



SUBMISSION ON THE FRAMEWORK FOR A NSW BIOSECURITY ACT

27 June 2014

This submission addresses the Proposed Framework for a NSW Biosecurity Act (the **Proposed Framework**).ⁱ We acknowledge the potential for the Proposed Framework to strengthen existing biosecurity protections and, in so doing, have positive implications for the environment and animals in NSW. We are, however, very concerned that the current process will be used as an opportunity to criminalise the dissemination of information about factory farming to the public via the media and other third parties.

In June 2014, the NSW Minister for Primary Industries, Katrina Hodgkinson MP and Federal Agriculture Minister, Senator Barnaby Joyce announced that they would use the Proposed Framework to introduce laws to target animal activists that use undercover surveillance to record the operations of intensive commercial facilities and disseminate information derived from such surveillance to the public.ⁱⁱ

These statements reveal that the issue of biosecurity has the potential to be used inappropriately as a pretext to introduce US-style ‘ag-gag legislation’ – draconian laws that seek to ‘gag’ animal advocates, employees, whistleblowers and the media from making public evidence of illegal animal cruelty. This type of legislation is not sought to address gaps in the law, but rather to stifle transparency: to prevent evidence of animal cruelty from being distributed to the media and, in turn, the public. It is on this point that we take objection.

We wish to acknowledge that it is already unlawful to trespass onto private property and to use undercover surveillance devices. Strong legal protections already exist to protect both producers and the public from potential biosecurity threats presented by unlawful trespass. As such, ag-gag legislation serves only to shield the commercial interests of intensive farming operations and to stifle transparency about the standard practices on factory farms. This is an illiberal response which is inconsistent with the Australian public’s rights to free speech, freedom of information and freedom of the press. As such, it will have significant implications for animals, consumers, media and for all members of the Australian public.

Most farmed animals in Australia are raised behind closed doors, deliberately hidden from public scrutiny. Footage provided by employees, whistleblowers and animal activists taken within factory farms is one of the only insights we have into the treatment of intensively farmed animals. Surveillance footage has also exposed evidence of animal cruelty, neglect and violations of animal protection laws within factory farms,ⁱⁱⁱ and has proved an effective enforcement tool in exposing cruelty that would have otherwise gone undetected. Covert footage is admissible as evidence in court,^{iv} and indeed, has been critical in prosecuting individuals and corporations charged with breaching animal and consumer protection laws (examples of which have been provided in Appendix 1). Based on this historical evidence, it is clear that if ag-gag laws are introduced in NSW, they will operate to conceal incidents of cruelty as they occur on factory farms.

Ag-gag laws also obstruct the ability of consumers to make informed decisions about the food they purchase. The lack of transparency surrounding factory farming is crippling for those consumers seeking genuine cruelty-free produce. In the absence of nationally consistent truth-in-labelling laws requiring producers to adequately disclose information about production methods, consumers are prevented from knowing the truth about the conditions in which food animals are kept. With greater dissemination of information through the media, animal

protection groups and other third parties, about factory farming practices – including the use of intensive systems like gestation crates, sow stalls and battery cages – shifting consumer sentiment has driven demand for free-range and higher welfare products in Australia. It is clear that Australian consumers care about animal welfare, and if ag-gag laws are introduced into NSW, they will operate to only stifle consumer choice, and the progression towards greater consumer awareness and producer transparency.

The most alarming aspect of ag-gag laws is that they prohibit the dissemination of information derived from surveillance and in so doing, suppress free speech and the media's ability to inform the public. The broader policy implication of ag-gag laws is that they shield the agricultural industry from public and political scrutiny. A similar point was articulated, albeit in a different context, by the former Justice of the High Court, Michael Kirby in *Lenah Game Meats Pty Limited v Australian Broadcasting Corporation*, who stated:

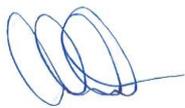
"Parliamentary democracies, such as Australia, operate effectively when they are stimulated by debate promoted by community groups. To be successful, such debate often requires media attention. Improvements in the condition of circus animals, in the transport of live sheep for export and in the condition of battery hens followed such community debate ... The form of government created by the Constitution is not confined to debates about popular or congenial topics, reflecting majority or party wisdom. Experience teaches that such topics change over time. In part, they do so because of general discussion in the mass media."^v

Freedom of the press is pivotal in encouraging genuine public debate, by shedding light on contentious issues, airing diverse opinions, and encouraging transparency in business practices.

Critically, ag-gag laws will not only have ramifications for animal advocates, but for all civil groups and individuals – whether involved in consumer protection, environmental protection or civil liberties. If the NSW Government permits big agribusiness to 'gag' its critics, it will set a dangerous precedent which will legitimate the suppression of genuine debate from other civil society groups and individuals.

For these reasons, we submit that the Proposed Framework should only address specific matters which relate to biosecurity and must not be used as a pretext to introduce ag-gag laws.

Yours sincerely



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Appendix 1

Covert surveillance has been successful in exposing animal cruelty in a number of cases, including the following:

- In 2011, ABC's *Four Corners* exposé, "A Bloody Business",^{vi} revealed footage of Australian cattle being abused in Indonesian slaughterhouses. The public and political reaction resulted in the Gillard Government suspending trade with Indonesia, and introducing a more stringent regulatory regime to govern live exports: the Export Supply Chain Assurance Scheme (ESCAS).
- In 2011, Victorian industry regulator, PrimeSafe forced the closure of the L.E. Giles abattoir at Trafalgar after it viewed video footage obtained from an animal advocate showing the mistreatment of pigs going to slaughter.^{vii}
- In 2012, Animal Liberation supplied the ABC with surveillance footage from a pig abattoir, Wally's Piggery in Yass, showing workers kicking piglets and beating sows with a sledgehammer, which was later aired on *Lateline*.^{viii} Wally's Piggery is now closed, and charges have been laid against its owners.
- In 2012, Animal Liberation footage revealed Willberforce abattoir just outside Sydney was slaughtering pigs and other animals inhumanely. Wilberforce was fined \$5,000 by the NSW Food Authority. The investigation prompted a government review which found animal welfare breaches at every domestic slaughterhouse in NSW, including "incompetency of slaughtering staff" and ineffective stunning.^{ix} The investigation resulted in the introduction of mandatory animal welfare officers being employed by abattoirs, as well as mandatory welfare training for those who conduct slaughter.^x
- In June 2013, Pepe's Ducks, one of Australia's largest producers of duck meat, was convicted of misleading and deceptive conduct by the Australian Federal Court.^{xi} The Australian Competition and Consumer Commission (ACCC) pursued an action against Pepe's Ducks under the Australian Consumer Law. This action was pursued shortly after the screening of covert footage aired on the ABC's *7.30*, showing Pepe's ducks were not in fact raised "open range" or "grown nature's way" as depicted on marketing material, but were in fact intensively farmed.^{xii}
- In *Australian Competition and Consumer Commission v Turi Foods Pty Ltd*,^{xiii} the Federal Court found two of Australia's largest poultry producers, Baiada Poultry Pty Ltd and Bartter Enterprises Pty Ltd, as well as the Australian Chicken and Meat Federation Inc., in breach of the *Trade Practices Act 1974* (Cth) and the *Australian Consumer Law 2010*. The respondents engaged in misleading or deceptive conduct and made false representations by using the words "free to roam" on advertising, packaging and publication materials. In reality, undercover surveillance had shown that the stocking densities of meat chickens in Baiada and Bartter facilities did not allow for chickens to roam freely.
- In *Australian Competition and Consumer Commission v Luv-a-Duck Pty Ltd*^{xiv} the Federal Court found in favour of the ACCC, and fined Luv-a-Duck \$360,000 for misleading and

deceptive conduct under the Australian Consumer Law. Various packing, logos, advertising, website material and brochures issued by the company claimed that their ducks were “range reared and grain fed” in the “spacious Victorian Wimmera Wheatlands.” However, covert footage obtained by animal rights activists revealed that the ducks were confined in barns.

- In 2013 Animal Liberation obtained footage of employees of Inghams Enterprises, kicking and stomping on turkeys. The footage was aired on the ABC and led to an employee being charged with three counts of animal torture.^{xv} Although the charges were later dropped due to a lack of evidence, the footage was critical in showing breaches of animal protection laws.

Endnotes

ⁱ NSW Department of Primary Industries, *Proposed Framework for a NSW Biosecurity Act* (2014) NSW Department of Primary Industries, <http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0004/518134/proposed-framework-nsw-biosecurity-act.pdf>.

ⁱⁱ Nicole Hasham, 'Animal cruelty activists targeted by tough new biosecurity measures' June 15 2014 *The Sydney Morning Herald* (online) <<http://www.smh.com.au/environment/animals/animal-cruelty-activists-targeted-by-tough-new-biosecurity-measures-20140615-zs8jt.html>>.

ⁱⁱⁱ See, for example, the undercover footage contained on 'Australian Pig Farming: The Inside Story', <<http://www.aussiepigs.com.au/>>, accessed 17 March 2014.

^{iv} The Evidence Act 1995 (Cth) states in section 138(1) that, in both civil and criminal proceedings, the admission of improperly or illegally obtained evidence may be allowed in certain circumstances.

^v *Lenah Game Meats Pty Limited v Australian Broadcasting Corporation* (2001) 208 CLR 199.

^{vi} See for example Sarah Ferguson, 'A Bloody Business', ABC Four Corners (30 May 2011) <http://www.abc.net.au/4corners/special_ed/20110530/cattle/>.

^{vii} See for example ABC News, 'Abattoir owner angry after charges dropped' ABC News (16 April 2013) <<http://www.abc.net.au/news/2013-04-16/abattoir-owner-angry-after-charges-dropped/4631864>>.

^{viii} 'NSW piggery owners face animal cruelty charges', ABC News (08 October 2013), <<http://secure.isidewith.com/news/article/nsw-piggery-owner-faces-animal-cruelty-charges>>.

^{ix} Animals Australia, 'Abattoir cruelty — history repeating?' (15 March 2013) <<http://www.animalsaustralia.org/features/abattoir-cruelty-history-repeating.php>>.

^x 'Chapter 8: Animal Welfare, Animal Health in Australia 2012', Animal Health Australia (2013), <<http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/01/CH8-Animal-welfare-AHIA-2012.pdf>>.

^{xi} *Australian Competition and Consumer Commission v Pepe's Ducks Ltd* [2013] FCA 570.

^{xii} See for example Bronwyn Herbert, 'Disturbing footage prompts calls for duck farming changes' Transcript, ABC News (19 June 2012) <<http://www.abc.net.au/news/2012-06-19/disturbing-footage-prompts-calls-for-duck-farming/4080436>>.

^{xiii} (No 5) [2013] FCA 1109.

^{xiv} [2013] FCA 1136.

^{xv} Shannon Tonkin, 'Inghams worker vindicated over turkey abuse' (17 January 2014) Illawarra Mercury (online), <<http://www.illawarramercury.com.au/story/2028570/inghams-worker-vindicated-over-turkey-abuse/>>.