

Submission to the Senate Rural and Regional Affairs
and Transport Legislation Committee: *Criminal Code
Amendment (Animal Protection) Bill 2015*

Inquiry into *Criminal Code Amendment (Animal Protection) Bill 2015*

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1 Introduction

- 1.1 Concern for animal welfare is clearly at the heart of the *Criminal Code Amendment (Animal Protection) Bill 2015* (Cth) (**Animal Protection Bill**).
- 1.2 I wholeheartedly endorse the simple aims of the Animal Protection Bill, namely to:
 - (a) minimise delays in the reporting of malicious cruelty to animals; and
 - (b) prevent interference with the conduct of lawful livestock production.
- 1.3 My submission seeks to summarise the arguments raised by the opponents to the Animal Protection Bill, and assuage their concerns by reference to similar pre-existing legislation in the Australian legal framework.

2 Evolution of animal welfare and animal rights groups

- 2.1 It is useful to commence my submission with a brief summary of the philosophy that underpins animal welfare and animal rights groups.
- 2.2 Animal welfare groups have been involved in laudable efforts to improve the plight of endangered animals, and minimise animal cruelty, in a myriad of situations around the world.
- 2.3 These groups have evolved over time from some that initially employed covert, guerrilla style tactics (such as the Animal Liberation Front), into more moderate, yet extremely sophisticated operations, with unparalleled media savvy.
- 2.4 The objective of these groups is to prevent the suffering and abuse of animals. The average person would unequivocally endorse these aims.
- 2.5 However, a review of the websites for the major animal welfare groups reveals that they go beyond the stated aims. For example, there is often a clear agenda that the overall suffering of animals would improve if the wider community adopted vegetarian or vegan lifestyles. The logic appears to be simple – stop eating meat and the meat production industries (and alleged suffering) will become redundant.
- 2.6 Animal welfare groups are seeking greater mainstream acceptance of their ideology and are particularly active in trying to spread their message.
- 2.7 Some in the animal welfare sector hold a radical view and desire the ultimate goal – a gradual cultural shift away from meat consumption. The genesis of these ideas can essentially be traced back to the philosophy of animal rights.

- 2.8 The main premise of the philosophy of animal advocacy is that animals and humans have equivalent rights. I outline below a brief summary of the underlying rationale of some of these philosophies.

Utilitarianism

- 2.9 The classic utilitarian principle states that we should act in such a way that the utility, or happiness, in the world is maximised.
- 2.10 According to Peter Singer, the leading proponent of utilitarianism, we should act so that the interests, or preferences, of all individuals concerned are equally considered and optimally satisfied.
- 2.11 From the perspective of animals, they have an interest in avoiding pain. Consequently, humans are obliged to avoid, as much as possible, causing pain to animals, even at the expense of some human interests of lesser importance.
- 2.12 In short, Singer believes that agricultural production systems and the slaughtering of the animals that flow from these production systems inflict unavoidable pain on the animals. He believes that this form of suffering cannot be explained in any way by humanity's desire to eat meat.
- 2.13 Pursuant to Singer's brand of utilitarianism, to place a higher value on human happiness than animal happiness just because it is human is 'speciesism', and is just as reprehensible as racism. To discriminate between living individuals on the grounds of which species they belong to is just as wrong as discriminating between humans on the colour of their skin or their sexuality.

Animal Rights

- 2.14 The other major animal welfare philosophy is that espoused by Tom Regan, namely 'animal rights'. Just as western society's moral view of rights has widened to include slaves and women, Regan believes that:
- (a) it is now time to widen it further to include the rights of animals;
 - (b) animals have an inviolable right to life; and
 - (c) animals as well as humans, have a consciousness and psychophysical identity that gives us an intrinsic value that demands unconditional respect.

3 Animal rights activists

- 3.1 Until now, Australia has been fortunate to avoid the more radical elements of the animal rights activists that have been present in the United States and Europe for decades¹.
- 3.2 For example, the first US domestic terrorist placed on the FBI's Most Wanted Terrorist List was a radical animal activist, who was responsible for bombing two office buildings in the San Francisco area in 2003.
- 3.3 According to the FBI:

'... eco-terrorists and animal rights extremists are one of the most serious domestic terrorism threats in the U.S. today ... for several good reasons:

¹ Strand P, 'Crime in the Name of Animal Rights: List of animal rights and eco-criminal acts since 1983', <http://www.naiaonline.org/articles/article/crime-in-the-name-of-animal-rights>, (16 January 2012)

- *the sheer volume of their crimes (over 2,000 since 1979);*
- *the huge economic impact (losses of more than \$110 million since 1979);*
- *the wide range of victims (from international corporations to lumber companies to animal testing facilities to genetic research firms); and*
- *their increasingly violent rhetoric and tactics (one recent communiqué sent to a California product testing company said: "You might be able to protect your buildings, but can you protect the homes of every employee?").^{2'}*

- 3.4 Given this ongoing campaign of reckless and wilful destruction, the US Federal Government enacted the far reaching Animal Enterprise Terrorism Act (**AETA**) in 2006. This law was passed as a result of the activities of animal activists, who had begun targeting the homes of individual researchers and executives of pharmaceutical companies.
- 3.5 The penalties enshrined in the AETA are significant and include life imprisonment.
- 3.6 It would be naïve to suggest that such wanton acts of violence and criminal damage are unlikely to happen to Australian livestock producers in the future.
- 3.7 By way of example, South Australian animal activists fed shredded ham to sheep to stop them from being exported to the Middle East in 2003, which resulted in \$1.3 million in damages to the exporters³. This incident is worth highlighting, because despite the overwhelming evidence and admissions by the accused, the perpetrator was ultimately acquitted.
- 3.8 The brief details of this incident are as follows:
- (a) subsequent to the deliberate contamination incident, Ralph Hahnheuser released a press release detailing the operation carried out by Animal Liberation, which included a video that showed him mixing shredded ham in water in his motel room, and adding it to feed troughs;
 - (b) he conducted television interviews during which he told journalists any problems arising from the group's actions were 'a small price to pay for stopping the brutal trade' and he also said he would do it again;
 - (c) he was charged with contaminating goods to cause economic loss and trespassing; and
 - (d) he was acquitted due to the fact that he submitted that he did not intend to cause economic damage as his primary concern. Mr Hahnheuser stated that it was his intention to raise concerns about the live export industry and that it was not his intention to cause economic loss.
- 3.9 In an effort to prevent a recurrence of this event, in 2005 the Victorian Liberal opposition proposed an amendment to the *Crimes Act 1958* (Vic) with the introduction of *The Crimes (Contamination of Goods) Bill 2005* (Vic)⁴.
- 3.10 A Commonwealth prosecutor would encounter the same 'intent' problem if proceedings were commenced pursuant to an alleged breach of Part 9.6 of the *Criminal Code Act 1995* (Cth)

² Federal Bureau of Investigation, 'Putting Intel to Work Against ELF and ALF Terrorists', http://www.fbi.gov/news/stories/2008/june/ecoterror_063008 (June 2008)

³ Parliament of Victoria, Parliamentary Debates (Hansard), 4 October 2005, page 1139

⁴ The *Crimes (Contamination of Goods) Bill 2005* (Vic) was enacted in 2005; refer to sections 248 – 252 of the *Crimes Act 1958* (Vic).

(contamination of goods provision). This is clearly a gap in the legislation at present, but the Animal Protection Bill should address this issue.

- 3.11 The Hahnheuser case provides cogent and compelling evidence of why the Animal Protection Bill should be enacted without amendment.

4 Mandatory reporting

- 4.1 The scope of the proposed 'failing to report' section⁵ of the Animal Protection Bill is not unusual or unique in the Australian legislative landscape.
- 4.2 With respect to the issue of domestic violence and child abuse, all Australian states and territories have enacted legislation that requires some form of mandatory reporting to relevant authorities⁶.
- 4.3 Child Family Community Australia notes that:

Mandatory reporting is a strategy which acknowledges the prevalence, seriousness and often hidden nature of child abuse and neglect, and enables early detection of cases which otherwise may not come to the attention of helping agencies. Mandatory reporting requirements reinforce the moral responsibility of community members to report suspected cases of child abuse and neglect. The laws help to create a culture which is more child-centred, and which will not tolerate serious abuse and neglect of vulnerable children.⁷

- 4.4 In the case of domestic violence and child abuse, it is safe to submit that there would be few people in Australia who would argue that it is acceptable to withhold footage of a domestic violence/child abuse incident to prevent the uncovering of 'systemic abuse'.
- 4.5 The community outrage would reach fever pitch if it was subsequently determined that a child was abused in a situation where it could have been completely prevented by the immediate notification of prior nefarious conduct to the relevant authorities.
- 4.6 Even if statutory guidelines were not in place, there would be a societal expectation that such evidence be delivered without delay to the relevant authorities to ensure that the perpetrators were brought to justice.
- 4.7 In any event, Victoria introduced a new criminal offence late last year that imposed a clear legal duty upon all adults to report child abuse information. The maximum penalty for failing to disclose the information to police is three years imprisonment.
- 4.8 This needs to be compared to the position advocated for by the animal rights groups that are against the mandatory reporting obligations in the Animal Protection Bill.
- 4.9 This is best illustrated by comments from a Voiceless press release:

⁵ Division 383

⁶ Similarly, there are mandatory reporting requirements at a Commonwealth and State level in relation to serious communicable diseases. By way of example, the *Public Health Act 2010* (NSW) requires that certain medical conditions be notified to the Director-General, NSW Ministry of Health. The *Public Health Act 2010* (NSW) also allows for Medical Practitioners and pathology laboratories to make a notification if they believe a patient is suffering from another medical condition or disease that may pose a significant risk to public health.

⁷ A limited number of occupations (e.g. Qld), to a more extensive list (Vic), to a very extensive list (ACT, NSW, SA, Tas), through to every adult (NT). Child Family Community Australia, *Mandatory reporting of child abuse and neglect*, <https://www3.aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> (August 2014).

*Forcing individuals to present evidence as it is discovered means incidents of cruelty will always be characterised as 'one-offs'. By enabling investigators to present systemic cruelty – that is, industry-wide cruelty which is recorded over the long-term or across multiple facilities – there is a greater chance of evoking public concern and ensuring perpetrators are properly reprimanded. It is also more likely to result in meaningful and much needed policy and law reform.*⁸

- 4.10 If we take a step back and follow the philosophy of the animal rights groups, they endorse an ideological construct that humans and animals should be afforded the same rights.
- 4.11 In a society where humans and animals should be afforded the same rights, why would an animal rights group believe that it is acceptable for them to suppress and censor suffering to satisfy a media focused agenda, which has the clear potential to be detrimental to the health and well-being of the allegedly abused animals?
- 4.12 Animals are the parties who are in most need of outside assistance as they cannot report alleged abuse to relevant authorities (as they are ironically, voiceless), whereas there is some prospect of self-reporting in the case of a domestic violence/child abuse victim.
- 4.13 Campaigners for victims of domestic violence and child abuse do not bemoan the fact that incidents are reported to authorities on a 'one-off' basis. On the contrary, the emphasis is on reporting each incident to stop the circle of violence and abuse.
- 4.14 There is no benefit derived from waiting to build a greater body of evidence for domestic violence and child abuse victims; if evidence exists it must be used to pursue prosecution of the perpetrator without delay.
- 4.15 In relation to the mandatory reporting of child abuse and neglect, Child Family Community Australia clearly states that, *inter alia*, it is based on 'early detection' and it is 'child-centred, and ... will not tolerate serious abuse.'
- 4.16 If this is compared with the position of the animal rights activists, they operate on a self-imposed time schedule, are not 'animal-centred' and do tolerate abuse in circumstances where they acknowledge that it is a deliberate tactic to aggregate footage of alleged abuse, which causes delays in reporting cruelty to the relevant authorities. The flow on effect of this delay is that hinders or makes it impossible to prosecute the alleged offenders⁹.
- 4.17 Further, it could be submitted that animal rights groups are in a clear position of conflict (though they would be loath to admit it) as they are the clear fiscal beneficiaries of bundling footage together to reveal alleged 'systemic cruelty' i.e. they cannot launch their media campaigns on one image alone, as their fundraising would drain away.
- 4.18 With respect to the RSPCA, it has proposed that 'mandatory reporting of animal cruelty' should be introduced 'For all persons in such positions of responsibility and who, by virtue of their role, are expected to have an understanding of animal welfare legislation ...'.¹⁰
- 4.19 I would submit that it seems perverse that the position being advanced by the RSPCA is that lawful agricultural operations performing lawful activities are mandatorily required to report

⁸ Voiceless, '5 reasons to fear ag-gag', <https://www.voiceless.org.au/content/5-reasons-fear-ag-gag> (13 February 2015)

⁹ Brown E, 'RSPCA says PETA is not "fair dinkum"', <http://www.abc.net.au/news/2014-07-17/rspca-on-peta/5603440> (18 July 2014)

¹⁰ RSPCA, 'Act to protect animals by reporting animal cruelty, Frequently Asked Questions', http://www.rspca.org.au/sites/default/files/website/media-centre/Press-releases/RSPCA_Australia-Act_to_Protect_Animals_by_reporting_animal_cruelty-FAQs.pdf, (8 September 2014)

incidents of alleged animal cruelty, but activists who enter these facilities unlawfully and record alleged animal cruelty within these operations, are not to be subjected to the same mandatory reporting requirement.

4.20 The RSPCA report also states:

'Mandatory reporting also reinforces the moral responsibility of community members to report suspected cases of animal cruelty.'

4.21 Does this mean that the RSPCA believes that animal rights activists are in a separate class, and are not required to report animal cruelty on a mandatory basis? Where is the 'morality' in holding onto footage of alleged animal cruelty, in circumstances where the delay in providing the footage to the relevant authorities will potentially lead to further acts of cruelty.

4.22 In any event, it could be argued that the prosecution of offenders is an afterthought for the activists, because the main purpose of their media campaigns is to turn public opinion.

4.23 How much abuse is 'enough' to show 'systemic abuse' and why do the animal rights activists get to be judge, jury and executioner in terms of the material that is disseminated to the Australian public?

4.24 As outlined above, these very groups operate in a moral vacuum, and if prior press releases are taken to be the standard fare of these groups, a cursory review finds them to be replete with numerous false statements.

4.25 In authorising these press releases and media campaigns, there is an arguable case that these groups have on occasions engaged in conduct which is misleading or deceptive within the meaning of section 18(1) of the *Australian Consumer Law* (Cth) (**ACL**)¹¹.

5 Industrial sabotage and threatening behaviour

5.1 To the opponents of the Animal Protection Bill I pose the following question: why should intentional economic and property damage to a farm business be treated any differently because there are animals involved?

5.2 By way of analogy, the Cole Royal Commission into the Building and Construction Industry heard numerous examples of the illegal conduct of building trade unions and their ability to cause significant financial damages to large scale construction projects.

5.3 Commissioner Cole recommended the introduction of the Australian Building and Construction Commission and a new range of powers to effectively hold these unions to account as the former legislative regime allowed individuals from these unions, and the unions themselves, to inflict multi-million dollar losses on the large construction companies without any impact or financial impost on the unionists themselves.

5.4 As is the current case with the animal rights groups¹², the unions also advocated at the time that current laws were in place to deal with their alleged nefarious conduct, which included money laundering, trespass, assault, theft, fraud etc.

5.5 The final report¹³ found that:

¹¹ 'A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive'. I submit that arguments can be made that these animal rights groups do engage 'in trade or commerce', despite the fact that they appear to be set up as registered charities.

¹²Note 8 and Note 10

'... there was "widespread disrespect for, disregard of and breach of the law in the building and construction industry". This included: disregard of court and industrial tribunal orders, use of inappropriate industrial power, making and receipt of inappropriate payments and a culture of intimidation. The commission concluded that this "depart[ure] from the standard of commercial and industrial conduct exhibited in the rest of the Australian economy ... mark[s] the industry as singular"'¹⁴.

- 5.6 Livestock producers are stewards for the properties and it is clearly in their best interests to treat their properties, and the animals that inhabit them, with the best possible practices as they rely upon both of them for their livelihood.
- 5.7 The message that is not often understood by animal rights activists is that there is no incentive in treating the livestock in a producers' care poorly, as they have a vested interest in getting the livestock to market in the best possible condition so that they can achieve the best possible return.
- 5.8 By way of example, if you consider a beef producer, poor animal handling techniques can lead to bruising, which negatively impacts on the value of the carcass when the cattle are processed at the abattoir.
- 5.9 Also, there can be little doubt that livestock production is one of the most heavily regulated and scrutinised sectors in the country. A producer in the livestock industry operates pursuant to layers of oversight by multiple regulatory bodies, both State and Federal.
- 5.10 Critically, if a producer fails to comply with its regulatory obligations, the ramifications can be enormous e.g. licences to supply can be withdrawn and export markets for product can be suspended or terminated.
- 5.11 In summary, livestock producers operate to the best of their ability, in compliance with Australian and international legal requirements, to provide food and fibre for a growing world population. It is a noble and increasingly thankless pursuit, but these producers rise and fall with the health and well-being of their respective herds.
- 5.12 It is therefore extremely concerning that some members of the Australian community feel that it is appropriate to cause physical harm and/or property damage to livestock producers.
- 5.13 The last 18 months have revealed (particularly in the pork industry) that the current trespass laws in all jurisdictions have consistently failed to act as a deterrent to animal rights activists.
- 5.14 It must be acknowledged that:
 - (a) a large proportion of livestock producers live on the property where they conduct their business. Put simply, this is their home. Breaking into a shed that may house animals on a property is an extension of a producer's home. The producer has every right to feel just as violated as if the perpetrator has illegally entered their house;
 - (b) it cannot under any circumstances be deemed acceptable that the participants in a lawful industry (and the employees working within that industry) can be subjected to intimidation, threats of violence and/or property damage;

¹³ Royal Commission into the Building and Construction Industry, *Final Report of the Royal Commission into the Building and Construction Industry*, AGPS, Canberra, 2003

¹⁴ Williams G & McGarrrity N, 'The Investigatory Powers of the ABCC' (2008) 21 *Australian Journal of Labour Law* 244 at 248-9.

- (c) the people who are making these threats and/or carrying out property damage are aligned to a minority philosophical position (animal rights) i.e. there is no current societal endorsement that this type of conduct is acceptable in Australia.
- 5.15 By way of conclusion, if an individual has sufficient conviction in their beliefs and are concerned with livestock production, they are free like every other citizen in this country to engage in political debate and attempt to change the way our society operates via our elected representatives, not undemocratic, vigilante action.

6 Reverse onus of proof

- 6.1 The Explanatory Memorandum¹⁵ to the Animal Protection Bill states that the:

'New subsection 383.5(3) sets out that the defendant will, bear an evidential burden in relation to making out the matter in paragraph 383.5(1)(c). This is appropriate as it reflects the fact that it will be significantly more difficult and costly for the prosecution to, in effect, prove a negative – i.e. that the activity was not reported – as information about whether the matter was reported would in most cases be peculiarly within the knowledge of the defendant.'

- 6.2 In this regard, Voiceless states:

'... the Bill reverses the onus of proof so that the individual charged will be required to prove their innocence. ... Reversing the onus is unduly burdensome and opens otherwise innocent individuals to potentially harassing claims.'¹⁶

- 6.3 This analysis is correct; in Australia you are ordinarily deemed innocent until proven to the contrary. However:

- (a) animal rights activists start from the other end of the spectrum and operate under a different paradigm, namely that businesses/individuals operating in livestock production are immoral and breaching animal rights on a daily basis, and are guilty on that basis alone; and
- (b) there are innumerable examples of reverse onus obligations in the Australian legal framework and, as a result, subsection 383.5(3) of the Animal Protection Bill is not an unduly onerous provision.

- 6.4 There are important checks and balances in our judicial system whenever law enforcement bodies request authorisation to undertake undercover surveillance activities on potential suspects. A judge will not grant a search warrant or phone tap unless sufficient evidence is provided by the law enforcement officer to justify the imposition of a significant breach of an individual's basic rights.

- 6.5 In summary, it is not a 'rubber stamping' process, nor should it be given the significant encroachment into a party's privacy. But issues of probity and judicial weight (e.g. whether the 'evidence' even reveals that abuse is taking place) are not taken into consideration when animal rights groups deem that a property should be raided.

¹⁵ The Parliament of the Commonwealth of Australia, *Criminal Code Amendment (Animal Protection) Bill 2015: Explanatory Memorandum*, Canberra, Senate, 2015

¹⁶ Note 8

- 6.6 Further, the Animal Protection Bill's prime focus appears to be dealing with issues of trespass onto private property. The Voiceless reference to '*innocent individuals*' rings hollow when dealing with footage that was procured illegally and without authority.
- 6.7 With respect to their reference to '*potentially harassing claims*', there is no positive obligation on animal rights activists to illegally enter private property for the purpose of uncovering alleged animal abuse i.e. even if the reverse onus provision in the Animal Protection Bill could amount to harassment, this conduct is self-induced. It is hard to cry wolf, when you are in fact the wolf!
- 6.8 In this regard, it is important to note that the 'good Samaritan' principle¹⁷ has no application to the conduct of animal rights activists. In Australia, there is no common law duty to render aid or assistance to parties injured in an emergency e.g. if a passer-by saw a swimmer in a distress, there is no obligation on the passer-by to attempt to save the swimmer.
- 6.9 In certain situations, there will be an obligation on a passer-by to render assistance if there is a pre-existing relationship (doctor or employer) or if there is an underlying duty to protect (professional surf lifesaver).
- 6.10 No such obligations exist in relation to the activities of animal rights activists, as rightly or wrongly, there is no common law duty for a passer-by to render assistance to injured animals. It is potentially arguable (but that a duty to protect injured animals is applicable to veterinarians¹⁸, but to no other party).

7 Review of the Animal Protection Bill

- 7.1 I have conducted a thorough review of the Animal Protection Bill in an effort to identify any oversights or unintended risks from a legal perspective.
- 7.2 I am unable to provide any suggestions in terms of potential amendments to the Animal Protection Bill, nor can I point to any unresolved issues that need to be addressed.

8 Conclusion

*'For more than half an hour 38 respectable, law-abiding citizens in Queens watched a killer stalk and stab a woman in three separate attacks in Kew Gardens. ... Not one person telephoned the police during the assault; one witness called after the woman was dead.'*¹⁹

- 8.1 The renowned 1964 sexual assault and murder of Kitty Genovese horrified New York society, in particular the callous indifference and apathy shown by the neighbours of Ms Genovese.
- 8.2 The case provides a useful analogy of what the Animal Protection Bill is attempting to address, namely that animal rights activists are knowingly standing idly by while animals are allegedly abused, to cynically advance their media and fundraising agendas.

¹⁷ A witness or passer-by to an emergency renders aid and assistance to affected parties, in circumstances where the witness was not the cause of the emergency.

¹⁸ Section 1.2 of the Australian Veterinary Association publication on animal abuse states: '*Veterinarians should report suspected animal abuse to the relevant authority. Veterinarians should not be required by law to report instances of suspected animal abuse as this may discourage owners from seeking essential treatment for their injured animals.*'

¹⁹ Gansberg M, 'Thirty-Eight Who Saw Murder Didn't Call the Police', *New York Times*, 27 March 1964

- 8.3 The entire notion of defending this vigilante conduct is specious and perverse. It should go without saying that if you believe in animal welfare and the rights of animals to live in accordance with the five freedoms, there is an absolute obligation to stop harmful activity without delay and further suffering.
- 8.4 To do otherwise allows reasonable people to question the actual motives of animal rights groups.
- 8.5 Animal rights activists should not continue to be rewarded for breaking the law and harassing farmers involved in livestock production.
- 8.6 For the sake of clarity, animal rights activists that trespass illegally onto private property to film alleged animal cruelty are not whistle blowers, as this implies some noble intent behind their illegal conduct.
- 8.7 There is absolutely nothing dignified or courageous about sneaking around on other peoples' property after dark, often with nothing more than threadbare allegations from disgruntled former employees.
- 8.8 The simple reality is that there are current avenues available to deal with alleged animal cruelty issues via complaints to the RSPCA or the police.

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