

Senate Rural and Regional Affairs and Transport Legislation Committee

**Questions on Notice – Friday, 15 May 2015
Canberra, ACT**

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

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

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

Public Hearing Friday, 15 May 2015

CANBERRA, ACT

Questions Taken on Notice – Australian Pork Limited

1. HANSARD, PG 4

Senator RHIANNON: Do you believe that anyone who witnesses animal cruelty has an obligation to report it.

Ms Kerr: Absolutely.

Senator RHIANNON: And how often have the people you represent reported animal cruelty.

Ms Kerr: Pig producers?

Senator RHIANNON: Within the pig farms?

Ms Kerr: There has been a couple of occasions where we have had some complaints made. We have a quality assurance program called APIC. If the producers is APIC accredited we will instigate an investigation. We also do it for farm raids. We will instigate an investigation through our APIC program. If we find any instances under that program where things need to be corrected, that will occur. We will also refer any animal cruelty complaints to the right authority, and that depends on which state you are talking about. Generally it is the RSPCA.

Senator RHIANNON: Have you reported any to the external authorities, because it sounded like the way you manage it is very internal?

Ms Kerr: We do both.

Senator RHIANNON: How many incidents have you reported externally.

Ms Kerr: I would have to take that on notice. I have not actually kept a record myself of all of those investigations and referrals. Could I take that on notice?

Senator RHIANNON: Yes. If you can take the numbers on notice, but could you share with us what happened. Did any prosecutions result? Were they taken any further?

Ms Kerr: Absolutely. I am aware of further investigations by departments. As far as I know I have not been informed of those couple of charges being laid. But I know the investigation has occurred through the regulatory authorities.

Senator RHIANNON: If you could take on notice the numbers, please—also for the external authorities. I think it would be useful to know the numbers internally and then how many of them went externally and then what the outcomes were. Do you believe that everyone who witnesses animal cruelty should have a mandatory requirement to report it?

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

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

Public Hearing Friday, 15 May 2015

CANBERRA, ACT

Questions Taken on Notice – RSPCA Australia

1. HANSARD, PG 12

Senator BACK: We will go to the greyhound issue for a moment, not that it was relevant to this legislation or this bill. In Queensland, did the party who exposed and found that footage share that with the RSPCA in Queensland and, if so, when did they?

Ms Neil: The RSPCA has always said on the public record that we believe that people should gain evidence legally. In terms of live baiting, live baiting is an illegal activity in every state in Australia. The RSPCA, on being provided evidence of live baiting in most recent times, acted on that information.

Senator BACK: Can I go back to the question on Queensland. In Queensland, can you tell me: was the RSPCA alerted and, if so, when?

Ms Neil: I will take that on notice to give you that exact detail.

Senator BACK: Thank you. And in New South Wales?

Ms Neil: I will do the same thing, and also for Victoria.

Senator BACK: In relation to Victoria, my recollection was that the bill was introduced on Wednesday, 11 February; the Four Corners program was run the next Monday evening, by amazing coincidence, on the 16th. When was the RSPCA alerted to the evidence of that cruelty on the greyhound track in Victoria?

Ms Neil: I will take it on notice.

Senator BACK: My evidence is that it was actually on the same day: Wednesday, 11 February. Can I ask you this—you might be able to advise me now or on notice—how long after the RSPCA was alerted to the activities going on at the greyhound track in Victoria was the greyhound track closed up?

Ms Neil: I will take that on notice.

Senator BACK: Was it 24 hours?

Ms Neil: I will take it on notice.

2. HANSARD, PG 17

Senator CANAVAN: I wanted to follow up on Senator Back's questioning on this \$10,000 bounty or reward. Have you made any payments to people?

Ms Neil: We will take that on notice.

Senator CANAVAN: If someone had come forward with a vision and that vision had been gained through the use of illegal means, what protections do you have in place to ensure that you are not rewarding illegal behaviour?

Mr Goodfellow: We would have to assess that on a case-by-case basis.

Senator CANAVAN: Had you guidelines around that before you issued the media release saying you wanted a bounty? I have the media release here, and I do not see any comment to make clear to people that they could not get the money if they had done something illegal.

Ms Neil: How about we come back to you with some information as to what the boundaries are?

Senator CANAVAN: Clearly this reward could potentially have encouraged people to do the wrong thing and break laws, but there was nothing in your media release saying it would not be paid in that instance.

Ms Neil: We will come back with information about what the requirements are.

3. HANSARD, PG 17

Senator XENOPHON: My question to the RSPCA, on notice, is: notwithstanding your opposition to the one-day or 24-hour notification, do you at least concede that there must be some time line so that, even if an investigation is continuing, as you have outlined, for several weeks, there must be some point in time where it ought to be reported to authorities? That is my question on notice.

4. HANSARD, PG 17

CHAIR: The Crimes Act says 'reasonable suspicion'. Finally, if I am out in a 5,000-acre paddock—which I do—and there is a ewe there with a cancerous ear and I cut the ear off, is that animal cruelty?

Dr Jones: I am sorry. What relevance does that have to this inquiry?

CHAIR: It has a lot of relevance to the inquiry on animal cruelty and whether someone is going to say: 'He cut that cancerous ear off the ewe. That's cruelty. He didn't use an anaesthetic.'

Senator RHIANNON: Point of order: the inquiry is not about animal cruelty. The inquiry is about the legislation.

CHAIR: Thank you very much, but unfortunately I am chairing it. So can you take that on notice.

Dr Jones: Sure.

Senator Bill Heffernan
Chair
Senate Rural and Regional Affairs and Transport
Legislation Committee
Parliament House
Canberra ACT 2600

20 May 2015

Dear Senator Heffernan

**RSPCA Australia Inquiry into Criminal Code Amendment (Animal Protection) Bill 2015 -
Questions on Notice from Public Hearing 15 May 2015**

Hansard p12

Live baiting in the greyhound industry in QLD, NSW, VIC

The use of live animals as bait for greyhounds is illegal in all states and territories in Australia. RSPCA Societies have from time to time received reports of live baiting at greyhound locations but have not been able to successfully substantiate such activities occurring.

In relation to the specific questions:

Queensland

RSPCA Queensland was notified on Tuesday 27 January 2015 of a pending formal cruelty complaint regarding live baiting in the greyhound industry in Queensland.

So far Racing Queensland has suspended 25 individuals and warned off 6 and as at 20 May 2015, the RSPCA/Queensland Police Service Taskforce has charged 23 individuals with 65 serious animal cruelty offences. On 2 March 2015 the Queensland Government established an Inquiry led by barrister Alan Macsporrán SC in relation to live baiting and associated issues in the Queensland greyhound industry.

Investigations by the RSPCA/Queensland Policy Service Taskforce are ongoing.

New South Wales

RSPCA New South Wales was notified on Monday 2 February of a complaint regarding live baiting in the greyhound industry in New South Wales.

So far Greyhound Racing NSW has suspended 11 individuals. On 18 February 2015 the Board of Greyhound Racing NSW and CEO agreed to stand down and on 4 March 2015 the NSW Government announced a Special Commission of Inquiry into the State's greyhound industry led by Michael McHugh QC.

Cruelty investigations related to live baiting and mass graves of greyhounds are continuing.

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Victoria

RSPCA Victoria received a cruelty complaint regarding live baiting in the greyhound industry in Victoria on Wednesday 28 January 2015.

Since that time 15 individuals in Victoria have been suspended, the Board of Greyhound Racing Victoria stood down, and there are ongoing Inquiries being conducted by the Chief Veterinary Officer in Victoria and Victorian Office of the Racing Integrity Commissioner. Investigations are continuing.

Hansard p17

Live baiting in the greyhound industry in WA

Since 16 February 2015 RSPCA Western Australia has received 14 cruelty complaints related to live baiting in the greyhound industry in Western Australia.

The reward was offered by RSPCA WA for key information on live baiting that leads to a successful animal cruelty prosecution. To date, no payment has been made.

Hansard p17

Reporting timeline

Anyone who observes what they consider to be cruelty to an animal or animals has a moral responsibility to report this to the relevant authorities as soon as possible.

The RSPCA fully supports mandatory reporting of animal cruelty under an appropriate and effective legal framework. This would include an appropriate class of people to whom the reporting obligation applies, a reasonable and effective period within which to report, comprehensive protections for the individuals reporting, and implementation within the appropriate jurisdiction, which is clearly the state jurisdiction in which the relevant cruelty offences occurs.

The reporting timeframe is just one of the multiple problems with this Bill including that as currently written, it only requires reporting by individuals who film/photograph cruelty, not individuals who witness animal cruelty.

In relation to the timeframe, the RSPCA is of the view that in drafting legislation it is more appropriate to use terminology such as "as soon as practicable" rather than specifying a specific timeframe for reporting. Child protection uses similar terminology.

Hansard p17

Cutting a cancerous ear off a ewe

The objects of the NSW Prevention of Cruelty to Animals Act (1979) are to prevent cruelty to animals and to promote the welfare of animals by requiring a person in charge of an animal to provide care for the animals, to treat the animal in a humane manner and to ensure the welfare of the animal (Sect 3).

In determining whether the action described by Senator Heffernan is cruel under the Act, the courts take into consideration whether an action is unreasonable, unnecessary and/or unjustified.

It is generally expected that a farmer would ensure treatment at the earliest stage, or seek veterinary advice. Alternatively, that the animal is humanely killed at the earliest opportunity. It should be noted that a sheep with ear cancer is not fit to load for transport.

Additional information

RSPCA shelters are open to the public

Senator Leyonhjelm questioned the openness of RSPCA animal shelters (p11). RSPCA's animal shelters across the country are open to the public. Details of the location and opening hours of each facility is available at www.rspca.org.au. Notwithstanding this, the RSPCA would be pleased to host a visit for any members of the Committee to visit their local RSPCA centre or any others around the country in order to see first-hand the work of the RSPCA.

Cruelty to cattle at Mataranka Station NT

Senator Heffernan questioned the past activities of the RSPCA in relation to cruelty to cattle at Mataranka Station in the Northern Territory (p9). To be clear, the Northern Territory Government is responsible for enforcing the animal welfare legislation in the Northern Territory. The RSPCA has no powers to enforce this Act in the Northern Territory.

In 2009/2010, many cattle died on the Charles Darwin University facility, Mataranka Station. The Northern Territory Government has undertaken a number of Inquiries regarding the failures in the University and Government systems to detect, report and adequately address the issues.

A number of changes are needed to animal welfare legislation in the Northern Territory and its implementation. RSPCA Australia has detailed these in its submission to the Northern Territory Government in relation to the recent review of the Northern Territory Animal Welfare Act.

Yours sincerely

Heather Neil
Chief Executive Officer
RSPCA Australia

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

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

Public Hearing Friday, 15 May 2015

CANBERRA, ACT

Questions Taken on Notice – Mr Trent Thorne

1. HANSARD, PG 19

Senator LEYONHJELM: I want to pursue this issue of trespass also. We heard from Dr Lloyd earlier. His understanding was that somebody merely being present on a property without permission is not automatically criminal trespass. There is a tort of trespass, but that is a whole different matter to criminal trespass. I am in New South Wales and I am not aware that there is an automatic invocation of the Criminal Code or criminal law in the case of trespass. Can you add to that?

Mr Thorne: No, I cannot. I think you are correct there. The trespass I was referring to was probably at the lower end. You are correct that it would be the tort of trespass.

Senator LEYONHJELM: There is the offence of breaking and entering, of course, but trespass without breaking and entering, as was described by Dr Lloyd, I am not aware that in New South Wales at least that that would be trespass.

Mr Thorne: I would have to take that on notice. Honestly, I would be speculating.

2. HANSARD, PG 21

Senator RHIANNON: Thank you. Your submission also refers to one incident of animal activism that occurred over a decade ago. This was the one of feeding ham to sheep at a live export feedlot. This was in the context of where you were identifying there were legal loopholes. Can you point to any other examples of animal activism that support your proposition that there are legal loopholes? The example you have given is fairly distant to what animal welfare groups are addressing. So I am looking for other examples. You have identified legal loopholes but you did not really give examples.

Mr Thorne: Maybe if I refer to those two earlier—those examples about damage to those trucks in WA. As I said, unfortunately—or fortunately—you cannot sheet those home to any individuals at this stage. In terms of other damage on property, I would have to take that on notice. I have one sitting in the back of my mind but I cannot think of it at the moment.

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

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

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

Inquiry into Criminal Code Amendment (Animal Protection) Bill 2015

1 Introduction

- 1.1 During the Senate Committee Hearing into the Criminal Code Amendment (Animal Protection) Bill 2015 (**Bill**) on 15 May 2015, I advised that Committee that I would provide two responses on notice, which are outlined below.

2 Trespass

- 2.1 With respect to the question by Senator Leyonhjelm¹, I briefly summarise below the Australian State and Commonwealth legislation relating to trespass.

Commonwealth

Crimes Act 1914 (Cth)²

s89 Trespassing on Commonwealth land

- (1) A person who, without lawful excuse (proof whereof shall lie upon him or her), trespasses or goes upon any prohibited Commonwealth land shall be guilty of an offence.
- Penalty: 10 penalty units.
- (2) Where a person is found upon prohibited Commonwealth land, a constable, a protective service officer or an authorized Commonwealth officer may request the person to furnish his or her name and address to the constable or officer and, if the person fails to comply with the request, he or she shall be guilty of an offence.
- Penalty: 10 penalty units.
- (3) Where a person is found upon prohibited Commonwealth land and a constable or authorized Commonwealth officer has reasonable grounds to believe that that person has gone upon the land in circumstances that amount to an offence against subsection (1), the constable or officer may apprehend that person and that person may be detained in proper custody to be dealt with according to law.

Public Order (Protection of Persons and Property) Act 1971 (Cth)³

¹ Hansard, page 19

² [link to legislation](#)

³ [link to legislation](#)

s11(1) A person who trespasses on premises in a Territory is guilty of an offence, punishable on conviction by a fine of not more than 10 penalty units.

s 12(1) A person who trespasses on Commonwealth premises is guilty of an offence, punishable on conviction by a fine of not more than 10 penalty units.

ACT

Crimes Act 1900 (ACT)⁴

s 151 Forcible entry on land

A person who enters on land that is in the actual and peaceable possession of another person in a manner likely to cause a breach of the peace commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

New South Wales

Enclosed Lands Protection Act 1901 (NSW)⁵

s4 Unlawful entry on enclosed lands

(1) Any person who, without lawful excuse (proof of which lies on the person), enters into enclosed lands without the consent of the owner, occupier or person apparently in charge of those lands, or who remains on those lands after being requested by the owner, occupier or person apparently in charge of those lands to leave those lands, is liable to a penalty not exceeding:

- (a) 10 penalty units in the case of prescribed premises, or
- (b) 5 penalty units in any other case.

s4A Offensive conduct while on enclosed lands

(1) Any person, who remains upon the enclosed lands of another person after being requested by the owner or occupier or the person apparently in charge of those lands to leave those lands and while remaining upon those lands conducts himself or herself in such a manner as would be regarded by reasonable persons as being, in all the circumstances, offensive, is liable to a penalty not exceeding:

- (a) 20 penalty units in the case of prescribed premises, or
- (b) 10 penalty units in any other case.

Northern Territory

Trespass Act 1987 (NT)⁶

s5 Trespass on premises

A person who trespasses on premises commits an offence.

⁴ [link to legislation](#)

⁵ [link to legislation](#)

⁶ [link to legislation](#)

Maximum penalty: 20 penalty units or imprisonment for 6 months.

s6 Trespass on prohibited land

A person who trespasses on prohibited land commits an offence.

Maximum penalty: 20 penalty units.

s7 Trespass after direction to leave

- (1) A person who trespasses on any place and, after being directed to leave that place by an occupier or member of the Police Force acting at the request of the occupier, fails or refuses to do so forthwith or returns within 24 hours to that place, commits an offence.

Maximum penalty: 20 penalty units.

Queensland

*Summary offences Act 2005 (Qld)*⁷

s11 Trespass

- (1) A person must not unlawfully enter, or remain in, a dwelling or the yard for a dwelling.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (2) A person must not unlawfully enter, or remain in, a place used as a yard for, or a place used for, a business purpose.

Maximum penalty—20 penalty units or 1 year's imprisonment.

s13 Unlawfully entering farming land etc.

- (1) A person must not unlawfully enter, or remain on, land used for—
 - (a) agricultural or horticultural purposes; or
 - (b) grazing; or
 - (c) animal husbandry.

Maximum penalty—10 penalty units or 6 months imprisonment.

- (2) A person must not unlawfully open, and leave open, any gate, fence or other barrier that encloses all or part of enclosed land used for agricultural or horticultural purposes or for grazing or animal husbandry.

Maximum penalty—10 penalty units or 6 months imprisonment.

South Australia

*Criminal Law Consolidation Act 1935 (SA)*⁸

⁷ [link to legislation](#)

⁸ [link to legislation](#)

s169 Serious criminal trespass—non-residential buildings

- (1) A person who commits a serious criminal trespass in a non-residential building is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 20 years.

s170 Serious criminal trespass—places of residence

- (1) A person who commits a serious criminal trespass in a place of residence is guilty of an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 15 years;
 - (b) for an aggravated offence—imprisonment for life.
- (2) A person who commits a serious criminal trespass in a place of residence is guilty of an aggravated offence if—
- (a) any of the factors that generally give rise to aggravation of an offence are applicable; 1 or
 - (b) another person is lawfully present in the place of residence when the offence is committed and the offender knows of the other's presence or is reckless about whether anyone is in the place.

*Summary Offences Act 1953 (SA)*⁹

s17A Trespassers on premises

- (1) Where—

- (a) a person trespasses on premises; and
- (b) the nature of the trespass is such as to interfere with the enjoyment of the premises by the occupier; and
- (c) the trespasser is asked by an authorised person to leave the premises,

the trespasser is, if he or she fails to leave the premises forthwith or again trespasses on the premises within 24 hours of being asked to leave, guilty of an offence.

Maximum penalty: \$2,500 or imprisonment for 6 months.

- (2) A person who, while trespassing on premises, uses offensive language or behaves in an offensive manner is guilty of an offence.

Maximum penalty: \$1,250.

⁹ [link to legislation](#)

- (2a) A person who trespasses on premises must, if asked to do so by an authorised person, give his or her name and address to the authorised person.

Maximum penalty: \$1,250.

- (3) In this section—

"authorised person", in relation to premises, means—

- (a) the occupier, or a person acting on the authority of the occupier;
- (b) where the premises are the premises of a school or other educational institution or belong to the Crown or an instrumentality of the Crown, the person who has the administration, control or management of the premises, or a person acting on the authority of such a person;

"occupier", in relation to premises, means the person in possession, or entitled to immediate possession, of the premises;

"offensive" includes threatening, abusive or insulting;

"premises" means—

- (a) any land; or
 - (b) any building or structure; or
 - (c) any aircraft, vehicle, ship or boat.
- (4) In proceedings for an offence against this section, an allegation in the complaint that a person named in the complaint was on a specified date an authorised person in relation to specified premises will be accepted as proved in the absence of proof to the contrary.

Tasmania

Police Offences Act 1935 (Tas)¹⁰

This covers unlawful entry onto land. It often also covers situations where a person refuses to leave land, e.g. during political protests or industrial activity.

Equivalent charges can also be laid under the Criminal Code.

s14B Unlawful entry on land

- (1) A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into, or remain on, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.
- (2) A person who is convicted of an offence under this section is liable to a penalty of—
 - (a) a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, in respect of entering or remaining in a dwelling-house; or

¹⁰ [link to legislation](#)

- (b) 25 penalty units or imprisonment for a term not exceeding 6 months, in respect of entering into, or remaining on, any other land, building, structure, premises, aircraft, vehicle or vessel.
- (2A) However, if the court that convicts a person of an offence under this section is satisfied that the person –
 - (a) was in possession of a firearm during the actual commission of the offence; or
 - (b) made any use of an aircraft, vehicle or vessel during the actual commission of the offence –
 the person is liable to a penalty not exceeding twice that provided for by subsection (2).

Victoria

*Summary Offences Act 1966 (Vic)*¹¹

s9(1)(d) wilfully trespasses in any public place other than a Scheduled public place and neglects or refuses to leave that place after being warned to do so by the owner occupier or a person authorized by or on behalf of the owner or occupier.

Western Australia

*Criminal Code Act Compilation Act 1913 (WA)*¹²

s69 Forcibly entering land

- (1) Any person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters on land which is in the actual and peaceable possession of another is guilty of a crime, and is liable to imprisonment for 2 years.

Summary conviction penalty: \$6,000.

s70A Trespass

- (1) In this section:

person in authority, in relation to a place, means:

- (a) in the case of a place owned by the Crown, or an agency or instrumentality of the Crown the occupier or person having control or management of the place or a police officer; or
- (b) in any other case:
 - (i) the owner, occupier or person having control or management of the place; or
 - (ii) a police officer acting on a request by a person referred to in subparagraph (i);

¹¹ [link to legislation](#)

¹² [link to legislation](#)

trespass on a place, means:

- (a) to enter or be in the place without the consent or licence of the owner, occupier or person having control or management of the place; or
 - (b) to remain in the place after being requested by a person in authority to leave the place; or
 - (c) to remain in a part of the place after being requested by a person in authority to leave that part of the place.
- (2) A person who, without lawful excuse, trespasses on a place is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12,000.
- (3) In a prosecution for an offence under subsection (2), the accused has the onus of proving that the accused had a lawful excuse.

3 Examples of damage caused by animal rights activists in Australia

3.1 With respect to the question raised by Senator Rhiannon¹³, in addition to the examples provided in my initial submissions¹⁴ and oral submissions¹⁵, I have been able to locate the following articles that refer to property/monetary damage caused by animal activists in the brief time provided to respond to the question on notice:

- (a) on 14 April 1989, it was reported that:
 - (i) in November 1987, Action for Animals in Victoria stormed a poultry farm and fled with some of the 37,000 fowl;
 - (ii) the same group claimed responsibility for painting the windows of David Jones and Myer stores in Melbourne in protest over fur displays causing damage worth an estimated \$750,000¹⁶;
- (b) on 24 June 2010, Parkhurst Farms sued both Patty Mark and Animal Liberation Victoria for trespass, damages, exemplary damages and costs in relation to trespass on their broiler chicken factory near Werribee¹⁷;
- (c) in or about June 2012, a predator-proof fence at the Mulligans Flat Woodlands Sanctuary was cut. The report reveals that members of the ACT Parks and Conservation believe that protestors of a controversial kangaroo cull were responsible¹⁸;
- (d) in July 2012, it was reported that a production at a hen farm at Parkwood in New South Wales shut down in March 2012, after activists forced entry into the site and slashed conveyor belts, destroyed grading and packaging machinery, and also damaged other equipment¹⁹;

¹³ Hansard, page 21

¹⁴ Submission 608, paragraphs 3.7 and 3.8

¹⁵ Note 13

¹⁶ Zampetakis H, 'Animal Libbers Take On Big Business', *Australian Financial Review*, 14 April 1989

¹⁷ <http://www.alv.org.au/storyarchive/0835ALV-Sued/Patty-Mark-and-Animal-Liberation-Victoria-Sued.php>

¹⁸ Knaus C, 'Outrage over 'mindless' fence damage', *Canberra Times*, 5 June 2012

¹⁹ Cox L, 'Battery egg farm will go cage-free', *Canberra Times*, 5 July 2012

- (e) in June 2013, activists entered the Blantyre Farms piggery. Animal Liberation New South Wales, confirmed its members were responsible for the incident²⁰;
- (f) in June 2014, 18 sections of wire were cut open at the Jerrabomberra Grassland West Nature Reserve, which was one of the planned locations for the kangaroo cull²¹; and
- (g) in July 2014, it was reported that animal activists who opposed the ACT Government's kangaroo cull have continued to vandalise public property. The most recent incidents of vandalism came one month after activists damaged the windscreens and tires of 10 government-owned cars, vandalised property with graffiti and broke windows and panels on buildings in the parks and conservation depot at Farrer. A Territory and Municipal Services Media spokesman said that vandals had stolen and defaced several signs alerting the public to the closure of nature reserves for the kangaroo cull, glued padlocks rendering gates shut and cut through fences around Pinnacle Nature Reserve in several places²².

4 Supplementary submission

Reverse onus

- 4.1 One of the criticisms of the Bill that has been made relates to the reverse onus provisions in section 383.5. There seems to be a suggestion in the Barristers Animal Welfare Panel submission that the offences in the Australian context that have reverse onus provisions in them are of an extremely serious nature²³.
- 4.2 In my initial submissions, I made the point that there are many reverse onus provisions in the Australian legal context. By way of example, with respect to anti-drug legislation across Australian jurisdictions, the following type of provision is not unusual.

Section 129 of the *Drugs Misuse Act* 1986 (Qld) states:

'... proof that a dangerous drug was in a place of which that person was the occupier is conclusive evidence that the drug was then in the person's possession unless the person shows that he then neither knew nor had reason to suspect that the drug was in or on that place.'

Systemic abuse

- 4.3 The other point that seems to be made in almost all of the submissions from the major animal welfare/animal rights groups relates to the claim that animal welfare abuse is happening at a 'systemic' or 'endemic' level in this country.
- 4.4 The facts simply do not bear out this analysis.
- 4.5 Voiceless²⁴ and the Barristers Animal Welfare Panel both contain annexures relating to examples of animal welfare issues raised by undercover surveillance. Whilst both of the submissions do not state that the annexures are exhaustive, it should be noted that the lists are not large.

²⁰ Mason E, *Young Witness*, 26 June 2013

²¹ Belot H, 'TAMS expects more cull vandalism', *Canberra Times*, 19 June 2014

²² Belot H, 'Roo cull vandalism costs get out of hand; Activists hit government property', *Canberra Times*, 19 July 2014

²³ Paragraph 18, submission 240

²⁴ Submission 56

4.6 Whilst it is concerning that there are any matters listed in these annexures at all, the quantum of incidents noted are still not significant when you consider the following:

- (a) the best information that I could gather in the brief time allowed reveal that in the 2014 calendar year there were approximately:
 - (i) 10.5 million cattle/calves;
 - (ii) 10 million sheep;
 - (iii) 21 million lambs;
 - (iv) 4.5 million pigs; and
 - (v) over 550 million chickens processed;
- (b) obviously there is a significantly larger number of productive breeding animals in addition to the figures above;
- (c) as a result, it can be assumed that at any one stage there are over one billion animals in the Australian livestock production system, yet when you drill down into the Voiceless submission:
 - (i) three of their ten examples relate to breaches of the Australian Consumer Law relating to stocking density matters and misleading marketing material (it could be argued that these matters are not even tenuously relevant to animal welfare);
 - (ii) one of the other examples relates to 2011 footage relating to the live export trade, which related to footage from outside of Australia; and
 - (iii) whilst credit needs to be given to those who managed to uncover the concerning illegal conduct in the Australian greyhound racing industry, this can be considered to be low hanging fruit in circumstances where live baiting was known to be happening at an anecdotal level for some time within the industry, a point that was clearly acknowledged by Dr Rosemary Elliott (President, Sentient, Veterinary Institute for Animal Ethics):

*'Sentient made a submission to the greyhound racing inquiry in, I think, March 2014. I read pages and pages of Hansard documents, and it was very sad to read whistleblowers from the industry, including a well-known veterinarian, talking about how they know live baiting is going on. Everybody knew someone who knew about live baiting.'*²⁵

4.7 It is difficult to continually accept criticism from these groups regarding animal welfare issues in the livestock production sector, when they have failed to substantiate their allegations of systemic welfare issues, which apparently justifies the illegal activities of their supporters.

4.8 In summary, the fact that animal rights groups state there is a systemic problem in this country does not make it so. They can only continue to justify these illegal incursions onto private property if there is a widespread, systemic problem, but the evidence does not bear out this analysis.

²⁵ Hansard, page 38

- 4.9 The only systemic thing that we seem to be dealing with in Australia is the craven attention seeking behaviour of these groups, their frequent gross exaggerations and the never-ending depths that they are prepared to plumb to try to seek to gain a larger slice of the donations pie.
- 4.10 As I have outlined in my initial submissions, if an individual has sufficient conviction in their beliefs and are concerned with livestock production, they are free like every other citizen in this country to engage in political bait and attempt to change the way our society operates via our elected representatives, not undemocratic, vigilante actions.

Trent Thorne, Agribusiness Lawyer

Dated: 20 May 2015

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

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

Public Hearing Friday, 15 May 2015

CANBERRA, ACT

Questions Taken on Notice – Voiceless

1. HANSARD, PG 33

Senator LEYONHJELM: I am curious. If I define factory farming and you define it, who is right?

Mr Giuffre: Do you mind if we take this question on notice, because I do want to debate the bill, which is what I have been brought here to talk about.

Response:

“Factory farming” is a term used to define farming systems that have moved away from more “traditional” systems of farming towards systems designed to prioritise production over animal welfare. This transition is part of a systematic effort to produce the most meat, dairy and eggs at the lowest possible cost.

Factory farms are typically characterised by one or more of the following features:

- (1) Animals are kept in high stocking densities;
- (2) Surgical procedures are performed on animals (“mutilation” practices) so they can be accommodated within the system;
- (3) Animals are fed an unnatural diet to increase their productivity;
- (4) Animals are selectively bred to achieve higher productive yields or growth rates, or so they can be accommodated in the system more appropriately, to the detriment of their individual health or welfare;
- (5) Animals have little or no access to the outdoors; and
- (6) Animals are unable to express natural behaviours, both physically and socially.

Farming systems change over time due to industry research and development and new technologies. Accordingly, Voiceless’s focus is on those farming systems where there is clear scientific evidence of significant animal welfare concerns for animals kept within those farming systems. To this end, Voiceless draws upon its panel of world-renowned scientific experts - the members of Voiceless’s Scientific Expert Advisory Council – to inform its position on the welfare of animals within farming systems.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

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

Public Hearing Friday, 15 May 2015

CANBERRA, ACT

**Questions Taken on Notice – Sentient, The Veterinary Institute for Animal
Ethics**

1. HANSARD, PG 39 – 40

CHAIR: I want to go to one final thing. I would have loved to have been a barrister. This is just how a farmer thinks. At home I leave the door open a little bit for the cats to come in and have a feed at night. Recently there was a bit of a commotion in the kitchen so I got out of bed and went into the kitchen and under the table there was a fox. He was not fully grown; he was half grown. He did not bolt for the door; he just sat there. I thought: 'Shit. What am I supposed to do with the fox?' I got a tea towel and put it over him and picked him up. What should I have done with him?

Mr McEwen: You are asking the wrong person. I live in the country and I had a neighbour who used to feed the foxes locally. I have seen what they do to lambs and I do not like it.

CHAIR: That is probably breaking the law.

Mr McEwen: When lambs were dropped at my old farm I used to take them up to the stables.

CHAIR: All right. You do not know the answer—

Mr McEwen: No, I do not.

CHAIR: Do you?

Dr Elliott: Are you asking me?

CHAIR: What should I have done with the fox?

Dr Elliott: What should you have done? What did you do?

CHAIR: No, I am asking you what I should have done.

Dr Elliott: I do not think this is really relevant to the terms of the inquiry but if you are interested in my view—

CHAIR: This is the dilemma.

Dr Elliott: It is a dilemma. We brought these animals here. Feral animals did not ask to be brought here. They are sentient beings. The whole issue of how we manage them in terms of—

CHAIR: You cannot keep a fox for a pet, right?

Dr Elliott: No.

CHAIR: So what should I have done with the fox?

Mr Giuffre: They have started domesticating them in the UK.

Mr McEwen: With feral animals you have immunocontraception. The technology is there. There are not the resources to do it.

CHAIR: No, what should I have done with the fox?

Dr Elliott: You could have released it. Was it a juvenile or a baby?

CHAIR: So you would let it go to kill the lambs? Anyhow, there you go.

Dr Elliott: Can I take this on notice, Senator?

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1. HANSARD, PG 39 – 40

Thank you for the opportunity to take this question on notice. We advise that it is illegal to release non-native species such as foxes in NSW, as outlined in the National Parks and Wildlife Act 1974, Section 109 (Unlawful liberation of animals), which states:

- (1) A person shall not liberate, anywhere in New South Wales, any [animal](#) (other than a homing pigeon or a captured [animal](#) which is native to New South Wales) unless under and in accordance with a licence under section 127.

Furthermore, in December 2014, the NSW Government introduced the Local Land Services (European Red Fox) Pest Control Order 2014. This order has declared the European Red Fox to be a pest on controlled land (all land in NSW). Under this order, the Local Land Services can serve individual eradication orders as follows:

6. Powers conferred in relation to the pest on controlled land:

- (1) Pursuant to sections 130(1)(c) and 130(2)(d) of the Act, Local Land Services is empowered to serve an individual eradication order in accordance with Part 10 of the Act, on any occupier or owner (other than a public authority) of controlled land requiring the occupier or owner to eradicate the pest by use of a method specified by Local Land Services in the individual eradication order.

In relation to the specific circumstances raised by Senator Heffernon, we are unclear whether allowing the juvenile fox to leave the house of its own accord would constitute liberating the animal, so we suggest he seeks legal advice for future reference. Having placed the tea towel over the animal and picked it up means it had effectively been captured, so allowing it to go would constitute release. The most prudent interpretation of the existing legislation would require the juvenile fox to be euthanased, i.e. killed in a *humane* manner. We suggest that given its small size, the most humane method would be to place the animal in a carry cage and have it euthanased by a veterinarian. An alternative would be a direct gun shot to the head.

As a longer-term preventative solution, Sentient promotes the inclusion of non-lethal forms of controlling introduced species, which are included in the NSW Department of Primary Industries fact sheet on fox control¹ and discussed in more detail in their 2007 publication entitled 'Improving Fox Management Strategies in Australia'² These options are:

¹ <http://www.dpi.nsw.gov.au/agriculture/pests-weeds/vertebrate-pests/pest-animals-in-nsw/fox-control>

² <http://www.pestsmart.org.au/wp-content/uploads/2010/03/final.proof.fox.collated.book.low.res.pdf>



- Electric fencing
- The use of guard animals such as Maremma dogs, alpacas, llamas or donkeys
- Habitat manipulation to deter the presence of foxes

There is a need for research into the effectiveness of these non-lethal options in the Australian context, as evidence beyond hearsay reports will encourage their uptake. Sentient supports an approach that considers the welfare of all animals concerned (both native, farmed domestic and feral animals), is based on the best available evidence and complies with existing legislation.

Regards,

Dr Rosemary Elliott, President

19 May 2015

