Appendix 1

Correspondence

THE HON JULIE BISHOP MP

Minister for Foreign Affairs

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Dear Senator Smith /Dean

Thank you for your letter seeking a response to the former Committee's request for a review of the human rights compatibility of sanctions regimes implemented under Australian sanction laws.

As you are aware, sanctions regimes are imposed only in situations of international concern, including the grave repression of human rights, the proliferation of weapons of mass destruction or their means of delivery, or armed conflict. Modern sanctions regimes impose highly targeted measures designed to limit the adverse consequences of the situation, to seek to influence those responsible for it to modify their behaviour, and to penalise those responsible.

As the former Committee noted, the implementation of sanctions is a complex issue that requires careful consideration of the various competing interests involved, including human rights. Sanctions measures that are targeted against designated or declared persons necessarily involve the balancing of the human rights of those persons, with the necessity of preventing broader, and often egregious, human rights abuses arising from a situation of international concern. As the process of considering the various competing interests is undertaken in the process of implementation, I see no need for a further review by the Department.

Yours sincerely Best wishes

Julie Bishop

16 FEB 2015

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17 July 2015

The Hon Phillip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
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Dear Chair

Criminal Code Amendment (Animal Protection) Bill 2015

With regard to the proposed Criminal Code Amendment (Animal Protection) Bill 2015 ("the Bill"), thank you for your letter of 23 June 2015 detailing the request for a response to the twenty-fourth report ("the Report") of the Parliamentary Joint Committee on Human Rights ("the Committee").

Self-incrimination

1.23 and 1.24 of the Report state:

"The committee's assessment of the requirement to report malicious cruelty to animals against article 14 of the International Covenant on Civil and Political Rights (right not to incriminate oneself) raises questions as to whether the requirement to potentially incriminate oneself is justifiable.

As set out above, the requirement to report malicious cruelty to animals engages and limits the right not to incriminate oneself. The statement of compatibility does not provide an assessment as to the compatibility of the measure with this right. The committee therefore seeks the advice of the
legislation proponent as to whether the limitation on the right to freedom from self-incrimination is compatible with the right to a fair trial, and particularly:

- *whether the proposed changes are aimed at achieving a legitimate objective;*
- *whether there is a rational connection between the limitation and that objective; and*
- *whether the limitation is a reasonable and proportionate measure for the achievement of that objective."*

Response:

Firstly, it is clear and self-evident that the proposals are aimed at achieving a legitimate objective, namely to require the timely reporting of malicious cruelty to animals to allow immediate preventative action to be taken.

Secondly, there is indisputably a rational connection between the possible limitation and the twin objectives of preventing cruelty to animals and preventing illegal interference in the lawful operation of animal enterprises.

Whether a limitation regarding self-incrimination actually exists at all is an arguable point, however if it does exist then the magnitude of the limitation is certainly very minimal in comparison to the seriousness of illegal and malicious cruelty against animals.

Thirdly, the limitation is a reasonable and proportionate measure for the achievement of the objective of addressing malicious cruelty because it requires a person with records of illegal activities to soon present them to the appropriate enforcement agencies for immediate action. The legitimate purpose of this legislation is to make responsible enforcement authorities aware of what may or may not be illegal activity.

The handing over of a visual recording does not in itself necessarily imply any association or potential culpability, nor does it impact on an individual's subsequent right for a fair trial.

Importantly the requirement to disclose materials detailing animal cruelty to authorities in a timely manner is wholly consistent with norms of responsible citizenry and delivers the opportunity for the acts of cruelty to be swiftly interrupted.

By way of a simple comparison, under State legislation it is an offence to fail to report a traffic accident to enforcement agencies as soon as possible. This absolute reporting requirement exists even if no other person is present at the scene of the accident and whether or not there are liability considerations for the person making the report. This requirement does not limit the right to not incriminate oneself, and there is no impact whatsoever on procedural fairness nor upon the presumption of innocence.

Another notable comparison relates to the issue of child abuse where Parliaments in all Australian states and territories have enacted mandatory reporting laws of some description (for professionals). While not wishing to link or associate the subject matter in any way, the legal principle provides an example of a requirement to report egregious activities of cruelty.

The key point is that it is immaterial as to whether or not the person disclosing the information to authorities has themselves potentially participated in any illegal activities, the primary requirement to report is simple and absolute.

Of course one could envisage certain circumstances where the person who is required to hand over the material might themselves be complicit with the illegal activities or may have already withheld the information in contravention of the reporting requirements. However similar situations can exist in the provided examples of mandatory reporting of child abuse and traffic accidents. However the reporting is a discrete requirement in its own right and does not in itself constitute any limitation on the right to freedom from self-incrimination nor the right to a fair trial.

To reaffirm this point, the Bill requires a person who has acquired significant information regarding illegal animal cruelty to immediately provide this to enforcement agencies regardless of whether the person has participated in the activities or has potentially committed an ancillary offence.

Arbitrary detention

1.34 of the Report states:

"The committee's assessment of the offence provision against article 9 of the International Covenant on Civil and Political Rights (right not to be arbitrarily detained) raises questions as to whether the offence may be excessive or disproportionate having regard to the breadth of the provision."

Response:

The Bill does not propose arbitrary detention.

Arbitrary detention involves the arrest or detainment of an individual in a case in which there is no likelihood or evidence that they committed a crime against a legal statute, or in which there has been no proper due process of law.

The drafting of the proposed Bill is consistent with the existing Criminal Code provisions and alleged offenders will be fully subject to normal legal due process. While there are maximum penalties for serious offences which may involve imprisonment, these could only be implemented following the normal judicial process. The maximum penalties are certainly not mandatory.

By way of background explanation, the words "maximum penalty" used to appear in Commonwealth legislation, but this expression is no longer used in new Acts. Additionally the older references in statutes are gradually being amended to the new standard. To be clear, the current reference to "penalty" in this Bill is still intended to be a maximum penalty, and it is a matter for the court, in the exercise of judicial discretion, to determine what level of penalty to impose.

A court always has a range of penalty options at its disposal which it will readily choose to utilise according to the circumstances of the offence or the character of the offenders.

It is envisaged that in ordinary circumstances, many of the indictable offences can be summarily dealt with before a Magistrate in the Local Court where the maximum penalty which can be imposed for an offence is generally two years imprisonment. This is regardless of the stated maximum penalty for the offence.

The Local Court hearing might apply to less significant breaches such as simple trespass or minor damage. However, there are some indictable offences which rightfully may be considered too serious to be dealt with in the Local Court. The hearings for these offences may well start off in the Local Court but be then referred to the District or Supreme Court for trial or sentencing. However if the alleged offences are clearly of a strictly indictable nature which requires arraignment, then the Local Court would be avoided altogether.

If found guilty, the accused would then face a penalty which is appropriate to both the level of offence seriousness and the specific case circumstances. The decision of the Court regarding a penalty would presumably also be influenced by many other factors which might include the testimony of character witnesses, existing criminal history, degree of repentance and the guidance of pre-sentence or psychiatric reports.

As such the accused may possibly face a strong penalty in a superior Court for serious offences conducted with wilful intent, or for lesser offences may just receive a fine, community service or a suspended sentence.

The key point is that the normal array of checks and balances will always apply in the Court and there is certainly nothing arbitrary or mandatory proposed in this Bill with regard to detention, sentencing or maximum penalties.

Once more, to be clear with regard to the concerns raised in 1.34, the penalties are reasonable and certainly not excessive or disproportionate. Further discussion and evidence to demonstrate this is provided in following section.

Degree and consistency of penalty

While a clarification has not been specifically sought by the Committee, I feel bound to respond to two concerns contained in point 1.30, notably:

"a penalty should be consistent with penalties for existing offences of a similar kind or of a similar seriousness"; and

"As it not clear that a prison term of five years for economic damage in excess of $10,000 is comparable to similar types of offences, the committee considers that the penalty may be so excessive as to be unjust".

I wish to state that the proposed penalties in this Bill are fully consistent with normal practice and neither excessive nor unjust. The high-end of contemplated offences are serious activities with direct consequences for human and animal life and as such they beckon a firm deterrent.

The proposed maximum penalties are in most cases less than comparable State and Territory legislation for malicious property damage.

As a test of relativity, in NSW under *s195* of the *Crimes Act 1900*, a person who intentionally or recklessly destroys or damages property is liable for imprisonment for up to five years; or if the damage is caused by fire or explosion, for up to ten years. However if the offences are carried out in the company of another, the maximum terms are longer.

Under *s29* of the Commonwealth *Crimes Act 1914*, destroying or damaging Commonwealth property by fire has a maximum penalty of 10 years imprisonment.

Under the Australian Capital Territory *Crimes Act 1900*, offenders can be imprisoned for 15 years plus 1500 penalty units, or up to 20 years if they acted dishonestly with a view to gain. Indeed, even threatening to damage property by fire has a maximum of 7 years jail plus 700 penalty units.

In Tasmania, under the *Criminal Code Act 1924*, a person placing combustible material with the intent to injure property faces a maximum jail term of 21 years plus a discretionary fine. In my home state of Western Australia, under *s144* of the *Criminal Code* the maximum penalty for wilful damage to property by fire is 14 years.

It is clear that the proposed penalties in the Criminal Code Amendment (Animal Protection) Bill 2015 are moderate by comparison.

Necessary nature

While a clarification has not been specifically sought by the Committee, I would like to respond to a statement contained in point 1.33, notably:

"as other legislation already includes provisions that make property damage a criminal offence.....whether the proposed offence provisions may be regarded as necessary in pursuit of a legitimate objective for the purposes of international human rights law".

As exemplified earlier in this document, the various levels of penalties within Commonwealth, State and Territory Criminal Codes are quite inconsistent. This Bill will provide some consistency by way of federal legislation.

While some elements of the possible suite of offences might be provided for in existing legislation (such as trespass or arson) there are other costly nuisance activities which may impact upon a primary producer attempting to lawfully conduct their business (such as biosecurity breaches, releasing animals from captivity, preventing the transportation of stock and interfering with husbandry practices) which are not.

Whatever the reason, it is abundantly apparent that incidences of the types of unruly activities contemplated in this Bill are currently not being prosecuted through normal channels. Therefore there is ample justification for legislation which defines and captures the central nature of the problem relating to animals and primary producers so that the enforcement action which is currently not being taken will be taken in the future.

I also wish to comment on the question as to whether or not the intent of this Bill is a legitimate objective for the purposes of international human rights law. The answer is yes.

I bring the Committee's attention to the right of a farmer, primary producer or animal enterprise manager to support their family and lawfully conduct their business or operations without illegal interruption from those who simply do not respect this right. Just the same as all other citizens in the community, they hold the right to protection under the law when their fundamental rights to maintain the safety of their property and person are threatened, as supported by Article 3 of the Universal Declaration of Human Rights which states:

"Everyone has the right to life, liberty and security of person."

Furthermore, Article 8 states: *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."*

Importantly, Article 7 states: *"All are equal before the law and are entitled without any discrimination to equal protection of the law."*

With regard to those who choose to offend their universal civic obligations as set out in Article 1 to: *"act towards one another in a spirit of brotherhood,"* they will rightly face appropriate sanctions when undertaking illegal activities against primary producers.

In this regard Article 10 states: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

As such I would contend that human rights considerations are implicitly central to both the purpose and utility of this Bill. The legislation as proposed provides

a degree of protection for law-abiding citizens in the pursuit of activities such as primary production, while also providing offenders the right to fairly defend their actions in a court of law.

From a human rights perspective this supports the universal recognition that basic rights and fundamental freedoms are inalienable and equally applicable to all human beings.

Summary

In conclusion, unfortunately it is not uncommon for people to record activities of animal cruelty and then consciously withhold the recordings for extended periods of time, thereby allowing the violent treatment of animals to endure. As such, I strongly contend that the requirement to immediately hand over visual recordings when they come to hand is justifiable, reasonable and proportionate and does not impact upon the common law rights of citizens. Also, the activities undertaken to damage the property or thwart and inhibit the ability of primary producers to conduct their lawful operations need to be firmly attended to.

This Bill is an important step forward as it ensures that malicious cruelty against animals can be more firmly reported in a responsible and lawful manner.

Yours sincerely

Dr Chris Back
Senator for Western Australia

Cc: Secretariat via email: human.rights@aph.gov.au

The Hon Scott Morrison MP
Minister for Social Services

MC15-008928

The Hon Philip Ruddock MP
Chair
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Dear Mr Ruddock

Thank you for your letter of 23 June 2015 about the Social Services Legislation Amendment (Youth Employment and Other Measures) Bill 2015.

I have noted the comments in the Committee's *Twenty-fourth Report of the 44th Parliament* and have provided my response to these comments in the enclosed document.

Thank you again for writing.

Yours sincerely

The Hon Scott Morrison MP
Minister for Social Services
31 / 7 /2015

Encl.

Social Services Legislation Amendment (Youth Employment and Other Measures) Bill 2015

The Parliamentary Joint Committee on Human Rights, in its 'Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*' report, has sought advice from the Minister of Social Services on whether certain measures included in the Social Services Legislation Amendment (Youth Employment and Other Measures) Bill 2015 (the Bill) are compatible with human rights, as defined in the Act.

Specifically the Committee has questioned the compatibility of some of the proposed changes with the right to equality and non-discrimination, the right to social security, and the right to an adequate standard of living. This document provides responses to the Committee's request for advice on compatibility of the measures identified with those rights.

Age requirements for various Commonwealth payments

Schedule 2

- **Remove access to Newstart Allowance and Sickness Allowance to 22 to 24 year olds and replace these benefits with access to Youth Allowance (other) from 1 July 2016**

1.92 The age requirements for various Commonwealth payments engage and limit the right to equality and non-discrimination. The statement of compatibility does not sufficiently justify that limitation for the purposes of international human rights law. The committee therefore seeks the advice of the Minister for Social Services as to:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

The amendments proposed at Schedule 2 of the Bill were previously included in the Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014 (the No. 2 Bill), and subsequently the Social Services and Other Legislation Amendment (2014 Budget Measures No. 4) Bill 2014 (the No. 4 Bill). The substance of Schedule 2 is the same as in previous Bills although the commencement date has been revised to 1 July 2016. The Committee concluded its examination of the measure in Bill No. 2 in its *Twelfth Report of the 44th Parliament*, following the provision of additional information on the human rights impact of the measure in relation to the right to social security and the right to an adequate standard of living. Based on this information, the Committee concluded that this measure was compatible with human rights. The Committee has now requested additional information in relation to the right to equality and non-discrimination.

Right to equality and non-discrimination

The measure in schedule 2 to extend the Youth Allowance (other) eligibility age is aimed at achieving consistency across payments, as well as encouraging young people to undertake or participate in education or training to better ensure that they are able to achieve long term sustainable employment outcomes.

Since 1998, there have been two different maximum ages for Youth Allowance – one for full-time students on Youth Allowance (student) and one for young unemployed people on Youth Allowance (other). Once a young person passes the maximum age for youth allowance as a job seeker (currently 21) they transition to Newstart Allowance, which is paid at a higher rate of payment.

For full-time students, however, the transition from Youth Allowance (student) to the adult student payment, Austudy, occurs at the age of 25 years.

Evidence suggests that education and training can play a significant role in improving a person's chances of finding and maintaining employment, particularly for young people. However, the higher rates of Newstart Allowance and Sickness Allowance (currently paid to around 73,000 unemployed youth aged 22 to 24 years) can act as an incentive for young people to stay on Newstart Allowance or Sickness Allowance instead of pursuing full-time study or employment, or to give up study in order to receive these payments. This measure achieves the dual objective of removing this perverse incentive and achieving consistent eligibility criteria, by placing all under 25 year olds on the same payment level, whether they are unemployed or studying full-time.

Australia's social security system is designed to be highly targeted and to provide for different payments, rates and other settings that reflect the needs and circumstances of different cohorts. For this reason, age-based eligibility criteria are already part of a number of social security payments, including Youth Allowance as outlined above. To the extent that this measure may limit the right to non-discrimination by affecting only a particular age group, this is reasonable and proportionate to the objective of ensuring that payment rates are aligned for young people aged under 25 with similar needs and circumstances, irrespective of whether they are studying or looking for work.

Affected young people will continue to be supported by a range of programmes and other services provided by the Commonwealth and state governments. Grandfathering arrangements will apply to young people aged 22 years or over who are in receipt of Newstart Allowance or Sickness Allowance as at 1 July 2016 to ensure that no existing recipients will have their payment rate reduced.

Income support waiting periods

Schedule 3

- **Provide for a four-week waiting period for certain persons aged under 25 years applying for Youth Allowance (other) or Special Benefit from 1 July 2016**

1.111 The income support waiting periods engage and limit the rights to social security and an adequate standard of living. The statement of compatibility does not sufficiently justify that limitation for the purposes of international human rights law. The committee therefore seeks the advice of the Minister for Social Services as to whether the measure is a proportionate means of achieving the stated objective.

1.123 The income support waiting periods engage and limit the right to equality and non-discrimination on the basis of age. The statement of compatibility does not sufficiently justify that limitation for the purposes of international human rights law. The committee therefore seeks the advice of the Minister for Social Services as to whether the measure is a proportionate means of achieving the stated objective.

The amendments at Schedule 3 of the Bill introduce a new four week waiting period for new job seekers applying for Youth Allowance (other) or Special Benefit, aged under 25 and placed in Stream A with a jobactive provider. This measure is aimed at increasing the level of young job ready people achieving gainful employment outcomes. This measure replaces the six month waiting period for young people under 30 previously included in the No. 2 Bill and subsequently the No. 4 Bill.

Right to social security

Unemployment rates for young people have increased significantly since the global financial crisis. As at June 2015, the youth unemployment rate was 13.4 per cent, compared with an average total unemployment rate of six per cent. The proportion of young Australians not in employment, education or training is also high, with young people in this category at particular risk of social exclusion. The 2014 report by National Centre for Vocational Education Research, *How young people are faring in the transition from school to work*, indicates that in 2012 more than a quarter of 21 year olds (27.4 per cent) were either not engaged or not fully engaged in employment, education or training. The report also notes that not all young people in this category are 'vulnerable' and that some may be in this category voluntarily. This measure seeks to address youth unemployment by establishing firm expectations for young people to accept jobs or move into education and training, rather than relying on income support in the first instance at the risk of becoming disengaged, both socially and economically.

The risk this measure could be considered to limit the right to social security by restricting immediate access to income support is mitigated by the specific targeting of the measure to those young people who are job ready (in Stream A of jobactive) and able to support themselves through paid work.

Job seekers who have been assessed as having significant barriers to work will be exempt from the measure. This will include job seekers in Stream B and C of jobactive, parents with 35 per cent or more care of a child, young people in or leaving state care and those with a temporary activity test exemption of more than two weeks, such as pregnant women in the six weeks before they are expected to give birth, or people testing their eligibility for Disability Support Pension. The Bill before Parliament also allows the Minister to make further exemptions via a legislative instrument. These exemptions ensure that young people who face more complex and/or multiple barriers to finding work and are less able to fully support themselves will continue to receive income support.

In recognition of the importance of education and training in preventing future unemployment, young people who return to school or full-time vocational education or university study will be able to access student payments, such as Youth Allowance (student), and therefore will not subject to a four week waiting period.

Evidence also suggests that this measure will be most effective if it is supported by an appropriate level of employment services, targeted at job seeker deficits[1]. Job seekers subject to a four week waiting period will continue to be supported by the full range of programmes and assistance currently available under jobactive to enable them to find employment. Job seekers will also be required to participate in rapid activation activities designed to enhance their chances of moving into work as quickly as possible.

To the extent that this measure may limit the right social security, this limitation is reasonable and proportionate to the objective of encouraging young people to be either working or studying as targeted cohort are those who are job ready and capable of finding and maintaining a job.

Right to an adequate standard of living

Income support data (as at June 2015) shows that a majority of young job seekers are receiving support from their parents, with 54 per cent of Youth Allowance (other) recipients considered to be dependent on

[1] Analysis commissioned by the New Zealand Government (*Actuarial valuation of the Benefit System for Working-Age Adults as at 30 June 2013: Greenfield/Miller/McGuire*), which would be broadly applicable to the Australian system, shows that if young unemployed people are not provided with the right mix of programmes and support, there is a high chance that they will end up trapped on welfare for much of their lives.

their parents for the purposes of calculating their rate of payment. This indicates that a large proportion of affected recipients will have access to external support in order to maintain an adequate standard of living.

From 1 July 2016, pending the implementation of the measure, around $8.1 million over three years in additional funding will be available to Emergency Relief providers to provide basic material aid to young people during the four week waiting period. This assistance is not intended to provide assistance to all young people affected by this measure. It is also not meant to meet affected individuals' living costs during the waiting period. Assistance will vary according to the needs and circumstances of the person.

This additional Emergency Relief funding will become available only following the implementation of the measure. The Department will undertake an analysis of payments data and consult with the Emergency Relief sector to inform the targeting and distribution of available funds to those most affected by the measure.

The limitation of the availability of income support is reasonable and proportionate as the measure is targeted at those who are job ready and able to be self-supporting through work and a large proportion of the targeted cohort will have access to parental support and additional Emergency Relief funding will be available for those in need.

Right to equality and non-discrimination

Young unemployed people under 25 years have a significantly higher rate of unemployment compared to the general population, with a large number in the cohort also facing increased risk of social exclusion due to disengagement from work and education. The targeting of this measure to those under 25 is specifically aimed at addressing the risks for this particular cohort by providing incentives for these young job seekers to pursue work or further education or training, which evidence suggests will reduce their chances of becoming long-term unemployed.

Additionally, around 43 per cent of the young people on unemployment payments aged under 25 years are still living in the parental home, compared to only seven per cent for those aged over 25. This shows that the cohort targeted by this measure is more likely to be drawing on family support and have secure housing than their older counterparts and therefore may be less likely to face hardship while serving a waiting period.

To the extent that this measure may limit the right to equality and non-discrimination by affecting only a particular age group, this is reasonable and proportionate in the context of factors particular to this group such as higher youth unemployment rates, high rates of youth disengagement from employment, education and training, and increased access to parental support.