



28 February 2020

DPIRD – Livestock Regulations

By email: livestock.regulations@dpird.wa.gov.au

To whom it may concern,

RE: Comments on the Draft WA Livestock Regulations

I am writing on behalf of the Kimberley Pilbara Cattlemen's Association (KPCA), to confirm our position in relation to key principles and issues relating to the draft WA Livestock Regulations.

The KPCA is an industry development and advocacy body that represents a diverse range of producers with, on a cumulative basis, significant pastoral land holdings across the Kimberley and Pilbara and the Gascoyne region of WA (i.e. the north of WA). The membership base is also inclusive of Aboriginal producers and a number of related businesses servicing the industry.

As an overarching approach, the KPCA is of the view that any legislative reviews, inclusive of the development and implementation of regulations, should be conducted in accordance with the Council of Australian Governments (COAG) principles in relation to best practice regulation, as set out below:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
 - i. the benefits of the restrictions to the community as a whole outweigh the costs, and
 - ii. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.



Adhering to/implementing these principles, endorsed by the Commonwealth and all State/Territory Governments (via COAG) in 2007, provides important performance indicators, which if holistically implemented, ensure a balanced and inclusive approach is taken by government in relation to regulation.

In relation to the form/approach of the draft WA Livestock Regulations, the KPCA, in principle, broadly concurs with the content of the Livestock and Rural Transporters' Association of WA (LRTAWA) submission and makes the following specific points:

- It is premature to introduce the Livestock Regulations ahead of the outcome of the major review of the *Animal Welfare Act 2002* (WA) particularly given the delay in developing, consulting on and implementing the Regulations resulting from the 2017 Animal Welfare Act Amendment Bill given the two processes/streams have now converged (i.e. the Review of the Act and the implementation of the Regulations). To progress the Regulations now is contrary to the COAG Principles for Best Practice Regulation that the WA Government is a signatory to and risks resulting in a fragmented, transactional approach to regulation rather than a strategic and holistic approach. Further the proposed draft Regulations seem to depart from a harmonised and consistent approach across jurisdictions to the implementation of the National Animal Welfare Standards and there should be analysis provided by DPIRD for consultation to contrast/compare to other jurisdictions in terms of how the National Standards are being regulated. In particular, the Draft Livestock Regulations appear to introduce prescribed conditions that must be eliminated prior to loading which is a deviation from the National Standards. As stated in the second paragraph under Purpose on pp. 1 of the Australian Animal Welfare Standards and Guidelines: Land Transport of Livestock (Edition One, Version 1.1, 21 September 2012):

“The standards provide the basis for developing and implementing consistent legislation and enforcement across Australia...”

It is imperative from a KPCA perspective that there is a harmonised approach with other jurisdictions given we have a number of members that have interests across jurisdictions/Northern Australia and that Western Australia seems continually challenged/behind in taking a consistent approach with other jurisdictions on a number of fronts including, but not limited to, biosecurity.

- The explanatory material provided with the Draft Livestock Regulations seems to suggest an undefined 'duty of care' is being imposed that is absent from the Act and the Draft Regulations in and of themselves. This is a fundamental modification to the outcomes sought by the Act and should be open to parliamentary debate not introduced through regulation. This leads to the risk that a Henry the VIIIth style amendment is still occurring by stealth which is what triggered the 2017 Animal Welfare Act Amendment Bill being referred to the Legislative Council Standing Committee in the first instance.

Further, and consistent with the point above, some of the Standards, for example Livestock Transport SA1.1 have not been included in the Draft Livestock Regulations yet



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this is the Standard that relates to defining duty of care and the various roles and responsibilities within the supply chain.

The lack of clarity in terms of roles and responsibilities for parties in the supply chain results in significant subjectivity in the Draft Regulations which will result in uncertainty and varying interpretations which ultimately will result in parties legally challenging the results.

- A significant number of defences have been removed from parties in the supply chain again with no explanation/justification and/or case for change. This has been a repeated concern raised by KPCA that there needed to be transparency and a solid discussion/consultation around the removal of defences however this is not clear in the materials provided for comment.
- Given the lack of clarity regarding the future reform agenda/direction for the Act, it is unclear/there seems to be some inconsistency. There is a lack of clarity/absence of detail on reform to the principal act, there is uncertainty about how the standards and guidelines for other species will be enforced through codes of practice and subsequent regulation.

On behalf of the KPCA, we look forward to the opportunity to further engage with DPIRD in relation to the Draft Livestock Regulations and thank you for the opportunity to provide a written submission.

Please do not hesitate to contact KPCA CEO, Emma White via [REDACTED] should you wish to discuss the contents of this letter further.

Yours sincerely,

[REDACTED]

David Stoate
Chairman