

# Australian Greens' Dissenting Report

1.1 The Australian Greens are deeply committed to improving animal welfare. We support any actions that seek to alleviate animal suffering and to put an end to animal cruelty where it occurs.

1.2 The Australian Greens fully reject any attempts to minimise and remove mechanisms that would increase transparency and accountability to this end.

1.3 The *Criminal Code Amendment (Animal Protection) Bill 2015* seeks to deter and punish those who would expose to the public visual evidence of animal cruelty in commercial animal industries. It would do this by effectively criminalising investigators while turning a blind eye to the perpetrators of that cruelty.

1.4 Indeed, the bill would result in greater penalties being imposed on those who make visual records of animal cruelty, than those who would commit the cruelty which remains an illegal act.

1.5 As such, the Greens reject the bill in its entirety.

1.6 The Greens acknowledge and thank the 1600+ individual submissions made to the inquiry which have helped inform the Greens' position. We note an overwhelming majority of submissions condemn the bill and its intentions, and that the minority support for the bill consists of those commercial interests that would benefit from less scrutiny of their animal welfare practices.

1.7 We also thank the many others who signed petitions and form letters and who contacted their elected representatives directly opposing the bill.

1.8 Without the voices and actions of Australians from all walks of life and political persuasions; without the journalists, activists and investigators of animal welfare issues; without the hard work of our animal welfare organisations across Australia, animals suffering systemic and casual cruelty would forever remain voiceless and unnoticed behind closed doors.

1.9 The Greens also thank the committee for its hard work and the witnesses to this inquiry particularly the RSPCA, Voiceless, Sentient, and the Barristers Animal Welfare Panel, for their valuable input. We thank Animals Australia and Animal Liberation for their advice on this bill.

## **Purpose of the bill**

1.10 The Second Reading Speech asserts the primary aim of the bill is "*the welfare of the animals believed to be victims of malicious cruelty*", while the Explanatory Memorandum claims "*the Bill's first priority is to ensure that animals are protected against further unnecessary cruelty caused by a delay in reporting*". The title of the bill erroneously claims "*Animal Protection*" as its purpose.

1.11 However statements in the Second Reading Speech and by the bill's proponents make clear the primary aim is to protect commercial industries from public exposure if their business practices result in animal cruelty. This would ensure that

such businesses could continue profiting or benefitting from the mistreatment and suffering of animals.

1.12 The effects of the bill confirm this.

1.13 It protects enterprises and associated persons and ventures from having visual evidence of systemic and long-term animal cruelty collected and exposed to the public and to legal scrutiny and accountability.

1.14 It also gags public revelations of animal cruelty by meting out draconian and disproportionate punishment to the investigators, whistle-blowers, advocates and media who would make and accumulate that visual record evidencing the animal cruelty.

1.15 It should be noted such bodies of evidence have been necessary for the successful prosecution of animal cruelty cases and for informing public demand for change to alleviate harm inflicted on animals by animal enterprises. This bill if passed would also diminish the chances of successful legal prosecution of cases against perpetrators of animal cruelty and neglect.

1.16 The bill turns a completely blind eye to the perpetrators of animal cruelty, despite the illegality of those crimes and the public demand for such crimes to be investigated and prosecuted.

1.17 Incredibly it does not compel other direct eye witnesses to report any animal cruelty when they see it.

1.18 The Greens note that proponents of the bill are contradictorily silent on these fundamental omissions that will allow the unimpeded continuation of animal cruelty where it occurs.

### **New offences**

1.19 The bill creates three new broad offences that are applicable only to animal enterprises or related enterprises or individuals:

1. Failing to report and submit the visual recording of malicious animal cruelty within certain time limits (s383.5).
2. Damaging of property belonging to an animal enterprise or a person connected or related to an animal enterprise (s385.5).
3. Causing fear of death or serious bodily injury to a person who is connected or related to an animal enterprise (s385.10).

### **Duplication**

1.20 The bill unnecessarily duplicates existing laws with the risk of double punishments, confused legal processes and compromised investigations by authorities.

1.21 State and federal laws already exist to protect all persons including “animal enterprises” from trespass, property damage, and conduct involving bodily injury, threats, harassment or intimidation. Those laws are already adequate.

1.22 Indeed evidence to the inquiry suggests this bill would confuse and complicate law enforcement of those existing statutes.

1.23 There has been no case made in any of the bill documents, nor in any evidence provided to the inquiry, as to why any part of this bill is needed or appropriate in any form.

1.24 The Greens note the Joint Media Organisation's observation that *the Australian Government Annual Deregulation Report 2014* states that "poorly designed and inefficient regulation has been imposing unnecessary costs on us all" and that the current government in 2014 removed "over 10,000 unnecessary and counter-productive regulations and redundant acts of parliament".

1.25 The additional qualifier attached to the replicated offences "*with the intention of interfering with the carrying on of an animal enterprise*" is redundant. Courts already consider the motivation of offenders during the sentencing process.

### **Political and commercial agendas**

1.26 With this in mind, however, the Greens share a number of submitters' concerns that the additional offences, solely applicable to commercial animal industries and associated individuals and entities, confirm that this bill is drafted to suit the political and commercial agendas of its proponents and to ensure a criminal conviction to suit those agendas.

1.27 This is dangerous territory indeed. As noted by Barristers Animal Welfare Panel, the RSPCA, and other submissions, it risks serious abuse of legislative power to secure criminal convictions for political or commercial advantage.

### **Targets visual records of cruelty**

1.28 The bill criminalises a person because they recorded an activity they believe to be "malicious cruelty" to animals and have not reported that activity within one business day, or have not submitted that visual record within five business days to an unspecified "authority" (s383.5).

1.29 This offence is applicable *only* to photographs and film footage of what is believed to be animal cruelty. This, taken with the time limits for reporting, effectively criminalises the accumulation of visual evidence required to prove systemic and ongoing animal cruelty in animal use industries and would ensure any long-term animal welfare investigations "*are stopped in their tracks*" (RSPCA Australia, Sub 52).

1.30 The scope of the bill would also criminalise vets, media and any other members of the public who record what they believe may be instances of animal cruelty.

1.31 The provision would dissuade individuals from seeking expert advice about the validity of their recorded animal cruelty concerns and put an end to the lodging of those animal welfare concerns outside the time periods, as to do so would constitute a criminal offence under this bill. Already public whistleblowers delay reporting animal abuse for various reasons, they "*often report they were nervous, frightened of the animal abuser, or were hoping that the abuse would stop without intervention*" (Animal Liberation, Sub 242).

1.32 Conversely, the bill may also find law enforcement agencies or the RSPCA flooded with thousands of photographs or footage of innocuous activities involving animals from all and sundry who may be concerned about committing a crime if they do not submit their animal photographs or footage of what might be construed as possible animal welfare breaches.

### **Constitutionality**

1.33 The Greens also note questions raised in many submissions about the constitutionality of the bill.

### **Infringement of traditional rights, freedoms and privileges**

1.34 The Joint Media Organisation's submission also highlights the Government's review by the Australian Law Reform Commission of Commonwealth laws, aiming to identify provisions that unreasonably compromise and encroach upon traditional individual rights, freedoms and privileges.

1.35 The stated intent by the Attorney-General is to "*strive to protect and restore*" those rights, recognising the diminishing and devaluing of those freedoms compromise the principles of democracy.

1.36 This bill actively and deliberately dismantles those rights and turns its back on well-established legal principles.

1.37 The Joint Media Organisations made it clear that the bill operates to actively undermine and inhibit freedom of the media for investigative news gathering and reporting in good faith and in the public interest. Especially those stories that "*may shine a light in dark areas*" such as intensive farming operations, live exports or the more recent greyhound industry investigations.

### **Reversal of Evidential burden**

1.38 The presumption of innocence is a *fundamental* cornerstone of common and criminal law which serves to protect even those proponents of the bill from arbitrary punishment by requiring the prosecution prove all elements of an offence beyond reasonable doubt.

1.39 This bill reverses the evidential burden of proof with the Explanatory Memorandum asserting that such a reversal "*will not necessarily violate the presumption of innocence provided that the law is not unreasonable in the circumstances and maintains the rights of the accused*" (our emphasis).

1.40 That is, this bill does not require the prosecutor or the accuser to provide evidence to establish the offence. Rather the defendant must shoulder the evidential burden to disprove the (non-established) offence.

1.41 Currently the reversal of the evidential burden onto the defendant is imposed in serious cases involving treason, espionage, and terrorism related acts as defined in the *Criminal Code Act 1995*. As an aside, the Greens share the same deep alarm about the removal of the basic right to a presumption of innocence in these cases.

1.42 Nonetheless, it is outrageous that proponents of the bill would have trespass, property damage, and fear of harassment or intimidation – or the non-reporting of a

photograph or video of animal abuse – fall into the same category such as are currently claimed to warrant serious abrogation of such a fundamental legal principle as the presumption of innocence.

1.43 That investigators into animal welfare abuses may be prosecuted in the similar rights framework as those accused of violent terrorist acts, where they must disprove an accusation that may be delivered without any proof whatsoever, is of most serious concern.

1.44 The Greens concur with submissions that note the claim this provision is justified because the prosecution would find it “very difficult” to prove that visual records of animal abuse were made is an absurdity, given the making of such records is the threshold element of the principal offence under the bill.

1.45 Equally absurd is that the prosecution must prove the act of cruelty in the first place, and then put aside that established fact in order to pursue the primary question of if or when that act was reported and recorded visual evidence supplied to authorities.

### **Removal of intention**

1.46 The bill also removes another important check on excessive punishment by removing no fault provisions otherwise available to the courts under existing laws: *“no fault needs to be proved and the defence of the mistake of fact is not available”*.

1.47 The onus is on the accused to disprove an offence unproven by the prosecution, with a presumption of guilt from the outset, and then unable to rely on any defence of ignorance or honest mistake of fact.

1.48 The dismantling of such fundamental legal protections, when considered with the penalties this bill seeks to bring down is unconscionable.

### **Draconian and excessive penalties**

1.49 The bill seeks draconian and disproportionate penalties for those seeking to obtain evidence of cruelty in animal enterprises that exceed maximum penalties for the actual infliction of animal cruelty.

1.50 The omission of a described “maximum” penalty finds that prescribed penalties in the bill are effectively mandatory.

1.51 This could see an animal welfare investigator prosecuted under the provisions of this bill facing a mandatory maximum penalty without the need for the accusing animal enterprise, or any person or business related to the enterprise, to prove the offence.

1.52 Not only this, the accused would be stripped of any basic right to the presumption of innocence or of a right of defence and instead would have to disprove the offence, regardless of whether the prosecution had any merit whatsoever.

1.53 Under this bill, it is conceivable that “an individual could be imprisoned for one year for breaking a lock or rescuing a sick or injured hen, which would certainly be an unjust outcome” (Voiceless, Sub 56).

## **Non-specificity**

1.54 The Greens NSW' submission notes there are a number of offences in the bill that are drafted dangerously loosely.

1.55 For example, the aggravated offences provisions (s385.20) lack the specificity such as causation, malice or intent otherwise required in laws on homicide or serious injury. For example the test "if the conduct results in [serious bodily injury, economic damage, or death to any individual]" does not specify what "results in" means.

1.56 Given the penalties are mandatory, and the maximum penalty is life imprisonment "for conduct that results in death", this conceivably could result in someone being accused of contributing to the death of any individual who may not have actually been present when the offence is asserted to have been committed.

1.57 A similarly vague offence (s385.10) "engages in conduct involving" allows the capture of an inappropriately broad range of activities that may have only the most tenuous connection to the offences of threats, vandalism, property damage, criminal trespass, harassment or intimidation that cause "fear" in a person – whether that fear is rational or not.

1.58 Sentient (Sub 51) notes the definition of "animals" does not protect non-domestic animals such as native and non-native wildlife which is often subjected to malicious cruelty as evidence by the recent expose of live bating in the greyhound racing industry.

## **The real problems**

1.59 The Greens have long condemned the inadequacy of current laws that purport to protect the welfare and wellbeing of animals within industry and other so-called "animal enterprises".

1.60 The lack of well-funded independent oversight of animal cruelty protection and the inadequate monitoring and enforcement of existing animal protection laws by government agencies continues to condemn animals to short lifetimes full of pain, fear and great suffering beyond the spotlight of the public gaze.

1.61 It is the lack of will and commitment from government that necessitates organisations such as Animals Australia, Animal Liberation , PETA and the many other courageous animal groups, journalists and committed individuals to investigate, bear witness to, and collect evidence of systemic industry-wide and long-term animal cruelty.

1.62 It is a lack of government support and funding that finds inadequately funded or legally empowered "*animal protection enforcement bodies such as the RSPCA, who are then put in a position to have to act on a reactive basis, after the harm is done*" (Animals Australia. Sub 770).

1.63 The significant impact such investigations have had on the development of animal welfare law, on enabling prosecutions against animal cruelty, increasing consumer and public awareness and forcing changing practices by offending industries and businesses cannot be underestimated.

1.64 Just two of the many examples: Without Animals Australia's collection of extensive evidence of cruel slaughter practices in Indonesia and ABC's Four Corners reporting of that evidence, the live export ESCAS regulations would not have been put in place and extended to the importing countries, the use of the cruel Mark I slaughter boxes would not have been banned and increased pre-stunning methods would not have been implemented in Indonesia (Animals Australia, Sub 770).

1.65 The greyhound industry across Australia would be continuing to use animals as live bait if not for the work of Animals Australia and Animal Liberation Queensland that has shaken up the industry across the country.

1.66 This bill would put an end to the community's most formidable weapon in exposing and prosecuting widespread routine and systemic cruelty: Covert surveillance in long-term investigations.

1.67 The Greens condemn this bill. It is an undisguised and clumsy attempt to end the scrutiny of offending animal industries, by punishing the investigators and protecting the offenders.

1.68 It offers nothing to repair our completely ineffective animal welfare regulatory framework.

1.69 There has been no evidence presented to support a case that this bill is required or appropriate. It undermines basic legal principles necessary to a fair and just legal system. It has no social license.

1.70 The Greens unequivocally reject this offensive bill.

### **Dissenting report recommendations**

1. The Greens recommend this bill not proceed.
2. Employees, owners and operators, associates and others connected to animal facilities who suspect or are witness to animal cruelty or neglect in that enterprise should be compelled to report it.
3. Strong and effective legal protections should be afforded to those who thus are required to report animal cruelty.
4. Journalists and independent investigators should not be prosecuted for the provision of any evidence of animal cruelty in animal enterprises.
5. Minimum Standards and Codes of Practice should meet public expectations of what constitutes humane treatment of animals. They should not codify animal cruelty that would otherwise be prosecuted under existing animal protection legislation.
6. The Australian Government should reinstate withdrawn funding for the Australian Animal Welfare Strategy and its advisory committees and commit to supporting animal welfare initiatives at a federal level, and prosecuting breaches to its own regulations such as the ESCAS that pertains to live exports.
7. Departments of Agriculture represent the interests of industry and should not be responsible for oversight of animal welfare investigations.

8. An Independent Office for Animal Welfare (IOAW), should be introduced by the federal government to oversee and coordinate state based IOAWs. All IOAWs should be empowered, resourced and compelled to fully investigate, enforce and prosecute all animal welfare cases, including not only domesticated animals but also native and non-native wildlife.
9. More and adequate funding and resources should be provided to animal protection organisations such as the RSPCA and The Animal Welfare League who are charged with investigating animal cruelty complaints.
10. Investigating organisations and animal welfare investigative officers such as the police and the RSPCA should be provided with appropriate powers and resources to detect long-term systemic animal cruelty and to enforce and prosecute breaches. This includes the ability to covertly record investigated premise and unannounced inspections of facilities.
11. Industries and sectors who use animals in any way should be incentivised by government to promote public transparency and accountability to ensure their treatment of animals meets social and ethical expectations of humane treatment.

**Senator Lee Rhiannon**  
**Australian Greens**