

21 February 2023

[REDACTED]
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Department of Agriculture, Fisheries and Forestry
GPO Box 858
Canberra ACT 2601

By email: LAE.ESCAS@agriculture.gov.au

Re: ESCAS Review - Consultation Stage 1

Dear [REDACTED]

This letter represents a response by LiveCorp regarding 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.

The Discussion Paper lists almost 60 ‘challenges’ (criticisms or possible weaknesses / issues) with ESCAS.

The large number of ‘challenges’ raised in the Discussion Paper might be regarded as surprising given that a May 2021 review of ESCAS by the *Inspector General of Live Animal Exports (IGLAE)*, while identifying some areas for improvement¹, found that:

“ESCAS was a unique and innovative regulatory practice solution designed to seek to ensure that Australian animals exported for slaughter experienced a level of animal health, welfare, and slaughter standards and practices acceptable to the Australian public. It was also designed to prevent any future industry-wide bans by ensuring that the individual exporter, and through their importers and supply chain facilities, were held accountable for any failures in maintaining these standards and practices.

ESCAS has been a successful reform that has largely achieved its broad objectives. It has been acknowledged that ESCAS, and the Livestock Export Program (LEP) delivered by Meat and Livestock Australia and LiveCorp in market, have not only lifted the standards and practices that

¹ Five main areas for ESCAS improvement were identified in the IGLAE review, namely, to address:

- Outdated business processes.
- Control and traceability.
- Regulatory actions in response to chronic or systemic non-compliance.
- Data collection and analysis.
- The challenges and opportunities offered by LGAP.

Of these five identified areas for improvement by the IGLAE, control and traceability receives substantial attention in the Stage 1 Discussion Paper of the current review. The other four issues in the IGLEA report (and three in particular) receive less attention.

Australian animals are subjected to but has also had a range of benefits to the way in which non-Australian livestock are managed and slaughtered in many of the importing markets.” (our emphasis).

Similarly, the Secretary of the Department of Agriculture, in responding to this Review, concurred its primary conclusion. The Secretary noted that:

“The department is proud of the change and reform that has been brought by the creation of ESCAS. The implementation of ESCAS has lifted the standards and practices that Australian animals are subjected to and has also had a range of benefits to the way in which non-Australian livestock are managed and slaughtered in many of the importing markets. As you have identified, the department has been successful in its implementation, which was a significant reform that has largely achieved its broad objectives”.

The number of ‘challenges’ raised in the Discussion Paper, contrasts strongly with the fact that both the IGLAE and Departmental Secretary have concluded that ESCAS has largely achieved its objectives.

The conclusion to draw from the IGLAE report, and the Department’s response, was that an opportunity existed to fine tune ESCAS, especially in a number of identified areas, but wholesale changes were unnecessary as the ESCAS regulations were basically sound and had stood the test of time. In contrast, from the number and tone of ESCAS issues raised, the Stage 1 Discussion Paper for the current review seems to be advocating “root and branch” ESCAS changes.

It is also to be noted that the ‘challenges’ raised have no information on their relative importance. LiveCorp understands that the current review of ESCAS is to be multi-staged, with the first stage being necessarily broader than subsequent stages. However, the Discussion Paper is very broad and the large number of possible ‘challenges’ raised and, particularly the lack of priority or weighting given to these, could see Departmental and industry / responder resources² used inefficiently.

In contrast to the broad nature of the Stage 1 Discussion Paper, online responses to it are structured by a fixed set of questions. LiveCorp is concerned the fixed set of questions unduly constrains responses to the Discussion Paper. LiveCorp has chosen not to respond to the online questions, but rather to provide this letter in response to the Stage 1 Discussion Paper.

LiveCorp has examined each of the 60 odd possible ‘challenges’ with ESCAS contained in the Discussion Paper and individually assessed each against requirements under LGAP. The conclusion drawn by LiveCorp is that the vast majority of the ‘challenges’ identified with ESCAS in the Discussion Paper are addressed within LGAP.

The fact that these possible ‘challenges’ are addressed within LGAP does not automatically imply that they should be addressed within ESCAS. As a set of regulations, ESCAS should define a *minimum* set of requirements to be met – of necessity, Government regulations should be “*least trade restrictive*”, representing minimums to be achieved, not best practice. LGAP, as an industry Quality Assurance scheme, on the other hand, should represent a system by which minimum regulatory standards can be met and exceeded³. It is significant, however, that LGAP, which is on

² Not only is limited information presented on the relative importance of claims made, often limited / no evidence is provided to support the ‘challenge’ - many identify only that a particular issue ‘may’ occur. It is important that ESCAS continues to be built around scientific evidence, including evidence that a particular issue is giving rise to substantial real-world problems. Again, LiveCorp recognises that the current Discussion Paper is only the beginning of a multi-stage process. It will be important, however, in future stages to present hard and compelling evidence to justify changes to ESCAS.

³ More broadly a much greater justification is needed for Government imposed regulation than for industry agreed standards. Amongst other things, to be justified, changes to regulation must meet the following criteria: (a) there is a clearly identified problem to be solved; (b) the need for Government intervention is clearly established; (c) net benefits

the cusp of becoming operational, addresses most of the ESCAS 'challenges' identified in the Stage 1 Discussion Paper.

An implication of the above, in terms of the ultimate outcomes of this Review, is that if the 60 odd possible 'challenges' with ESCAS contained in the Stage 1 Discussion Paper are representative of ESCAS matters to be remedied, clear policy choices will emerge from this Review.

To address the identified weaknesses in ESCAS, as outlined in the Stage 1 Discussion Paper, this Review can embrace one of two sets of policy options:

- 1) Either ESCAS can be further extended into the realm of Quality Assurance (noting that it already leans into this territory)⁴, or
- 2) ESCAS can remain as primarily a regulatory model that sits alongside a Quality Assurance system, (LGAP and possible future similar systems) that provide further assurances that the objectives of regulation are being met.

For four primary number of reasons LiveCorp holds the view that the second option will result in more effective and efficient outcomes.

- First, and most importantly, LGAP will provide a greater level of assurance as the regulator is constrained and, understandably, hesitant from acting extra-territorially. This constraint impacts the regulator's ability to directly check compliance against ESCAS regulations, investigate non-compliances and act against those identified as directly responsible for non-compliances (who are often overseas operators and facilities, not Australian exporters). Instead, under ESCAS the regulator must rely heavily on the exporter for checking compliance and investigations. This reliance on the exporter affects every aspect of how ESCAS runs. It is appropriate, for instance, under ESCAS that the exporter appoints an auditor as it is the exporter (as much, or more, than the regulator) who needs assurance that operating supply chains are low risk and compliant (noting that the exporter's license is at stake).

The LGAP Program Owner is subject to no constraints on acting extra-territorially. Amongst the keystone elements of LGAP are independent audit and appointment of Approved Certification Bodies in overseas markets with responsibilities which include:

- overseeing the audit process,
- ensuring the competency of Approved Auditors,
- risk assessment,
- following up and evaluating corrective actions,
- undertaking investigations as required to determine the ongoing conformity with the Certification Requirements, and
- granting, suspending or withdrawing certification in accordance with the Program's rules.

It is difficult to know how these keystone elements could be replicated in a modified ESCAS without the Australian Government being seen as directly enforcing Australian regulations extra-territorially.

- Second, as noted in the Commonwealth Government's Best Practice Regulation Handbook, schemes which involve a mixture of regulation and appropriately run codes of practice or

accrue from such intervention; (d) out of all options the form of Government intervention embodied in the regulatory change results in the greatest possible net benefits.

⁴ LiveCorp notes that explicitly listed as "*Out of scope*" for the ESCAS Review is to "*develop a detailed quality assurance system*" (Stage 1 Discussion Paper, p21). Yet many of the ESCAS 'challenges' identified in the Paper were considered at the time of developing LGAP and the LGAP quality assurance system was developed in response to these challenges.

accreditation schemes, such as envisaged under option 2, allow greater flexibility and tend to respond more quickly to changing circumstances⁵. By comparison, inherently, Government regulation is more rigid.

One example of the problems associated with rigid regulation is highlighted in the current Review. The underlying ESCAS regulation refers to the *Terrestrial Animal Health Code*, 2010, published by the World Organisation for Animal Health, a code that has now been superseded, but the regulation has yet to be updated.

No matter how well regulation is drafted such rigidities will remain – and the more specific the requirements imposed by the regulation, the greater the potential rigidity.

- Third, regulations must impose minimum standards. In contrast, an appropriately run accreditation scheme can over time impose or encourage standards above the minimum. LiveCorp is not stating that this would happen immediately with LGAP, but under option 2 this possibility is left open during the medium term.
- Fourth, as again noted in Commonwealth Government's Best Practice Regulation Handbook, schemes which involve a mixture of regulation and appropriately run codes of practice or accreditation schemes, such as envisaged under option 2, will result in lower costs for Government and often lower costs overall.

Some might hold the view that pursuit of both options is possible – that is, it is possible to both:

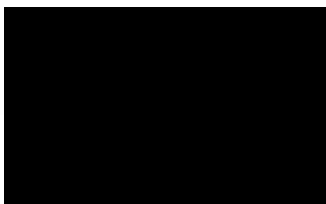
- Further extend ESCAS into the realm of Quality Assurance.
- Allow ESCAS to sit alongside Quality Assurance systems that provide further assurances that the objectives of the regulations are being met.

However, it is our view that it is unrealistic to believe both options can be simultaneously pursued (at least to any significant degree). If ESCAS is further extended into the realm of Quality Assurance there will be little space for Quality Assurance schemes like LGAP to operate – regulation will crowd out initiatives like LGAP. With respect to LGAP, industry has already allocated very substantial resources to the design and implementation of this Quality Assurance program. If the role of LGAP is to be unduly lessened (through further Quality Assurance elements being included in ESCAS), industry will surely question the allocation of additional resources to the ongoing development and operation of this initiative.

LGAP is on the verge of being operationalised and the department has indicated its support for its implementation in the past. It should continue to allow and support this process to be completed, and ensure that this review continues to provide space for LGAP and other QA models to operate.

Thank you for your consideration of the above.

Yours sincerely,



Australian Livestock Export Corporation (LiveCorp)

⁵ Australian Government 2007, Best Practice Regulation Handbook, Canberra.