



## **PUBLIC STATEMENT OF REASONS**

On 8 June 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 13 June 2020, I decided to grant an exemption from section 8 of the Northern Summer Order, pursuant to s 12(1) of that Order.

I gave careful consideration to the application and all of the supporting information including the responses received from RETWA to the Department's invitation to comment. I also took into account all of the material before the Department in relation to the earlier application for exemption made by RETWA on 27 May 2020 and refused by the Department on 2 June 2020. This included all of the information and submissions received from third parties.

On balance, I was satisfied that it was appropriate to grant the exemption sought by the application made on 8 June 2020. However, I decided to grant an exemption subject to a number of conditions, pursuant to s 12(4) of the Northern Summer Order.

I note that the exemption is only in respect of section 8 of the Northern Summer Order and RETWA is required to comply with the rest of that Order as applicable, as well as any other applicable legal requirements relevant to the proposed export. Below, I provide a 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.

On 2 June 2020, a delegate of the Secretary decided to refuse to grant the exemption.

On 8 June 2020, the Department received a new application for exemption made by RETWA pursuant to s 11 of the Northern Summer Order. The new application was substantially different from the previous application made by RETWA in the degree of specificity, the number and type of live-stock to be exported, and the mitigation measures proposed. In particular, the application was made to export approximately 50,000 sheep (**Consignment**) using the MV Al Kuwait departing Fremantle as soon as possible after the vessel is cleared on 13 June 2020 and before 24:00 on 17 June 2020 to ensure discharge in Kuwait prior to the end of June 2020.

In support of its application, RETWA provided a Management Plan for the proposed voyage, and expert opinions in relation to meteorological data and impact on animal welfare. RETWA subsequently provided further meteorological data and expert opinion, logger data analysis and an Updated Management Plan. 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 (**Bureau**), regarding forecasts for the Persian Gulf for June 2020 (**Bureau Forecast** and **Updated Bureau Forecast**).

Additionally, I considered submissions previously 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 an invitation 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 accepted that a global pandemic is 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 12 month planning schedule when it was developed, and that a number of crew testing positive for COVID-19 onboard the MV Al Kuwait as the vessel was berthed in Fremantle waiting to load live-stock falls into the category of exceptional circumstances. Indeed, additional members of the crew of the MV Al Kuwait subsequently tested positive for COVID-19 and the vessel had been held in quarantine and had been unable to load its cargo since 25 May 2020. I also accepted that RETWA acted reasonably in arranging for the arrival of the MV Al Kuwait to Fremantle on 25 May 2020 with a view to departing prior to the commencement of the prohibition period on 1 June 2020.

However, I found that the COVID-19 outbreak onboard the MV Al Kuwait would not in itself warrant granting the exemption, particularly if it presented an unacceptable risk to animal health and welfare.

I gave weight to RETWA's concerns 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. I considered the impact that a decision to refuse the exemption might have on RETWA's relationship with its trading partners. I was satisfied that there was a risk that a decision to refuse the exemption might further incentivise RETWA's trading partner, Kuwait Livestock & Trading Company (KLTT), to develop alternative supply chains away from the Australian market, which would adversely effect RETWA's business. I also had regard to representations made by KLTT, the Embassy of the State of Kuwait and the Kuwaiti Minister of Commerce and Industry to various Australian Ministers. I was satisfied that a decision to refuse to grant an exemption would adversely impact RETWA's trade relationship with KLTT and Australia's trade relationship with the State of Kuwait, and might further incentivise them to develop supply chains away from the Australian market.

Overall, I gave weight to the financial and ongoing trade impact that a decision to refuse to grant the exemption would have on RETWA's 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 against the risk of harm to animal health and welfare during the proposed voyage.

I had regard to the likelihood that my decision would have implications beyond the interests of RETWA, including the possibility that it will 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 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. 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.

I had regard to a 2019 BOM report and two forecasts for the Persian Gulf for June 2020 that the Department had received from the Bureau. The First Bureau Forecast indicated that overall in June 2020, temperatures in the Gulf are forecast to be 0.6-1.2°C above average, which indicated that temperatures were likely to reach up to 1.2°C above average after 21 June 2020.

Relevantly, the Updated Bureau Forecast dated 10 June 2020 indicated that:

- a. Maximum and minimum air temperatures are predicted to be up to 0.6 – 1.2°C higher than average for the whole of June 2020, but up to 2.0°C higher than normal for the period 13 – 26 June 2020, and 1.0 °C higher than normal for the period 20 June – 3 July 2020.
- b. Sea Surface Temperatures for the periods 13 – 26 June and 20 June – 3 July 2020 are forecast to be up to 2.0 °C higher than normal in the vicinity of the Arabian Sea, 0.4 – 0.8 °C higher than normal in the Gulf of Oman, and 0.8 – 1.2 °C higher than normal in the Strait of Hormuz and to the east in the Persian Gulf.
- c. Sea Surface Temperatures along the route are predicted to be up to 0.4 – 2.0°C higher than normal for each of the periods 13 – 26 June 2020 and 20 June – 3 July 2020.
- d. The Indian Ocean is currently much warmer than average, which is influencing the current temperature forecasts. Across the region, sea surface temperatures have been 0.5–2.0 °C above the long-term average in recent months.

In its current application, RETWA did not deny that the delayed departure of the MV Al Kuwait would result in an increased likelihood that environmental WBTs during the latter part of the journey will be “slightly higher” than those which would have been experienced if departure had occurred prior to 1 June. In its response dated 11 June 2020, RETWA provided an updated advice and opinion from Dr Buckley dated 11 June 2020. In his updated opinion, Dr Buckley stated that voluntary observing ship data, which covers ship reports out to around 240km from the port location, shows that the 98<sup>th</sup> percentile WBT for June is 30.5°C (from ships located well south in the Persian Gulf) and 31.0°C for July. Dr Buckley opined that the worst case WBTs, assuming light wind conditions for the transit of the ship, would be 1°C higher.

While RETWA submitted that the Updated Bureau Forecast and information should be given little or no weight on matters specifically addressed by Dr Buckley, the forecasts of the Bureau and of Dr Buckley were broadly consistent. That is, the Bureau forecasted sea surface temperatures in the Strait of Hormuz between 0.8°C and 1.2°C above average (noting that these are likely to be reflected in similar increases in WBTs), and Dr Buckley forecasted up to 1°C above average WBTs. In its response of 11 June 2020, RETWA acknowledged that, broadly speaking, the Bureau’s propositions were not inconsistent with Dr Buckley’s opinion, but submitted that this did not take into account any active voyage management planning.

Overall, I considered that the opinions of the Bureau and Dr Buckley were broadly consistent and proceeded on the basis of the Bureau’s estimated range of 0.8-1.2°C above the average WBTs in the Strait of Hormuz (as outlined in the 2019 BOM report). Applying that range to the maximum average WBTs in the Strait of Hormuz, I found that if the MV Al Kuwait departed Fremantle on 17 June 2020, the predicted WBTs were 28.3°C to 29.8°C. Whereas the average WBTs that a vessel would encounter in the Strait of Hormuz if it departs Fremantle on 31 May are 27°C to 28°C. However, I acknowledged the risk that the WBTs might be higher, in light of Dr Buckley’s view that the highest environmental WBT in this region should be 30°C or lower on the basis of the ship being actively managed.

In that respect, I also took into account the expert opinion of Dr John McBride dated 1 June 2020 that there was a very high probability of WBTs in the Persian Gulf exceeding 29°C in June 2020. On the totality of the evidence in respect of the forecast temperatures, I proceeded on the basis that the ambient WBT would be between 28.3°C to 29.8°C, and possibly up to 30°C in this region.

I noted that RETWA submitted that the time transiting Strait of Hormuz is relatively short and that it estimated this time to be some 12-13 hours. The geographic location of the Strait of Hormuz is a

relatively short section (approximately 90nm) of the overall voyage route from Fremantle to Kuwait. However, the estimated WBT figures for the Strait of Hormuz are approximately representative of the WBTs encountered in the upper Arabian Sea, the Gulf of Oman and most of the Persian Gulf. Further, Dr Buckley acknowledges in his updated opinion dated 11 June 2020 that there would be a period of 24 hours with a risk of high WBTs. Dr Buckley identified this period as the time that it takes the vessel to transit through the Gulf of Oman, Strait of Hormuz and adjacent Persian Gulf. As noted above, Dr Buckley considered that the likelihood is that the highest WBT in this region should be 30°C or lower on the basis of an actively managed ship.

Overall, I was satisfied that the meteorological data indicated that the MV Al Kuwait might encounter ambient WBTs in the Strait of Hormuz and surrounding areas between 28.3°C to 29.8°C, and possibly up to 30°C.

As set out in the Department's RIS, WBTs found on the decks inside of live-stock export vessels are typically 1°C to 3°C above the ambient WBT of the air surrounding the ship (see p 58). The better the ventilation on a vessel, the smaller the difference between ambient temperature and deck temperature. In its current application, RETWA indicated that with the superior ventilation of the MV Al Kuwait and the lower stocking density (additional 10% than what is required by EAN 2018-06), the MV Al Kuwait's wet bulb rise will be approximately 1°C.

The Department's Animal Welfare Branch reviewed logger data from the 19 April 2020 voyage of the MV Al Kuwait held by the Department which showed a difference of 2.2°C, and at times in excess of 3°C, between the lowest average WBT (kestrel 1) and the highest average WBT (kestrel 16) onboard the MV Al Kuwait. Ambient WBT data was not available as there was no logger on the bridge. I note in this regard that the Northern Summer Order does not require an environmental logger on the bridge to reflect ambient temperatures and there was no direction requiring this for the MV Al Kuwait's April 2020 voyage.

This information was put to RETWA for comment on 10 June 2020. In response, RETWA submitted that neither the logger data nor the AAV voyage data that it has also reviewed could be relied on, in particular because of anomalies in the data. In the further explanatory notes and information provided on 12 June 2020, RETWA accepted that >1.5°C would be the upper limit of the wet bulb rise for the MV Al Kuwait given the limitations of the existing data.

In light of the limitations identified in the logger data for the MV Al Kuwait's last voyage, I placed no weight on the T-deltas between Kestrel 1 WBTs (the coolest) and Kestrel 16 WBTs (the hottest). I gave weight to RETWA's confirmation that the hottest deck, Deck 5 Aft (Special 5), would not be used for the proposed voyage. Overall, I was satisfied that 1.4°C was a reasonable estimate of the wet bulb rise onboard the MV Al Kuwait.

The average WBTs that a typical vessel might encounter in the Strait of Hormuz if it departs Fremantle on 31 May are 27°C to 28°C. Assuming a wet bulb rise of between 1°C and 3°C, this would mean that the vessel could face deck WBTs between 28°C and 31°C. Given that the estimated deck WBT for the MV Al Kuwait in the Strait of Hormuz is between 29.7°C and 31.4°C, I found that the upper limit of the range is similar to the upper range of the risk of higher WBTs for a vessel departing on 31 May that was contemplated in the RIS. Having regard to the totality of the weather information including RETWA's submissions and Dr Buckley's reports, I found that the deck WBTs onboard the MV Al Kuwait could be expected to reach between 29.7°C and 31.4°C, but that this was not a materially greater risk than what was contemplated in the RIS that informed the making of the Northern Summer Order.

I had regard to the other expert material provided by RETWA. However, I preferred the findings in the RIS that informed the introduction of the Northern Summer Order and give weight to the

assessment in the LiveCorp and MLA Veterinary Handbook for Cattle, Sheep and Goats that WBTs above 29°C are considered the 'danger' zone for sheep.

On the basis of the above information, I found that an MV Al Kuwait departure date between 15 and 17 June 2020 posed a risk of heat stress, when the vessel would transit through the Gulf of Oman, Strait of Hormuz and adjacent Persian Gulf. However, I gave weight to Dr Buckley's assessment that this period was likely to be some 24 hours and that the WBTs should not exceed 28°C anywhere across the Arabian Sea. I also gave weight to the WRI predictions of around 25-26°C. This suggested that notwithstanding that sheep experience cumulative heat load, deck WBTs would not rise above 29°C during the days before the MV Al Kuwait transits through the Gulf of Oman, the Strait and the adjacent Persian Gulf.

I noted that duration was a consideration in determining the overall animal welfare impact of exposing sheep to high WBTs. As noted by Professor Maloney, the impact of the duration of continuous exposure to heat stress thresholds is still under investigation (HSRA review). However, sheep cope better if periods of high WBT are broken by periods where the WBTs drop for a number of hours. This is most commonly seen where WBTs follow a diurnal pattern, i.e. routinely drop each 24 hour period (typically at night). The AWB analysis notes that the WBTs in the Strait of Hormuz (and in Middle East maritime locations generally) show minimal diurnal variation, with the average minimum WBTs in mid/late June being less than 2°C lower than the average maximum temperature. In light of this, I was not satisfied that the risk of heat stress in the Strait of Hormuz would be mitigated by any diurnal variation and consider it likely that the sheep will have little diurnal respite during this part of the voyage. However, I was satisfied that the risk of heat stress in Kuwait Port for a departure on or after 15 June 2020 was very low.

I considered the mitigation strategies identified in RETWA's Updated Management Plan, the AWB analysis of the adequacy of those strategies, and the additional heat stress mitigation measures identified by the Department's Animal Welfare Branch. These risk mitigation strategies included strategies in relation to removing live-stock at potentially higher risk from the Consignment (heavier, fatter sheep), loading the vessel with a higher allometric K-value to reduce stocking density, additional inspections and preparation, ventilation of the MV Al Kuwait, active voyage management by expert Voyage Management Team, animal welfare monitoring and management, and animal management during discharge.

I identified some limitations to aspects of the mitigation strategies but considered that they could be addressed by imposing a condition that required the removal of heavier sheep and ensured that additional drafting measures occurred effectively at the Registered Premises. I was not persuaded by RETWA's statement that the live-stock now to be shipped would have an HST of about 1.3°C WBT higher than those originally to be shipped. However, I gave weight to the fact that the most vulnerable sheep would not be loaded.

Overall, I was satisfied that the Updated Management Plan incorporated more elements of additional measures beyond those already mandated in ASEL, the Northern Summer Order and RETWA's Approved Arrangement than the previous management plans submitted in support of the previous exemption application. I gave weight to these strategies and found that while each of the measures was individually inadequate, when considered cumulatively, they provided substantial albeit not complete mitigation against the animal welfare impacts of deck WBTs of up to 31.4°C. I considered that the imposition of conditions would provide further mitigation against the risk of adverse animal welfare outcomes.



## Conclusion

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

I accepted that the exemption is being sought in exceptional circumstances resulting from the global COVID-19 pandemic. I gave weight to the significant financial and ongoing trade impact that a decision to refuse to grant the exemption is likely to have on RETWA's business operations, the interests of persons and entities associated with it, and its relationship with its trading partners. Further, I had regard to the likelihood that a decision to refuse the exemption will create an oversupply that may reduce livestock prices for farmers, as well as for meat processors, who are already experiencing freight difficulties.

I had regard to the possibility that my decision may adversely impact Australia's trade relations with Kuwait and the Gulf region, and therefore adversely affect the interests of the live animal export industry. In this respect, I had regard to the impact on Kuwaiti food security that may be occasioned by a refusal to grant the exemption particularly in the current circumstances resulting from the global pandemic.

However, I balanced the above considerations against the health and welfare of the animals on board the vessel during the proposed voyage. In considering this issue, I given significant weight to the available forecasting data for WBTs during the voyage and the duration of the animals' exposure to WBTs above 29°C. I was satisfied that on the available data, the likely deck WBT during the voyage through the Gulf of Oman, the Strait of Hormuz and the adjacent Persian Gulf will be between 29.7°C and 31.4°C, and found that this was comparable to the risk identified in the RIS for a departure on 31 May, having regard to the RIS's assessment that wet bulb rises on vessels generally range from 1°C to 3°C. I also found that the risk of heat stress posed by the forecasted WBTs was not fully but substantially mitigated by the combination of measures detailed in the exemption application and supporting material, including the superior ventilation and PAT scores for the MV Al Kuwait and the measures set out in the Updated Management Plan. I identified a number of conditions that I considered appropriate to impose on an exemption if I were to grant it, in order to further mitigate the risk of heat stress. I found that with the combination of these measures and having regard to the forecast temperatures during the voyage, the risk of heat stress to a level that was commensurate with that which may be posed by voyages departing in May 2020.

I had regard to the submissions received from third parties in respect of RETWA's first exemption application, including from Animals Australia, RSPCA Australia, the AVA and Professor Phillips. I gave some weight to these statements.

Overall, and weighing all of the matters for and against a decision to grant an exemption, I was satisfied that in the exceptional circumstances resulting from the global pandemic and bearing in mind the weather forecasts for the journey, the measures in place to mitigate the risk of heat stress, and the factors weighing in favour of an exemption as set out above, including the likely impact on RETWA and related persons, the industry, and Australia's trade relations, it was appropriate to grant the exemption pursuant to s 12(1)(b) of the Northern Summer Order.

Accordingly, I granted the exemption from s 8 of the Northern Summer Order subject to a number of conditions, being that: the vessel used for the consignment is the MV Kuwait; the loading ceases by 2400 on 17 June 2020; there is only one port of discharge; the vessel is stocked at a minimum allometric stocking density of 0.037; no sheep are loaded onto an area of the deck on the ship identified as presenting a risk of higher deck WBTs; the sheep types averaging above 50kg are removed from the consignment; sheep with wool of over 20mm are removed from the consignment; at least one additional stock person accompanies the voyage; and the export and

related loading, voyage and discharge are otherwise undertaken in line with the exemption application and the Updated Management Plan.

David Hazlehurst  
Deputy Secretary

13 June 2020