

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Criminal Code Amendment (Agricultural Protection) Bill 2019 Submission

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Thank you for the opportunity of making a submission.

- **My farming background**

Until the age of 35, I experienced life on a dairy and beef farm in northern Victoria. In the 1960s I used to accompany our local vet on his farm rounds, because I wanted to study veterinary science. I saw all sorts of farming practices first-hand. I saw the distress of calves having their horn buds destroyed with hot iron cautery. I saw the de-horning of older cattle. I saw the castration of young animals by burdizzo. All these procedures took place without pain relief. I saw five-day old bobby calves put on trucks destined for the abattoir. I heard cows bellowing for days after their calves were taken. One Saturday I saw sheep in an abattoir holding pen in 40-degree heat without shade as they awaited their slaughter the following Monday. These images have remained with me.

- **The community is increasingly aware of farming practices – but wants to know more**

Nowadays pain relief is readily available for castration, mulesing etc, but it is often not used because of its cost to farmers.

Moreover, there are major problems, corruption even, with the way agriculture is regulated and the standards are framed, which allow these cruel practices to continue. Few codes of practice are mandatory - and there is no way of knowing what happens on individual farms or behind the gates of intensive-farming enterprises.

Is it any wonder the public is calling for transparency in agriculture? The bill is an attempt at ag-gag; it is a backward step, especially in view of findings of the Futureye report (discussed below). I know plenty of people - from rural and regional areas and the city - who share my views about the need for transparency. They want to know where their food comes from - and they want reassurance that farm animals are well treated. Unfortunately, I cannot give them any reassurance. When I talk to people about 'routine farming practices' and so-called 'wastage', they register disbelief. Few know about the 'wastage' of more than 700 000 male calves annually in the dairy industry, because they can't produce milk, and about the millions of male chicks in the poultry industry thrown alive into macerators or gassed because they can't lay eggs - all this death despite the availability of cutting-edge technology that could prevent their birth in the first place.

For example, scientists and animal rights campaigners in Germany have come up with an alternative to the mass-slaughter of the 45 million male chicks born into the country's egg industry each year. A company

called Seleggt has developed technology that will determine the sex of each fertilised egg before the chick inside develops. Seleggt aims to provide this technology free to hatcheries in Germany by 2020. See link <http://www.seleggt.com/>

Australian farmers say they have world best practice in agriculture; if so, why are they not rushing to adopt such technology? No wonder activists are growing impatient.

Those who advocate for farm animals are ordinary members of the Australian community who seek truth and transparency in agriculture. They want those sentient creatures to have a voice. Farm animals who die to provide us with food are living, breathing, intelligent beings who – I can attest from personal experience – feel happiness, pain and fear just as we do.

- **Key reasons why I oppose the bill**

I therefore strongly oppose the Criminal Code Amendment (Agricultural Protection) Bill. First, the existing state and territory trespass laws are adequate; and federally section 474.17 of the crimes legislation relating to telecommunications offences already protects farmers privacy and security. The article in the link below questions how the bill will protect farmers. <https://theconversation.com/it-isnt-clear-how-the-new-bill-against-animal-rights-activists-will-protect-farmers-120588>

Secondly, even Bridget McKenzie, the responsible minister, herself admitted that the government did not know how many farms had been broken into in the past year, and she could not say to what extent the government expects the new laws to prevent farm trespass.

I argue that the best way to deter trespass on farms is to vastly improve the farm animal welfare standards with effective monitoring, compliance and penalties for breaches. Activists would have no motive to trespass if farm animal regulations were re-set and upheld. Incidents of unauthorised activity on Victorian farms are miniscule in the scheme of things, whereas the process of setting standards for farm animal welfare is in need urgent review. The bill is clearly a knee-jerk reaction to an off-the-cuff comment made during the election campaign. It is not good governance.

- **WHY is farm trespass happening?**

The simple answer is the lack of transparency in agricultural industries leading to a lack of trust in the community – for example a 2017 CSIRO study on *Public concerns about dairy-cow welfare: how should the industry respond?* concludes:

Animal agriculture is coming under greater public scrutiny. Hiding practices, for example, using ag-gag legislation, is unlikely to help and may contribute to a loss in public trust <https://www.publish.csiro.au/an/Fulltext/an16680>

Because the government seems blind to the cause of activism I shall outline below why it is increasing.

- **Productivity Commission – *Regulation of Australian Agriculture* report 2016**

The Productivity Commission final report - *Regulation of Australian Agriculture, Productivity Commission Inquiry report No 79*, 15 November 2016 prepared the groundwork to ameliorating this issue. I commend to committee members 'Chapter 5 Regulation of farm welfare' beginning at page 199. <https://www.pc.gov.au/inquiries/completed/agriculture/report>

In my opinion if the Commission's recommendations on transparency, community input and better regulation of farm animals had been adopted, the motive for activism would have reduced. Time and again the report refers to the need for transparency and community input. The report highlighted conflict of interest, bias and collusion in standard setting. The report found (Page 224) that at all levels of government, the regulation and governance of animal protection has been delegated to government departments that possess a real or perceived conflict of interest as they are also responsible for ensuring the profitability of the agricultural industry. This raises concerns that animal welfare laws are not being appropriately enforced.

The report includes submitters' concerns about impartiality, transparency and accountability in the process because of disproportionate industry influence. The RSPCA is quoted in the report thus:

Even when a set of standards has been finalised by stakeholder reference committees and endorsed for implementation by state and territory agriculture ministers, political lobbying by industry groups can nevertheless result in last minute changes ...

The community saw this loud and clear in media reports when NSW was leading the national review of poultry standards in 2017. See links below, with one governance expert calling it collusion and corruption:

<http://www.abc.net.au/news/2017-12-21/egg-farmers-accused-of-colluding-with-nsw-government/9229242>

<http://www.abc.net.au/news/2018-01-08/concerns-poultry-welfare-standards-stage-managed-by-industry/9299256>

Despite the community's overwhelming opposition to cage eggs and their banning and/or phasing out of them in Europe and other countries, the Australian standards continue to legalise battery cages. This abuse of the standards process is all grist for the mill of activists.

The agriculture standards are what the government should be addressing; not a bill that will achieve nothing. A clever government would analyse what is causing activism. What is the point of having a Productivity Commission if its recommendations are ignored?

Legislation is needed to monitor and enforce farm regulations, because at present the system is reliant on complaints. To paraphrase the report's findings (page 241) it was observed by the Law Society of South Australia that any complaints are likely to be limited for intensive farming facilities, because animals and operations are usually in closed buildings or in remote areas. This makes it difficult for members of the public to observe animal farming practices.

This secrecy and remoteness in my view leads to a temptation to trespass. It also puts the lie to the government claims that farming families themselves are at risk. Families are not located alongside intensive factory farms. The unpleasant environmental conditions around these farms rules that out for a start.

It was also found that there were no current routine compliance monitoring systems related to animal welfare in place (other than for abattoirs), and only in Tasmania were 'unannounced' inspections the norm. RSPCA Australia, a charity, (page 242) said regulations are not appropriately enforced mainly through lack of funding. Its website states:

In addition to investigating cruelty, RSPCA Inspectors spend a significant portion of their time preparing animal cruelty cases and attending court. Whilst the RSPCA has an excellent prosecution record, the financial penalty of losing a case can be extremely high. Court cases and potential appeals can be extremely costly and difficult to anticipate. Fines imposed by the court are allocated to the State Government and whilst costs can be awarded to the RSPCA these are often difficult to recover from the offender.

The Law Society of South Australia told the Commission that the detection of contraventions of animal welfare law has, in large part, been left to individuals and animal welfare groups. Circumstances where individuals and charities are required to take on the role of investigating and detecting contraventions indicate that there is a significant deficiency in the enforcement of the law.

A further problem is that the large number of reported animal welfare incidents relating to companion animals limit the available resources for compliance activities in farming, particularly as some farming occurs in vast geographical rural areas. The Australian Veterinary Association told the Commission:

A section of the public has lost its confidence in the power of government and non-government agencies to adequately enforce existing legal protections for animals. Some animal welfare advocates have felt compelled to take matters into their own hands.

It is not hard to see why trespass happens. A google search throws up many examples of penalties for farmers and activists. In the case below, the farmer was depriving hens of food and water to induce moulting to extend his hens' egg-laying life, a practice banned in Europe. This perpetrator said the practice was 'common in the industry'. He received a five-year ban from owning animals; I believe he should never own animals again. Activists are rightly outraged when weak penalties are imposed. And remember: this cruelty was uncovered by activists, not through routine monitoring by government authorities.

<https://www.theage.com.au/national/nsw/lakesland-egg-farmer-convicted-of-serious-animal-cruelty-20190430-p51ipt.html>

<https://www.abc.net.au/news/2019-04-30/nsw-egg-farmer-hit-with-five-year-ban-following-hen-cruelty/11060210>

If perpetrators of on-farm cruelty are not punished and banished from the industry, activists feel the need to take matters into their own hands. Repeat offenders and bad farming practices tar all farmers with the same brush in the eyes of activists and the general community.

- **Erosion of community trust**

Page 227 of the Productivity Commission report states:

There is significant scope for greater rigour in the process of developing national farm

animal welfare standards and guidelines. And importantly, for science and (soundly elicited) community values to play a more prominent role

The Australian Veterinary Association pointed to concerns that community groups are underrepresented in standard-setting and suggested that additional expertise from veterinarians and animal welfare scientists may lead to the development of more defensible animal welfare standards.

On a positive note, I was pleased to see that Victoria is to be the first state to make it mandatory for farmers to use pain relief for mulesing sheep. Since pain relief has been available for a decade, one can appreciate why activists lose patience with farmers. See Link below:

<https://www.abc.net.au/news/rural/2019-07-16/mandatory-mulesing-pain-relief-in-victoria/11312596>

In the link above the chairman of the Victorian Farmers Federation Livestock Group confirms what I am saying:

Mr Vallance said the use of pain relief was important in protecting farmers' social licence to farm.

"We don't have a God-given right to be farmers anymore," he said.

"We are very subject to public perception of what we do and we must be very open and transparent about what happens on our farms."

This sort of positive attitude by some sections of industry is the best way to promote animal welfare and help alleviate community outrage about the all-too-many cruelty cases. However, the positive was followed by a negative with the latest news in NSW that peak bodies are fighting a proposed mulesing ban:

<https://www.sheepcentral.com/peak-sheep-and-wool-bodies-to-oppose-mulesing-ban-bill/>

A ban is rejected outright, despite a number of producers having invested in genetics and management systems that have enabled them to transition away from mulesing altogether. One step forward, two steps back.

Community outrage following the expose of the *Awassi Express* journeys where thousands of sheep suffered and died in 2017 was so high that then Minister Littleproud asked former Integrity Commissioner, Philip Moss, to review the regulatory capability and culture of his own department. Recommendation 30 of Mr Moss was:

That the department establish appropriate forums to consult with stakeholders and assess community expectations.

The ABC reported on 6 November 2018 that following whistle-blowers' reports, Minister Littleproud had asked a former head of the Australian Crime Commission, Mr John Lawler, to investigate his department. Mr Littleproud is reported as having said:

There are seven (staff) that have made allegations that they wished to bring forward evidence of wrongdoing by export companies but were advised by their senior officers not to raise them because there could be repercussions...

Despite this investigation, the community has heard nothing since. Were the senior officers Mr Littleproud mentioned dealt with appropriately? The live export regulations are to this day unfinished - and the community expectations have not been met. Little wonder there is no trust in government regulations generally.

- **Biosecurity**

Intensive farms are hotbeds for disease and can be unhealthy for the workers and for the public who eat their products, let alone trespassers. Victorian Farmers Federation egg group president and an owner of the Bridgewater Poultry farm - where workers were filmed inflicting egregious cruelty on hens - sums up in the link below exactly what is wrong with intensive farms. The article states in part:

Bridgewater Poultry also faced controversy back in March after having to [recall a number of products due to a potential salmonella outbreak](#).

According to *The Age*, both Coles and Woolworths stopped stocking eggs from the farm in March.

One of the Bridgewater Poultry owners is Victorian Farmers Federation Egg Group president Tony Nesci.

He told the publication he was "horrified" by the video, adding the contractors were hired following the disease outbreak.

"Trying to get people to go into a quarantined farm is like trying to find gold nuggets in pig sh*t," he said.

"We in the egg industry are at the mercy of only a handful for people who are prepared to do this job."

<https://www.news.com.au/technology/science/animals/secret-video-reveals-horrific-abuse-of-hens-inside-victorian-egg-farm/news-story/dd429e36eb2e210fc702c78663f6961d>

Mr Nesci says only a 'handful' of people want to slaughter hens. I will not go into the psychological reasons why that may be.

Farmers have a responsibility to vet carefully the type of people they hire to look after and/or slaughter hens - 'doing the jobs no-one else wants to do'. Obviously, the perpetrators in this instance are totally desensitised to the sentience and suffering of the animals in their care. The animals are treated like 'things'. Even agriculture minister, Bridget McKenzie, said 'It is clear this footage includes some disturbing behaviour that cannot be condoned' ('Probe into gross animal cruelty', Age 22.6.19.)

Footage of cruelty to animals in intensive farms and in abattoirs is far too common to be isolated incidents. If not for the activist footage, the cruelty would continue unchecked. The next link shows yet another atrocity, again in Victoria, which the regulator PrimeSafe had failed to identify despite regular audits

<https://www.abc.net.au/news/2017-11-16/chickens-boiled-alive-inside-melbourne-abattoir/9157186>

Biosecurity is a term often used by the government and industry in cases of trespass. What could be more harmful to biosecurity than the picture below which was captured in a battery cage farm?



They called it 'state of the art' — but these are the lives led by 'forgotten' hens trapped inside this factory farm in NSW. Here, dozens of abandoned hens were found 'living' among enormous towers of rotting faeces — surviving on scraps, beetles and eggs. (Website of Animals Australia, August 21, 2014)

A Humane Society of the United States public health report entitled 'Human Health Implications of Intensive Poultry Production and Avian Influenza' concludes:

Genetic selection for productivity and the stressful, overcrowded, and unhygienic confinement of animals in industrial poultry production systems facilitate immune suppression in birds already bred with weakened immunity, offering viruses like avian influenza ample opportunities for spread, amplification, and mutation. Placing genetically un-diverse birds into these kinds of unsanitary environments with inadequate ventilation and sunlight exposure is believed to provide a ripe "breeding ground" for the emergence and spread of such diseases as virulent avian influenza—diseases with human public health implications. (my emphasis)

Intensive farming establishments are not only bad for hens and for workers' physical and mental health, they also have implications for public health.

As described in the link below, activists, whose sole motive is animal welfare, are mindful of biosecurity risks and are careful to disinfect their footwear and take precautions before entering.

<https://www.smh.com.au/national/nsw/biosecurity-law-sets-hurdles-for-animal-activists-documenting-cruelty-20150822-gj5bqi.html>

The Productivity Commission report mentions biosecurity at page 331:

Trespass on farms is unlawful and can lead to biosecurity risks. Reviewing the monitoring and enforcement of animal welfare standards and improving transparency around farms' operations (with the use of industry-led initiatives such as web cams), should reduce the motivation for trespass. (My emphasis)

At page 342 the report states that stricter laws and penalties to deter trespass may simply be treating the symptom rather than the cause and offers a solution:

... addressing activists' underlying motivation to trespass appears to be a better solution. Several participants agreed that this was the better approach. (My emphasis)

The RSPCA said:

We believe this [activism] is partly associated with a loss of confidence in the government's role in monitoring and upholding animal welfare standards and

therefore agree with the Commission's observation [in its draft report] that 'one way of reducing it is to remove the motivation for it' by increasing 'confidence within the community that livestock welfare outcomes are being achieved.

World Animal Protection argued that the best strategy to discourage trespass is improved transparency and trust. Industry initiatives to improve transparency through installing CCTV and web cams offer a good response to this need. Compulsory use of CCTV should be considered for stages of production where animal welfare is particularly at risk. The PC report recommended at page 343 that:

... state and territory governments review their monitoring and enforcement of farm animal welfare standards, and suggests ways to encourage industry-led initiatives, including quality assurance systems, that can increase transparency around farms' operations.

Implementing these initiatives can avoid potential regulatory costs which can arise from adjusting trespass laws and have the potential to improve the community's understanding of livestock industries' welfare practices. (My emphasis)

The calls to address 'trespass' or 'biosecurity' concerns are all about keeping consumers in the dark about cruel practices.

First world countries' view of our farming practices

Most first world countries have better animal welfare than Australia does. In the EU, especially France and UK, CCTV is being implemented in abattoirs to support regulators to audit effectively. Battery cages, for example, are still used in Australia whereas in Europe they are outlawed. And most countries to whom we export want high animal welfare akin to their own. For example, high-end Italian designers demand wool from sheep that have not been mulesed. There are export dollars to be earned from cruelty-free, clean, green farm practices. Cruelty is far worse for Australia's international reputation and, if you remove the cruelty and provide transparency you will remove the incentive for trespass.

The British government has just released the results of a 14-day consultation on a Free Trade agreement with Australia, post-Brexit. The article states that their consultation uncovered fears that this would lead to a spate of salmonella in Britain – with submissions linking Australia's 'lower standards of animal welfare' to 'high rates of food poisoning' in Australia. (See link below)

The rates of food poisoning (notably salmonella) in Australia were also highlighted in a number of NGO responses. Here, the respondents linked high rates of food poisoning with lower standards of animal welfare

<https://www.smh.com.au/world/europe/british-reveal-salmonella-fears-over-free-trade-deal-with-australia-20190718-p528mw.html>

Futureye report – Australia’s shifting mindset on farm animal welfare

The report commissioned by the federal government entitled *Commodity or Sentient Being: Australia’s Shifting Mindset on Farm Animal Welfare*, by Futureye shows the Productivity Commission was right to emphasise community input into regulation-making. See link for a copy of the report. <http://www.agriculture.gov.au/SiteCollectionDocuments/animal/farm-animal-welfare.pdf>

A reading of both reports makes it evident that inflicting higher penalties or jail terms for trespass will be counterproductive. The community is seeking greater transparency and, as the Futureye report found, the community is increasingly siding with activists.

After seeing footage of cruelty in factory farming and live export and then seeing industry groups and the government defending and even subsidising these industries, causes outrage in the community and causes people to question what happens on farms generally.

Rogue industries like live export are tarnishing the community’s view of ALL farming. People wonder why farmers continue to send their animals overseas when they know they will suffer egregious cruelty. Even countries like Mongolia are banning live exports, while here in Australia taxpayers have just contributed \$2.2 million to trial dehumidifiers for live export ships. This is despite the fact that animals who survive the voyage will still suffer heat stress on disembarking in the Middle Eastern summer and will be slaughtered without stunning. That money would be better spent on phasing out the industry. No wonder activism is on the increase. Source: See links below:

http://www.xinhuanet.com/english/2019-07/03/c_138196108.htm

<https://maritime-executive.com/article/australian-government-funds-live-export-dehumidifier-trial>

The links below, including those from farmers’ perspectives, discuss what the Futureye report tells us about Australian community attitudes toward farm animal welfare and activists.

<https://www.farmweekly.com.au/story/5940516/farmers-need-to-control-the-narrative/>

The 'Farm Weekly' link above states:

... there's distrust of government agencies charged with regulating farm animal welfare, and the livestock industry is too secretive about on-farm activities.

These factors are driving growing outrage about farm animal welfare.

That sounds like the report's authors surveyed activist groups and echoed their views.

But the report isn't referring to the views of activists but the results of national surveys and focus groups of everyday Australians.

And, in a wake-up call for producers, the report found a growing section of the public sympathises with activists. [My emphasis]

Indeed, 76 per cent of Australians say whistleblowing by activists about farm animal welfare should be encouraged, with 20pc undecided and only 4pc disagreeing with the whistle-blowing.

Australians are taking a keener interest than ever before on what happens to animals on farms.

The 'Farm Weekly' link further states on trespass and ag-gag laws:

... With farm animal welfare, Australia is at the "challenging stage" when activism intensifies.

This has developed rapidly over the past eight years with key incidents driving growing public outrage.

These include shocking revelations over the way Australian cattle were slaughtered in Indonesia in 2011, highly publicised documentaries confronting people with on farm animal treatment and slaughter, whistle-blowing exposes of live sheep suffering onboard export ships and attempts to stop undercover investigations via proposals for 'ag-gag' laws in some States.

Like demands for stronger trespass laws, the public sees 'ag-gag' as trying to shut them out.

This issue is bigger than a few activists invading farms in WA.

The increase in animal-based activism is part of a global trend and shows no sign of abating. (My emphasis)

<http://theconversation.com/not-just-activists-9-out-of-10-people-are-concerned-about-animal-welfare-in-australian-farming-117077>

<https://www.sheepcentral.com/activists-aside-how-does-the-general-public-view-farm-animal-welfare/>

The Futureye report found that 95% of the community view farm animal welfare to be a concern and 91% want reform to address those concerns. The concerns are spread evenly across states and territories, and between capital cities, regional towns and rural areas. Importantly, the report provides considerable insight into why activism has increased and increasing concern about how farm animals are treated.

I quote below some snippets from the Futureye report, which go to issues of trust and transparency. Futureye found that secrecy, 'ag-gag' laws, jail terms and higher penalties for trespass will further inflame community outrage and adversely affect farmers:

There is a gap between societal expectations and the regulatory reality.

Animals are seen as sentient beings that have capabilities, rights, and freedoms.

There is a high alignment with activist views on the treatment of animals.

The public is demanding stricter regulation and effective solutions.

There is a high level of concern about the treatment of farm animals and current regulation.

The majority of the public is concerned about how farm animals are treated.

The public's distrust of the industry and government, and the perceived lack of transparency are driving outrage on farm animal welfare.

... as the younger generations mature they are likely to become highly involved around issues of animal welfare ... and thus demand significant reform.

Public has clear expectation for effective regulation to uphold these systems and expect highly transparent practices, regulation and enforcement.

'Browsers' are watching issues develop through news or online media ... watching how 'highly involved' and 'attentive' stakeholders are treated and often will decide to get further involved if they perceive this treatment as poor or not sufficiently addressing their concerns.

Page 10 'Working with animals has changed my perception of them. I see them as sentient... and having a will to live'.

Page 11 Because regulation of farm animals is less strict than for companion animals, there is higher concern about the treatment of farm animals.

This was mentioned in the Productivity Commission report. We need the same strict regulation for farm (meat) animals that we have for companion animals. They are both sentient: they feel the same pain, hunger and discomfort.

On page 18 Futureye recommends what the federal agriculture department should do, including activist and stakeholder engagement. On page 24 it describes how animal activism is not a sudden phenomenon and how it has evolved over many years. It says in 2018 vegetarianism and veganism emerged as the fastest growing lifestyles worldwide. Page 88 lists the 'outrage factors' relating to farm animal welfare among participants in the survey. Under 'Solutions' some participants suggested people pursue lab grown meat or adopt plant-based diets.

- **The major new trend - plant-based food and lab meat**

The Futureye report does not elaborate on the trend for plant-based and lab meat alternatives which is gathering momentum and which will change farming as we know it.

<https://www.smh.com.au/world/north-america/meat-grown-in-labs-can-consumers-be-convinced-to-take-a-bite-20190710-p525u7.html>

The link above describes one of many new companies in the USA, Memphis Meats, whose investors include billionaires like Bill Gates and Richard Branson and even huge traditional meat-producing multinationals like Cargills and Tyson Foods. A recent report in June by consultants AT Kearney (See link below) predicts that by 2040, cultured or lab meat will make up 35 per cent of meat consumed worldwide and plant-based alternatives to meat will compose 25 per cent.

<https://www.atkearney.com/retail/article/~/a/how-will-cultured-meat-and-meat-alternatives-disrupt-the-agricultural-and-food-industry>

<https://www.theguardian.com/environment/2019/jun/12/most-meat-in-2040-will-not-come-from-slaughtered-animals-report>

Almost weekly the media reports a new start-up company with scientists and innovators in various countries producing plant-based products and lab meat to feed markets that are clamouring for more. Consumers are becoming increasingly concerned that farming animals for meat and milk is unsustainable for the environment, bad for their health and bad for the animals. Industry and regulators are out of step with community

expectations on this trend. These new advances avoid all the welfare problems associated with the production of animals for food.

While governments, some politicians and the farming community talk about tougher penalties for activists, companies like Coles and Safeway and myriad other companies around the world have listened and responded to consumer calls for the phasing out of battery cages and sow stalls and are stocking plant-based products next to the meat aisle. Countless fast food outlets like Subway, McDonalds, Grill'd et al have also responded to consumer demand by offering plant-based alternatives.

As I have said – if the government regulated agriculture effectively and met community expectations about animal welfare, the activists would have no motivation to trespass. While the government has criminalised activists, their activities have brought about major improvements in animal welfare and enabled the community to make informed choices about the products they buy. The community listens and responds to activists.

- **Ag-gag laws**

Wherever so-called ag-gag laws have been enacted, problems have arisen due to community outrage about the loss of free speech. Any bill/act on trespass should make clear that animal abuse is a matter of public interest, and individuals and organisations who publicise evidence of animal abuse should not be criminalised.

Further, individuals and organisations that use materials obtained from surveillance devices that have already been published and are in the public domain should not be prosecuted. Recent exposés into the greyhound racing industry, for example, would not have been possible without the publication of undercover footage by animal protection groups other than the RSPCA.

I am concerned that systemic animal cruelty in animal-use industries will escape detection if these groups cannot gather information and publish. Instead of targeting the messenger, legislators need to focus on ways to strengthen the monitoring and enforcement of existing laws and farm animal standards. Why is the government not listening to the Productivity Commission on this – and acting on the Futureye findings?

In the USA, where 10 states have ag-gag legislation, public outcry has caused challenges in higher courts, because the laws are deemed unconstitutional and an affront to free speech.

The link below states in part:

<https://theconversation.com/animal-activists-v-private-landowners-what-does-the-law-say-110279> 24 January 19

The leading case on this subject is the 2001 case [ABC v Lenah Game Meats](#). Activists had placed a hidden camera without permission inside a factory in Tasmania's Lenah Valley. They later retrieved the camera, which contained evidence of cruelty to brush-tail possums being processed for export.

On objection from the meat processors, a lower court granted an injunction, banning the ABC's 7.30 Report from airing it on the show. The ABC appealed to the High Court.

The High Court lifted the injunction. It decided that although the footage had been filmed without the owners' permission and involved a trespass, it was more important for the evidence of animal cruelty to be screened.

The public interest in witnessing greater transparency into suspect meat processing methods trumped the interests of a private business trying to shield its practices from public scrutiny

The link below contains a treatise by Elizabeth Englezos in the *Griffith Journal of Law and Human Dignity*, Page 272. It comments on the Lenah case and the implications for ag-gag legislation in Australia and elsewhere.

<https://griffithlawjournal.org/index.php/gjlhd/article/view/998>

- **Who are these animal activists?**

It is wrong to lump all animal activists together. Not all animal activists are vegans. My family has marched against live export alongside our meat-eating friends and other members of the community – we are part of the community the Futureye report talks about. People are driven to march because governments refuse to listen, let alone act. Marchers are trying to direct community attention to the need for better farm animal welfare laws and regulations. Sometimes marchers block intersections. I do not recall the taxi-driver protest about Uber that blocked Flinders street suffering the same vilification as the recent animal activist blockade -- both groups were exercising their right to free speech. Ag-gag laws such as those being proposed in various Australian states and federally will offend many Australians who value transparency and free

speech. The links below discuss civil disobedience and other pertinent issues.

<https://theconversation.com/animal-rights-activists-in-melbourne-green-collar-criminals-or-civil-disobedients-115119>

<https://www.smh.com.au/national/vegan-protests-flash-in-the-pan-or-seismic-social-shift-20190411-p51da3.html>

<https://www.smh.com.au/national/vegan-activists-spectacularly-inconvenient-but-morally-right-20190409-p51c9q.html>

A quote from the link directly above:

'If animal agriculture is indeed a massive systemic injustice as many have argued, then I submit vegan activists can reasonably claim to be part of a long tradition of morally justifiable civil disobedience'.

Conclusion

I have included as an attachment to my submission some additional references concerning the dangers inherent in ag-gag laws and the developments and experience of Ag-gag legislation in Australia and the USA that the committee may find useful.

I trust the committee will acknowledge from my arguments above that this proposed bill is futile. The federal government should instead focus on what the Futureye report is telling it about community attitudes to farm animal welfare - and implement immediately the recommendations on farm animal welfare in the Productivity Commission final report. This would be a good start.

The rise in activism can be linked, in part, to the failure of the Coalition to implement these recommendations. Fundamental change is needed – not a knee-jerk reaction with higher penalties and prison for activists.

I believe the existing laws on trespass are adequate. The best strategy to discourage trespass is to remove the motivation for it by having rigorous farm animal standards -- and that they include equally rigorous monitoring, enforcement and strong penalties. Transparency in agricultural industries will give the community trust and confidence that farm animals are treated humanely, just like their companion animals.

I agree with Senator Janet Rice, who said recently that Australians should have the freedom to 'call out' bad farming practices. It should be up to the courts to decide whether the rationale behind trespassing is reasonable to draw attention to an alleged issue.

<https://www.abc.net.au/news/2019-07-25/greens-back-civil-disobedience-on-farm-trespass/11345132>

As Carmel Boyle from Wendouree in Victoria wrote in the *Age* letters page recently, citing revelations of cruelty in egg farms and the treatment of sheep shipped to the Middle East ‘... I have to support the work of animal activists in general, even if I don’t care for some of them in particular’.

I think she speaks for the 95% of the community referred to in the Futureye report.

Jan Kendall

July 2019

Attachment

Useful additional references concerning developments and experience of Ag-gag legislation in Australia and the USA

Ag-gag issues generally

1 – A treatise by A. S. Whitfort. ‘Achieving effective animal protection under the threat of ‘Ag-gag’ laws’ on how Europe has achieved much for animal welfare but that ag-gag laws are being enacted in USA (where laws in Idaho and Utah are being challenged) and in Australia (2018)

https://www.wageningenacademic.com/doi/abs/10.3920/978-90-8686-869-8_52

2 - A treatise by Amanda Whitfort ‘*Justice and the Vulnerable: extending the duty to prevent serious crimes against children to the treatment of agricultural and research animals*’. The Abstract states:

... Legal protection for farm animals has been further eroded by the introduction of so-called ‘ag-gag’ laws. Historically, the recognition of the special vulnerability of children and animals caused their legal protections to develop in tandem. This article examines the case for extending the duty to prevent serious violent crimes against children in the home, to animals in laboratories, abattoirs and on farms. It concludes that effective protection of animals requires the imposition of a new legislative duty to prevent their unlawful serious harm.

<http://www.austlii.edu.au/au/journals/AdelLawRw/2018/5.pdf>

3 - Will Potter, ‘Ag-gag Laws: Corporate Attempts to Keep Consumers in the Dark’ (2017) Volume 5, Issue 1, Griffith Journal of Law and Human Dignity. This discusses ag-gag in the USA, the threats to free speech, the fact that ag-gag coalesces animal welfare groups, and finally discusses the public backlash to ag-gag laws, which the pork industry says are not helping its industry. He notes that every time an ag-gag bill is introduced it provides an opportunity to discuss issues the agriculture industry is trying to hide.

<https://griffithlawjournal.org/index.php/gjlhd/article/view/934/856>

4 – J.A. Robbins et al, ‘Awareness of ag-gag Laws Erodes Trust in Farmers and Increases Support for Animal Welfare Regulations’ (2016) 61 Food Policy 121, 124. Psychological research suggests that ag-gag laws may be counterproductive as reducing information flow often reduces feelings of trust and their study showed ag-gag laws led to increase in support for animal welfare regulations.

https://econpapers.repec.org/article/eeejfpoli/v_3a61_3ay_3a2016_3ai_3ac_3ap_3a121-125.htm

5 -This link refers to pork industry concerns about activists – but acknowledges that introducing ag-laws and tougher penalties will generate negative publicity for the industry.

<https://www.abc.net.au/news/2014-05-25/pork-industry-tougher-penalties-animal-activists-illegal-filming/5474958>

6 - The links below from Voiceless and the Guardian contain some background on ag-gag laws in Australia and internationally.

<https://www.voiceless.org.au/hot-topics/ag-gag>

<https://www.theguardian.com/commentisfree/2014/may/05/ag-gag-laws-the-battle-for-animal-welfare-is-a-battle-over-information>

7 – A 2014 RSPCA submission against ag-gag laws

<https://www.rspca.org.au/media-centre/news/2015/rspca-tells-senate-ag-gag-won%E2%80%99t-protect-australian-animals>

NSW

1 - This link refers to NSW proposals regarding activists and the first Animal Justice Party MP

<https://www.smh.com.au/national/nsw/animal-justice-mp-mark-pearson-wants-to-ban-battery-hens-20150502-1mye7i.html>

2 - Submission of RSPCA to NSW committee on the way that enacting draconian ag-gag laws is not in the public interest and touches on US experience stating: ... ‘a coalition of over 70 organisations has been formed in the US to combat the proposals consisting of groups representing civil liberties, the media and free speech, environmental protection, workers’ rights, prosecutors, consumers and public health’.

<https://www.parliament.nsw.gov.au/lcdocs/submissions/60992/0011%20RSPCA%20Australia.pdf>

3 - Adjournment speech by Mark Pearson MLC, NSW on ag-gag and the lack of transparency to inform the public

<https://markpearson.org.au/tag/ag-gag/page/2/>

4 - As a result of cruelty at abattoirs, NSW has mandated the appointment of animal welfare officers in all abattoirs. The RSPCA and other welfare bodies say self-regulation does not work and monitored CCTV as in Europe would be a better option. The link below provides useful commentary on developments.

<https://www.smh.com.au/environment/conservation/multiple-deficiencies-uncovered-in-nsw-abattoirs-20120517-1ytn0.html>

<https://www.sydneycriminallawyers.com.au/blog/nsw-government-silences-animal-rights-activists/>

SA

1 – comments on SA legislation and risk to free speech

<https://www.abc.net.au/news/2015-12-03/ag-gag-bill-surveillance-devices-sa-parliament/6994516>

2 - In February 2016 in South Australia the Surveillance Devices Bill passed both houses (See link below). A previous bill in 2014 was defeated following community outcry about animal welfare. In April 2016 the South Australian Greens introduced an amendment bill to protect animal advocates and clarify that animal welfare issues are within the public interest. I understand the amendment was lost. See links:

SA bill - http://classic.austlii.edu.au/au/legis/sa/consol_act/sda2016210/

<https://www.abc.net.au/news/2015-12-03/ag-gag-bill-surveillance-devices-sa-parliament/6994516>

VIC

1 - Wodonga rendering company saying that ag-gag will not work and you need to stop cruelty first

<https://www.bordermail.com.au/story/2358996/forget-ag-gag-laws-animal-cruelty-just-shouldnt-happen-full-stop-abattoir-says/?cs=11>

2 - June 2014 Article about when Napthine Victorian coalition government was thinking about introducing ag-gag laws

<https://newmatilda.com/2014/06/25/know-what-battery-cage-looks-thank-animal-activist/>

Queensland

1 - Qld bill <https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2019-036>

2 – In the link a barrister claims the new act in Qld will not stop farmers being ‘doxed’ – that is, the publishing of private or identifying information somewhere as part of an animal activist campaign.

<https://www.northqueenslandregister.com.au/story/6267861/will-new-anti-farm-trespass-laws-help/?cs=4770>

WA

Link shows RSPCA WA submission on ag-gag:

[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/1F7FBF8DDED267E748257E8B001154E0/\\$file/ra.rpa.060.150702.sub.Neale+Blackwood.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/1F7FBF8DDED267E748257E8B001154E0/$file/ra.rpa.060.150702.sub.Neale+Blackwood.pdf)

USA

1 - How public outcry helped to stop the effectiveness of ag-gag laws in USA (Utah)

<https://www.smh.com.au/environment/conservation/australia-risks-copying-us-ag-gag-laws-to-turn-animal-activists-into-terrorists-20140501-37k8i.html>

2 - This article discusses health and safety issues for staff in feed lots suffering headaches, eye irritation, and nausea as an apparent result of the emissions from the feedlots. The health and environmental concerns have driven down nearby property values ...

'These feedlots are tough to fight because of so-called "ag-gag" laws in seven [now 10] states, which bar the recording of undercover videos, photographs, or sound recordings at farms. Farms and livestock producers say the laws are aimed at protecting their homes and businesses from intruders, but critics say they have a chilling effect on whistle-blowing or investigative work'.

Two "ag-gag" laws [are currently being challenged in federal court in Idaho and Utah](#), according to USA Today.

- <https://www.businessinsider.com.au/mishka-henners-photos-of-american-feedlots-2014-8>

3 - This link gives history of ag-gag in USA and describes how the laws are controversial being unconstitutional and violating free speech.

<https://www.cnn.com/2019/06/12/alleged-animal-abuse-at-indiana-farm-puts-ag-gag-laws-in-spotlight.html>

4 – Early days of ag-gag laws in US and, similar to Futureye, it was found that over 94% of Americans want farm animals to be free of abuse and cruelty and 71 percent support undercover investigative efforts by animal welfare organisations to expose animal abuse on industrial farms.

https://www.huffpost.com/entry/animal-cruelty_b_2194615

5 - Utah's ag-gag law was declared unconstitutional in July 2017. See link below:

<https://www.care2.com/causes/victory-utahs-ag-gag-law-is-declared-unconstitutional.html>

6 - Informative article from 2019 below about what is happening in the US and in Australia with ag-gag etc.

<https://sentientmedia.org/animal-farmers-press-charges-against-activists-cruelty-continues/>

7 - Link below is a RSPCA discussion paper on ag-gag in USA

https://www.rspca.org.au/sites/default/files/website/media-centre/Press-releases/RSPCA_Australia-Ag_gag_laws_in_Australia-Discussion_paper.pdf

8 - Link below has RSPCA comments on issues of trust and ag-gag - 2019

<https://kb.rspca.org.au/knowledge-base/what-are-ag-gag-laws-and-how-would-they-affect-transparency-and-trust-in-animal-production/>

Other recommended reading:

Garrett M Broad, 'Animal Production, Ag-Gag Laws, and the Social Production of Ignorance: Exploring the Role of Storytelling' (2016)

https://www.academia.edu/9018809/Animal_Production_Ag-gag_Laws_and_the_Social_Production_of_Ignorance_Exploring_the_Role_of_Storytelling