

Infringement Notices

The proposed provisions introduce infringement notices or fines which will result in on the spot modified penalties similar to speeding fines. These can be challenged in court at the risk of a higher penalty or a review can be requested. Payment of a fine is not an admission of an offence.

Unlike speeding fines where, in most cases, the evidence is unambiguous, these regulations incorporate many subjective assessments that will have different interpretations by both transporters and inspectors – loading densities being one of the most obvious. There is concern that this scenario will result in resources being wasted challenging subjective interpretations. This is even more likely given the variety of officers classified as inspectors under the current laws and who will be able to issue infringements - not all of whom are knowledgeable about livestock. Such a situation is neither fair nor conducive to good animal welfare outcomes.

Loading densities

The regulations do not prescribe loading densities whereas in the standards and guidelines they are a guideline. They are also prescribed in the current codes of practice and therefore are a defence. This defence will no longer be available if the new regulations are adopted. Reliance on specific loading densities as a defence as per the current code of practice has merit under the current statutory regime where evidence is weighed up in response to a specific incident and a range of factors are considered. However, under the regime being proposed by these regulations loading densities are subjective and transporters will be at the mercy of varying interpretations from inspectors.

Despite our concerns about the manner in which loading densities are treated by the regulations, the LRTAWA considers an offence should be created that prohibits another party in the chain requiring a transporter to breach the loading densities.

Notwithstanding our view that the regulations are premature, there are concepts we believe are worthy of consideration in the future.

Chain of responsibility

The LRTAWA made a strong argument when the national standards and guidelines were being developed that animal welfare would benefit from placing obligations where they could best be influenced i.e. it was important not to make transporters responsible for matters they had little to no control over. If this approach was adopted in implementing the standards there is likely to be better outcomes. A chain of responsibility approach would help ensure that transporters were not the easy target by placing responsibility on others in the chain who can influence outcomes to a greater extent.

Areas of responsibility could be specified for consignors (which at times includes livestock agents), transporters and receivers. Areas where this is relevant include livestock preparation for loading, selection for loading, spelling, loading densities and loading infrastructure.

Selection of animals for loading

The consignor must assess animals to ensure they are not unfit to load and the transporter must do the same. For both the consignor and the transporter there are \$15000 penalties possible. If behavioural change was at the heart of the regulations the penalty for the consignor would be higher than the transporter. The consignor is in a stronger position to know the condition and history of the animals presented for loading and therefore the penalty for presenting an animal not fit to load should be higher. This would assist in overcoming the tension experienced by some drivers who sometimes feel under pressure to load an animal that otherwise may not be suitable to transport, particularly given the specificity of prescribed conditions and the physical practicality of loading conditions in some circumstances such as poor lighting and visual barriers to close assessment.

Further the penalty for a transporter who transports an animal with a condition that could not have developed during transport should not be as severe as the penalty applied to a consignor who had more opportunity to identify it and had greater historical knowledge of the animal.

Loading and Unloading

The proposed regulations state that a livestock transporter must not unload the livestock at a livestock handling facility unless the livestock handling facility is able to reasonably hold the number of livestock animals to be unloaded. In some cases it is difficult for a transporter to know until he/she arrives what the capacity of the facilities are. There should be corresponding obligations on the consignor or consignee to ensure the destination facilities are capable of accepting the number of animals expected.


Supported aspects

The LRTAWA supports the requirement for saleyards to have someone to destroy livestock when animals are present, improved specifications around loading and unloading equipment and a high penalty for giving a transporter false or misleading information in the journey record. If these provisions are agreed an information campaign should follow.

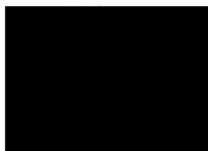
Conclusion

The LRTAWA does not support these regulations in their current form. In summary, rejection of the draft regulations is based on the following:

- It is premature to introduce significant regulations ahead of the outcome of the major review of the Animal Welfare Act 2002.
- The regulations impose a 'duty of care' that is absent from the Act. This is a fundamental modification to the outcomes sought by the Act and should be open to parliamentary debate not introduced through regulation.
- A significant number of defences have been removed from parties in the supply chain.
- In the 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.
- The draft regulations deviate from the national standards by introducing prescribed conditions that must be eliminated prior to loading.
- There is significant subjectivity in the regulations which will result in a lack of clarity and varying interpretations which ultimately will result in transporters challenging the results.
- The regulations should encourage clear responsibilities along the supply chain with matching offences i.e. obligations should be imposed on those most able to influence the outcomes.

Thank you again for the opportunity to comment. If you have any queries, please do not hesitate to contact Jan Cooper 

Yours faithfully



D Fyfe
President