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FOI Officer
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Freedom of information request FOI 2017/18-10

I write on behalf of Vets Against Live Export (VALE). I refer to the above request and the decision letter of Dr Narelle Clegg, dated 23 November 2017 (**'the Letter'**), in which Dr Clegg refused to release two reports (documents 3 and 5) (**'the Decision'**). The request was for

'the End of Voyage Report, Masters Report, Daily Voyage Reports and AMSA's post voyage inspection report for the April 2017 voyage by South East Asian Livestock Services from Darwin to Buntulu/Maura with 7.79% mortality as tabled in the Parliamentary Report (mortalities Jan-Jun 2017, excluding from the scope of the request personal information regarding AAV and stockman names, signatures and contact information'.

Document 3 is described by the Document Schedule (which was sent with the Letter) as 'Report by attending vet day 2' and Document 5 is described by the Document Schedule as 'Report by attending vet day 3'. As both documents are in the Schedule, clearly the Department regards these documents as falling within the scope of the request; they appear to be 'daily voyage reports'.

The Decision was said to be because the documents referred to contain 'additional information beyond the minimum mortality reporting requirements of the AMLI Act...', and concern the professional affairs of the Australian Government Accredited Veterinarian (AAV) providing the report and the business affairs of the exporter. This was said to enliven section 47G(1)(b) of the FOI Act, such that disclosure of the requested information could reasonably be expected to prejudice the future supply of information to the Department. Dr Clegg acknowledged there was a public interest in disclosure of information

I reiterate VALE's request for an internal review of the Decision.

In making that request, VALE wishes to point out that the reference in the Letter to the 'minimum mortality reporting requirements of the AMLI Act' (we assume the reference is to the *Australian Meat and Live-stock Industry Act 1997*) is, in our view, misleading. Legislative requirements concerning reporting by an AAV are in the *Export Control Act 1982* and the *Export Control (Animals) Order 2004* ('**the Order**'). It is helpful to set these out. There are no 'minimum mortality reporting requirements of the AMLI Act'. There are statutory obligations imposed on an AAV to report on a variety of matters, one of which is mortality, but many of which include matters relating to animal health and welfare.

Firstly, by section 9G(1) of the *Export Control Act*, it is an offence to fail to make reports required by the Order. Secondly, it is apparent that the relevant order is Order 4A.15, concerning 'Reports by accredited veterinarians on voyages'. That Order relevantly requires an AAV to make a written daily report and an end of voyage report, both 'in the form approved by the Secretary for the purpose'. It appears to VALE that the 'form approved' for the daily reports is that found in Appendix 5.1 of the Australian Standards for the Export of Livestock (Version 2.3) ('**ASEL**'). From this, for the daily reports, there is a requirement that those reports must include (relevantly) information on 'health and welfare issues', 'issues from daily meeting' and 'mortality' and 'general comments'. VALE thinks it is reasonable to infer that 'general comments' are those concerning animal health and welfare, given the subject matter of ASEL.

That being so, if documents 3 and 5, being daily reports made by the AAV, contain information relating to health and welfare of the animals, mortality, or any issues from the daily meeting, or general comments otherwise relevant to animal health or welfare, then that information is provided as part of a statutory obligation imposed on the AAV. It cannot be said to be information which is supplied at the discretion of the AAV, and therefore releasing it to VALE in response to the request cannot be said to prejudice the future supply of information to the Department, as the AAV is obliged in any case by law to supply the information referred to by virtue of the effect of the Order and the referenced part of ASEL. Put simply, the AAV must provide that information to the Department, or be in breach of the law; releasing that information in response to an FOI request cannot therefore prejudice the future supply of such information, as that supply is a statutory requirement. VALE suggests that the reviewer considers the approach to this issue adopted by the Information Commissioner in *Animals Australia Inc and Department of Agriculture* [2015] AICmr14, where it will be seen in similar circumstances (ie relating to a live export voyage and reports made by those obliged to under law) that information which was required by law to be supplied to the Department was not regarded as falling under the exemption in section 47G(1)(b) of the FOI Act.

If there is information in documents 3 and 5 which does not come under the heading of 'health and welfare issues', 'issues from daily meeting', 'mortality' and 'general comments', but rather refers to the professional affairs of the AAV, or the commercial

affairs of the exporter, then VALE will accept release of the documents with that information redacted.

Finally, a particular matter relating to the public interest in the live export of animals, is the fact that AAVs are not independent, but are employees of the exporter. VALE has long argued that this results in AAVs being put under pressure to avoid saying anything negative about their employers, or about the voyage which could give cause for alarm to the public regarding live export. Failure to disclose information which is in any case required to be reported by law will further strengthen the belief that AAVs are not independent reporters of animal welfare issues on live export voyages, which in turn is a matter of interest to the public.

Yours sincerely



Dr Malcolm Caulfield