

# Chapter 3

## Issues

### **Key issues raised by those in favour of the bill**

3.1 The committee received a number of submissions which fully supported the objectives of the bill. These submissions were largely – but not exclusively – provided by those involved in various agricultural enterprises. These groups argued very strongly in favour of the amendments proposed by the bill, and told the committee that there is a very real risk that Australian food and fibre production systems can be compromised by the actions of any person 'that would for whatever reason, intimidate, threaten or attack any other person associated with an animal enterprise'.<sup>1</sup> Members of these groups also expressed concerns in relation to issues of animal safety, the safety of farm workers and possible breaches of biosecurity protocols.<sup>2</sup>

3.2 The National Farmers' Federation (NFF) submitted that it strongly supports the bill in its intent, and is of the view that the bill 'does not preclude any individual from lawfully pursuing a cause'. It was argued that:

If an organisation or individual wish to raise a concern then they should use every course available to them to do so as long as it does not break the law. This [the bill] is a simple and logical approach which reduced the likelihood of the law being taken into individuals own hands and preventing any negative impacts such as breaches of biosecurity arrangements which would have serious consequences for the agriculture industry. The NFF view is that no one should be above the law. Farmers must conduct their business in accordance with the law and it only fair and equitable that other members of [the] community should act lawfully as well.<sup>3</sup>

### ***Failing to report 'malicious cruelty to animals'***

3.3 As noted in the previous chapter, Section 383.5 makes it a criminal offence for a person not to report a visual record of what they believe to be 'malicious cruelty' to an animal to the relevant authority within one business day, and/or the person fails to surrender the visual record to the relevant authority within five business days.

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1 National Farmers Federation, *Submission 41*, p. 6.

2 See for example, Australian Chicken Growers' Council Limited *Submission 59*, [p. 2], Australian Dairy Farmers, *Submission 54*, [p. 1], Australian Pork Limited, *Submission 58*, p. 1 and Queensland Farmers' Federation, *Submission 67*, [p. 2].

3 National Farmers Federation, *Submission 41*, p. 7.

3.4 A number of individuals and organisations indicated their support for this amendment.<sup>4</sup> The Australian Chicken Growers' Council (ACGA) argued that this amendment would guarantee that witnesses to malicious animal cruelty are obliged by law to report the incident within 'a timeframe that allows authorities to address and prevent further occurrences of cruelty in a timely manner'.<sup>5</sup> The ACGA also indicated that it supports the use of the word 'malicious' in the amendment, because it prevents any ambiguity about what might be defined as animal cruelty and argued that 'a perfectly human practice might be seen as cruel if witnessed by someone who does not understand the process'.<sup>6</sup>

3.5 In response to a submission provided by the AVA which argued that the proposed measure would not achieve its stated objectives, Dr Barry Smyth, Past President of the AVA, responded:

The bill addresses specifically cases of malicious cruelty to animals. And the notification cannot be soon enough. You need to know straightaway. The sooner you can have access to an animal that has been injured or whose welfare in any other way has been compromised, the sooner you can institute treatment and the better off the animal will be and the more likelihood there is of a successful outcome to your treatment. The longer the delay between reporting and you, as a veterinarian, being able to access the animal and being able to institute treatment, the less likely you are to have a good outcome. So I do not see a problem with 24-hour reporting.<sup>7</sup>

3.6 The committee also notes Dr Smyth's responses to questions from the committee regarding the AVA's submission:

**Senator Rhiannon:** Did you read the AVA's submission before you came?

**Dr Smyth:** Yes, I did.

**Senator Rhiannon:** So you would be aware of their statement. They have said:

... we have concerns about the effectiveness of this proposed legislation to achieve any significant improvement in animal welfare.

Do you agree with that statement?

**Dr Smyth:** Absolutely not.<sup>8</sup>

3.7 ACGA also expressed support for the second part of the amendment – the requirement to surrender any visual evidence within a five day period. It was further

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4 See, for example, National Farmers' Federation, *Submission 41*, p. 7, Australian Chicken Growers' Council Limited *Submission 59*, [p. 2], Australian Dairy Farmers, *Submission 54*, [p. 1], Australian Pork Limited, *Submission 58*, p. 1 and Queensland Farmers' Federation, *Submission 67*, [p. 2].

5 Australian Chicken Growers' Council Limited *Submission 59*, [p. 2]

6 Australian Chicken Growers' Council Limited *Submission 59*, [p. 2]

7 Dr George Barry Smyth, *Committee Hansard*, 15 May 2015, p. 24.

8 Dr George Barry Smyth, *Committee Hansard*, 15 May 2015, p. 25.

suggested that the requirement that any evidence being provided should be unedited, would ensure that evidence (that could lead to preventing future cases of cruelty) are not stockpiled with a view to achieving greater media impact and shock value.<sup>9</sup>

3.8 Australian Pork Limited (APL) also raised concerns about footage being used for shock value. APL submitted whilst it considers the proposed timeframes for reporting animal cruelty (and the provision of any record of this cruelty) are appropriate, it argued that the bill could be strengthened by:

... specifically stating that the removal of metadata or the manipulation of the electronic files (e.g. the incorporation of 'screams' from animals for 'shock' purposes) be prohibited. APL is concerned that the altering of evidence in any form will potentially render evidence of animal cruelty inadmissible in a court of law.<sup>10</sup>

3.9 While being clear in its support for the bill, APL also sought some clarification in terms of the terminology used in relation to this particular amendment. It was suggested that there is a need for more inclusive definitions – in particular a clarification of the term 'domestic animal'. APL asked, for example, whether the term only applies to farmed animals or whether it also covered domestic pets and enterprises such as puppy farms. APL argued that this particular definition should also be made clearer in the EM.<sup>11</sup>

3.10 The NFF acknowledged that the draft bill is concerned in large part with the issue of reporting malicious cruelty as defined under section 383.10, and surrendering visual recordings of malicious cruelty. The NFF noted that the bill does not address animal suffering as a result of animal neglect, and suggested that the scope of the bill be broadened to include:

- incidences of cruelty against wildlife and feral animals;
- incidences where duty of care has been breached; and
- a requirement to report by anyone who witnesses such acts of malicious cruelty whether filmed or not.<sup>12</sup>

3.11 The NFF suggested that broadening the bill may address potential criticisms that the legislation is intended to keep such things hidden from public view rather than to actually tackle animal cruelty.<sup>13</sup>

### ***Destroying or damaging property and causing fear of death or serious bodily injury***

3.12 As previously noted, under Section 383.5, the bill proposes the creation of a new offence for engaging in conduct that destroys or damages property in the following circumstances:

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9 Australian Chicken Growers' Council Limited *Submission 59*, [p. 2]

10 Australian Pork Limited, *Submission 58*, p. 2.

11 Australian Pork Limited, *Submission 58*, p. 1.

12 National Farmers Federation, *Submission 41*, p. 7.

13 National Farmers Federation, *Submission 41*, p. 7.

- where that property:
  - is used in carrying on an animal enterprise;
  - belongs to a person who carries on an animal enterprise; or
  - belongs to a person who is otherwise connected with, or related to animal enterprise; and
- where the person engaging in the conduct intends that the conduct will interfere with the carrying on of the animal enterprise.

3.13 The new offence provision proposed by Section 385.10 can be summarised as follows:

- a person commits an offence (the first person) if they engage in conduct involving threats, vandalism, property damage, criminal trespass, harassment or intimidation in circumstances where that conduct causes another person (the second person) to reasonably fear that 'any person' will cause death or serious injury to a 'targeted person', being the second person, or their close family member, or their employee or a contractor of the person. This must occur in circumstances where:
  - the second person or the targeted person carries on an animal enterprise; or
  - the second person or the targeted person is otherwise connected with, or related to, an animal enterprise and;
  - the first person intends that the conduct will interfere with the carrying on of the animal enterprise.<sup>14</sup>

3.14 In his evidence to the committee, Dr Peter Scott<sup>15</sup> told the committee that those who invade agricultural enterprises – for example, poultry farms and piggeries – can cause considerable damage and disruption. Dr Scott argued that following incursions on farms, one of the primary concerns is biosecurity – in relation to both exotic and endemic diseases:

Endemic diseases are diseases that are out there and they are controlled by vaccination in general. But particularly when you are dealing with elite herds, those herds are under extreme biosecurity, where people shower on and have a strict 'no entrance' of 48 hours and things like that. And I suppose those animals are bred very, very clean, out of a disease-free status. We do have active examples of people invading those farms and introducing those endemic diseases, which means that those animals lose

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14 Joint Submission: Animal Defenders Office, the Northern Rivers Community Legal Centre, Lawyers for Companion Animals and Far West Community Legal Centre, *Submission 201*, [p. 4].

15 Dr Peter C. Scott is a veterinarian who has considerable experience in working with intensive farming and animal enterprises.

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value for commercial sale down the line and in some cases for export overseas.<sup>16</sup>

3.15 Mrs Jo-Anne Bloomfield, a cattle producer in the Northern Territory, argued that the actions of those involved in farm intrusion can actually 'initiate negative animal welfare through intention or otherwise', and in some cases the invasion itself can lead to malicious cruelty through injury and/or death of an animal.

3.16 Mrs Bloomfield told the committee that she supports the provisions of the bill, and made the following comments in relation to trespass and destroying and/or damaging property:

- trespass laws alone do not act as a deterrent to those people involved in property invasions; and
- most people involved in property invasions have no actual animal husbandry skills and are not trained in the legal aspects of conducting investigations;
- it is only a matter of time before mass animal deaths occur due to intruders; and
- it is also only a matter of time before a human being is either injured or killed during a farm invasion.

### **Committee comment**

3.17 The committee has in the past expressed its concerns about the risks those employed in agricultural enterprises are constantly exposed to. The committee is very much aware of the ways in which those involved in Australia's food and fibre production systems and their livestock can be compromised by the actions of those who would seek to intimidate, threaten or attack them. The committee shares the concerns of those involved in agricultural enterprises in relation to the safety of farm workers and livestock and the serious consequences which can arise following breaches of biosecurity and workplace health and safety protocols.

### **Key issues raised by those opposed to the bill**

3.18 The committee received a substantial number of submissions to its inquiry – a large number of which expressed concern about the intentions of the bill. In particular, the committee received a substantial number of submissions which did not support the amendment proposed in Section 383.5 in relation to failure to report 'malicious cruelty to animals'.<sup>17</sup>

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16 Dr Peter C. Scott, *Committee Hansard*, 15 May 2015, p. 24.

17 See for example, Mr Barry Terzic and Ms Sonja Terpstra, *Submission 9*, p. 1, Mr Paul Daher, *Submission 17*, p. 1, Ms Nicole van Barneveld, *Submission 21*, p. 1, Greens NSW, *Submission 42*, p. 3, Sentient, The Veterinary Institute for Animal Ethics, *Submission 51*, [p. 1], RSPCA, *Submission 52*, p. 4, Voiceless, *Submission 56*, p. 3, Ms Karin Schuett, *Submission 801*, p. 1, Mr J. and Ms C. Donaldson, *Submission 803*, p. 1 and Joint Media Organisations, *Submission 810*, p. 2.

3.19 In particular, it was suggested by a number of submitters that the bill would unfairly target undercover investigators and investigative journalists who expose animal cruelty.<sup>18</sup> It was argued that 'investigators should be allowed to gather evidence to expose those who commit animal cruelty'.<sup>19</sup> Further, it was argued that:

The Bill will also target whistleblowers, who will then be deterred from exposing animal cruelty in their workplaces (abattoirs, factory farms, etc) due to fear of losing their jobs if they are identified. There is specific whistleblower legislation in place within Australia to specifically protect people in such situations, and these protections should not be curtailed by this Bill.<sup>20</sup>

3.20 A similar sentiment was expressed by submitters who argued that:

... since subsection 383.5(2) makes the actual occurrence of animal abuse immaterial, and since reporting is only limited to select authorities, it is difficult to see how this provision aligned with the purported object of the Bill, which is to ensure that animals are protected against 'unnecessary cruelty' and to minimise delays in the reporting of cruelty. If these intentions are genuinely at the heart of the Bill, then available avenues for reporting abuse would be widened, and the focus of the provisions would be on the occurrence of actual abuse, and not on the subjective qualities of those who capture evidence of abuse.<sup>21</sup>

3.21 A large number of submitters also argued that, without undercover investigations, animal cruelty in abattoirs and factory farms would escape detection.<sup>22</sup>

3.22 It was argued that this provision 'creates a positive legal duty which is both unusual and highly burdensome, and it is difficult to identify any analogous provision under either Commonwealth or state legislation'. Further, it was argued that this is:

Particularly concerning since the provision involves the creation of a criminal offence where the burden of proving the elements of the offence is displaced from the prosecution to the defendant (contrary to s13.1 of the Code). A criminal conviction attracts consequences that typically extend far beyond the immediate penalty, and the Explanatory Memorandum does not include any explanation as to why it is appropriate to impose such onerous obligations and sanctions on members of the community who are not

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18 See for example, Sentient, The Veterinary Institute for Animal Ethics, *Submission 51*, [p. 1], Voiceless, *Submission 56*, p. 3, Ms Karin Schuett, *Submission 801*, p. 1, Mr J. and Ms C. Donaldson, *Submission 803*, p. 1 and Joint Media Organisations, *Submission 810*, p. 2.

19 Ms Karina Huddleston, *Submission 200*, p. 1.

20 Ms Karina Huddleston, *Submission 200*, p. 1.

21 Joint Submission: Animal Defenders Office, the Northern Rivers Community Legal Centre, Lawyers for Companion Animals and Far West Community Legal Centre, *Submission 201*, [p. 2].

22 See for example, Mr Barry Terzic and Ms Sonja Terpstra, *Submission 9*, p. 1, Mr Paul Daher, *Submission 17*, p. 1, Ms Nicole van Barneveld, *Submission 21*, p. 1, Greens NSW, *Submission 42*, p. 3, RSPCA, *Submission 52*, p. 4 and Ms Lynn Fitzpatrick, *Submission 71*, p. 1.

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perpetrators of animal abuse, but who merely witness and capture evidence of animal abuse. Similarly, the fact that it is difficult for the prosecution to prove a particular matter is not in itself a sound justification for placing an evidentiary burden on a defendant, and the explanation provided in the Explanatory Memorandum can only be described as deficient, at best.<sup>23</sup>

3.23 In evidence to the committee, the RSPCA indicated that the organisation 'believes that anyone witnessing animal cruelty has a moral obligation to report it to relevant authorities'. The RSPCA indicated that it also supports a mandatory reporting requirement under an appropriate and effective legal framework. It argued that its preferred framework would include:

- an appropriate class of persons 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.<sup>24</sup>

3.24 The RSPCA further argued that the reporting requirement contained in the bill does not address these key features:

It imposes an arbitrary and unrealistic reporting time frame. It applies only to individuals who take video and photographs of cruelty and not to eyewitnesses, which makes it clear that the bill is directed at private investigations and journalists in particular and therefore casts doubt over the sincerity of the bill's stated aims of protecting animals. It provides no protections for those who are made to report, and it is proposed for implementation at the federal level, which is constitutionally suspect and will create difficulties in enforcement. Ultimately it will inhibit and prevent investigations into widespread or routine cases of animal cruelty.<sup>25</sup>

3.25 The views expressed by the RSPCA were supported by the Australian Veterinary Association (AVA). The AVA noted that veterinarians have an ethical obligation to report instances of abuse or neglect to the authorities and, similarly the organisation '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'.<sup>26</sup>

3.26 The AVA did, however, express 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

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23 Joint Submission: Animal Defenders Office, the Northern Rivers Community Legal Centre, Lawyers for Companion Animals and Far West Community Legal Centre, *Submission 201*, [p. 2].

24 Mr Jed Goodfellow, Policy Officer, RSPCA Australia, *Committee Hansard*, 15 May 2015, p. 7.

25 Mr Jed Goodfellow, Policy Officer, RSPCA Australia, *Committee Hansard*, 15 May 2015, p. 7.

26 Australian Veterinary Association, *Submission 64*, p. 3.

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.<sup>27</sup>

3.27 The Animal Law Institute (ALI) also raised concerns about what it described as the 'unreasonable time limits'<sup>28</sup> prescribed in the bill in relation to reporting. ALI argued that the proposed one day and five day time limits are unreasonable and counter-productive to the prevention of malicious cruelty, in the following ways:

- A person who is unable to report malicious animal cruelty (within the one day timeframe) is likely to choose not to report the cruelty at all, rather than face possible criminal charges.
- The bill states that the time requirements start from the time the record is made. It is possible there would be situations where an individual (conducting a covert investigation) would leave a camera recording for several days before returning to collect the camera. In this situation, the individual would then be required to watch footage, possibly seek expert opinions from a veterinarian or a lawyer, to determine if it contained any malicious cruelty. By the time the individual is able to hand over the footage, they may have already breached the reporting requirements.
- The requirement to report all recorded incidents of malicious animal cruelty within one day prevents ongoing investigations into animal industries, which may be uncovering long term and systematic animal cruelty.<sup>29</sup>

3.28 The committee received evidence from a number of submitters which commented on Section 385.5 of the bill – which proposes the creation of a new offence for 'engaging in conduct that destroys or damages property' in a number of different circumstances. Those opposed to the bill noted that this provision is extremely broad, and the EM does not offer sufficient explanation as to its application, or to the meaning of many of its terms.

3.29 It was argued, for example that it is difficult to draw any clear legal boundary around what it means to engage in conduct that destroys or damages property that belongs to a person who is connected with, or related to, an animal enterprise, given that 'animal enterprise' is defined in the bill to include a commercial enterprise that stores animals or animal products, for among other things, profit or food.

3.30 It was further argued that:

The definition of animal enterprise also includes, rather curiously, 'any show or similar event intended to advance agricultural arts or science',

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27 Australian Veterinary Association, *Submission 64*, p. 4.

28 Animal Law Institute, *Submission 530*, p. 2.

29 Animal Law Institute, *Submission 530*, p. 2.



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which again casts an extremely broad net in terms of the provision's coverage.<sup>30</sup>

3.31 A number of submitters also argued that the EM does not provide an appropriate explanation as to why it is necessary to create a new, additional offence relating to property damage, or why the imposition of new criminal penalties is warranted or justified.<sup>31</sup>

3.32 ALI suggested that the bill creates an unnecessary duplication of existing laws, and may in fact lead to double punishment. Further, it argued that:

Laws are currently in effect in all States and Territories to capture the proposed offences contained in Division 385, including damage to property, threats, vandalism, criminal trespass, harassment or intimidation. These new offences are wholly unnecessary, as they would duplicate crimes contained in state and territory legislation. ALI fails to see grounds to create additional offences to the state/territory laws simply because those offences are committed on the property of an animal enterprise, belonging to a person who carries on an animal enterprise, or belonging to a person who is otherwise connected with, or related to, an animal enterprise.<sup>32</sup>

### **Committee comment**

3.33 The committee acknowledges that a significant number of the submissions to this inquiry questioned both the intention and the likely operation of the bill in regard to animal cruelty. In particular, the committee notes the views expressed by those who argued that the proposed legislation would unfairly target those who seek to uncover animal cruelty, such as whistleblowers (including abattoir, farm and factory workers), undercover investigators and investigative journalists.

3.34 Whilst the committee acknowledges these views, it also notes that the bill does not remove or limit the ability for people to report animal cruelty, nor does it preclude any individual from lawfully pursuing a specific case of ongoing and/or systematic animal cruelty.

3.35 The committee does note, however, the argument raised by some submitters about the prescriptive nature of the timeframe for reporting. The committee acknowledges that, particularly in the case of remote locations, reporting within one business day may not be practical or possible. The committee therefore suggests that the time frame for reporting be less prescriptive.

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30 Joint Submission: Animal Defenders Office, the Northern Rivers Community Legal Centre, Lawyers for Companion Animals and Far West Community Legal Centre, *Submission 201*, [p. 4].

31 See for example, Australian Veterinary Association, *Submission 64*, p. 4, Barristers Animal Welfare Panel, *Submission 240*, Annexure A, p. 1, The Animal Law Institute, *Submission 530*, p. 3 and Joint Submission: Animal Defenders Office, the Northern Rivers Community Legal Centre, Lawyers for Companion Animals and Far West Community Legal Centre, *Submission 201*, [p. 4].

32 See for example, The Animal Law Institute, *Submission 530*, p. 3.

**Recommendation 1**

**3.36** It is recommended that, rather than the current requirement of one business day, the time frame be amended to require that a person report, 'as soon as practicable' to the relevant authority.

**Recommendation 2**

**3.37** It is recommended that, subject to the foregoing recommendation, the bill be passed.

**Senator the Hon Bill Heffernan  
Chair**