of Melbourne, claimed that these proposals were revolutionary as the Australian Government had become progressively more involved with issues relating to the management of live exports. This was evidenced by the request to Prime Minister Julia Gillard, one week prior to the introduction of the Bills, to allow a conscience vote on the issue of live export.⁶⁸ This was significant as, historically, conscience votes had only been permitted for a limited number of matters⁶⁹, none of which traditionally related to animal welfare.⁷⁰

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Caulfield, above n 12.

⁶⁵ Ibid.

⁶⁶ Siobhan O'Sullivan 'Live animal exports and Australian politics; more than a case of conscience' *The Conversation* (23 August 2011) <<http://theconversation.edu.au/live-animal-exports-and-australian-politics-more-than-a-case-of-conscience-2964>>.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ They are: (a) stem cell research, cloning and IVF; (b) abortion, euthanasia and capital punishment; (c) drug reform, war crimes, homosexuality and gambling; and (d) privilege concerns, parliamentary procedure and standing orders.

⁷⁰ O'Sullivan, above n 67.

Ms O'Sullivan contends that the logic supporting the request for a conscience vote relating to the live export trade is possibly linked to a 'sense that [live export] is a deeply felt issue' and that there was a significant response to the *Four Corners* broadcast.⁷¹ However, Ms O'Sullivan also highlighted that the matter of live export is markedly different to the issues that Ministers usually submit for vote in Parliament, based on their conscience.⁷² She explained that the major difference was the significant financial investments and returns associated with the live animal export trade, stating that 'the overtly economic nature of animal agriculture means a conscience vote on the issue is almost unthinkable'.⁷³ The live export industry is largely founded on the notion of 'necessary suffering' that Ms O'Sullivan asserts is at the core of animal welfare law both domestically and internationally.⁷⁴

The principle of 'necessary suffering' infers that it is wrong to cause an animal to suffer unless it is deemed 'necessary'.⁷⁵ Interpretation of this notion requires a utilitarian approach by which the pain and suffering of the animal is weighed up against the potential benefit to humans of treating the animal in a particular manner.⁷⁶ The application of this test is prompted by the inclusion of various characteristics within the protective provisions of the legislation that infuse a degree of subjectivity into what constitutes animal cruelty.⁷⁷ However, it has been commonly held that necessity is satisfied if it is associated with 'standardised, mass animal use, usually for an economic purpose'.⁷⁸ This principle is the basis on which the Australian Government justifies factory farming, yet prohibits acts of violence against companion animals.⁷⁹ As such, despite its significant tradition of suffering, cruelty and death, the acceptability of live export has been maintained through economic rationalisation. Notwithstanding the fact that where economic interests are concerned, necessity may allow increased animal suffering, Ms O'Sullivan postulates that this is not a standard that can endure scrutiny. She asserts that eventually, 'even the most economically advantageous activity will become difficult to justify when the suffering of the animals is sufficiently great and brought to the community's attention'.⁸⁰

In the case of *Department of Regional Government and Local Department v Emanuel Exports Pty Ltd*⁸¹ ('*Al Kuwait*' Case), a magistrate's court was required to consider whether the welfare of the animals being exported live should be subordinated to the 'essentialism' of economic growth.⁸² One of the issues that arose was whether it was necessary to export 'fat sheep' when evidence existed that such sheep were prone to higher mortality rates.⁸³ The Court held that:

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ O'Sullivan, above n 67; Caulfield, above n 12; Deborah Cao, Katrina Sharman, and Steven White *Animal Law in Australia and New Zealand* (Lawbook Co., 2009) 204-207.

⁷⁵ Deborah Cao, Katrina Sharman, and Steven White, *Animal Law in Australia and New Zealand* (Lawbook Co., 2009) 204-207.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ O'Sullivan, above n 67.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ (Unreported, Western Australia Magistrates Court, Crawford M, 8 February 2008).

⁸² Cao, above n 76.

⁸³ Ibid.

The beneficial or useful ends sought to be attained must be reasonably proportionate to the extent of suffering caused and in no case can substantial suffering be inflicted, unless necessity for its infliction can reasonably be said to exist.⁸⁴

Consequently, it was found that the sheep had been subjected to unnecessary harm under the *Animal Welfare Act 2002* (WA). However, the accused parties had been issued an export permit by the Commonwealth Government and so, pursuant to s 109 of the Commonwealth Constitution, were acquitted due to an operational inconsistency between the State and Federal laws.⁸⁵

Despite this acquittal, Ms Glenys Oogjes, Director of Animals Australia, stated that:

[This] finding is not only damning for the industry, as this was a routine shipment, but politically it is groundbreaking. There is now immense pressure on the Federal Government to respect State law.⁸⁶

This ruling highlights the need for legislative reform of Australia's regulation of animal welfare. This need for reform is due to the operational inconsistency between the State and Federal laws as any export permit issued by the Federal Government that allows 'fat sheep' to be transported in the second half of the year⁸⁷ will be permitting animal cruelty under State law. If this inconsistency remains unreformed, the Commonwealth will continue to undermine the States and Territories' power to protect animals in such circumstances. Ms Oogjes supports the necessity of legislative reform, concluding that:

The... Government must act on this ruling by not approving export permits that allow exporters to breach state animal welfare regulations. To do otherwise, would not only be knowingly permitting cruelty, but undermining the ability of the state legislation to protect animals from cruelty.⁸⁸

Despite the acquittal of the accused and the inapplicability of the result as legal precedent, this decision remains significant for a number of reasons. First, its rationale has been accepted by the Government of Western Australia.⁸⁹ Second, it highlighted the difficulty of applying the *Animal Welfare Act 2002* (WA) and similar legislation, to conduct relating to the live export process.⁹⁰ Third, it emphasised the limited protection offered by both the State and Federal legislation.⁹¹ Finally, it illustrated that the 'multiplicity of regulatory sources' hinders, rather than advances the protection of livestock during export due to the operational inconsistencies between differing legislation.⁹² Consequently, although the current regulatory framework is allegedly designed to impose standards of animal welfare upon the industry, the decision in '*Al Kuwait*'⁹³ reveals the inadequacy of the framework's ability to achieve appropriate welfare standards.⁹⁴

⁸⁴ (Unreported, Western Australia Magistrates Court, Magistrate Crawford, 8 February 2008) 98.

⁸⁵ Laura Morfuni, 'Pain for Profit: an analysis of the Live Export Trade' (2011) 16 *Deakin Law Review* 497-538.

⁸⁶ *Ibid.*

⁸⁷ Fat sheep are the primary types of sheep and the peak time for exports according to Morfuni, above n 86.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ (Unreported, Western Australia Magistrates Court, Magistrate Crawford, 8 February 2008).

⁹⁴ Morfuni, above n 86.

1 *The Federal Government's Action on Live Export since the Indonesian Ban*

In response to the Indonesian ban and the subsequent societal tumult, the Federal Government released a plan to reform the live export trade. This plan was announced by the Minister for Agriculture, Fisheries and Forestry, Mr Joe Ludwig, on 21 October 2011.⁹⁵ The reforms were founded on conclusions and recommendations of two Industry Government Working Group reports and the Independent Review of the Live Export by Bill Farmer AO.⁹⁶ The Federal Government has effected these amendments by altering legislative Orders under the *Export Control Act 1982* (Cth) and the *Australian Meat and Live-stock Industry Act 1997* (Cth).⁹⁷

The supply chain assurance framework, developed immediately following the ban in June 2011, was modified and was to be applied to all importing countries by the end of 2012.⁹⁸ This new framework requires all potential exporters of Australian livestock to demonstrate that: the animals will be handled in accordance with OIE standards up to the point of slaughter; they have control of, and can account for, the livestock; and they have independent audits conducted of the supply chain prior, and subsequent, to the completion of export.⁹⁹

Further, the Federal Government has stated that it intends to conduct a 'comprehensive review of the Australian Standards for the Export of Livestock (ASEL) by 29 March 2013' in addition to a review of the current livestock carriage and shipping standards by the Australian Maritime Safety Authority.¹⁰⁰ The Government also claims that it will 'improve the support and assessment of AQIS-accredited veterinarians by providing further training, streamlining reporting processes and strengthening audit methods'.¹⁰¹ In addition, it has been proposed that the Federal Government will be conferring with State and Territory Governments to encourage various amendments to existing legislation, including the incorporation of animal welfare standards.¹⁰²

Internationally, the Federal Government asserts that it will encourage the practice of stunning in export markets but will not make it mandatory as it is not obligatory under the OIE standards.¹⁰³ Also, \$10 million has been allocated over four years¹⁰⁴ to be provided to eligible countries that import Australian livestock in an effort to improve the standards of animal welfare.¹⁰⁵ On the domestic front, the Government has promised to provide five million dollars over two years to support livestock exporters in helping them create improved supply chains.¹⁰⁶ While these suggestions appear to be addressing the issues of livestock welfare, the reform propositions are largely focused on 'conferring', 'suggesting' and 'reviewing' existing methods and regulations. Consequently, there is no indication that existing practices will be amended to a standard that will effect significant change in current animal welfare standards.

⁹⁵ Ibid.

⁹⁶ Department of Agriculture, Fisheries and Forestry, *Australian Government Action on Live Export* (2011) <http://www.daff.gov.au/liveexports/Government_action#new>.

⁹⁷ Ibid

⁹⁸ Ibid; at the time of writing, it is not yet known whether this has been successfully implemented.

⁹⁹ Department of Agriculture, Fisheries and Forestry, above n 97.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ From the 'Official Development Assistance' contingency fund.

¹⁰⁵ Department of Agriculture, Fisheries and Forestry, above n 97.

¹⁰⁶ Ibid.

Over the past few years, it has been alleged that the Federal Government has jeopardised the red meat industry due to the recent mismanagement of the live export trade.¹⁰⁷ The Government figures compiled in 2012 claimed that the live export ban resulted in at least 274,000 animals being stranded, 326 jobs lost in northern Australian and that it affected over half of the northern Australian cattle producers.¹⁰⁸ The emergence of possible class action, brought by beef producers against the Federal Government, is evidence of the significant detriment and loss the ban has caused Australian farmers.¹⁰⁹ It has been revealed that almost 12 months after the Indonesian live export ban, many beef producers are seeking ‘hundreds of millions ... in compensation’ from the Federal Government.¹¹⁰ The release of the 2012 Federal Budget Papers indicated that:

The Australian Government may become liable for compensation following the decision by the Minister for Agriculture, Fisheries and Forestry to suspend the export of livestock to Indonesia for a period of one month in 2011.¹¹¹

In response to the possibility of the class action by beef producers, Independent Member of Parliament, Mr Bob Katter, proposed that MLA should ‘foot the bill’ of the class action compensation stating that ‘[MLA] was paid a hundred million a year to look after our interests [and] quite frankly did nothing whatsoever ... so I would think [they] would be caught in the action here’.¹¹²

However, MLA advised they had not been served with any form of legal notice and their only knowledge of the class action was to the extent that it was mentioned in the 2012 Federal Budget Papers¹¹³. Minister Ludwig himself declined to comment and instead released a written statement advising that he believed ‘it would be inappropriate to comment on any matters that may be subject to action before the courts’.¹¹⁴

The damage sustained by livestock and its producers during the Indonesian Ban was considerably more significant than the alleged changes the Federal Government’s IAP and the new supply chain assurance framework claimed to have on animal welfare.¹¹⁵ In light of the multimillion dollar class action against the Federal Government, the introduction of the permit system and a proposed ‘comprehensive review’ of the current regulations far from provide a solution to the unjustifiable suffering of livestock and its producers during the Indonesian live export ban.¹¹⁶

¹⁰⁷ Patricia Peterson ‘Beef Industry at Threat’ *Warwick Daily News* (10 August 2012) <<http://www.warwickdailynews.com.au/story/2011/08/10/dr-patricia-petersen-lecturer-in-economics-at-cen/>>.

¹⁰⁸ Mitchell Nadin, Milanda Rout ‘Cattle Farmers Demand Compo for Indonesia’ *The Australian* (15 May 2012) <<http://www.theaustralian.com.au/news/nation/cattle-farmers-demand-compo-for-indonesia-live-export-ban/story-e6frg6nf-1226355287475>>.

¹⁰⁹ AAP ‘Beef Farmers seek compensation over live export ban to Indonesia’ *The Herald Sun* <<http://www.heraldsun.com.au/news/victoria/beef-farmers-see-compensation-over-live-export-ban-to-indonesia/story-fn7x8me2-1226355260699>>.

¹¹⁰ *Ibid.*

¹¹¹ James Nason, ‘Talks continue around live export compensation claims’ *Beef Central* (15 February 2013) <<http://www.beefcentral.com/live-export/article/2768>>.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Live Export – Indefensible, *Live Animal Exports; The Issues*, (2011) <<http://liveexport-indefensible.com/facts/issues.php>>.

Further, while the same Government Department¹¹⁷ retains control over both the agricultural industry and standards of animal welfare, there remains a stark conflict of interest that will always inevitably fall in favour of economic gain. While the class action may deliver some reprieve to livestock producers for their losses, the suffering of livestock fails to be addressed, and continues to be intrinsically condoned by Federal legislation. Simply because international guidelines do not require livestock to be stunned prior to slaughter, does not mean that such a requirement is not necessary to achieve and ensure adequate standards of welfare for farmed animals.¹¹⁸

B *The Egyptian Live Export Ban 2013*

Arguably, the most compelling evidence that confirms the inadequacy of the Government reforms can be found in the recently obtained footage of the abhorrent mistreatment of Australian cattle in Egyptian abattoirs. This graphic evidence was obtained by Animals Australia and was subsequently provided to the Department of Agriculture, Forestry and Fisheries in late April 2013.¹¹⁹ In response to this footage, live trade to Egyptian ports was suspended in early May 2013.¹²⁰

Following the implementation of this ban, the damning footage was broadcast publicly on the Australian television program '7.30 Report'¹²¹, featuring evidence captured in late 2012 and early 2013, of Australian cattle being abused in two Egyptian abattoirs.¹²² The video revealed numerous instances of horrific treatment of Australian animals, including: a cow having its eyes stabbed and leg tendons slashed after it escaped from a slaughter box; and a cow that escaped from its restraint box and was found wandering the abattoir with a gaping neck wound, sustained during a failed attempt by abattoir workers to effect successful slaughter.¹²³

This abuse occurred in abattoirs previously described as 'state of the art' by industry leaders.¹²⁴ Mr Jeff Murray, president of the Meat Division of the Western Australian Farmers Federation had reported that he had been impressed with the standards of these Egyptian abattoirs, which he observed during his visit in November 2012.¹²⁵ Mr Murray further stated that the Egyptian Ban is 'another blow to beef producers reeling from falling prices caused by a lack of demand for live exports'.¹²⁶ This response, defending the international abattoirs in which these horrific instances of animal cruelty occur, highlights that the priorities of the Australian agricultural industry lie in the continuation of animal suffering in the name of profit.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Chris Johnson, 'Live exports to Egypt suspended', *Sydney Morning Herald* (Sydney) 4 May 2013.

¹²⁰ Ibid.

¹²¹ James Dowling, 'Videos of cattle abuse halt live exports to Egypt', *Herald Sun*, 3 May 2013.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Brad Thompson and Andrew Tillett, 'Call to make live export ban permanent' *The West Australian*, 7 May 2013.

¹²⁵ Ibid.

¹²⁶ Ibid.

Investigations have now been launched, by relevant Australian and Egyptian regulators, to inspect the current standards and practices occurring in such abattoirs.¹²⁷ Tasmanian Independent Member of Parliament, Mr Andrew Wilkie stated that ‘the latest shocking revelation of cruelty to Australian animals, this time in Egypt, surely must sound the death knell for Australia’s live animal export industry’.¹²⁸ Agriculture Minister Mr Joe Ludwig responded to the public and ministerial pressure to permanently cease the Australian live export trade by claiming that 99.9 per cent of animals exported live were not abused.¹²⁹ Mr Ludwig, however, could not provide a source for this percentage.¹³⁰ Greens Senator, Ms Lee Rhiannon, stated that, ‘[Mr Ludwig] should move quickly to transition away from live exports and establish an overdue independent Office of Animal Welfare’.¹³¹

At the time of writing, the full effect of this new ban is unknown. However, it is anticipated that the consequences will be akin to those suffered as a result of the previously implemented Indonesian live export ban. This strongly highlights that the reforms implemented by the Government, following the Indonesian Ban, have failed. It reinforces this paper’s position that, while the suggestions for reform appear to be addressing the issues of livestock welfare, they are predominantly focused on ‘conferring’, ‘suggesting’ and ‘reviewing’ existing methods and regulations. Consequently, there is no indication that existing practices will be amended to a standard that will effect significant change in current animal welfare standards.

As such, this paper contends that the Federal Government should adopt a proactive, rather than reactive approach, by addressing the root cause of these issues. Instead of spontaneously banning live export to individual importing countries in response to footage of mistreatment of Australian livestock in foreign slaughterhouses, this paper suggests that a proactive approach would primarily involve replacing the live trade with the chilled and/or frozen meat trade.

IV ANIMAL WELFARE V CULTURAL PREFERENCE

The preceding section of this paper focused upon the political consequences of the current policy and the effect it has had on the livestock, the agricultural industry and the importing countries. In particular, it examined the repercussions, on both the industry and the livestock, following the Indonesian live export ban of 2011 and the Egyptian live export ban of 2013. This section of the paper considers the welfare of Australian livestock in the context of the cultural preference for freshly slaughtered meat. Before the implications of Australia’s live export trade on the welfare of farmed animals is assessed, the justifications for continuing the live export trade will be highlighted with reference to the ‘halal’ standards required by Islamic importers.

¹²⁷ Dowling, above n 122.

¹²⁸ Sue Neales, ‘Egypt cruelty death knell for live exports, warns Wilkie’, *The Australian*, 7 May 2013.

¹²⁹ James Nason, ‘Ludwig defends new regulatory system in wake of new cruelty footage’, *Beef Central*, 5 May 2013.

¹³⁰ *Ibid.*

¹³¹ Johnson, above n 120.

Throughout Asia and the Middle East, many developing countries depend on the trade of livestock for their supply of affordable meat products.¹³² A number of these countries cannot afford commodities such as home refrigeration and access to supermarkets.¹³³ Additionally, live animals are considered important for various cultural reasons. For example, the purchase and ritual slaughter of live animals at the end of Ramadan in the Middle East is considered a central component of Islamic culture.¹³⁴ The live export industry purports that because chilled meat and live export serve different purposes, the industry could not be replaced by chilled meat.¹³⁵ Further, the industry asserts that in instances where Australia has been unable to satisfy the demand for live animals in the Middle East¹³⁶, the demand was met by countries such as Sudan, Somalia and Iran that do not share 'Australia's commitment to animal welfare'.¹³⁷

In addition to the cultural justifications for continuing livestock export, the industry claims that the trade is a 'major contributor' to the Australian economy, generating \$1.8 billion annually towards the country's Gross Domestic Product. The industry also provides for almost 13,000 jobs within 30 individual business types and pays a total of \$987 million per year in salaries.¹³⁸ Advocates of the industry maintain that the trade makes a 'huge contribution' to the regional areas of Australia as many of the jobs it provides are located rurally.¹³⁹ This is largely due to the central role played by the industry in supporting the economic activity and social welfare within large divisions of these rural communities that, in turn, assist in maintaining the wellbeing of Australian families.¹⁴⁰ Additionally, Australia has arguably developed a noteworthy trade relationship within the Middle Eastern and Asian meat markets.¹⁴¹ It has been suggested that the strength of this relationship may be in jeopardy if the live export trade were to be banned.¹⁴² However, the Department of Agriculture, Farming and Fisheries (DAFF) estimated that the total value of live exports in 2005 was approximately \$700 million compared to over \$5.9 billion contributed by processed meat exports.¹⁴³

Consequently, it is contended that the trade relationship between Australia and countries throughout the Middle East and Asia would not be significantly compromised if the live export industry were to be phased out. The validity of this assertion is reinforced by the knowledge that certain Australian abattoirs have the ability to successfully perform ritual slaughter, in accordance with both animal welfare guidelines and specific religious requirements. The most common form of religious slaughter required by importing countries throughout the Middle East and Asia is known as 'halal'.¹⁴⁴

¹³² Live Export – Indefensible, above n 117.

¹³³ O'Sullivan, above n 67.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Due to drought or restricted shipping capacity.

¹³⁷ Department of Agriculture, Forestry and Fisheries, above n 97.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ RSPCA Australia, *What is Halal slaughter in Australia?*(2012) <http://kb.rspca.org.au/What-is-halal-slaughter-in-Australia_116.html>.

A *The 'Halal' Standard*

The process that traditionally satisfies the 'halal' standard involves the invocation of Allah's name over the animal prior to slaughter and the cutting of the animal's throat while it is fully conscious.¹⁴⁵ The most practised method of 'halal' slaughter in Australia uses a reversible stunning process rather than the irreversible stunning method used in conventional humane slaughter.¹⁴⁶ This differs to tactics employed overseas due to different interpretations of the Quran where stunning may be prohibited.¹⁴⁷ However, certain abattoirs in Australia may be permitted to perform ritual slaughter in accordance with the nationally adopted guideline 'Ritual Slaughter for Ovine (Sheep) and Bovine (Cattle)', without prior stunning if approved by the relevant meat inspection authority.¹⁴⁸ In such cases, cattle are required to remain in an upright, restrained position and must be stunned instantly after the throat is cut.¹⁴⁹ For the slaughter of sheep, the guidelines stipulate that the jugular veins and the carotid arteries must both be adequately cut. If it is found that these blood vessels are not completely severed, the guidelines require the animal to be immediately stunned to prevent further suffering.¹⁵⁰ Both commercial and 'halal' certified chickens are stunned prior to slaughter.¹⁵¹

As a result of its various investigations, the RSPCA has stated that it is 'strongly opposed to all forms of slaughter that do not involve prior stunning of the animal' as it is deemed to cause unnecessary suffering.¹⁵² This is founded on the fact that the animals subjected to religious slaughter suffer due to 'the use of increased restraints, injuries caused by the slaughter methods, and subsequent bleeding out'. Nevertheless, the RSPCA accepts that while stunning during the slaughter process does mitigate some of these welfare concerns, it does not exclusively eliminate animal suffering.¹⁵³

B *Livestock Mortality Rates*

Despite the fact that the Australian meat production industry has demonstrated that it has the ability to slaughter livestock in accordance with religious requirements such as 'halal', the requirement for live animals persists due to the significant cultural preference that certain markets have for freshly slaughtered meat.¹⁵⁴ Consequently, the question arises as to whether these preferences justify the suffering that Australian livestock endure whilst in transit to, and upon arrival at, foreign ports.

¹⁴⁵ Department of Agriculture, Forestry and Fisheries, *Australian Government Authorised Halal Program - guidelines for the preparation, identification, storage and certification for export of halal red meat and red meat products* (2009) <<http://www.daff.gov.au/aqis/export/meat/elmer-3/notices/2009/mn09-08>>.

¹⁴⁶ RSPCA Australia, above n 145.

¹⁴⁷ Alex Bruce, 'Do Sacred Cows Make the Best Hamburgers? The Legal Regulation of Religious Slaughter of Animals' (2011) 34 *University of New South Wales Law Journal* 359-362.

¹⁴⁸ *Ibid.*

¹⁴⁹ This process is known as 'sticking' and requires one person to perform the sticking and another to control the stunning. During this method, the cattle are stunned immediately if any problems occur while attempting to restrain the animal.

¹⁵⁰ RSPCA Australia, above n 146.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ Department of Agriculture, Forestry and Fisheries, above n 145.

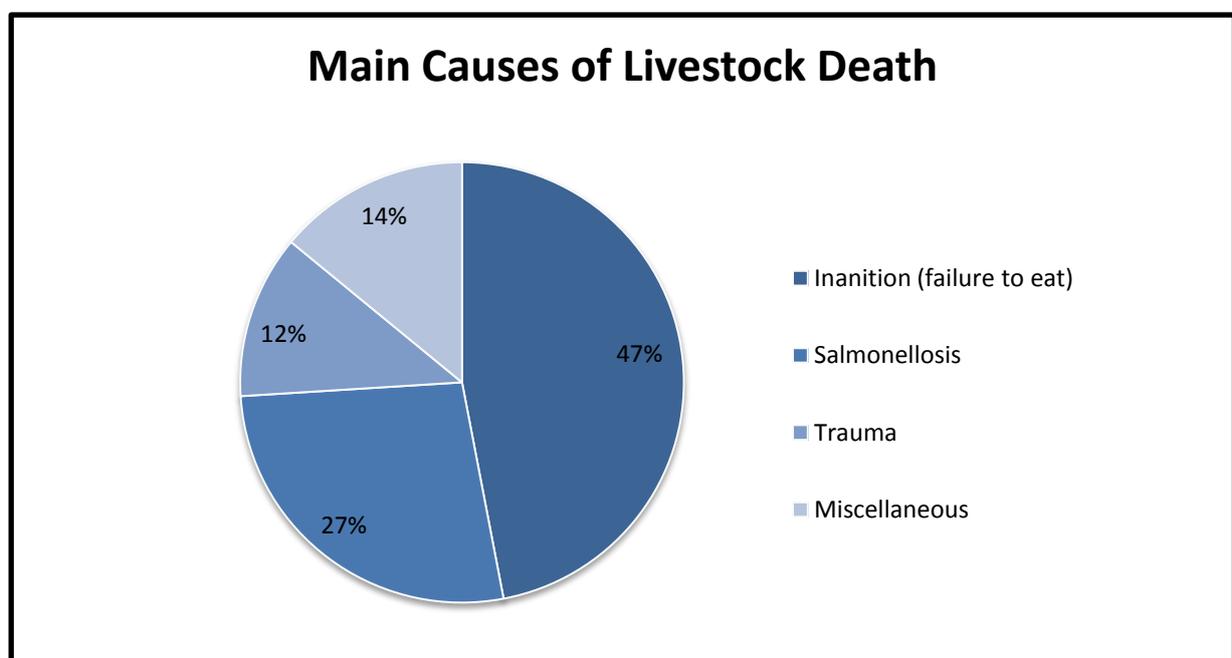
Animals Australia has documented evidence that illustrates that many of the livestock deaths occur during the sea voyage.¹⁵⁵ Pursuant to the *Australian Meat and Livestock Industry Act 1997* (Cth), a report on the mortality rates of livestock exported from Australia is tabled every six months in each House of Parliament. Table 1 provides an illustration of cattle deaths while onboard voyages destined for foreign ports.¹⁵⁶

Table 1 CATTLE EXPORT VOYAGES

Year of Voyage	2005	2006	2007	2008	2009	2010
Number of Voyages	244	221	261	285	339	272
Head Exported	547,356	623,052	712,320	983,653	939,722	848,265
Mortalities	769	1,088	747	1,131	932	1192
Average Mortality Rate	0.14%	0.175%	0.10%	0.11%	0.10%	0.14%

Although 0.14% may appear to be a small median rate of mortality, these figures illustrate that during each voyage in 2010, an average of at least four animals died just *days* after being deemed fit for travel from Australian ports. Figure 2 below exhibits the main causes of livestock death during these voyages.¹⁵⁷ In addition to these median mortality rates, the live export trade has also been wrought with disastrous events in which large numbers of Australian animals have perished.¹⁵⁸

FIGURE 2



¹⁵⁵ Department of Agriculture, Forestry and Fisheries, above n 4.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ In 1999, 829 cattle suffocated after ventilation aboard the *Temurong* failed on a voyage to Indonesia while in 2002, 800 cattle and 1,400 sheep died on board the *Becrux* after overheating.

Further investigations conducted by AA have found that ‘unhealthy’ livestock are often rejected upon their arrival in the Middle East. For instance, over 5,500 sheep died on board the *Cormo Express* in 2003 when 57,000 sheep remained at sea for almost three months after they were rejected by the Saudi Arabian importer on the basis that six percent of the consignment population were infected with scabby mouth.¹⁵⁹

In March 2011, AA and the RSPCA recorded the treatment and slaughter of cattle in 11 Indonesian abattoirs.¹⁶⁰ The results revealed that every slaughterhouse failed to meet international animal welfare guidelines.¹⁶¹ Further, it was found that the majority of animals were tortured prior to slaughter through methods of eye gouging, tail twisting, kicking and tail breaking.¹⁶² On average, these cattle sustained 11 cuts to the throat while fully conscious, with one animal having its throat cut a total of 33 times.¹⁶³ In addition, the investigation revealed that half of the animals being observed showed ‘signs of consciousness’ over 1.5 minutes after having their throat cut.¹⁶⁴ In one instance, an Australian animal was tortured for 26 minutes before being slaughtered.¹⁶⁵

Professor Temple Grandin¹⁶⁶ stated that the restraint boxes installed by MLA and LiveCorp in Indonesian abattoirs breached ‘every humane standard all around the world’ and were ‘absolutely atrocious and unacceptable’.¹⁶⁷ This evidence illustrates the eagerness of the Australian live export industry to provide livestock regardless of the sub-standard handling practices that occur in foreign abattoirs. Further, the installation of the restraint boxes highlights the way in which the industry actively contributes to the mistreatment of Australian livestock.¹⁶⁸

This contribution perhaps, while not justified, is to be expected of the live export industry, due to the large profit involved in maintaining the livestock trade.¹⁶⁹ However, the Federal Government’s knowledge of, and even assistance to, the sub-standard treatment of Australian livestock is less comprehensible.¹⁷⁰ Such knowledge and involvement exposes the actions of Senator Ludwig, and other Members of Parliament, as quite contemptuous and cynical. Consequently, this paper contends that cultural preference for freshly slaughtered meat does not justify the suffering endured by Australian livestock while in transit to, and upon arrival at, foreign ports. Unfortunately, while the Australian Government continues to assist and contribute to the suffering of its livestock in importing countries, this unacceptable treatment will continue. However, it is important to note that currently, this continuation of suffering is founded more upon financial gain of the industry, than cultural preference of the importing country. In any event, it is evident that ensuring the welfare of Australian livestock is not currently considered a priority for the Australian Government.

¹⁵⁹ The acceptable amount of animals being imported by Saudi Arabia with scabby mouth is 5% according to Caulfield, above n 12.

¹⁶⁰ This research laid the foundations for the *Four Corners* broadcast, referred to earlier in this paper.

¹⁶¹ Live Export – Indefensible, *Animal Australia’s Investigations* (2011) <<http://liveexport-indefensible.com/investigations/>>.

¹⁶² Ibid.

¹⁶³ Live Export – Indefensible, above n 117.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ International expert in slaughtering practices.

¹⁶⁷ Sarah Ferguson, *Interview with Temple Grandin from Colorado State University* (30 May 2011) <<http://www.abc.net.au/4corners/content/2011/s3230885.htm>>.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

V THE FUTURE OF AUSTRALIA'S LIVE EXPORT TRADE

The previous section of this paper considered the welfare of Australian livestock in context of the cultural preference for freshly slaughtered meat. It examined the justifications for continuing the live export trade, with particular reference to the 'halal' standards required by Islamic importers. It was concluded that the preference for fresh meat does not justify the unnecessary suffering endured by Australian livestock. Additionally, it was also noted that the Australian Government is currently contributing to this suffering. This section of the paper evaluates the future of Australia's live export trade, focusing predominantly on the ethical grounds that, the writer contends, justify a revision of Australia's current approach to this contentious issue. Several proposals for future reform are also examined while alternatives to the live export trade, such as the supply of chilled and frozen meats, are proffered.

To foster the future of the live export trade, organisations such as MLA and LiveCorp invest levies into the 'Livestock Export Program'.¹⁷¹ This joint initiative endeavours to improve the livestock trade in Australia, during export and upon arrival at foreign slaughterhouses. LiveCorp and MLA assert that these initiatives assist in fostering the future of the live export industry in Australia.¹⁷²

Critics argue that this industry-directed funding for animal welfare research has made it difficult for the public to obtain a clear insight into the implications of the management and husbandry practices conducted within the livestock industry.¹⁷³ The reasons for this may be attributed to the fact that MLA is in control of which research projects are conducted. Professor Clive Phillips, a Professor of Animal Welfare at the University of Queensland, has stated that this needs to be 'changed urgently'.¹⁷⁴ Professor Phillips argues that it would be more beneficial for researchers to be able to publish the results of their investigations without the live export industry dictating what is made public.¹⁷⁵ If the welfare of animals is found to be compromised during the live export process, the industry standards are likely to be challenged.¹⁷⁶ As a result, improved standards may be introduced into the code of practice or legislative provisions that may create difficulty for the industry to change their existing processes. Professor Phillips suggests that it is 'totally wrong' that the industry maintains control over the research projects as there is a 'vested interest in preserving the status quo' and any modifications to the processes are likely to cost the producers money.¹⁷⁷

¹⁷¹ Meat and Livestock Australia, *Livestock Export Program* (2011) <<http://www.mla.com.au/About-the-red-meat-industry/Livestock-exports/Livestock-export-program>>.

¹⁷² LiveCorp Australia, *Trade support – MEA* (2011) <http://www.livecorp.com.au/Member_Services/Business_Services/Trade_Support_MEA.aspx>.

¹⁷³ Michael Atkin, 'Abattoir Research Knocked Back: professor' *Australian Broadcasting Corporation* (9 June 2011) <<http://www.abc.net.au/worldtoday/content/2011/s3239769.htm>>.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

A *Justifications for a Revision of Australia's Regulation of the Live Export of Farmed Animals*

This section of the paper investigates what justifications currently exist that may warrant a revision of the Australian live export trade. In March 2011, the Centre for International Economics (CIE) conducted a study which found that since 2005 the livestock export industry has generated approximately one billion dollars annually, with an average of 74% of this profit going to the producers of livestock.¹⁷⁸ Mr Cameron Hall, CEO of LiveCorp, stated that this evaluation by the CIE confirms the 'significant flow-on benefits the livestock export industry provides to livestock producers and regional economies'.¹⁷⁹ Mr Hall contended that the industry would lose an average of \$126 million each year without the live export trade. He noted that this is largely because boxed meat would be inadequate in substituting the trade in key live export markets.¹⁸⁰

However, over the last two years, three individual economic reports have revealed that live exports are actually undermining the meat processing industry in Australia.¹⁸¹ In a 2009 report by economic consulting firm, ACIL Tasman, an investigation into the live sheep export trade found that phasing out the exportation of live sheep and increased meat processing in Australia would 'reap long-term benefits for farmers and the economy rather than be of significant detriment to the wellbeing of farming families.'¹⁸² In a report commissioned in 2010 by Australia's leading meat processors,¹⁸³ it was revealed that live exports compete with Australia's beef exports and threaten to destroy 36,000 jobs, five billion dollars in turnover and approximately three and a half billion dollars in assets.¹⁸⁴ This investigation highlights that because Queensland cattle are being progressively exported live to Indonesia, this results in lost processing opportunities in Australia. Indonesia perpetuates this loss by imposing high tariffs on imported beef products and prohibiting the importation of fundamental cuts of beef in an effort to protect its own beef industry.¹⁸⁵ Consequently, the export of live animals means that premium Australian cattle are being processed in importing countries and then sold in competition with imported Australian beef.¹⁸⁶ This competition is both detrimental and unnecessary as leading meat processors have unanimously confirmed that Australia possesses the ability to process all sheep and cattle currently being exported live.¹⁸⁷ Further, contrary to the claim that, without live export, many jobs supporting rural communities would disappear, these reports found that 'thousands of jobs would be created by increased domestic processing'.¹⁸⁸

¹⁷⁸ Live Export Care, *Leading economist confirms importance of live export to the Australian economy* (2011) <<http://www.liveexportcare.com.au/LatestNews/Leading+economist+confirms+importance+of+live+export+to+the+Australian+economy.htm>>.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ ACIL Tasman 'Australian live sheep exports: economic analysis of Australian live sheep and sheep meat trade' (2009) [prepared for the World Society for the Protection of Animals] <<http://www.humanechain.org.au/media/1943/acil%20tasman%20report.pdf>>.

¹⁸² Live Export – Indefensible, above n 161.

¹⁸³ Teys Bros, Swift Australia and Nippon Meat Packers Australia.

¹⁸⁴ Live Export – Indefensible, above n 161.

¹⁸⁵ SG Heilbron Economic & Policy Consulting, *The Future of the Queensland Beef Industry and the Impact of Live Cattle Exports* (2010) [prepared for Teys Bros, Swift Australia and Nippon Meat Packers Australia] <<http://www.humanechain.org.au/media/3983/live%20cattle%20final%20report%2010062010.pdf>>.

¹⁸⁶ ACIL Tasman, above n 181.

¹⁸⁷ Live Export – Indefensible, above n 161.

¹⁸⁸ Ibid.

In addition to the economic justifications that warrant a revision of Australia's livestock trade, there are also ethical reasons why the industry desperately needs reform. On such reason is founded on the fact that, upon arrival in importing countries, Australian livestock are exposed to the customs and practices of that country.¹⁸⁹ AA has found that none of the countries involved in live trade with Australia have standards that enforce a minimum level of welfare for livestock.¹⁹⁰

Attempts to enforce animal welfare standards overseas, as they exist in Australia, have been subject to international debate.¹⁹¹ Critics claim that countries with different religious practices or specific cultural preferences should not be required to observe practices which respect Australian sensitivities or values.¹⁹² However, these animal welfare standards are founded on universal recommendations, established by the OIE, that arguably go beyond the preferences of a particular culture. These standards are comparable to international human rights to be free from suffering and are not to be confined to specific cultures or countries.¹⁹³ However, when contemplating the imposition of standards upon importing countries, it is necessary to also consider any World Trade Organisation (WTO) implications that may arise from this approach.

Pursuant to Article 20 of the General Agreement on Tariffs and Trade (GATT), Governments are permitted to 'act on trade in order to protect animal life or health, provided they do not discriminate or use this [provision] as disguised protectionism'.¹⁹⁴ The WTO contends that if a country applies international standards to its trade conduct, it is less likely to encounter issues of illegality than if it were to implement its own standards.¹⁹⁵ The Sanitary and Phytosanitary Measures Agreement (SPS) imparts the basic rules that outline the standards for food safety and the standards for animal and plant health. This agreement permits countries to implement their own standards, but states that these standards must be founded on science and should only be applied to protect human, animal or plant health or life.¹⁹⁶ It prohibits arbitrary or unjustified discrimination between countries whose circumstances and/or conditions are alike or similar.¹⁹⁷

While the WTO recommends countries utilise international standards, it also maintains that such countries can also implement higher standards if justified by empirical evidence. The SPS also states that different countries may employ varying standards and methods of goods inspection, provided all standards are founded on science. However, too many diverse standards can make it challenging for both the exporting and the importing countries. The Technical Barriers to Trade Agreement (TBT) attempts to mitigate this challenge by ensuring that differing regulations, and other associated procedures, do not create unnecessary or conflicting obstacles upon the trade. Despite their existence, these agreements and regulations

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Mark Schipp, 'International Animal Welfare Standards and Australia's Contribution' *Outlook 2013 Conference, Department of Agriculture, Forestry and Fisheries* (29 April 2013) <<http://www.daff.gov.au/abares/outlook/conference-program/transcripts/mark-schipp>>.

¹⁹² Live Export – Indefensible, above n 161.

¹⁹³ Ibid.

¹⁹⁴ World Trade Organisation, *The Agreements* <http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap2_e.pdf>.

¹⁹⁵ [Ibid.](#)

¹⁹⁶ World Trade Organization, *The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SP Agreement)* (2013) <http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm>.

¹⁹⁷ Ibid.

are futile if not all of the contracting countries are members of the WTO, as is the case of the numerous Middle Eastern countries to which Australia exports livestock. Consequently, it would be rather exigent for Australia to impose its standards of animal welfare upon importing countries that are not members of the WTO, without that country amending or altering its current animal welfare standards, if any such standards exist.

In such instances where a particular country is unwilling to comply with basic international animal welfare standards (as Australia does), this paper suggests that the dissenting country or countries must source their live meat products from alternative exporters, whose meat quality may be comparatively inferior. Consequently, although it would be unjust for Australia to impose regulations on livestock unless it was part of a wider global movement, or in accordance with the WTO stipulations, minimum standards should be imposed upon importing countries when dealing with Australian produce, provided that these regulations are in accordance with international animal welfare models as recommended by organisations such as the OIE.

B *Alternatives to Live Export: The Chilled Meat Trade*

Animal welfare advocates contend that the chilled meat trade may be a ‘viable alternative’ to the live export industry.¹⁹⁸ This is proposed on the basis that all importing countries in the Middle East are also purchasing chilled meat that generates greater profits than the export of live animals.¹⁹⁹ Recent research has revealed that in 2010, \$433 million was made from the export of frozen or chilled mutton and lamb to the Middle East.²⁰⁰ Further, Australia has approximately 40 ‘halal’ abattoirs that are overseen by Islamic officials appointed by the importing countries to ensure that the slaughter is performed in accordance with the ‘halal’ standards.²⁰¹ These slaughterhouses export the carcasses of the animals to the importing countries in chilled or frozen form.²⁰² The reversible pre-stunning of sheep and cattle prior to the cutting of the throat has been approved by Islamic leaders in Australia as the animal is not injured and remains alive. This is consistent with the ‘halal’ requirements of ritual slaughter.²⁰³ This method appears to strike a prudent balance between satisfying the traditional methods of ‘halal’ slaughtering and ensuring that the animals involved are subjected to a quick and relatively painless death. Interestingly, during several recent investigations by AA in the Middle East, it was revealed that many Australian animals imported live were not being slaughtered in accordance with ‘halal’ requirements.²⁰⁴

Arguably one of the greatest impediments to the adoption of the chilled meat trade is the claim that importing countries do not have the facilities to store frozen, chilled or pre-packaged meat.²⁰⁵ In response to this assertion, AA has highlighted the fact that the leading importers of Australian sheep²⁰⁶ are considerably wealthy nations.²⁰⁷ Many consumers

¹⁹⁸ Live Export – Indefensible, *Halal meat exports – a viable alternative* (2011) <<http://liveexport-indefensible.com/facts/halal.php>>.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Investigations were conducted in November 2003, January 2006, December 2006, September 2007 and December 2007; Live Export – Indefensible, above n 161.

²⁰⁴ Bruce, above n 146.

²⁰⁵ Live Export Care, above n 178.

²⁰⁶ Saudi Arabia and Kuwait.

within these countries already purchase their meat products from supermarkets and in restaurants.²⁰⁸ Consequently, the claim that there is a lack of refrigeration in most importing countries lacks a substantial evidentiary basis. Additionally, during a previous ban on live export to Saudi Arabia from 1991-2000, it was reported that there was a ‘three-fold increase in exports of chilled and frozen mutton and lamb to that market’.²⁰⁹ This illustrates that Islamic countries are willing to import meat that has been slaughtered in Australia.

However, Indonesian consumers do not have the same access to refrigeration as Saudi Arabia and Kuwait, as nearly 40 million Indonesians live below the poverty line.²¹⁰ As such it has been suggested that Indonesia cannot afford to purchase and maintain chilled meat imported from Australia and so must obtain its meat freshly slaughtered.²¹¹ However, this argument is not persuasive as the poorer populations in Indonesia cannot afford to buy Australian beef, whether chilled or freshly slaughtered. Therefore, such an argument lacks comparative relevance as live export does not solve the issue of the poorer Indonesian population’s limited access to Australian beef.

It has also been suggested that banning the live export trade would have devastating consequences on the farming communities throughout Australia.²¹² However, the livestock export industry has been detrimental towards various rural Australian communities for over 20 years.²¹³ For example, the Australian Meat Industry Employees Union (AMIEU) has opposed the live export trade for many years due to its contribution to the liquidation of multiple slaughterhouses across Australia. The AMIEU alleges that approximately 150 meat processing plants have closed over the past two decades, resulting in a loss of some 40,000 jobs for rural Australians.²¹⁴ This has occurred because the industry has relocated jobs to importing countries where the standards of animal welfare are significantly lower.²¹⁵

Arguably, the most compelling argument in favour of Australia adopting an alternative to live export is the fact that New Zealand has successfully done so since 2007 with the introduction of the Customs Export Prohibition (Livestock for Slaughter) Order 2007. When compared to the Australian industry, the New Zealand trade is much smaller, with only about 10 million sheep being exported live between 1986 and 2004, during which 200,000 died.²¹⁶ The live export trade in New Zealand reportedly generates approximately NZD\$49 million per annum.²¹⁷

²⁰⁷ Live Export Care, above n 178.

²⁰⁸ Ibid.

²⁰⁹ SG Heilbron Economic & Policy Consulting, above n 185.

²¹⁰ Live Export Care, above n 178.

²¹¹ Ibid.

²¹² Live Export – Indefensible, *Damning live export reports obtained through Freedom of Information*, (2011) <http://liveexport-indefensible.com/foi_reports.php>.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

However, following the disastrous ‘*Cormo Express* incident’ in 2003²¹⁸, the New Zealand live export trade almost ceased.²¹⁹ In a report evaluating the *Cormo Express* disaster, the Animal Rights Legal Advocacy Network (ARLAN) concluded that the live export of sheep was fundamentally incompatible with the purposes of the New Zealand *Animal Welfare Act 1999* (NZ).²²⁰ It has been suggested that the present New Zealand laws regulating the live trade of farmed animals represent a significant improvement, particularly when compared with existing Australian legislative provisions.²²¹

The introduction of the Customs Export Prohibition (Livestock for Slaughter) Order 2007 prohibits all live exports for slaughter but allows individual consignments on a ‘case-by-case’ basis. Permission for these consignments is only granted when slaughter is conducted in commercial abattoirs where international OIE standards are followed.²²² Additionally, audits of these slaughter facilities are conducted by Government inspectors to ensure compliance with OIE guidelines. Malcolm Caulfield contends that the Australian Government should follow New Zealand’s ‘impressive lead’ as it demonstrates that live export can be banned or limited successfully without devastating effects on economy, employment opportunities or international trade relations.²²³

C *Proposals for Reform of Australia’s Live Export of Farmed Animals*

In order for Australia’s agricultural animal trade to continue as an enduring and respected national industry, significant changes must be implemented. Ultimately, this paper suggests that the live export trade should be replaced with an increased chilled and frozen meat trade. In instances where it is not viable to export chilled meat, live export may be continued on a case-by-case basis. However, where this is undertaken, Australian welfare regulations should be attached to the animal rather than to its geographical location at each stage of meat production. Therefore, the standards regarding the welfare of Australian livestock should be attached to the animals from birth to death, regardless of where the livestock is destined to be slaughtered.

This proposal could be combined with the increase of regulation of animal welfare while livestock are being transported to international ports. This increased regulation may be attained through the introduction of various ‘checkpoints’ that exist after livestock depart Australian shores. While on board the vessel, at least one veterinarian and several stock workers may be assigned to a manageable number of livestock. For instance, four stock workers and one veterinarian must be attached to every 500 animals. This may overcome the current problems associated with not having enough professional personnel onboard voyages to tend to sick or anxious animals. Additionally, officials nominated by Australian animal welfare experts could be stationed at the foreign receiving ports and also at the nominated slaughterhouses to ensure that adequate welfare standards are abided by from voyage to slaughter. This process would arguably maintain the standards of animal welfare once livestock leaves Australia and also create a large number of employment opportunities for Australian citizens.

²¹⁸ This incident involved the unnecessary deaths of approximately 5,500 sheep, as discussed above in Part IV, subsection B.

²¹⁹ Live Export Shame, *Live Sheep Exports and Animal Welfare: an impossible match* (2011) <http://www.liveexportshame.com/impossible_match.htm>.

²²⁰ Ibid.

²²¹ Caulfield, above n 12.

²²² Ibid.

²²³ Ibid.

However, there are obvious problems with this proposition. First, additional funding will be needed to support a greater number of people at each check point and this will be reflected in the prices of live meat. Second, it is unlikely that the Government would support such a complex and expensive project. Third, there are several legal barriers that impede the imposition of Australian standards onto Indonesian abattoirs. For example, these standards could only be enforced through trade agreements, contractual promises and diplomacy, all of which are difficult to achieve when negotiating increased commercial standards, stricter regulation and higher costs with an economically weaker country. Finally, the profitability of the live export industry may be threatened by a decrease in demand when Australian live meat prices escalate as a result of these increased costs.

To counter this, the introduction of a more prominent chilled meat trade may be the most logical solution to the issues of economy, employment, animal welfare and political relations. Further, if the live export industry were banned, it would allow Australia's globally recognised 'disease-free' meat status to be brought to the foreground, thereby adding significant potential to increasing the current trade of chilled meat to importing countries.²²⁴ AA and the RSPCA consider that, 'far greater long-term security for both Australian farmers and Australian workers in meat processing industries ... could be created through vigorous marketing of Australian chilled disease-free meat to importing countries'.²²⁵ However, the full potential of Australia's chilled and frozen meat trade will not be realised while the industry continues to export job opportunities and livestock to foreign ports, where the concept of animal welfare for farmed animals is comparatively lower or non-existent.

VI CONCLUSION

This paper contends that the welfare of Australian livestock needs to be maintained from birth to slaughter. Consequently, the current policy requires reform to: ensure the future welfare of livestock; maintain the strength of the Australian livestock industry; and increase employment opportunities for those involved in the distribution of livestock, both domestically and internationally.

Currently, once in the control of importing countries, Australian livestock are often subjected to cruel and unnecessary practices of transportation, handling and slaughter due to the inability to apply Australian welfare standards once the livestock are in a foreign jurisdiction. However, previous attempts to enforce animal welfare standards overseas, commensurate to those in Australia, have been subject to international debate.²²⁶ Critics claim that countries with different religious practices, or specific cultural preferences should not be required to observe procedures which respect Australian sensitivities or values.²²⁷

With reference to these criticisms, this paper notes that the proposed animal welfare standards are founded on universal recommendations, established by the OIE, that go beyond the preferences of a particular culture. Such standards are comparable to international human rights to be free from suffering and are not to be confined to specific cultures or countries.²²⁸ While the Australian standards of animal welfare arguably fall short of those required for adequate animal welfare, the standards of livestock welfare upon their arrival at foreign ports are significantly lower.

²²⁴ Live Export – Indefensible, above n 209.

²²⁵ Live Export – Indefensible, above n 117.

²²⁶ Schipp, above n 191.

²²⁷ Ibid.

²²⁸ Live Export – Indefensible, above n 161.

It is further contended that the preference for fresh meat by foreign countries does not justify the unnecessary suffering endured by Australian livestock. Therefore, the live export of Australian farm animals is not the most humane method of providing red meat and other animal products to the world. Consequently, in order to achieve higher welfare standards for livestock, while maintaining Australia's international trade relationships, profitability and domestic employment opportunities, the chilled meat trade should replace live export industry to all countries wherever possible. This paper purports that the trade relationship between Australia and countries throughout the Middle East and Asia would not be significantly compromised if the live export industry were to be phased out.

Furthermore, if the live export industry were banned it would allow Australia's globally recognised 'disease-free' meat status to be brought to the foreground, thereby adding significant potential to increasing the current trade of chilled meat to importing countries.²²⁹ However, the full potential of Australia's chilled and frozen meat trade will not be realised while the industry continues to export job opportunities and livestock to foreign ports, where the concept of animal welfare for farmed animals is comparatively lower or non-existent.

This paper further maintains that, for countries where it is not viable to supply with chilled or frozen meat, livestock should be supplied by attaching standards, compliant with the OIE guidelines, to the animal rather than the geographical location. In such instances, live export may be continued on a case-by-case basis. However, where this is undertaken, Australian welfare regulations should be attached to the animal, rather than its geographical location, at each stage of meat production. Therefore, the standards regarding the welfare of Australian livestock should be attached to the animals from birth to death, regardless of where the livestock is destined to be slaughtered.

Moreover, there exists a blatant conflict between the legislative protections afforded to domestic companion animals and those imparted upon farm animals, particularly during the process of live export. Similarly, while the same Government Department retains control over both the agricultural industry and standards of animal welfare, the conflict of interest will always inevitably fall in favour of economic gain.

In summary, while the ongoing maltreatment of live exported animals continues to be exposed to both the Federal Government and the Australian public, such issues ought to weigh on the consciences of all fair minded Australians and be the imprimatur of change. This paper asserts that the aforementioned proposals for change will ensure that livestock are treated as sentient beings rather than mere commodities of profit, without foregoing the livelihood and wellbeing of Australia's export industry and its contributors.

²²⁹ Ibid.