



PUBLIC STATEMENT OF REASONS

On 27 May 2020, the Department of Agriculture, Water and the Environment (**Department**) received an application for exemption submitted by Rural Export & Trading (WA) Pty Ltd (**RETWA**), pursuant to s 11 of the *Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East—Northern Summer) Order 2020* (Cth) (**Northern Summer Order**).

I am a delegate of the Secretary for the purpose of s 12 of the Northern Summer Order.

On 2 June 2020, I decided not to grant an exemption pursuant to s 12(1) of the Northern Summer Order. I provide this public statement of reasons for my decision.

Background

In April 2018, footage was released showing live sheep in severe heat stress while being transported to the Middle East during the 2017 Northern Hemisphere summer. The government commissioned the Independent Review of Conditions for the Export of Sheep to the Middle East during the Northern Hemisphere Summer by Dr Michael McCarthy (**McCarthy Review**), which was published on 17 May 2018. Following recommendations from the McCarthy review and the Independent Heat Stress Risk Assessment Technical Reference Panel (**HSRA review**), and consultation with various stakeholders, the Department published a Regulation Impact Statement (**RIS**) for live sheep exports to, or through, the Middle East during the Northern Hemisphere summer.

The Northern Summer Order is the legislative framework for the implementation of policy recommendations from the RIS process. The Northern Summer Order prohibits trade during the hot months of June to mid-September inclusive in 2020 and in subsequent years, with extended periods for the hotter locations of Qatar and Oman, and has additional conditions to manage heat stress risk in exported sheep.

Overview of legislative scheme

The export of live-stock from Australia is governed by a legislative regime that relevantly comprises:

- a. the *Export Control Act 1982* (Cth) (**Export Control Act**);
- b. the *Export Control (Animals) Order 2004* (Cth) made under s 25 of the *Export Control Act (Animals Order)*;
- c. the *Australian Meat and Live-stock Act 1997* (Cth) (**AMLI Act**); and
- d. the Northern Summer Order.

Subsection 7(1) of the *Export Control Act* provides that the regulations may prohibit the export of ‘prescribed goods’ from Australia. The term ‘prescribed goods’ is defined in s 3 of the *Export Control Act* to mean goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of this Act. The term ‘regulations’ is defined in s 3 to include orders.

Section 1.04 of the *Animals Order* relevantly provides that, for the purposes of the definition of the term ‘prescribed goods’ in s 3 of the Act, live animals are prescribed goods. Live animals include live-stock such as cattle and sheep: s 1.05 of the *Animals Order*.

Section 1A.01 of the Animals Order provides that the export of live stock is prohibited unless specified conditions are complied with. Those conditions relevantly include that:

- a. the exporter holds a live-stock export licence under the AMLI Act (s 1A.01(a));
- b. an export permit for the export by the exporter is in force (s 1A.01(i)); and
- c. the exporter complies with any condition of the export permit (s 1A.01(l)).

Section 17(1)(a) of the AMLI Act permits the Secretary to make orders by legislative instrument, not inconsistent with the regulations, to be complied with by the holders of export licences. Orders made under s 17(1) may prohibit (either absolutely or unless particular conditions are complied with) the export, or sale for export, of live-stock by reference to the countries or places to which the live-stock is exported or any other matter that the Secretary thinks appropriate (s 17(3)(iii), (v)). Section 17(5)(a) provides that an export licence is subject to the condition that the holder of the licence must comply with orders made under this section.

The Northern Summer Order is an order made under s 17 of the AMLI Act. Relevantly, s 8 of the Northern Summer Order prohibits the export of sheep in certain circumstances:

8 Prohibition of export of sheep between 1 June and 14 September

The holder of a sheep export licence must not export a consignment of sheep from Australia by sea on a vessel:

(a) that leaves an Australian port during the period starting at the start of 1 June in a year and ending at the end of 14 September in that year; and

(b) that will travel, or travels, through waters in the Arabian Sea, or the Red Sea, north of latitude 11°N at any time during its voyage.

The Northern Summer Order also provides for exemptions which may be sought by, and granted to, sheep export licence holders in certain circumstances. The procedure begins with an application for an exemption, which must be in a manner approved by the Secretary, include information required in any approved form, and must set out the basis on which the exemption is sought: s 11(2).

Under s 11(3), an application is taken not to have been made if the application does not comply with the requirements in s 11(2).

Under s 12(1), the Secretary may decide to grant the exemption or not grant the exemption.

For the purpose of making a decision in relation to the application, the Secretary may, in writing, request the applicant to give the Secretary further specified information or documents relevant to the application: s 12(2).

The Secretary may grant the exemption if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that it is appropriate to grant the exemption: s 12(3). Further, the Secretary may grant an exemption subject to any conditions that the Secretary considers necessary: s 12(4).

Under s 14, if the holder of a sheep export licence is granted an exemption under s 12(1)(a) from one or more provisions of the Northern Summer Order in relation to a consignment of sheep, the exempted provisions do not apply in relation to the export of that consignment while the exemption is in force.

The Department consulted widely in making the policy decision that led to the introduction of the Northern Summer Order (Explanatory Statement to the *Australian Meat and Live-stock Industry (Prohibition of Export of Sheep by Sea to Middle East – Northern Summer) Order 2020*, p 2). The Department considered recommendations from the McCarthy Review, the HSRA review, public submissions to the draft RIS and a policy options discussion paper. Scientific analysis was considered including climatological analysis by the Bureau of Meteorology (**2019 BOM report**), data provided by the Australian Bureau of Agricultural and Resource Economics and Sciences (**ABARES**), and voyage reports from Australian Government Accredited Veterinarians (**AAVs**) and Independent Observers (**IOs**) on board vessels during 2018 and 2019 Northern Hemisphere summer months.

Feedback on the policy options was received through formal submissions and during meetings with industry stakeholders (Explanatory Statement, p 2). The Department acknowledged that sheep farmers and the live export industry could be affected by the limited period sheep can be “turned off” to live exports each year. Farmers, particularly those in Western Australia, would have reduced flexibility in their farming practices and marketing options. There is also a risk that a further animal welfare incident (comparable to the incidents in 2017 on board the MV Awassi Express) will cause significant harm to the sustainability of live animal exports. Welfare based non-government organisations primarily supported managing heat stress in sheep by prohibiting exports to the Middle East for the whole six months of the Northern Hemisphere summer or by ceasing the trade altogether.

The Northern Summer Order prohibits holders of sheep export licences from exporting live sheep from Australia from 1 June to 14 September (inclusive), with extended periods for Qatar and Oman, if the intended voyage were to travel through waters in the Arabian Sea or Red Sea, north of latitude 11°N at any time, and has additional conditions for managing heat stress risk in exported sheep. This will improve the welfare of sheep exported to these places during these periods (Explanatory Statement, p 2).

Pages 6-7 of the Explanatory Statement provides the following commentary in relation to the exemption power under s 12 of the Northern Summer Order:

A decision to grant or not grant an exemption is about determining whether, in the circumstances of the case, it is acceptable to exclude a consignment of sheep from the requirements of the instrument. The decision-maker may grant an exemption if he or she is satisfied that the matters in subsection 12(3) are met. It is anticipated that exemptions will only be granted in exceptional circumstances.

Decisions about whether to grant or not grant an exemption are expected to be based on whether animal health and welfare can continue to be protected if an exemption is granted.

The impact of a decision to grant an exemption may also have implications beyond the interests of the individual exporter, including adversely impacting trading partners' confidence in the Australian Government's regulatory oversight of exported goods. This in turn may adversely affect the interests of the live animal export industry. In such circumstances, the decision-maker may consider that it would not be appropriate to grant the exemption.

Application for Exemption

On 27 May 2020, the Department received an application for exemption from RETWA pursuant to s 11 of the Northern Summer Order to load a live-stock vessel after 1 June 2020 and before 15 June 2020 with discharge at the first of two ports to be completed before the end of June 2020.

In its application, RETWA stated that it had prepared a live-stock consignment consisting of 56,000 sheep and 420 cattle (**Consignment**) in accordance with the requirements under the AMLI Act,

Export Control Orders and approved governance documents, including RETWA's Approved Arrangement and Approved Export Program. The Consignment was due to be loaded on the MV Al Kuwait on 25 and 26 May 2020 for departure on 26 May 2020. However, the application specified that due to a series of events, the vessel was being held in quarantine under WA Department of Health direction and was unable to load the Consignment.

In support of its application, RETWA provided a Management Plan for the proposed voyage. RETWA confirmed that it had sought independent AAV advice to develop this plan and had conducted internal meetings and reviews which would be ongoing. In addition, RETWA stated that it is participating in a Strategic Response Group, which includes Australian Livestock Exporters' Council (**ALEC**), LiveCorp and Meat and Livestock Australia (**MLA**).

RETWA subsequently provided updated Management Plans that included more detail as to weather monitoring and further independent veterinary advice to manage the pad and reduce unnecessary activity and handling. In addition, RETWA provided draft space, fodder and water calculations, an Animal Welfare Risk Register, a weather monitoring technology presentation, and other information relating to the vessel and weather forecasting. I gave careful consideration to all of the information received from RETWA.

I also considered information received by the Department from the Australian Government Bureau of Meteorology (**BOM**), regarding forecasts for the Persian Gulf for June 2020 (**BOM forecast**).

Additionally, I considered submissions received by the Department from Animals Australia, RSPCA Australia, the Australian Veterinary Association Limited (**AVA**), the Pastoralists & Graziers Association of Western Australia (Inc) (**PGA**), and the AAV Working Group. I also considered representations received by the Minister for Agriculture from Livestock Transport & Trading Company (**KLTT**) and the Embassy of the State of Kuwait.

RETWA was issued three invitations to comment on potentially adverse material before I reached my decision. Each of RETWA's responses and supporting information were taken into account.

Reasons for Decision

In considering whether it was appropriate to grant the exemption, I considered the nature and extent of the risk to health and welfare of the live-stock on the basis of the MV Al Messilah being used, but also in the event that the MV Al Kuwait was used and able to depart on 15 June 2020.

I had regard to an analysis undertaken by the Department's Animal Welfare Branch (**AWB analysis**) of the implications for sheep heat stress on voyages departing 31 May to 15 June 2020, in order to assist me with consideration of RETWA's exemption request. That analysis compared the average and forecasted WBTs in the Straits of Hormuz and Kuwait Port for a range of departure dates (5, 10 and 15 June 2020) against the reference date of 31 May 2020, which is the latest that vessels are permitted to depart under the Northern Summer Order. The Straits of Hormuz was chosen for inclusion in the analysis as the route location with the most consistently elevated WBTs. The average WBTs set out in the AWB analysis were based on data from the 2019 BOM report, which I note is a publicly available report commissioned by the Department in 2019. The forecasted WBTs were based on the BOM forecast.

The 2019 BOM report indicated that average WBTs in the Straits of Hormuz progressively rise through June and July, and that average WBTs at Kuwait Port remain relatively the same through the second half of June but rise sharply from the first week of July onwards. The BOM forecast indicated that maximum and minimum temperatures in the Persian Gulf were expected to be:

- a. close to average from 1-14 June 2020;

- b. up to 1.0°C above average from 8-21 June 2020; and
- c. overall in June 2020, temperatures in the Gulf are forecast to be 0.6-1.2°C above average, which indicates that temperatures are likely to reach up to 1.2°C above average after 21 June 2020.

The AWB analysis of the 2019 BOM report and BOM forecast indicated that if the MV Al Messilah had departed on 31 May 2020, the deck WBT would be estimated to be 30.2°C by the time the vessel reached the Straits of Hormuz. However, this estimate increased to: (a) 31.7°C if the vessel departs on 5 June 2020, (b) 32.3°C if the vessel departs on 10 June 2020, and (c) 32.7°C if the vessel departs on 15 June 2020.

I put the above information from the AWB analysis to RETWA for comment together with departmental information relating to the past performance of the two vessels. RETWA provided a response to the Department addressing vessel performance, weather data, mortality data and supporting evidence. RETWA also provided an updated Management Plan (**Updated Management Plan**). I took into account both the information in the AWB analysis and RETWA's response and supporting documents in assessing the nature and extent of the risk to health and welfare of the live-stock if the exemption is granted.

Having regard to the totality of the weather information including RETWA's response and weather forecasting, I was satisfied that the weather forecasting used in the AWB analysis was a reasonable predictor of temperatures during the proposed voyage. I was therefore satisfied that the MV Al Messilah deck WBT could be expected to reach (a) 31.7°C if the vessel departs on 5 June 2020, (b) 32.3°C if the vessel departs on 10 June 2020, and (c) 32.7°C if the vessel departs on 15 June 2020. I found that this indicated that the deck WBT in the Straits of Hormuz was likely to be at least 1.5°C higher than if the vessel had departed before 1 June 2020. I also found that this information indicated that departure dates of 10 and 15 June 2020 were likely to result in deck WBTs in the Straits of Hormuz that were 2.1°C and 2.5°C higher than if the vessel had departed before 1 June 2020.

Further, assuming that the MV Al Kuwait was able to depart on 15 June 2020, I found that the estimated deck WBT in the Straits of Hormuz as at 30 June 2020 was likely to be 32.7°C. While I acknowledged that it may be that the MV Al Kuwait would reach Kuwait Port more quickly than the MV Al Messilah, I found that the deck WBTs were unlikely to greatly differ. In this regard, I noted that the estimated deck WBT in the Straits of Hormuz on 25 June 2020 was 32.3°C.

On the basis of the above information, I found that while a departure date of 31 May 2020 would result in an acceptable risk of heat stress by the time the vessel reached the Straits of Hormuz, an MV Al Messilah departure date of 5 June 2020 posed an increased risk of heat stress which continued to increase the later the vessel departed. According to studies into sheep physiology (LiveCorp & Meat and Livestock Australia (MLA) Veterinary Handbook for Cattle Sheep and Goats (2020)), when WBTs increase above 29°C, heat stress increases very significantly. This means that relatively small increases in WBT (as little as 1°C) can greatly increase the number of sheep in a group that experience heat stress. While sheep vary in their heat stress threshold temperatures depending on a range of factors including breed, age, fatness, wool length and acclimatisation, I found that the available information indicated that there was a significant risk of heat stress if the MV Al Messilah departed on or after 5 June 2020. I also found that the available information indicated that there was an even greater risk of heat stress if the MV Al Kuwait departed on 15 June 2020.

I accepted that the geographic location of the Straits of Hormuz was a relatively short section (approximately 90nm) of the overall voyage route from Fremantle to Kuwait. However, I found that the risk of encountering high WBTs in June does not suddenly start at entry and stop at the exit of the Straits. The WBT figures for the Straits of Hormuz are approximately representative of the WBTs

encountered in the upper Arabian Sea, the Gulf of Oman and most of the Persian Gulf. The 2019 BOM report illustrated that the risk of the MV Al Messilah or MV Al Kuwait encountering high and/or sustained WBT starts several days before the Straits are reached and continues through the Persian Gulf until just before the Port of Kuwait. Further, the BOM forecast states that sea surface temperatures in the Indian Ocean and across the region are 0.5°C to 2.0°C above the long-term average. I therefore found that there was a significant risk of prolonged heat stress if the MV Al Messilah departed on or after 5 June 2020 or if the MV Al Kuwait departed on or about 15 June 2020.

I found that the significant risk of heat stress in the Straits of Hormuz if the MV Al Messilah departed on or after 5 June 2020, or if the MV Al Kuwait departed on 15 June 2020, was not mitigated by any diurnal variation and it was likely that the sheep would have little diurnal respite during that part of the voyage. I was satisfied that the risk of heat stress in Kuwait Port for a departure on or after 5 June 2020 was very low. However, I found that this did not address the significant risk of heat stress during the several days before the vessel reaches the Straits of Hormuz continuing through the Persian Gulf until just before the Port of Kuwait, nor the increasing risk of high WBTs and heat stress if the vessel were to continue to discharge at Jebel Ali in the UAE as proposed. I found that this risk was unacceptable.

I considered the risk mitigation strategies identified in RETWA's Updated Management Plan and Animal Welfare Risk Register, and additional heat stress mitigation measures identified by the AWB analysis. These risk mitigation strategies included strategies in relation to wool length, pre-existing health conditions, body condition score, heat-sensitive classes of sheep, stocking density, recent ventilation modifications, additional weather monitoring technology during the voyage, additional sawdust, fodder and water provisions, voyage length reduction, and discharge planning.

As a whole, I was not satisfied that the Updated Management Plan provided adequate mitigation against the animal welfare impacts of the significantly higher WBTs expected to be experienced by the MV Al Messilah if it departed Australia on or after 5 June 2020. I also found that it did not provide adequate mitigation against the animal welfare impacts of the significantly higher WBTs expected to be experienced by the MV Al Kuwait if it departed on or about 15 June 2020. Nor was I satisfied that the mitigation strategies identified by the Department's Animal Welfare Branch would adequately address the risk of health stress for the proposed voyage on either vessel.

I considered that if all identified additional heat stress mitigation measures were implemented, including the use of a faster vessel, export to a single port and careful selection of the most heat tolerant sheep, it was theoretically possible that the risk could be managed for a proportion of sheep for a voyage leaving up to 5 June 2020. However, this was based on the assumption that a faster ship leaving at this time would likely arrive in Kuwait at approximately the same time as the MV Al Messilah departing on 31 May. There was no evidence before me that a faster vessel could or might be used for a departure date of 5 June 2020.

In light of the WBTs likely to be experienced, I found that without ensuring earlier arrival approximately in line with a 31 May departure by the MV Al Messilah, even the other additional risk strategies identified by the AWB analysis would face similar limitations to the measures identified by RETWA. I was also not satisfied that imposing a condition restricting the voyage to one port of discharge (Kuwait Port) would address the significant risk of heat stress during the several days before the vessel reaches the Straits of Hormuz continuing through the Persian Gulf until just before the Port of Kuwait.

Having considered each of the mitigation measures individually, I also considered them cumulatively. I was not satisfied that the combination of the mitigation strategies proposed by RETWA and those identified by the Animal Welfare Branch sufficiently addressed the significant risk of heat stress and adverse animal health and welfare outcomes if the vessel departed Australia on or after 5 June 2020. I was not satisfied that even if all of the measures specified above were adopted, they would

adequately address the unacceptable risk of heat stress posed by the proposed voyage. I found that this weighed heavily against granting the exemption.

I also considered departmental information available to me on vessel performance together with RETWA's response in assessing whether the use of either vessel would mitigate or reduce the significant risk to animal health and welfare. I took into account the information on past sheep mortality rates on board the MV Al Messilah and the MV Al Kuwait. In so doing, I accepted that historical information was not entirely reflective of current practices including preparation of stock, stocking densities, monitoring and reporting and general industry culture, noting the significant industry changes over the past couple of years. I also had regard to information about the ventilation modifications carried out on the MV Al Messilah and the vessel's performance during its last voyage from Fremantle to the Persian Gulf. However, I noted that that voyage occurred in April/May 2020 and did not encounter particularly high WBTs. I found that in any event, the MV Al Messilah's past average performance overall was not an adequate mitigation for the significant risk of heat stress if it were to depart on or after 5 June 2020. I also found that it was unlikely that the MV Al Kuwait would be able to be used and that even if it could depart on or about 15 June 2020, its better performance was unlikely to adequately mitigate the significant risk of heat stress which risk will increase with the later departure date. I gave weight to the evidence before me that RETWA's past performance as an exporter of live-stock to the Middle East has been satisfactory, but found that that was insufficient to address the significant risk of heat stress if the Consignment were to depart Australia on the MV Al Messilah on or after 5 June 2020, or on the MV Al Kuwait on or about 15 June 2020, either in and of itself or having regard to the mitigation strategies noted above.

I accepted that the global pandemic was an exceptional circumstance and the restrictions adopted worldwide to address COVID-19 have been unprecedented. I also accepted that a COVID-19 infection would not have been factored into RETWA's annual planning schedule when it was developed. However, I found that the COVID-19 situation had been rapidly developing since March 2020, including increasing restrictions from the Commonwealth and Western Australian Governments that exporters such as RETWA would have been aware of. I found that the COVID-19 outbreak onboard the MV Al Kuwait did not in itself warrant granting the exemption in light of the significant risk of adverse animal health and welfare outcomes if RETWA were permitted to export the Consignment by sea on or after 5 June 2020. I gave some weight to the MV Al Kuwait arriving a week before the prohibition period started and the delays caused by the other vessel and weather conditions, but noted that such delays are not unusual and in any event, do not justify in themselves the grant of an exemption.

I gave significant weight to concerns raised by RETWA about the significant financial and ongoing trade impact that a decision to refuse to grant the exemption would have on its business operations and the interests of other entities and persons associated with it. However, bearing in mind the rationale behind the Northern Summer Order, I balanced this consideration against the risk of harm to animal health and welfare during the proposed voyage. In circumstances where I was not satisfied that adequate mitigation measures could be put in place to reduce the risk of harm to the live-stock to an acceptable level, I found that the impact on the exporter and associated persons and entities, either individually or cumulatively, did not outweigh the unacceptable risk of harm to the animals' welfare and therefore did not in themselves make the grant of an exemption appropriate.

I also had regard to the likelihood that my decision would have implications beyond the interests of RETWA, including the possibility that it would adversely impact trading partners' confidence in the Australian Government's regulatory oversight of exported goods. I accepted that this in turn might adversely affect the interests and long-term viability of the live animal export industry. I accepted RETWA's submission that the Consignment was a crucial quantity to KLTT's processing plan and that KLTT had made the Australian Government aware that the Consignment was critical to meeting demands for food security. I also took into account representation from both KLTT and the Embassy

of the State of Kuwait to the Minister for Agriculture in support of RETWA's application for exemption. I considered it plausible that not granting the exemption for this Consignment would have some impact on the supply of meat to Kuwait and accepted that the current pandemic had impacted the flow of products across borders. However, I found that there was no independent information before me to suggest that refusing the exemption would have an impact on Kuwaiti and UAE food security of such magnitude as to justify the grant of the exemption. I noted that the food security of foreign trading partners was not explicitly identified as a relevant consideration in either the Northern Summer Order or more broadly in the AMLI scheme. However, insofar as any significant harm may be caused to Kuwaiti and UAE food security, I found that it might adversely affect the Australian live animal export industry and Australia's trade in live animals with Kuwait and the UAE. I gave particular weight to the information in RETWA's response of 31 May 2020 indicating that live animals are being sourced from other countries during the prohibition period. Overall, I was not persuaded that the impact on Kuwaiti and UAE food security that would be occasioned by refusing the exemption would be drastically different to the impact caused by the Northern Summer Order. I was not satisfied that this justified the grant of the exemption.

I had regard to the adverse impacts on industry, including for producers who would lose some access to potentially lucrative markets, and by reducing the flexibility to manage feed and stocking levels through the year. I also gave weight to the submission from the PGA that if the Consignment were diverted into the domestic market, it would reduce live-stock prices for farmers, as well as for meat processors, who were already experiencing freight difficulties.

I gave some weight to the submissions from Animals Australia, RSPCA Australia, the AVA and Professor Phillips insofar as they gave voice to the concerns of segments of the community, but I found that they were not representative of the community as a whole. I noted that the submissions were prepared by persons and entities with known policy positions and that others in the community may well have different views. Further, I did not consider that granting an exemption two months after the Northern Summer Order commenced would, in and of itself, undermine public confidence in the regulatory framework, the Department's administration of that framework, and the live animal export industry. I accepted that the Northern Summer Order clearly allows, and was intended to allow, for exemptions. However, as noted in the Explanatory Statement to the Order, exemptions were only anticipated to be granted in exceptional circumstances and where it was considered acceptable to exclude a consignment of sheep from the requirements of the Order.

I found that the Australian public would expect that in deciding whether or not to grant the exemption, the Secretary (or his delegate) would have due regard to the rationale underlying the prohibition, and balance the impact on the exporter and industry against the risk to the health and welfare of the live-stock. In circumstances where I was not satisfied that adequate mitigation measures could be put in place to reduce the risk of harm to the live-stock to an acceptable level, I found that there was a risk that if the exemption is granted, a further animal welfare incident (comparable to the incidents in 2017 on board the MV Awassi Express) would cause significant harm to the sustainability of live animal exports. This risk was well articulated in the Department's RIS (for example, pp 12, 15 and 56 of the RIS).

Conclusion

I considered each of the relevant considerations and all of the evidence put before me both individually and cumulatively. I assessed whether the combination of the various considerations in favour of granting the exemption outweigh those against granting the exemption.

I found that I was not satisfied that there were adequate reasons to justify granting the exemption from the Northern Summer Order, bearing in mind the rationale behind the prohibition. In light of the weather data and the AWB analysis of the likely WBTs, I found that there was a significant risk of heat stress if the exemption is granted. I considered that the risk was unacceptable and was not

adequately mitigated by the Updated Management Plan, any additional conditions that may be imposed by the Department, the available information on the past performance of the exporter, and/or the available information on the past performance of the proposed vessels. I found that the nature and extent of the risk to the health and welfare of the live-stock weighed heavily against granting the exemption.

I accepted that a global pandemic was an exceptional circumstance and the restrictions adopted worldwide to address COVID-19 have been unprecedented. However, I considered that the COVID-19 outbreak onboard the MV Al Kuwait was not in itself a circumstance that would warrant granting the exemption given the significant risk of adverse animal health and welfare outcomes if RETWA were permitted to export the Consignment on the MV Al Messilah on or after 5 June 2020 or on the MV Al Kuwait on or about 15 June 2020. I also gave some weight to the MV Al Kuwait arriving a week before the prohibition period started and the delays caused by the other vessel and weather conditions, but noted that such delays are not unusual and in any event, do not justify the grant of an exemption.

I placed significant weight on the concerns raised by RETWA about the financial and ongoing trade impact that a decision to refuse to grant the exemption would have on its business operations, the interests of persons and entities associated with it, and its relationship with its trading partners. However, bearing in mind the rationale behind the Northern Summer Order, I balanced that against protecting animal welfare during these months.

I had regard to the possibility that my decision might adversely impact trading partners' confidence in the Australian Government's regulatory oversight of exported goods, which might adversely affect the interests and long-term viability of the live animal export industry. However, having regard to the available information, I was not persuaded that the impact on Kuwaiti and UAE food security that would be occasioned by refusing the exemption would be drastically different to the impact caused by the Northern Summer Order.

I also had careful regard to the adverse impact on industry and the likelihood that a decision to refuse the exemption would create an oversupply that might reduce livestock prices for farmers, as well as for meat processors, who are already experiencing freight difficulties.

Having considered all of the above and balanced the unacceptable risk to the health and welfare of the live-stock against the considerations favouring an exemption, I was not satisfied that it was appropriate to grant the exemption. I therefore decided to refuse the exemption pursuant to s 12(1)(b) of the Northern Summer Order.

Tina Hutchison
Assistant Secretary
Live Animal Export

3 June 2020