Inspector-General of Live Animal Exports Bill 2019

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Law and Bills Digest Section

Contents

Purpose of the Bill ................................................................. 2
Structure of the Bill ............................................................... 2
Background ............................................................................. 2
Regulation of live animal exports ............................................. 2
Awassi Express footage and response ...................................... 4
Moss Review ........................................................................... 4
Interim Inspector-General ....................................................... 5
Other oversight proposals ....................................................... 6
Independent Office of Animal Welfare ............................... 6
ALP proposal for Inspector-General ........................................... 6
Committee consideration ......................................................... 7
Selection of Bills Committee .................................................. 7
Senate Standing Committee for the Scrutiny of Bills .............. 7
Policy position of non-government parties/independents ........... 7
Position of major interest groups ............................................. 8
Financial implications ............................................................ 8
Statement of Compatibility with Human Rights ...................... 9
Parliamentary Joint Committee on Human Rights ....... 9
Key issues and provisions ....................................................... 9
Role of the Inspector-General ............................................... 9
Limits of review power ......................................................... 10
Which live animals? ............................................................... 11
Information-gathering powers .............................................. 11
Reporting misconduct ......................................................... 12
Terms of appointment .......................................................... 12
Information management ................................................... 12
Reporting requirement ......................................................... 13

Date introduced: 31 July 2019
House: Senate
Portfolio: Agriculture
Commencement: The day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at September 2019.
Purpose of the Bill

The purpose of the Inspector-General of Live Animal Exports Bill 2019 (the Bill) is to establish an independent Inspector-General of Live Animal Exports, responsible for oversight of the Department of Agriculture in its role as the regulator of the Australian live-stock export industry.

Structure of the Bill

The Bill has six Parts:

- Part 1 sets out preliminary matters including the statutory objects and relevant definitions
- Part 2 establishes the Inspector-General of Live Animal Exports and sets out its functions and powers
- Part 3 provides for the appointment of the Inspector-General and terms and conditions of the office
- Part 4 contains provisions relating to the use and disclosure of information
- Part 5 provides for the enforcement of civil penalty provisions and
- Part 6 contains miscellaneous matters, including the power to make rules and a reporting requirement.

Background

Regulation of live animal exports

The regulation of live animal exports has long been a source of contention, as numerous incidents involving live-stock deaths and documented cruelty in destination countries have prompted debate, both about Australia’s continued participation in the live-stock export trade as well as the Department of Agriculture’s regulatory role.¹

As the independent regulator, the Department is responsible for enforcement of the regulatory scheme underpinning live animal exports. There are two key Acts which create the broad legal framework, with specific requirements for exporters largely contained in instruments made under these Acts:

- the Australian Meat and Live-stock Industry Act 1997 (AMLI Act) regulates the licencing of exporters. It prohibits the export of meat or live-stock without a licence, which may be subject to prescribed conditions, orders and directions² and
- the Export Control Act 1982 regulates the export of prescribed goods (including live animals). It provides authority for ‘authorised officers’ to carry out monitoring and enforcement activities, and sets out penalties for a range of export offences.³

The Export Control (Animals) Order 2004 (Animals Order) requires exporters of live-stock to have in place an Exporter Supply Chain Assurance System (ESCAS), allowing them to trace all animals

1. For a timeline of major incidents, reviews and regulatory reforms in relation to the Australian live export trade, see: C Petrie, Live export—a chronology, Research paper series, 2019–20, Parliamentary Library, Canberra, 6 September 2019.
through the supply chain and ensure that handling and slaughter in the importing country conforms to international animal welfare standards.\textsuperscript{4}

In relation to the live-stock export process, the Department’s monitoring role is primarily conducted through ESCAS auditing requirements.\textsuperscript{5} The Department also has the power to monitor, review or audit the activities of exporters, including in response to self-reported breaches and third party complaints.\textsuperscript{6} There is a range of sanctions available, including criminal penalties, the refusal or revoking of an export permit or licence, or imposition of conditions on the export licence.\textsuperscript{7}

From February 2012 to the time of writing, there have been 172 regulatory compliance investigations (either finalised or ongoing).\textsuperscript{8} Additionally, there have been 77 investigations of voyages with reportable mortality events.\textsuperscript{9} However, the Department has been criticised for a perceived reluctance to penalise exporters, having only suspended or cancelled export licences in a small number of cases.\textsuperscript{10}

As part of its 2016 inquiry on the Regulation of Australian Agriculture, the Productivity Commission considered the regulatory scheme for live animal exports.\textsuperscript{11} Its report highlights the tension between concerns from exporters as to the cost and complexity of the ESCAS, and criticisms from animal welfare groups regarding weaknesses in responding to non-compliance. The Commission concluded:

> It is critical that the community has confidence in the system used to regulate live exports. Incidents of mistreatment of animals in facilities that are within the purview of the ESCAS and that are overseen by the Australian livestock industry reduce community confidence in the trade and the regulator’s effectiveness.\textsuperscript{12}

The Productivity Commission’s report acknowledged concerns about conflicts of interest in the arrangements for animal welfare regulation in Australia, noting:

> There is the potential for a conflict of interest to arise where policy and regulatory objectives conflict. Animal welfare is likely to be of secondary importance when the primary objective of the agency responsible for livestock welfare is to promote a productive and profitable agricultural sector.

> ... Representing the interests of the industry that a government department is tasked with addressing is not of itself a concern, it is consistent with its objective. However, issues can arise when that

\textsuperscript{4} Export Control (Animals) Order 2004, Division 1A.3 of Part 1A; Department of Agriculture (DOA), ‘Exporter Supply Chain Assurance System (ESCAS)’, DOA website.

\textsuperscript{5} DOA, ‘2015–06—Revised risk-based auditing requirements for ESCAS’, DOA website, 23 March 2015.

\textsuperscript{6} DOA, ‘Compliance and investigations’, DOA website.

\textsuperscript{7} Ibid.

\textsuperscript{8} DOA, ‘Regulatory compliance investigations’, DOA website.

\textsuperscript{9} That is, where the mortality level is higher than: 2% for sheep and goats, camelids and deer; 0.5% for cattle and buffalo on a voyage less than ten days; 1% for cattle and buffalo on a voyage more than ten days (or three animals, whichever is greater): see the definition of reportable level in the Australian Standards for the Export of Livestock, standard 5.5, p. 107; for summaries of DOA’s mortality investigations see: DOA, ‘Investigations into mortalities’, DOA website. In July 2018, the Australian Meat and Live-stock Industry (Standards) Amendment (Reportable Sheep Mortality Level) Order 2018 (Cth) reduced the reportable mortality level in relation to sheep exported by sea from 2% to 1%.

\textsuperscript{10} See, for example: S O’Sullivan, ‘Why are Australian livestock still turning up in places where they are treated cruelly?’, The Conversation, 21 October 2015; ‘Editorial: cruelty exposes flaws in live export safeguards’, The Sydney Morning Herald, 21 May 2015, p. 18; L Sales, ‘live exporter joins animal rights activists in push for Middle East slaughtering procedure enforcement’, The 7.30 Report, Australian Broadcasting Corporation (ABC), 13 October 2015.


\textsuperscript{12} Ibid., p. 258.
department is also responsible for implementing a regulation that has broader community interests that may conflict with those of the industry.  

**Awassi Express footage and response**

The Explanatory Memorandum to the Bill notes that:

> The need for increased assurance over the live-stock export regulatory system was highlighted in the months following the release of footage showing the conditions experienced by sheep and unacceptable mortality rates during a voyage of the *Awassi Express* to the Middle East in August 2017.

In April 2018, *Sixty Minutes* broadcast footage obtained by Animals Australia from the *Awassi Express* en route to the Middle East in August 2017, run by Perth exporter Emanuel Exports. The footage showed the extreme suffering of sheep on board the vessel, on which approximately 2,400 sheep died from heat stress (3.76 per cent of the total number on board). A mortality investigation by the Department, completed prior to the release of the footage, had declined to take enforcement action against the exporter.

On 9 April 2018, then Minister for Agriculture, David Littleproud expressed concern that the Department’s mortality report ‘did not accurately reflect the conditions seen in the vision on the ship’. He announced three measures in response:  

- a review into the ‘investigative capability, powers and culture’ of the Department
- a whistleblower hotline, allowing anonymous reporting of wrongdoing and
- an intention to increase the applicable penalties for exporters.

In relation to the review of the Department’s regulatory capabilities, Minister Littleproud stated:

> We need to make sure the regulator has the right tools, training and culture to make sure exporters do the right thing. This requires prosecutions and heavy penalties where breaches occur.

**Moss Review**

The independent review into the Department’s regulatory capability and culture was conducted by Philip Moss, and was tasked with making recommendations on:

> … any improvements to regulatory and investigative performance to ensure persons involved in the live export trade are compliant with regulations and maintain high standards of animal welfare, and the department is a trusted regulator of the live animal exports trade.

The terms of reference for the review included, relevantly, an assessment of: ‘appropriate structures within the Department to ensure regulatory responsibilities are met, including whether an Inspector-General of Livestock Exports would provide superior oversight of the regulator’.

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17. DOA, *Mortality investigation report—sheep exported by sea to Qatar, Kuwait and United Arab Emirates in August 2017*, Report 69, last reviewed 12 April 2018. While not imposing any sanctions, the Department did require Emanuel to review and comply with a heat event management plan for its next consignment of sheep to the Middle East using the same vessel.
19. Ibid.
20. DOA, ‘*Review into our regulatory capability and culture*’, DOA website, last reviewed 31 October 2018.
The report from the Moss Review was publicly released in late October 2018.\textsuperscript{21} The review found that the Department’s focus on trade facilitation and industry self-regulation ‘appears to have had a negative impact [on] the department’s culture as a regulator’, and that the Department’s regulatory capability was dispersed across a number of groups, divisions and branches, with ‘the characteristics necessary for effective regulation including skills, resources and technology… lacking to the required extent’.\textsuperscript{22}

The report made 31 recommendations, including the re-establishment of an Animal Welfare Branch within the Department, to address the finding that ‘sufficient focus within the department on animal welfare is currently lacking’, and to ensure the Department places animal welfare ‘at the centre of its regulatory activities relating to live animal exports’.\textsuperscript{23} It also recommended the establishment of an external entity to oversee the Department in its regulatory role, and suggested that the model provided by the Inspector-General of Biosecurity could be applied. The review concluded:

The proposed Inspector-General of Live Animal Exports would:

- be independent of the department, be appointed by the Minister and would review the performance of functions or exercise of powers by department staff members in the regulation of live animal exports

- in consultation with the department and key stakeholders, would develop a review program which would be over and above the department’s internal audit and performance programs

- provide reports to the Minister and make recommendations about the regulatory framework and provide an assurance framework for stakeholders.\textsuperscript{24}

The Government’s response to the Moss Review accepted the report’s findings and announced an intention to implement its recommendations, including the establishment of an Inspector-General of Live Animal Exports. Minister Littleproud stated ‘[t]he live export industry needs a strong ‘cop on the beat’ and the Department must reform as a capable, trusted and effective regulator’.\textsuperscript{25}

The current Bill reflects the features of the Inspector-General role recommended by the Moss Review.

**Interim Inspector-General**

In March 2019, an Interim Inspector-General of Live Animal Exports, Ross Carter, was appointed for twelve months ‘pending completion of legislation to establish the statutory appointment’.\textsuperscript{26} The Interim Inspector-General provided an indicative three-year work program to the Minister in June 2019—this is discussed further below, under Key Issues and Provisions.


\textsuperscript{22} Ibid., pp. x–xi.

\textsuperscript{23} Ibid., p. 45.

\textsuperscript{24} Ibid., pp. 46–9.

\textsuperscript{25} D Littleproud (Minister for Agriculture and Water Resources), *Government response to the Moss Review*, 1 October 2018.

\textsuperscript{26} D Littleproud (Minister for Agriculture and Water Resources), *Independent Inspector-General takes office to oversee live animal exports regulation*, media release, 19 March 2019.
The Interim Inspector-General is currently conducting a review on the effectiveness and efficiency of the Department’s requirements and management of monitoring and reporting during livestock export voyages by sea. Public submissions are due by 25 September 2019. 27

Other oversight proposals
There have previously been a number of proposals to reform the oversight of live animal exports.

Independent Office of Animal Welfare
In its 2016 report, the Productivity Commission recommended the establishment of an Australian Commission for Animal Welfare, with responsibility for developing national standards and guidelines relating to farmed animal welfare. It also recommended that this independent statutory body play a role in live export regulation:

At a minimum, this role should involve reviewing the performance of the ESCAS, including the performance, independence and effectiveness of the auditing arrangements, and making recommendations for reform... It should also review other aspects of the regulatory system for live exports, including the Australian Standards for the Export of Livestock. Although not a focus of analysis of this inquiry, the Commission notes concerns raised about these standards, including with respect to the accreditation and independence of veterinarians on board live export vessels.

... Regular, independent reviews will help to address any perceived or actual conflict of interest in livestock export regulatory arrangements, and ultimately help to further improve the welfare of Australian live exports. It is important that the live export regulatory system is independently reviewed irrespective of whether the Australian Government establishes an independent organisation for farm animal welfare. 28

The Australian Greens have previously introduced private member’s Bills to establish an Independent Office of Animal Welfare. 29 Under their proposal, the Office would be responsible for reviewing and monitoring livestock export standards; preparing reports about a range of animal welfare issues including live animal export; and reviewing the activities of the Department in relation to the monitoring, enforcement and effectiveness of the Commonwealth’s animal welfare laws. 30

ALP proposal for Inspector-General
In the lead-up to the 2013 Federal Election, the Rudd Government announced its plan to establish an Independent Inspector-General of Animal Welfare and Live Animal Exports, responsible for auditing and reviewing the live animal export regulator across the supply chain, including its investigation and compliance procedures. 31 In June 2018, Shadow Minister for Agriculture, Fisheries and Forestry, Joel Fitzgibbon introduced a private member’s Bill into the House of

Representatives aimed at establishing this independent office. The Inspector-General’s powers and functions under the private member’s Bill were in largely similar terms to the present Bill. However, unlike the current Bill, the Inspector-General’s review powers were not expressly limited to live-stock exports but extended to exports of all ‘live animals’. The private member’s Bill lapsed at the dissolution of the House of Representatives in April 2019.

The establishment of an Inspector-General for Animal Welfare and Live Animal Exports was also part of the ALP’s ‘six point animal welfare plan’ prior to the 2019 Election:

Labor will provide $1 million a year to establish the Inspector-General of Animal Welfare as an independent statutory position operating within the Department of Agriculture. The Inspector-General will be responsible for advising on the protection of animals in all Commonwealth-regulated activities and will report directly to the Minister of the day on issues concerning live export, animal welfare standards and guidelines. The Inspector-General will also work with the states and territories to establish an independent Office of Animal Welfare to oversee animal protection and welfare activities nationally.

Committee consideration

Selection of Bills Committee

On 1 August 2019, the Senate Standing Committee for the Selection of Bills deferred consideration of the Bill to its next meeting.

Senate Standing Committee for the Scrutiny of Bills

The Scrutiny of Bills Committee has not commented on the Bill at the time of writing.

Policy position of non-government parties/independents

The ALP has not stated its position on the Bill at the time of writing. However, as discussed above, the establishment of an independent Inspector-General for Animal Welfare and Live Animal Exports was one of the ALP’s 2019 Election commitments.

The Australian Greens also have not stated whether they support the current Bill but, as discussed above, have previously advocated for the establishment of an independent Office of Animal Welfare to oversee live exports. At the same time, in response to the Moss Review, Greens Animal Welfare Spokesperson, Mehreen Faruqi stated:

While I welcome Mr Moss’s review and proposed changes, it clearly shows the reality that a culture of tolerating animal cruelty is completely entrenched. The shortcomings of the system encompass legislation, regulation, capability and culture. The whole industry and its regulation are based on money, not animal welfare.

… No amount of reviews or tinkering around the edges can get around the fact that this is a trade in misery and is incompatible with animal welfare. The live export industry is well beyond redemption.

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34. J Fitzgibbon (Shadow Minister for Agriculture, Fisheries and Forestry), Labor will reinstate national leadership on animal welfare, media release, 30 April 2019.

35. Senate Standing Committee for the Selection of Bills, Report, 4, 2019, The Senate, Canberra, 1 August 2019, p. 4.
Similarly, independent MP, Andrew Wilkie described the Moss Review’s recommendation for an independent Inspector-General as ‘welcome’, but also stated:

... even if the Government implements these recommendations, it is only a small improvement to a trade that is systemically cruel. The Government can tweak around the edges all it likes, but the only way to stop the cruelty is to stop the trade. There is simply no amount of regulation that can make live export not cruel.

Independent MP, Bob Katter does not appear to support the establishment of an Independent Inspector-General, stating in response to the proposal in November 2018: ‘I remain tenaciously opposed to any restrictions on live exports’.  

No other minor parties or independents appear to have commented on the Bill at the time of writing.

Position of major interest groups

Livestock exporters and farmers have expressed support for the Bill. The Australian Livestock Exporters’ Council (ALEC) stated:

An independent Inspector General of Live Animal Exports will support the industry’s commitment to improved welfare practices of exported animals.

“We have called for the introduction of an Inspector General to oversee independence and cultural change in our industry, for both exporters and the industry regulator”.

The National Farmers’ Federation has also described the legislation as a ‘positive move’, stating ‘the agriculture industry stands ready to engage with the Inspector General as he commences his work program. It is critical that we are all working together to ensure a culture of continuous, evidence-based improvement’.

Animal welfare groups do not appear to have commented on the legislation at the time of writing. Following the release of the Moss Review report, the RSPCA stated that the review had shown the ‘massive failings of the regulatory framework’, and the:

... fundamental conflict within the Department of Agriculture in terms of being a facilitator and promoter of the live sheep and cattle trades, while at the same time having to regulate animal welfare standards.

Financial implications

The Explanatory Memorandum states that funding of $0.45 million for four years ($1.8 million in total) has been allocated for the Inspector-General, and that funding commenced in 2018–19.
Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible. 43

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights has not commented on the Bill at the time of writing.

Key issues and provisions

The objects of the Bill are set out in clause 3, and are to:

• promote continual improvements in the regulatory practice, performance and culture of the Department in its role as the regulator of live-stock exports and

• provide an additional layer of accountability and assurance over Australian live export regulation.

Role of the Inspector-General

Part 2 of the Bill establishes the Inspector-General of Live Animal Exports and sets out its functions and powers. As was recommended by the Moss Review, these functions and powers appear to have been modelled on those of the Inspector-General of Biosecurity, as set out in Part 6 of Chapter 10 of the Biosecurity Act 2015 (Cth).

Subclause 10(1) provides that the Inspector-General may review the performance of functions, or exercise of powers, by live-stock export officials in relation to the export of live-stock under the following legislation:

• Part 2 of the AMLI Act, or an instrument made for the purposes of this Part and

• the Export Control Act, or an instrument made under that Act.

Part 2 of the AMLI Act provides for the regulation of live-stock exports through the grant and cancellation of export licences and a range of enforcement powers, including search and seizure powers. The Export Control Act and the Export Control (Animals) Order 2004 which is made under it, contain much more detailed requirements for the various stages of the export process, including the preparation of livestock for export, the accreditation of veterinarians, export and health permits, approved export programs, the registration of premises and the ESCAS.

A live-stock export official is defined as any of the following:

• an authorised officer within the meaning of Part 2 of the AMLI Act or the Export Control Act

• an accredited veterinarian within the meaning of the Export Control Act or

42. Explanatory Memorandum, Inspector-General of Live Animal Exports Bill 2019, p. 3. Funding for the Inspector-General of Live Animal Exports was first announced in: J Frydenberg (Treasurer) and M Cormann (Minister for Finance and the Public Service), Mid-year economic and fiscal outlook—2018–19, 12 February 2019, p. 135.

43. The Statement of Compatibility with Human Rights can be found at pages 25–9 of the Explanatory Memorandum to the Bill.
• the Secretary or a delegate of the Secretary.\(^44\)

**Limits of review power**

**Subclause 10(2)** states that the Inspector-General is not permitted to review ‘only a single performance of a function, or a single exercise of a power, by a single live-stock export official’.

The Explanatory Memorandum states that this limitation:

> ... is to ensure that the scope of the review is focussed on the effectiveness of the regulation of the live-stock export regulatory system as a whole, not the performance of an individual. It is intended that reviews will be high-level and may concern either the whole or specific parts of the live-stock export regulatory system.\(^45\)

The Inspector-General’s role, therefore, does not appear to be aimed at reviewing decisions made about a particular matter, or the handling of a particular situation, but looking at broader regulatory practices and approaches and detecting systemic issues. This is reflected in the nature of the reviews proposed in the three-year ‘indicative work plan’, developed by the interim Inspector-General:

- a review of the efficacy of on-board monitoring and reporting of animal welfare, compliance and responsive actions during livestock export voyages
- a review of the department’s processes and systems that support decisions regarding livestock export licences and permits
- a review of the department’s processes and systems that support decision making regarding the ESCAS
- a review of the processes through which the department reviews, develops and determines the Australian Standards for the Export of Livestock (ASEL)
- a review of department processes and systems that support responses to external inquiries, reports, complaints, allegations, and incidents
- a review of the department’s approach to managing risk
- an assessment of the effectiveness of the department’s system of Approved Arrangements\(^46\)
- a review of the department’s establishment of an effective regulatory culture and
- a review of the effectiveness of the department’s interaction and integration with state and territory animal welfare regulation.\(^47\)

The Bill is silent as to what may prompt a review—it does not mention, for example, whether the Minister may request the Inspector-General review a particular issue.

**A note to subclause 10(2)** states that the Inspector-General’s role is to provide ‘accountability and assurance’ in relation to Australia’s live-stock export regulatory systems through ‘independent

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\(^44\) Clause 5 (definition of *live-stock export official*), ‘Authorised officers’ are appointed by the Secretary under the *AMLI Act* (section 49) and *Export Control Act* (section 20) to exercise a range of enforcement powers and other functions under those Acts.


\(^46\) An ‘approved arrangement’ is the documented system, agreed to between an exporter and the Department, to manage the exporter’s compliance with the ASEL, relevant export legislation and importing country requirements during the sourcing, transportation, preparation and export of livestock. The approved arrangement sets out the systems and procedures which the exporter has in place to comply with all relevant requirements. For more information, see: DOA, ‘Approved arrangements for the export of livestock’, DOA website, last reviewed 22 January 2019.

evaluation and verification of regulatory practices’. It further states that the Inspector-General may make recommendations for overall system improvements.

**Subclause 10(3)** states that the Inspector-General must publish a report on each review conducted.

Rules made by the Minister through a disallowable legislative instrument may provide for or in relation to:

- the process to be followed by the Inspector-General in conducting a review, and/or
- the content of reports.\(^{48}\)

**Which live animals?**

Although the name of the proposed office refers to ‘Live Animal Exports’, **clause 10** expressly limits the Inspector-General’s review functions to live-stock exports. The definition of **live-stock** in the Bill is the same as that in the *AMLI Act*, which defines it as ‘cattle, calves, sheep, lambs, goats or other animals prescribed for the purposes of this definition’.\(^{49}\) Further animals currently prescribed as ‘live-stock’ are buffalos, camelids and deer.\(^{50}\)

This means the Inspector-General will not have the power to review the Department’s regulation of the export of other live animals, such as companion animals, horses or racing greyhounds.

**Information-gathering powers**

**Clause 11** provides the Inspector-General with the power to require a person to:

- answer questions or give information in writing, about information or documents relevant to a review or
- produce relevant documents to the Inspector-General.

The Inspector-General must provide a person with at least 14 days to respond to such a request.\(^{51}\) Failure to comply with a request may incur a maximum civil penalty of 240 penalty units, or $50,400.\(^{52}\) These powers cannot be used to require a foreign person or body outside Australia to provide information or documents.\(^{53}\)

**Part 5** of the Bill creates civil penalties for knowingly:

- giving false or misleading information, or omitting any matter or thing without which the information is misleading (**clause 34**) or
- giving false or misleading documents (**clause 35**).

Both provisions attract a maximum penalty of 240 penalty units, or $50,400. The provisions of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* apply to the enforcement of any of the civil penalty provisions under the Bill.\(^{54}\)

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\(^{48}\) Subclause 10(4) and clause 41.

\(^{49}\) *AMLI Act*, section 3 (definition of *live-stock*).

\(^{50}\) Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998, section 3A.

\(^{51}\) Subclause 11(2).

\(^{52}\) Subclause 11(3). Section 4AA of the *Crimes Act 1914* (Cth) provides that a penalty unit is currently $210.

\(^{53}\) Subclause 7(2), also see definition of *foreign person or body* under **clause 5**: an individual who is not an Australian national or resident; a body corporate that is not an Australian national or resident; and a body politic of a foreign country.

\(^{54}\) Clause 33.
Reporting misconduct

Clause 37 provides that if before, during or after conducting a review, the Inspector-General forms the opinion that a live-stock export official has engaged in misconduct and that the evidence ‘is of sufficient weight to justify the Inspector-General doing so’, they must report the evidence to the Secretary, or in the case the relevant official is the Secretary, to the Minister.

Terms of appointment

Part 3 of the Bill contains administrative provisions regarding the appointment of the Inspector-General. Clause 13 provides that the Inspector-General is to be appointed by the Minister by written instrument, and can be appointed on a full-time or part-time basis. They hold office for the period specified in the instrument of appointment, but this cannot be longer than five years. While the Inspector-General can be reappointed, they must not hold office for a total of more than ten years.55 Clause 22 sets out circumstances in which the Minister may terminate the appointment, and include misbehaviour, incapacity, bankruptcy or extended periods of absence.

The Bill provides that remuneration and leave entitlements are to be determined by the Remuneration Tribunal.56 It also requires a full-time Inspector-General to obtain the Minister’s approval before engaging in other paid work, and prohibits a part-time Inspector-General from engaging in paid work which conflicts, or may conflict, with the proper performance of duties of the office.57 Other terms and conditions of the office may be determined by the Minister.58

Information management

Part 4 sets out the circumstances in which a person may use or disclose information obtained under the Act (referred to as ‘protected information’). This includes an authorisation to use or disclose information:

- in performing functions or exercising powers under the Act59
- to a court or tribunal, or to a coronial inquiry60
- for the purposes of enforcement related activity conducted by an enforcement body (as defined under the Privacy Act 1988)61
- if required by another Australian law62
- to a person to whom the information relates, or with the consent of the person to whom the information relates63 and
- to the person who provided the information.64

The Minister may make rules authorising the use or disclosure of protected information for other purposes. These rules will be in the form of a disallowable instrument.65

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55. Clause 15, also see the note to subclause 13(1) regarding reappointments.
56. Clauses 17 and 18.
57. Clause 19.
58. Clause 20.
60. Clause 25.
62. Clause 27.
63. Clause 28.
64. Clause 29.
65. Clauses 30, 41.
Clause 31 states that a person commits an offence if:

- they use or disclose protected information which has been obtained in the course, or for the purposes of, performing functions or duties or exercising powers under the Act and
- the use or disclosure is not authorised by any of the provisions in Part 4 (outlined above) or by the rules.

Subclause 31(2) provides an exception where the information is used or disclosed in good faith and in ‘purported compliance’ with a provision in Part 4 or with relevant rules. A defendant bears an evidential burden in seeking to rely on this exception.

A maximum penalty of two years’ imprisonment and/or 120 penalty units applies to an offence under clause 31.

Reporting requirement

Clause 40 requires the Inspector-General to prepare an annual report as soon as practicable after the end of each financial year, on the activities of the office during the financial year. This report must include the number of reviews started, and the number completed, during the year.