

## ESCAS Review

As proposed by the Department of Agriculture, Fisheries, and Forestry

### Stage-1: Current State and Structural Considerations

#### Live Export Industry Submission – A Macro Assessment

*Submission is focused on assessment of ESCAS as an overarching model.*

*Macro considerations as part of the Department's review of ESCAS.*

*Submission made from perspective of active live exporter.*

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#### Introduction

1. The Exporter Supply Chain Assurance Scheme (ESCAS) underpins Australia's live export trade through the assurance of good animal welfare outcomes throughout the entire supply chain. Whilst animal welfare standards form the centrepiece of ESCAS its ultimate *purpose* is to support sustainable trade and economic value-add. ESCAS wouldn't exist without the live export industry and the live export industry wouldn't exist without ESCAS (or some form of ESCAS).
2. ESCAS is a critical part of the live export industry. It was implemented more than 10 years ago, and the prevailing review presents the first meaningful opportunity to refine its form and processes. The Department Agriculture, Fisheries and Forestry discussion paper, titled *Exporter Supply Chain Assurance System Review (ESCAS) stage 1 discussion paper: current state challenge identification*, released in December last year is very prescriptive and allows limited opportunity to talk to the broader ESCAS model from a more top-down standpoint. It is important that we take the opportunity, at this early stage of the review process, to assess the overall structure and operating model of ESCAS (strengths and weaknesses) and explore alternative models before analysing the detail.
3. Accordingly, this submission aims to "takes a step back" and looks at ESCAS at a more macro level; it concentrates on key ESCAS structural and / or conceptual issues and opportunities. By doing so this paper identifies matters that should be considered by the department in determining how to structure its review of ESCAS, how it should be shaped, what to consider and any key concepts or ideas to incorporate.
4. The submission aims to highlight key considerations that any review of ESCAS should incorporate and raises the concept of looking at ESCAS as two parts: the first part relating to how ESCAS is structured as a regulatory instrument and the second reviewing how ESCAS (the instrument) is administered.

#### ESCAS: Background

5. The ESCAS is a government regulatory instrument administered by the Department of Agriculture, Fisheries and Forestry (Department).
6. ESCAS was introduced in 2011 (rather hastily) but has been a successful regulation, delivering on its broad objectives and serving the industry relatively well with limited adjustments to its original design.

7. The scope of ESCAS covers all feeder and slaughter livestock exported from Australia to all markets through the in-market supply chain until point of slaughter (or death or reclassification). The supply chain covered under ESCAS is all encompassing. It includes the port of discharge, in-market transport, handling, and slaughter practices, tracking of livestock through any in-country movement and associated reconciliation, independent facility auditing and reporting, and access to all supply chain facilities. This oversight and control is demanded from exporters under ESCAS, despite ownership transferring from the exporter at point of in-market port discharge.
8. The four elements of ESCAS are:
  - a. independent auditing,
  - b. control,
  - c. traceability, and
  - d. animal welfare.

ESCAS as an instrument, and the administration of ESCAS, is structured around these four elements.

9. The purpose of ESCAS is:

*“...to ensure that Australian livestock exported for feeder and slaughter purposes are transported, handled, and slaughtered humanely for the purpose of delivering good animal welfare outcomes and facilitating trade.”*

10. A key objective of the design of ESCAS is to avert industry-wide bans by ensuring that individual exporters are held accountable to their supply chain performance in maintaining the ESCAS standards and practices.
11. ESCAS as a framework is broadly based around two fundamental functions: the *regulatory instrument* that sets the rules, standards, and outcomes, and the *administrative function* that administers the ESCAS instrument.

## **ESCAS: Fundamentals**

12. The live export industry is primarily an economic and trade pursuit. Ensuring good animal welfare is a critical facilitator of the industry; good regulation supports good animal welfare outcomes that in turn supports the sustainability of the industry. Good animal welfare is both a moral and an economic pursuit. No reasonable person disputes the importance of good animal welfare outcomes in underpinning the sustainability of the industry (and in absolute terms for that matter).
13. ESCAS has two primary roles, which are inherently linked. ESCAS must underpin the delivery of good animal welfare outcomes and support and underpin the sustainability of the trade. Good regulation relates to the utility of the regulation as well as the cost of regulation in the context of practical application.
14. The Department's “*compliance statement for the export of livestock*” (Dec-2021) lists as a key objective of its regulatory approach: “*...to ensure...support for the long-term sustainability of the livestock export industry.*” Sustainability relates to animal welfare outcomes *and* cost. Cost relates to the absolute set of conditions or requirements the regulation insists on and the efficiency (and effectiveness) with which the regulation is administered.
15. Good regulation supports trade sustainability. However, excessive and poorly structured, or inefficient regulation (at the instrument or administrative level) undermines the sustainability of the trade.

#### ESCAS Review Considerations:

- A. *The review of ESCAS should consider the two broad functions of ESCAS: The first being the ESCAS regulatory instrument and the second the administration of the ESCAS instrument. While ESCAS regulation and administration are inherently linked they can be assessed separately as they represent two distinct functions.*
- B. *The review of ESCAS should also be conducted with full consideration of its dual role; ESCAS must support good animal welfare outcomes and good economic and trade outcomes. While ESCAS must deliver good animal welfare outcomes, it must do this in a manner that is not detrimental to the economic and financial viability of the industry.*
- C. *ESCAS must not represent an excessive unsustainable burden on industry; ESCAS must be effective and efficient as an instrument and how it is administered.*

#### **ESCAS: Instrument**

- 16. The regulatory instrument is taken as the enforceable set of “rules” and required “outcomes” that represent the minimum conditions of operating in the industry. It includes standards, licensing requirements, monitoring obligations, a set of industry controls with penalties and incentives to influence and direct behaviour toward the desired outcome (good animal welfare and facilitation of trade).
- 17. A good regulatory instrument should be easy to understand and readily accessible; it should enable each party to clearly identify and determine their responsibilities. Principles of good regulatory instruments include efficiency and economy, proportionality, supporting sustainable growth, and transparency.
- 18. The ESCAS instrument is structured around four core elements of
  - a. independent auditing,
  - b. control,
  - c. traceability, and
  - d. animal welfare.
- 19. The standards and related checklists and expectations underpinning independent facility auditing embedded in the ESCAS instrument are sound. They are well understood and broadly accepted by exporters and in-market supply chain participants.
- 20. The standards underpinning animal welfare are comprehensive and demand outcomes that are above OIE levels, and they are generally understood by exporters and in-market supply chain participants. Notwithstanding, there are some ambiguities indicating scope for refinement and improvement of the prevailing standards.
- 21. The ESCAS instrument is less clear regarding the remaining two ESCAS elements of control and traceability. There is not a clear set of standards and accompanying documents surrounding control and traceability. While the principles of control and traceability are understood by exporters, they are arguably less well understood by in-market supply chain participants and suffer from a lack of structure and absence of clearly articulated standards and outcome expectations. This represents the biggest structural deficiency of the existing ESCAS instrument.

22. EAN 2015-10 did introduce an ESCAS control and traceability standard, but this was market specific (Vietnam only) and species specific (cattle and buffalo only) as well as time specific (with its current status ambiguous).
23. The prevailing ESCAS instrument itself is clunky. There is not one “document” that provides the full ESCAS instrument. There are published ESCAS documents as well as a number of Export Advisory Notices (EANs). Further, a special set of “requirements” was developed around control and traceability for one market (Vietnam), referred to as the Six Point Plan (6PP), which wasn’t clearly identified as part of ESCAS, yet EAN 2015-10 clearly links it to ESCAS.
24. As a regulatory instrument, ESCAS has largely served the industry well, notwithstanding the structural deficiency referred above.

#### ESCAS Review Considerations

- D. *The review should assess the prevailing relevance and appropriateness of the four ESCAS elements; whether they represent the best infrastructure for ESCAS in the context of prevailing conditions and contemporary international bodies. Should the primary element be animal welfare and the secondary elements (say, animal handling, auditing, control, traceability) be subordinate to, but underpin, welfare?*
- E. *The review and improvement of ESCAS as an instrument should consider moving away from the existing patchwork of policies, standards and auxiliary documents to a central “document” that captures the entire instrument. (The set-out of ASEL and its accompanying guidelines offer a reasonable reference point for reviewing the structure to house ESCAS.)*
- F. *Consideration could be given to developing a set of guidelines to accompany the ESCAS instrument which assist industry participants.*
- G. *A formal annual review of the instrument could be embedded within the overarching ESCAS policy. This would provide a means to incorporate any changes to the OIE standards and/or adjust for industry level changes to ensure the instrument remains contemporary, effective, and efficient. ESCAS’s future form should include a mechanism to allow for user (regulated entity) feedback.*
- H. *The absence of standards for the elements of control and traceability represents a structural weakness of ESCAS: this should be addressed. The C&T standards should integrate with the existing animal welfare and audit standards and be outcome focused. Auditing the regulated entity against the C&T standards should then focus on two aspects: the integrity of the underlying C&T “system” (data integrity, restrictions on retrospective data adjustments, reconciliation mechanisms, record keeping, user record keeping...) and the integrity of the use of the “system” (veracity of raw data, timeliness of raw data provision and uploading, separation of duties, internal controls, record keeping...)*
- I. *The requirements under ESCAS should be applied consistently across markets and regulated entities. While the instrument can incorporate the ability to be calibrated to allow for “risk” (at a market and/or regulated-entity level), any adjustment should be potentially applicable to all markets and regulated entities equally and should have clearly defined and transparent criteria for adjustments and a clear framework and timeframe for re-assessment.*
- J. *ESCAS should ensure that the standards it sets as a minimum are not above those that apply in Australia. The review of ESCAS should be conducted in context of what is demanded of the Australian livestock supply chain.*

*K. The role of government is to set the rules and standards that the live export industry must operate within. This is achieved by the ESCAS instrument. The ESCAS instrument represents what the Australian government deems the minimum set of requirements that the industry must adhere to, and the industry must be held accountable to the government's set standards. This fundamental role should remain with government and the ESCAS instrument should represent the only regulatory instrument, as the only point of regulatory reference. The ESCAS instrument must be set by government and "owned" by government. The industry is not well served by creating a parallel set of standards that represent an "equivalence" to ESCAS, that are set by a third party. A third party may recommend changes to the instrument, but any changes should be made by the government and be reflected in the government standards.*

## **ESCAS: Administration**

25. The regulatory instrument is the set of rules that guide (through setting outcomes or prescribing the conduct) the regulated industry or entity. The regulatory administrator is the body that administers the instrument, dispenses the rule, supervises the industry's adherence to the instrument.
26. ESCAS is administered by the Department. The Department is empowered to enforce the ESCAS instrument, which includes a reporting framework, evidence of compliance, and imposition of penalties for non-compliance or rewards for compliance.
27. There is an inherent limitation with the Department acting as the administrator: jurisdictional constraints.
28. The implications of this structural limitation include:
  - Despite the ESCAS instrument applying to the supply chain outside of Australia, all physical administration is limited to within Australia.
  - Administration of ESCAS must be conducted exclusively through Australian exporters.
  - The department, as the administrator, has no ability to have a physical in-market presence. It cannot hold resources in market or deploy resources at times of alleged compliance breach.
29. The compromised administration structure has flow-on consequences:
  - The ability of the Department to review and filter claims from third parties of alleged in-market compliance breaches is highly constrained. The Department has no meaningful penetration into the market, no visibility, and no way to conduct an effective "fact-check" of a claim.
  - Being forced to administer the regulation remotely impacts alleged breach investigations. Investigations by the administrator tend toward a blanket approach. Reflecting their remoteness from the market and inability to conduct any form of direct investigation, the department defaults to including all regulated entities that are active (in the relevant market) in the investigation, demanding a very broad set of data across a very broad geography (often the entire market) and across an extended retrospective timeframe. This results in maximum disruption, cost, time, and distraction and represents manifestly inefficient administration of regulation. While this might be the objective of the body alleging the breach, it is not in the interest of the industry, or the regulation administrator.
  - The timeframe for conducting and closing out an ESCAS investigation can exceed 12-months. While the timeframe for exporters to provide information (at the demand of the department) is usually relatively short, the time taken to analyse and assess the data can be very long (and the timeframe is rarely defined upfront). This at least partly reflects the structure of how ESCAS is

administered. The blanket approach to data and information requests from exporters and the inability of the administrator to act in-market fosters administrative inefficiency.

30. Facility audits represent a key in-market assurance mechanism. They are relied upon under the ESCAS framework to demonstrate continuous compliance (IPARS) of existing supply chains and the basis for admitting new facilities to supply chains (IIARS). While the standards surrounding the facility audit as defined under the ESCAS instrument are viewed as adequate, the administration framework has weaknesses:
- The administrator has limited ability to verify the quality of the auditors.
  - The administrator has limited ability to access the field quality of the auditor's processes and approach, and ultimately the quality of audit performance.
  - The prevailing structure doesn't allow for real-time, ad-hoc facility audits.
  - The criteria for accrediting auditors are loose and ambiguous.
  - There remain ongoing questions regarding the true independence of auditors (independence being a criterion of auditors per the ESCAS instrument).
  - The current structure doesn't clearly separate the compliance and commercial function resulting in lingering potential for conflict of interest.
31. In what is a unique, complex, and time critical regulatory environment, the Department as the administrator must, given its government status, operate remotely and at arm's length (to the market and supply chain that the instrument is being applied). This represents a fundamental structural weakness of the prevailing administration of ESCAS.
32. The IGLAE's Review of the Exporter Supply Chain Assurance System published in 2021 refers to poor utilisation of technology. There indeed appears an unwillingness or inability to engage new technologies and processes to support more effective and efficient administration of ESCAS. The technology applied doesn't support easy use or underpin accuracy and is cumbersome and time consuming, which in turn adds cost and undermines good decision making.

#### ESCAS Review Considerations

- L. *The review should assess the underlying effectiveness and efficiency of the prevailing ESCAS administration. Does the current structure result in the best administration utility and cost outcomes?*
- M. *The unique, complex and time critical nature of the industry's regulation environment supports consideration of utilisation of an independent administrator. Review and assessment of the potential to mandate an independent agent or body to administer ESCAS (separate from the instrument). The potential upside is to overcome the inherent structural weakness of the existing administration structure and reduce some of the ESCAS regulatory burden on both the regulated entities and the department and enhance the integrity, effectiveness, and efficiency of the ESCAS framework. (Arguably an independent administrator would also better support the uptake of new, more effective technologies and processes.)*
- N. *Administration of proposed C&T standards (proposed to be added to the ESCAS instrument) would also be best served, at least partly, by an in-market presence.*