



Department of
**Primary Industries and
Regional Development**

Consultation report

Animal Welfare (Livestock) Regulations 2019
and Proposed Infringement Notice Scheme



Animal welfare

Ensuring all animals receive appropriate care

dpird.wa.gov.au

Executive summary

The Western Australian Government recognises the value of animal welfare to the community and strives to ensure that all animals receive appropriate standards of care. The objective of the Animal Welfare (Livestock) Regulations 2019 (Livestock Regulations) is to implement Australian Animal Welfare Standards and Guidelines that promote the humane treatment of livestock and set minimum industry welfare standards. The Department of Primary Industries and Regional Development (the department) asked for feedback on the draft Livestock Regulations from 17 December 2019 to 28 February 2020.

The department sought feedback on:

- the implementation of the Australian Animal Welfare Standards and Guidelines – Land Transport of Livestock (Land Transport Standards) and the Australian Animal Welfare Standards and Guidelines – Livestock at Saleyards and Depots (Saleyards and Depots Standards) by the Livestock Regulations
- a proposed infringement notice scheme for enforcing the Livestock Regulations, to be introduced by amendments to the Animal Welfare (General) Regulations 2003 (General Regulations)
- the adoption of the Land Transport Standards and the Saleyards and Depots Standards (collectively referred to as the Standards and Guidelines) as codes of practice for the purposes of the *Animal Welfare Act 2002* through amendments to the General Regulations.

The department received 14 written submissions, including submissions from the Kimberley Pilbara Cattlemen's Association; the Livestock and Rural Transport Association of Western Australia; the Australian Cattle Veterinarians; the Hon. Alison Xamon MLC; the Royal Society for the Prevention of Cruelty to Animals Western Australia (RSPCA); Animals' Angels; Animals Australia; and from some members of the community.

The department also received 15 responses to an online survey, in which:

- fourteen respondents supported the regulation of the Standards and Guidelines
- eleven respondents said they believe the welfare of livestock animals is 'very important' to Western Australians
- twelve respondents said that the proposed infringement notice (modified) penalties were appropriate. Others said the penalties should be higher.

This report considers the issues raised by respondents according to the following themes:

- General comments on the implementation of the Standards and Guidelines as regulations
- Responsibilities of those involved in livestock transport and sale
- Provisions relating to fitness of livestock for transport or sale
- General welfare provisions
- Adoption of the Standards and Guidelines as a Code of Practice

- Defences to breaches of the regulations
- The proposed infringement notice scheme.

The department thanks everybody who participated in this process and will take the feedback into account in finalising the Livestock Regulations. Major changes to the draft Livestock Regulations are not anticipated but some of the issues stakeholders identified are the subject of more detailed consideration.

The Standards and Guidelines being implemented in Western Australia (WA) have been nationally endorsed. Modifications have been made solely with the objective of providing greater legal certainty and facilitating compliance. Any amendments to the technical requirements may be considered as part of future national reviews of the Standards and Guidelines.

The implementation of the Livestock Regulations in WA will initially focus on education of stakeholders and raising awareness of legal requirements and guidelines. After an introductory period (expected to be four to six months), the Livestock Regulations will be enforced via the use of infringement notices or prosecution in the courts. Cruelty to animals (as defined in Part 3 of the Act) will continue to be dealt with in accordance with current practice, which is by prosecution in the courts.

Introduction

Australian Animal Welfare Standards and Guidelines

The Livestock Regulations will be made under the *Animal Welfare Act 2002* (Act) and will introduce requirements for people involved in transporting livestock and receiving or managing livestock at saleyards and depots in WA. The Livestock Regulations apply only to sheep and cattle. The overall goal of the Livestock Regulations is to give legal effect to the specified technical requirements of the standards in a manner that is legally appropriate to WA.

The Livestock Regulations address two sets of Australian Animal Welfare Standards and Guidelines: the Land Transport Standards and the Saleyards and Depots Standards. These two sets of Standards and Guidelines were developed through a consultative process involving the Commonwealth, states, territories and stakeholders, with the goal of regulating farm animal welfare in a harmonised manner across Australia.

The Land Transport Standards and the Saleyards and Depots Standards were endorsed by the WA Minister for Agriculture in 2012 and 2018 respectively. Each Australian state or territory agreed that, following endorsement by the Minister for Agriculture, the jurisdiction would implement the endorsed standards as appropriate to the jurisdiction's legal framework. Until recently, limitations of the Act prevented the implementation in WA of animal welfare regulations based on the Standards and Guidelines. An amendment to the Act in November 2018 resolved this obstacle.

Implementation of the Standards and Guidelines

Western Australia will implement the Standards and Guidelines via two legal mechanisms.

1. The Livestock Regulations will implement most of the standards (not the guidelines) by mandating compliance with appropriate regulations. The Livestock Regulations will in effect set a minimum industry standard for the welfare of cattle and sheep during transport and while they are at saleyards and depots. Non-compliance with a regulation will be an offence under the Livestock Regulations. Non-compliance with a guideline will not, in and of itself, be an offence under the Livestock Regulations.
2. Through amendments to the General Regulations, the Standards and Guidelines will be adopted as new codes of practice under the Act and will operate in the same way as the existing adopted codes of practice. This means that they must be used by the courts to assess husbandry and management practices in cases of cruelty. They can also be used as a defence to a charge of cruelty if an accused can prove that he or she was acting in accordance with a relevant code of practice. Existing codes of practice that relate to transport or to saleyards and depots will be replaced by the new adopted codes of practice.

Overview of the consultation process

The department released the draft Livestock Regulations for public consultation on 17 December 2019. Consultation was open for 10 weeks and closed on 28 February 2020.

The consultation was limited to the implementation of the Standards and Guidelines in WA, including the planned introduction of a new scheme for the use of infringement notices and the adoption of the Standards and Guidelines as codes of practice. Consultation did not include the technical requirements of the Standards.

The department received 14 written submissions (see Appendix 1). Written submissions have been published on the department's consultation webpage, except when the author requested confidentiality.

In addition to the written submissions, the survey received 15 responses. The survey questions are listed in Appendix 2.

This Consultation report considers the issues raised by respondents according to the following themes:

- General comments on the implementation of the Standards as regulations
- Responsibilities of persons involved in livestock transport and holding
- Provisions relating to the fitness of livestock for transport or sale
- General welfare provisions
- Adoption of the Standards and Guidelines as a code of practice
- Defences to breaches of the regulations
- The proposed infringement notice scheme.

Stakeholder comments and Department's response

1. General comments on the implementation of the Standards as regulations – Stakeholder comments

Nearly all (14/15) respondents to the survey supported the implementation of the Standards and Guidelines.

The following key points were raised in written submissions:

- While there may be challenges in incorporating the Standards into regulations, deviations from the Standards are generally not supported as this will reduce harmonisation of minimum requirements between jurisdictions.
- The Livestock Regulations do not reflect the intent of the Standards and Guidelines process because they have been limited to sheep and cattle, and because of the decision to combine the Land Transport Standards and the Saleyards and Depot Standards.
- The Livestock Regulations are too subjective. This will result in variable interpretations and challenges to infringement notices and charges in court.
- The Livestock Regulations should not be introduced until the review of the Act is finished.
- The Livestock Regulations are opposed, on the basis that they impose a duty of care, which does not exist under the Act. The introduction of a duty of care should be subject to parliamentary debate.

- The drafting of the Livestock Regulations does not adequately reflect the fact that livestock are sentient, e.g. the word 'it' should be replaced with 'the animal'.

General comments on the implementation of the Standards as regulations – Department's response

In implementing the Standards and Guidelines, each jurisdiction drafts regulations in a manner consistent with the relevant legal framework. The goal is to give legal effect to the specified technical requirements in the most legally appropriate manner. Where necessary, the expression of the Standards has been modified to ensure that the regulations are clear and enforceable and to satisfy established Western Australian drafting conventions.

The Livestock Regulations implement the technical requirements set out in the Standards. The Livestock Regulations also contain additional provisions to clarify the meaning of particular regulations and to facilitate enforcement. For example, regulation 22(2), which is based on guidelines within the Land Transport Standards and Saleyards and Depots Standards, provides greater legal certainty by clarifying how a person must ensure that an animal is dead following euthanasia.

Some Saleyards and Depot standards fall within the transport process and therefore form part of the regulations relating to transport. Those Standards that are unique to Saleyards and Depots are addressed in a separate part of the regulations (Part 4).

The next step will be to prepare regulations based on the Australian Animal Welfare Standards and Guidelines for Cattle and Sheep (these relate to on-farm management). Subsequently or in parallel, the department will start work on regulations dealing with transport and saleyards in relation to livestock other than cattle and sheep.

The Livestock Regulations are unlikely to encroach on the review of the Animal Welfare Act. The Review Panel's recommendations will be considered by the State Government and if changes are needed to the regulations, appropriate amendments can be made.

The Livestock Regulations further the objects of the Act, which provides for the protection of animals by regulating the conduct of people in relation to animals, including the manner in which animals are treated, cared for and managed. Implementation of the Livestock Regulations is facilitated by section 18B of the Act, which allows regulations to be made that "provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate matters including the treatment, care and handling of animals; the transportation of animals; and facilities used in relation to animals." This encompasses the provision of minimum animal welfare standards, meaning that a person is legally obliged to provide for the animal's needs in a reasonable way.

The types of matters that are covered include:

- Provision of food and water
- Provision of appropriate living conditions
- Appropriate treatment of disease and injury
- Use of correct procedures for handling the animal.

The use of terms such as 'it' and 'humane destruction' are used, as these are determined by the parent Act and to satisfy Western Australian legal drafting conventions. These matters are outside of the department's control.

2. Responsibilities of persons involved in livestock transport and holding – Stakeholder comments

The following key points were raised in written submissions:

- The Livestock Regulations should encourage clear responsibilities along the supply chain and impose obligations on those persons most able to influence the outcomes. The lack of clarity in terms of roles and responsibilities for parties in the supply chain will cause uncertainty and result in parties challenging the results.
- Definitions of the various roles and responsibilities (such as 'livestock transporter') in the Livestock Regulations should reflect the definitions in the Standards and Guidelines.
- The penalty for a consignor who supplies an animal for transport who is not fit to load should be higher than the penalty for a transporter who loads an animal that is not fit to load. The consignor is in a stronger position to know the condition of the animals.

Responsibilities of persons involved in livestock transport and holding – Department's response

The Livestock Regulations will apply to all those responsible for the care and management of livestock throughout the 'transport process'. The approach to allocating responsibility is comprehensive: consignors, drivers, rail authorities, receivers, saleyard managers, stockpersons, and livestock owners may all be held responsible.

The terms used in the Livestock Regulations to describe responsible persons are not identical to the terms used in the Standards and Guidelines, as some of these were not suitable to be used in regulations (e.g. the meaning was unclear). The Livestock Regulations clearly set out who is responsible with respect to each regulation and ensure that responsibility rests with a suitable person or persons, consistent with the Standards and Guidelines. Both individual persons and corporate entities may be involved in the livestock supply chain. The term 'person' includes a public body, company, or association or body of persons, corporate or unincorporated (*Interpretation Act 1984*).

The Livestock Regulations set out the maximum penalties for a regulatory offence and the courts will apply the penalty considered to be appropriate in the circumstances. The Act provides for higher penalties for a body corporate and for the liability of officers for offences by a body corporate. These provisions will also apply in the case of regulatory offences.

3. Provisions relating to the fitness of livestock for transport or sale – Stakeholder comments

The following key points were raised in written submissions:

- Regulation 9(1)(a), which provides that an animal is unfit to undertake a journey if it is 'unable to walk independently by bearing weight on all hooves', does not make clear whether animals that are limping or otherwise not walking normally are unfit for transport.

An animal may be able to bear some weight on each hoof while walking, but that does not mean the animal is not in pain.

- ‘Is the animal fit to load?’ publication (revised 2019) produced by Meat and Livestock Australia (Fit to Load Guide) facilitates consistent decision-making regarding fitness to load. Regulation 11(2) should reflect the descriptors used in the Fit to Load Guide to determine whether an animal is fit to load.
- The Livestock Regulations deviate from the Standards and Guidelines by introducing prescribed conditions (in regulation 11(2)) that must be eliminated prior to loading, which reduces consistency with other jurisdictions.
- The prescribed conditions (in regulation 11(2)) are excessively prescriptive and do not accommodate the wide spectrum of severity of conditions or the actual risk posed to the welfare of the animal.
- It is unclear why the term ‘emaciated’ has not been defined by reference to the scoring systems used for the Australian Standards for the Export of Livestock, which had stakeholder input.
- The term ‘emaciated’ is defined by reference to an external publication that does not include the relevant information, being a BCS of 2 or less for cattle.
- The definition of ‘emaciated’ in the Livestock Regulations is inconsistent with the Standards and Guidelines, which provide that livestock that are severely emaciated or BCS 0 are unfit for transport.

Provisions relating to the fitness of livestock for transport or sale – Department’s response

Provisions in the Livestock Regulations on the fitness of livestock for transport or sale are based on the Land Transport Standards and the Saleyards and Depots Standards. The Standards list injuries or conditions that make an animal unfit for transport or sale. In addition to the listed injuries or conditions, it is a general requirement that an animal must not be transported or sold if it has **a condition that is likely to cause increased pain or distress during transport**.

The listing of conditions as ‘prescribed conditions’ (regulation 11(2)) is intended to provide greater certainty to those responsible for animal welfare – if one of the listed conditions is present, it can be assumed that affected animals are at risk of increased pain or distress and therefore not fit for transport or sale.

The department plans to review the list of prescribed conditions one year after the Livestock Regulations come into effect.

Some stakeholders commented on the meaning of ‘emaciated’ in the Livestock Regulations (emaciation renders an animal unfit for transport or sale). The Livestock Regulations do not distinguish between ‘emaciated’ and ‘severely emaciated’. Emaciation is defined in the Livestock Regulations by reference to industry standards referring to the body condition score (BCS) of animals. These standards provide an objective definition of emaciation.

4. General welfare provisions – Stakeholder comments

The following key points were raised in written submissions:

- The Land Transport Standards prohibit the dropping of sheep. The Livestock Regulations should be amended to prohibit dropping sheep during transport.
- The height from which sheep may be dropped (1.5 m) is too high; it is dangerous for the sheep.
- The regulation regarding dragging animals (regulation 17) does not reflect the intent of the Standards and Guidelines. The intent of the Land Transport Standards is to prevent dragging animals that are unable to stand, whereas the Livestock Regulations have interpreted this as 'not dragging a standing livestock animal'.
- With respect to confirmation of death following humane destruction, for consistency with the Saleyards and Depots Standards the time for which the animal is monitored should be five minutes rather than three minutes.
- The Standards and Guidelines require humane destruction to be performed by a competent person. This requirement for competency is not, but should be, included in the Livestock Regulations as incompetency leads to poor animal welfare outcomes.

General welfare provisions – Department's response

The Livestock Transport Standards and the Saleyards and Depots Standards are part of a continuum (the transport process) and therefore there are some overlapping provisions, such as requirements for livestock handling. In some cases, text from one or the other Standards and Guidelines document was modified to ensure consistency.

The Land Transport Standards prohibit the dropping of sheep during the transport process. The Australian Animal Welfare Standards and Guidelines for Sheep (adopted in 2016) prohibit throwing or dropping a sheep, except if the sheep can land on its feet from a height of less than 1.5m. The Saleyard and Depot Standards prohibit dropping a sheep, except from a height that allows the animal to land safely on its feet. The department is reviewing this matter.

The department proposes to modify the Livestock Regulations so that an animal should be monitored for five minutes after euthanasia (rather than three minutes, as originally proposed) to reflect the requirement in the Saleyards and Depots Standards and Guidelines, as opposed to the Land Transport Standards.

The department is giving further consideration to the enforcement of competency issues identified by stakeholders.

5. Adoption of the Standards and Guidelines as a code of practice – Stakeholder comments

The following key points were raised in written submissions:

- Adopting the Land Transport Standards as a code of practice will mean that compliance with those standards will be a defence to a charge of cruelty. This is a backward step and inconsistent with the policy behind the Standards and Guidelines.

- The delay in adopting the Standards and Guidelines is questionable; the Land Transport Standards could have been adopted back in 2012.
- Guidelines within the Standards and Guidelines provide for specific loading densities. Loading densities are 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.

Adoption of the Standards and Guidelines as a code of practice – Department’s response

Under the Act, a person charged with cruelty can claim a defence if the action he/she took accorded with a relevant code of practice (adopted under the General Regulations). Adoption of the Standards and Guidelines will provide a defence to a person charged with cruelty – providing his/her action accorded with the Standards and Guidelines. Replacement of the outdated codes of practice with the Standards and Guidelines is an important update.

The Standards and Guidelines include guidelines on loading densities for sheep and cattle. Compliance with these loading densities may provide a defence to a charge of cruelty. When the Livestock Regulations are implemented, livestock transporters will also need to ensure that the number of animals being transported on a vehicle does not exceed the ‘reasonable loading density’ for the vehicle. The reasonable loading density for sheep and cattle depends on the factors described in the Livestock Regulations. Specific loading densities in the Guidelines will provide guidance.

6. Defences to breaches of the regulations – Stakeholder comments

The following key points were raised in written submissions:

- A significant number of defences have been removed from parties in the supply chain.
- Under the current regulatory regime, a person can rely on a defence of having complied with a relevant code of practice. Under the Livestock Regulations, this defence will not be available when transporting sheep and cattle. This is strongly opposed.
- The Livestock Regulations create a defence for a ‘person responsible’ for livestock which largely mirrors the defence provided by section 28 of the Act. This defence is not part of the Standards and Guidelines nor does it appear in the regulations of other jurisdictions.

Defences to breaches of the regulations – Department’s response

The Livestock Regulations operate differently to the cruelty provisions in the Act. They establish minimum standards of care that are required for sheep and cattle in the transport process, including at saleyards and depots.

The defences under the Act in respect of cruelty offences will remain, but they may be unavailable to persons undertaking action that is covered by the regulations. So for example, the defence of following generally acceptable animal husbandry may not be available if the Livestock Regulations have established what would be considered to be normal animal husbandry practices in respect of certain actions.

In addition to the existing defences to a charge of cruelty under the Act, new defences to charges under the Livestock regulations have been included. For example, the Livestock

Regulations create defences for a 'person responsible' for livestock animals, such as owners of transport businesses, who (together with other requirements under the regulations) did not have actual physical control of the animal. These defences have been included to ensure clear and appropriate accountability, and to ensure consistency with the Act and other legislation.

7. The proposed infringement notice scheme

Twelve respondents to the survey said that the proposed infringement notice (modified) penalties were appropriate; some said they should be higher.

The following key points were raised in written submissions:

- The modified penalties should be higher.
- It will be essential to closely monitor compliance with the new regulatory regime and keep records of infringement notices issued to allow detection of chronic offending.
- The infringement notice scheme will allow fines to be issued based on subjective assessment by inspectors. This may result in those assessments being challenged in court, which will result in resources being wasted.
- Infringements should not be able to be issued for conduct that would amount to animal cruelty (such as punching an animal) under the Act. This would undermine the cruelty provisions in the Act by resulting in a lesser fine being issued than would apply if the person was charged with cruelty.

The proposed infringement notice scheme – Department's response

Infringement notices can provide a timely and cost-efficient outcome for both the regulator and the regulated industry. A person who receives an infringement notice can pay a modified penalty within 28 days of the date of issue or may elect to have the matter dealt with by the courts.

For the purpose of the infringement notice scheme, a modified penalty of \$250 or \$500 (depending on the regulation that was breached) was originally proposed. This has been increased to \$500 and \$750, in line with such penalties in other legislation. These penalties remain subject to review.

The ability to issue infringement notices for offences does not preclude prosecution. However, when an infringement notice has been paid, a person cannot be prosecuted for the same offence. Inspectors may determine whether it is appropriate to issue an infringement notice or prosecute a person for breaching the relevant law.

The department will develop prosecution guidance for general inspectors in relation to the enforcement action taken for breaches of the Act and regulations to ensure consistent enforcement.

Other stakeholder comments

- The definition of 'depot' should not exclude live export registered premises. The Land Transport Standards do not exclude such premises.

- The meaning of 'reasonable loading density' in the Livestock Regulations should be clarified by reference to the specific loading densities set out in the Land Transport Standards.
- The definition of heat stress is different to the definition contained in the Standards and Guidelines.
- The term 'physiological' should be removed from the definition of heat stress as it implies 'within normal range of function or homeostasis of the animal'. Patho-physiological would be a better term.
- The term 'distress' is poorly defined in animal welfare law so should be defined in the Livestock Regulations to avoid varied interpretations.
- The department should confirm that the term 'risk to welfare' of livestock can apply to an individual livestock animal.
- The term 'at the first reasonable opportunity' should be defined. The definition should refer to action being taken 'without delay' (as referred to in the Land Transport Standards) or 'immediately'.
- Some stakeholders proposed technical changes or additions to the Standards and Guidelines.

Other stakeholder comments – Department's response

The scope of the Saleyard and Depot Standards specifically excludes live animal export pre-assembly depots (registered premises), which are regulated by the Commonwealth government in accordance with the Australian Standards for the Export of Livestock. The Livestock Regulations do, however, apply to the loading and unloading of livestock at registered premises. The interface of State and Federal law in this area is under examination.

The regulations do not refer to specific loading densities, as these are guidelines and not standards.

The definition of 'heat stress' and 'cold stress' is being reviewed.

The term 'livestock' applies to both single and multiple animals.

The term 'at the first reasonable opportunity' is commonly used when drafting legislation.

Conclusions and next steps

Implementation of the Livestock Regulations will initially focus on education and raising awareness of legal requirements and guidelines. After an introductory period (expected to be four to six months), the Livestock Regulations will be enforced via the use of infringement notices or prosecution in the courts. Cruelty to animals (as defined in Part 3 of the Act) will continue to be dealt with in accordance with current practice, which is by prosecution in the courts.

To stay informed about this process, please visit the department's website at:

<https://www.agric.wa.gov.au/animalwelfare/animal-welfare-livestock-regulations-2019>

Appendix 1: List of written submissions

	Submitting Party
1	Animals' Angels
2	Animals Australia
3	Australian Cattle Veterinarians
4	BLAKERS, Christine
5	FELIX, K
6	Kimberley Pilbara Cattlemen's Association
7	KING, Margaret
8	Livestock and Rural Transport Association of Western Australia (Inc)
9	Office of the Hon. Alison Xamon MLC
10	The Royal Society for the Prevention of Cruelty to Animals, Western Australia
11	SAKLANI, Ruchita
12	SOBEY, Vicky
13	VINES, Deanne
14	Name withheld

Appendix 2: Survey questions

1. Please check any of the following boxes that apply to you: Livestock producer / livestock transporter / saleyard/depot operator or worker / abattoir owner or worker / feedlot operator / cattle/sheep owner / I do not own or work with cattle or sheep / animal welfare advocate / other (please specify)
2. Please provide your postcode. If you do not wish to provide your postcode, please indicate which region of WA you live in.
3. Do you think Western Australia should implement the Australian Standards and Guidelines for Land Transport and for Saleyards and Depots? Why/why not?
4. If the Standards and Guidelines for Land Transport and for Saleyards and Depots are implemented, what effect will this have on you or the way you work? Little to no effect / some effect / considerable effect / significant effect
5. Were you aware that other states and territories in Australia have already implemented some of the Standards and Guidelines? Yes / no
6. Who should be responsible for enforcing the Livestock Regulations? Government (including local government) / Industry / RSPCA WA
7. In addition to the Australian Standards and Guidelines for Land Transport and Saleyards and Depots in relation to sheep and cattle, the department will need to consider regulations covering other livestock species. There are also Australian Standards and Guidelines relating to on farm practices for sheep and cattle. Do you agree that the next priority is the regulation of the on farm standards for sheep and cattle? Strongly disagree / disagree / agree / strongly agree / unsure
8. As part of the implementation of the Standards and Guidelines, the department is proposing to introduce infringement notices (as with fines for non-compliance with the road rules) for breaches of the Livestock Regulations. Where a person is prosecuted under the Livestock Regulations, the maximum penalty is either \$7,500 or \$15,000, depending on the offence. Do you think these penalties are appropriate? Yes / no
9. Did you know that an independent panel is currently undertaking a review of the Animal Welfare Act 2002? Yes / no
10. If you could make one suggestion about animal welfare to the panel, what would it be?
11. Do you think that the welfare of the following types of animals is important to Western Australians (farm animals / pets / wildlife)? Yes – very important / yes – somewhat important / no – not really important / no – not important at all / not sure
12. Email address

Important disclaimer

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