

# Criminal Code Amendment (Animal Protection) Bill 2015

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Submission from the Australian Veterinary  
Association

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The Australian Veterinary Association (AVA) is the national organisation representing veterinarians in Australia. Our 8500 members come from all fields within the veterinary profession. Clinical practitioners work with companion animals, horses, farm animals, such as cattle and sheep, and wildlife. Government veterinarians work with our animal health, public health and quarantine systems while other members work in industry for pharmaceutical and other commercial enterprises. We have members who work in research and teaching in a range of scientific disciplines. Veterinary students are also members of the Association.

## Overview

The AVA supports initiatives which may bring about improvements in regulating and enforcing animal welfare legislation in Australia. However, we have concerns about the effectiveness of this proposed legislation to achieve any significant improvement in animal welfare. The AVA believes there are alternative strategies to bring about much greater improvements in animal welfare in Australia, and these are outlined below.

Existing animal welfare legislation in states and territories provides safeguards for animals in Australia, and these safeguards could be strengthened. Most importantly, there is a serious shortfall in resourcing to monitor, investigate and enforce these safeguards.

With enforcement operations seriously under-resourced, increased reporting will not necessarily result in reductions in cruelty. If authorities do not have resources to investigate and prosecute acts of cruelty, or the powers to investigate systemic animal abuse, then the increased reporting sought by this bill will have no effect.

The key to sustainability of livestock and other animal-use industries is building consumer confidence and gaining public trust through schemes which promote transparency of operations. Significantly more resources are needed to allow state-based animal welfare regulators to undertake more effective surveillance, and support accredited quality assurance and independent auditing programs. These sorts of initiatives will help to ensure ongoing public confidence and support for animal use across all industry sectors.

State government agencies do not appear to be adequately resourced to effectively administer animal welfare legislation and recent breaches have highlighted the need for better animal welfare regulation and enforcement. 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. This situation is undesirable for a number of reasons, not the least of which is the potential for serious breaches in biosecurity protocols and risks to the animals themselves from uncontrolled and unauthorised contact with animal welfare advocates.

Immediate reporting of breaches may prevent further animal suffering and place an onus on regulators to respond. However, the time frames may be impractical and the associated penalties may deter people from reporting. Animal welfare inspectors currently rely on complaints from the public to alert them to breaches such as the existence of puppy farms, substandard livestock operations or serious abattoir negligence. Additional state resourcing to permit proactive surveillance by regulators under formal monitoring schemes would help to improve this situation.

The combination of laws regarding animal cruelty and trespass in the draft bill may have the unintended consequence of creating a perception that animal industries have something to hide. A better approach would be to resource schemes which promote transparency and restore community confidence, such as independent auditing

schemes and farms which 'open their doors' to public scrutiny. Examples of these are some of the supermarket cage-free and sow-stall free marketing initiatives and RSPCA approved foods.

The former Australian Animal Welfare Strategy (AAWS) was instrumental in promoting sustainable improvements in animal welfare as well as increased community awareness through education and extension activities. National leadership in progressing best-practice animal welfare is required, along with measures to fortify animal welfare regulation in the states and territories.

## Recommendations

- Greater government investment and resourcing of animal welfare enforcement agencies, increased investigative powers and strengthening of existing animal welfare legislation is urgently needed. This will reduce the need for covert and illegal tactics to uncover malicious cruelty. Formal monitoring schemes based on random audits by the regulator are a key component.
- The Australian Animal Welfare Strategy or a similar national initiative should be reinstated to promote sustainable improvements in animal welfare across all animal use sectors and coordinate animal welfare improvements across Australia.

## Division 383 – Failing to report malicious cruelty to animals after recording it

### Scope of the bill

Animal suffering may occur as a result of direct acts of cruelty, or more indirectly as a result of failure of duty of care (neglect) by a person responsible for an animal's wellbeing. Breaches in duty of care include such things as failure to treat injuries or disease, and can result in chronic and severe suffering comparable with direct or intentional acts of cruelty.

This bill concerns itself specifically with the issue of reporting malicious cruelty as defined under section 383.10. It does not address severe suffering as a result of animal neglect. Broadening the scope to include incidents where duty of care has been breached would make the legislation a more effective animal welfare enforcement tool.

The bill also specifically relates to visual recordings of malicious cruelty rather than requiring reports from those simply witnessing such activities, whether filmed or not. This raises potential criticisms that the legislation is intended more to keep such things hidden from public view, than to truly tackle animal cruelty.

The AVA strongly supports the obligation of all citizens to report breaches of the law, including acts of malicious cruelty to animals. However, making those who do not report guilty of a criminal act is not appropriate. If there is to be legal strengthening of the obligation for witnesses to report malicious cruelty to animals, then further consultation is required to avoid unintended consequences.

Finally the scope should not be restricted to domestic animals but should be broadened to include wildlife and feral animals that may be subjected to acts of cruelty.

### Time frame for reporting

The AVA supports prompt reporting of suspected animal abuse or neglect, in order that further animal suffering may be alleviated or prevented. Indeed veterinarians have an ethical obligation to report such instances to the authorities (AVA Policy 1.2). The AVA similarly believes that members of the public who become aware of animal abuse or neglect should act to report their concerns as soon as practically possible.

However there are concerns that the rather limited time frame for reporting and the related penalties in this draft bill

may actually discourage reporting. It is also likely that in remote locations reporting within one business day may not be practical. While the bill's explanatory memorandum suggests that there is some flexibility in the reporting timeframe, this is not included in the bill itself. There should be greater clarity around this in the bill at the very least.

Further concerns have been raised that immediate reporting may prevent accruing of sufficient evidence to reveal systemic long-term issues within an industry and thus may prevent successful prosecution. In many instances, when reports are made to regulators, those reporting are asked to cease their involvement and to leave the investigation to the authorities. This possibility must be balanced against the risk that a delay in reporting may lead to further animal suffering. Empowering regulators to conduct random audits would go a long way towards reducing the need for undercover surveillance altogether.

It is recommended that the time frame be less prescriptive and require reporting "as soon as practically possible" in order that each case may be judged on its own merit. In any case, it is conceivable that an individual may accumulate visual recordings and then hand them onto another party to report the findings, so the legislation may not be particularly enforceable, even if passed.

## Division 385 – Interfering with the carrying on of animal enterprises

Trespass or otherwise interfering with animal enterprises poses disease prevention and control risks. It also may impact directly on the welfare of the animals involved. Existing trespass and privacy laws should be enforced. It is hard to see that additional anti-trespass laws will dissuade people who are determined to gain access for the purposes of undercover investigations, as they already flout the existing laws.

There is also a risk that combining laws about documenting animal cruelty with anti-trespass legislation may give an impression that animal industries have something to hide. The public may perceive this as a way of stopping whistle blowers from taking action, and this may be detrimental to the reputation of animal industries.

## Promoting transparency in animal use

The key to restoring public faith in animal-use enterprises such as livestock industries, research, recreation and sport is greater transparency of operations. Consumers have a desire to connect with the origins of their food and this is an increasing trend in younger consumers (Smith and Brower, 2012). Retailers respond to pressure from both activists and consumers. Similarly, use of animals in research, teaching and other areas such as zoos and circuses is under increasing public scrutiny such that continued access will rely on a 'social licence' to operate. Continued support from the community is key. The AVA sees the bill as potentially harming this social licence to operate by giving the impression that animal enterprises have something to hide.

The AVA supports the concept of independent auditing schemes such as the accredited industry quality assurance schemes, RSPCA approved food scheme and retailer animal welfare marketing schemes which allow the consumer to make informed decisions. The Australian Animal Welfare Strategy was on the right track as it promoted sustainable improvements in animal welfare practices and at the same time, community awareness through extension programs. This approach is preferable to a "closed shop" approach which engenders suspicion and unease in the community.

Some industries have already realised this and are making moves to "open the farm door" either physically or virtually. This includes web cams established on free range egg farms, inside farm sheds and farm tours, and is a critical educational approach to increase understanding of agriculture among consumers. Temple Grandin is a strong advocate for this kind of transparency.

"Laws which make it a crime to take undercover video send the wrong message to today's consumer. Agriculture has to look at everything it does and ask themselves, 'Can I explain this to my guests from the city?'" (Grandin, 2014).

Some US and Canadian slaughter plants have voluntarily established video auditing by third party auditors for this very reason.

Australian Pork Limited chief executive officer Andrew Spencer said last year that the pork industry would be holding discussions on how to improve its transparency levels.

“If consumers want to know how we produce pigs, they have a right to know - so we need to do better at letting them have a view to our industry,” he said. “That isn’t so easy because of biosecurity and other reasons why we don’t want people on our farms.

“But with today’s technology there are many other ways to see how pigs are produced with a proper understanding and contextual explanation along the way.

“That’s the kind of thing we need to do – transparency is the key word and we need to have more of it” (Farmonline, 2014).

Charlie Arnot, CEO of the US Centre for Food Integrity, says the risk is a lack of understanding by consumers; this is being tackled in the US via the smart use of modern technology such as real time webcam in the sheds and visits by consumers to real farms. He maintains that a move to more transparent operation is essential. (Agriculture today, 2012)

Some forms of animal use may not lend themselves to this type of ‘open door policy’, such as use of animals in research laboratories where complex ethical arguments and controls are undertaken to assess the use of animals for scientific purposes. This is where it becomes so important that the public have faith in strong regulation and enforcement so that this sort of animal use is being properly monitored.

Ultimately a blend of better monitoring and regulation, combined with schemes to promote transparency wherever possible, are key to ensuring ongoing public support for the use of animals to benefit people.

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