

Background Briefing (24 January 2005)

Live animal export complaint under the Animal Welfare Act 2002

Complaint lodged with WA Police

On the 17th of December 2003, Animals Australia lodged a historic complaint with the Western Australian police alleging that a shipment of 103,222 sheep which departed Fremantle on 11th November bound for the Middle East breached Section 19 (3) (1) of the Western Australian Animal Welfare Act 2002.

Supportive evidence to this specific complaint was provided by Animals Australia's investigation in Kuwait City in November 2003. However, the allegation made that sheep exported from WA are being "transported in a way that causes **or is likely to cause them** unnecessary harm, in breach of Section 19 (1) (3) relates to each and every live export shipment. Supportive evidence for this specific complaint was provided by Animals Australia's Communication Director Lyn White who met the Al Kuwait shipment in Kuwait. Animals Australia lodged this benchmark complaint after obtaining supportive expert legal advice from leading Perth barristers.

Animals Australia initially lodged this complaint with WA police, believing that they had both the resources and expertise needed to investigate this complaint. Importantly, we also believed that they had the independence from government and rural influences required, to ensure that this matter was fully investigated on its merits.

In March 2004 Animals Australia was advised by WA Police that a policy decision had been made that the RSPCA was the more appropriate body to investigate. The file, whilst with the police, had been examined by the Police Legal Services Section. There was no indication that there was not a sound basis of evidence needed to undertake an investigation.

Complaint lodged with RSPCA WA

Animals Australia then lodged the file with the West Australian RSPCA on March 24th 2004.

In June 2004 disturbing information came to light which created grave concerns as to the will of the RSPCA to investigate and forward this benchmark complaint. Animals Australia therefore, on 22 June 2004 instructed the RSPCA to take no further action on the complaint.

The vessel in question, the Al Kuwait had returned to Fremantle to load sheep on four occasions whilst the responsibility for the complaint had rested with the police and the RSPCA.

Lodging complaint with DG Local Government Department

On 22 June 2004 Animals Australia formally lodged the live export cruelty complaint with the office of the Director General of the Department of Local Government and Regional Development. The Director General Cheryl Gwilliam is empowered under the act (Sect 82.(1) (a)) to instigate proceedings and also has the ultimate responsibility of ensuring the Animal Welfare Act is enforced.

In June 2004 Animals Australia had also received a further full legal opinion on its historic complaint from leading Perth barrister, Martin Bennett. Mr Bennett agreed with barrister Ian Weldon, that there is a strong evidentiary base provided by Animals Australia, worthy of full investigation. He also agreed with Mr Weldon's opinion that there are no jurisdictional hurdles preventing a prosecution under Section 19 (3) (1) in relation to the allegations in this complaint.

Animals Australia was forced to take the unusual step of lodging the file of evidence for investigation with the Director General Ms Gwilliam (six months after the initial complaint was made) in seeking an authority that would prioritise and investigate the complaint without fear or favour.

Animals Australia now believes that this has not occurred and that the Director General's handling of Animals Australia's complaint regarding a live export shipment breaching Section 19 of the Animal Welfare Act (2002) has been deficient.

It is now seven months since the complaint was provided to the Ms Gwilliam for investigation. Director General Cheryl Gwilliam is aware that all expert legal opinions provided over the past 13 months relating to Animals Australia's Section 19 complaint, including the State Solicitors, have extensively examined all relevant State and Federal legislation and have supported the need for a full investigation into this complaint. No investigation has commenced.

Animals Australia fully understands the perceived political ramifications of endorsing a full investigation of Animals Australia's complaint assessing whether live animal export is breaching the Animal Welfare Act.

Further action taken by Animals Australia (24 January 2004)

Animals Australia will therefore today lodged an application for a writ of mandamus in the WA Supreme Court, with the Director General Ms Gwilliam as the respondent.

The Supreme Court has the power to make an order in the nature of mandamus, in circumstances where there is a public duty to act and there has been a failure to perform that public duty. Such an order has the effect of forcing the person who is under public duty to do that which ought to be done.

Concurrently Animals Australia has lodged a complaint with the WA Crime and Corruption Commission alleging in regard to the failure to proceed by the Director General.

The repercussions of this 13 month delay in proceeding with an investigation are considerable. The vessel in question, the MV Al Kuwait, has now returned to load sheep in Fremantle on at least nine occasions, and is currently in Fremantle loading further sheep for the Middle East. The capacity of this vessel is over 100,000 sheep per journey.

Additionally, the implications of an investigation or successful prosecution impact on the practice of live sheep export in its entirety. At least 3 million sheep have been exported from WA during the past 13 months since Animals Australia's complaint has been lodged.

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