



**SUBMISSION TO THE SENATE RURAL AND REGIONAL AFFAIRS AND
TRANSPORT LEGISLATION COMMITTEE**

CRIMINAL CODE AMENDMENT (ANIMAL PROTECTION) BILL 2015

10 March 2015

Voiceless Limited

ACN 108 494 631
2 Paddington Street
Paddington NSW 2021

P +61 2 9357 0703

F +61 2 9357 0711

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ABOUT VOICELESS

As an innovator, capacity builder and ideas-generator, Voiceless plays a leading role in the development of a cutting edge social justice movement, animal protection.

With a highly professional and well-educated team, Voiceless brings together like-minded compassionate Australians from the legal, academic, non-profit and education sectors to form strong and effective networks.

Voiceless believes in the provision of quality information, analysis and resources to inspire debate and discussion and to empower individuals and organisations to generate positive social change.

Voiceless is a non-profit Australian organisation established in May 2004 by father and daughter team Brian and Ondine Sherman.

To build and fortify the animal protection movement, Voiceless:

- gives grants to key projects which create the groundswell for social change;
- cultivates the animal law community through the provision of leadership, educational opportunities and resources; and
- raises awareness of animal protection issues within the education system in order to strengthen democratic skills, promote critical thinking and encourage advocacy amongst students.

PATRONS

J.M. COETZEE, Nobel Prize for Literature Winner 2003, author of 'Lives of Animals' and 'Elizabeth Costello'

BRIAN SHERMAN AM, businessman and philanthropist

DR JANE GOODALL, world-renowned primatologist and animal advocate

THE HON MICHAEL KIRBY AC CMG, former judge of the High Court of Australia

AMBASSADORS

HUGO WEAVING, Actor: Oranges and Sunshine, Last Ride, Little Fish, Lord of the Rings Trilogy, Matrix Trilogy, The Adventures of Priscilla Queen of the Desert

EMILY BARCLAY, Actor: Prime Mover, Piece of my Heart, Suburban Mayhem, In My Father's Den

ABBIE CORNISH, Actor: w.e., Suckerpunch, Limitless, Bright Star, Stop Loss, Elizabeth: The Golden Age, A Good Year, Somersault, Candy

For further information visit <http://www.voiceless.org.au>

All correspondence in relation to this submission should be directed to:

Mr Emmanuel Giuffre
Voiceless
2 Paddington Street
Paddington NSW 2021 AUSTRALIA
T: + 612 9357 0713
F: + 612 9357 0711
Email: emmanuel@voiceless.org.au

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Voiceless opposes the *Criminal Code Amendment (Animal Protection) Bill 2015* (the Bill) on the following grounds:

1. In our view, this is ‘ag-gag’ packaged as an ‘animal protection’ Bill. As seen in the US, ag-gag laws have nothing to do with animal protection and serve only to generate increased public scepticism of, and negative sentiment towards, animal industries.

- 1.1 Despite its title, in our view, the operation of the Bill will be counterproductive to animal protection for a number of reasons. In particular, if enacted, the Bill will operate to target activist investigators and whistleblowers who work to expose animal cruelty, rather than the perpetrators of that cruelty, an outcome which is entirely antithetical to promoting and protecting the welfare of animals.
- 1.2 The form and effect of this Bill is consistent with US-style ‘ag-gag legislation’ and the *Animal Enterprises Terrorism Act* (AETA), both of which operate to ‘gag’ animal advocates, employees, whistleblowers and the media from publicising evidence of illegal, systemic animal cruelty.
- 1.3 Both ag-gag laws and AETA have been heavily criticised in the US as violating free speech, freedom of the press and the right for the public to be appropriately informed of matters of public interest. Importantly, they have also been criticised for operating to shield animal industries from investigations exposing bad business practice. This opposition has come not only from animal protection groups, but also from civilian groups concerned about matters of consumer protection, the environment and civil liberties.ⁱ It is important to note that in our experience, the strongest proponents of ag-gag laws are from representatives and participants of ‘animal industries’, not from those individuals or groups that advocate for animal protection policy and law reforms (such as RSPCA Australia).
- 1.4 As a result, ag-gag bills in the US have had an extremely low rate of passage into law. Of the 20 bills proposed since 2011, only four have been successful.ⁱⁱ Critically, ag-gag laws in the US have had the effect of fostering increased scepticism of and negative sentiment towards animal industries, particularly the US animal agriculture industry. This was encapsulated in the following passage from a *New York Times* editorial in April 2013:

“The ag-gag laws guarantee one thing for certain: increased distrust of American farmers and our food supply in general. They are exactly the wrong solution to a problem entirely of big agriculture’s own making. Instead of ag-gag laws, we need laws that impose basic standards on farm conditions and guarantee our right to know how our food is being produced.”ⁱⁱⁱ

- 1.5 If enacted, the Bill will likely generate similar scepticism of, and negative sentiment towards, Australian animal industries. There is already concern amongst the Australian public regarding the lack of transparency surrounding animal industries, which is fuelling the sort of activism targeted by the Bill. In our view, introducing ag-gag laws will serve only to reinforce these concerns, and further legitimise the work of activist investigators in exposing animal cruelty. As noted by RSPCA Australia: “[p]roposing Ag-gag laws in this climate will further damage the reputation of Australia’s agricultural industries and may further accentuate tensions between city and rural communities”.^{iv}

- 2. The Bill will operate to prevent long-term investigations into systemic, industry-wide animal cruelty and will disincentivise whistleblowers from reporting acts of malicious animal cruelty.**
- 2.1 Consistent with ag-gag laws,^v the Bill imposes mandatory reporting obligations on individuals who capture evidence of animal cruelty. The provision creates a legal obligation that is highly unusual in that it is difficult to identify any analogous State or Commonwealth mandatory reporting obligation with respect to a potential criminal act. For example, there is no analogous mandatory reporting obligation in relation to the recording of a suspected assault or murder. Further, the Explanatory Memorandum fails to provide sound justification as to why ‘malicious animal cruelty’ warrants mandatory reporting over other criminal offences.
- 2.2 The mandatory reporting provision is unduly burdensome in that it reverses the statutory onus of proof or the presumption of innocence until proven guilty. It also imposes absolute liability on the perpetrator, which make the individual’s knowledge that they are in fact committing an offence irrelevant. The latter is particularly concerning, as it may take several days (even weeks or months) for an individual to realise he or she has in fact captured an act of ‘malicious animal cruelty’, which is an element of the offence. In our view, the Explanatory Memorandum fails to provide sound justification for reversing the onus of proof or imposing absolute liability for this offence.
- 2.3 The provision also imports excessive criminal penalties for individuals who fail to report (\$5,100 per offence). In our experience, this penalty is more severe than the sentences ordinarily handed down to perpetrators of animal cruelty, which is concerning given the purported intention of the Bill is to protect the welfare of animals.
- 2.4 In our view, mandatory reporting will inhibit long-term, industry-wide investigations into systemic animal abuse in animal enterprises. Forcing individuals to present evidence as it is discovered will likely result in incidents of animal cruelty being characterised by industry, certain politicians and relevant authorities as ‘one-offs’ or ‘isolated incidents’, and will likely fail to result in much needed industry-wide policy and law reform. In our experience, it would also likely result in inadequate enforcement action being taken by relevant authorities against the perpetrator(s) involved.
- 2.5 Further, mandatory reporting will likely discourage whistleblowers from acting upon cruelty if and when it arises in their workplaces. Managers and staff who work within animal industries are often best placed to witness and report on incidents of animal cruelty. By requiring whistleblowers to report cruelty and handover footage to authorities, it will likely disincentive those whistleblowers that do not wish to identify themselves to authorities and, in so doing, jeopardise their job security.
- 2.6 In these important respects, mandatory reporting will likely lead to adverse welfare outcomes for animals. Further, if the Bill were legitimately focused on animal protection, surely the reporting obligation would not simply be targeted at individuals who have recorded footage of

animal cruelty, but for all individuals who witness or become aware of incidences of malicious animal cruelty.

3. The Bill creates a nebulous and unnecessary offence around property damage, and imposes excessively harsh penalties for potentially minor property offences.

3.1 The Bill creates an extremely broad offence around an individual engaging in conduct that, in summary, destroys or damages property connected with an animal enterprise for the purpose of interfering with the carrying on of that enterprise. It is difficult to see how this provision has anything to do with animal protection, and accordingly, how it is consistent with the stated objectives of the Bill.

3.2 In Voiceless's experience, there has been no instance of activist investigators causing significant property damage or loss to animal enterprises. Indeed, it is unclear why this provision is deemed necessary, given State and Territory laws already adequately protect individuals and businesses from property damage, as discussed at 5 below. In our view, the Explanatory Memorandum fails to provide adequate justification as to why individuals or businesses participating in animal industries warrant additional protections from property damage over other individuals or businesses, or why new criminal penalties are justified.

3.3 In addition to imposing absolute liability with respect to this offence, the provision imposes unduly harsh penalties on individuals, ranging from 1 year imprisonment to imprisonment for life. On our reading of the relevant provisions, an individual could be sentenced to 1 year imprisonment if the relevant elements of section 385.5 (Destroying or damaging property) are found to be met, and the damage suffered by the animal industry is less than \$10,000. In theory, an individual could be imprisoned for 1 year for breaking a lock or rescuing a sick or injured hen, which would certainly be an unjust outcome.

3.4 The Explanatory Memorandum also gives no adequate justification as to why the penalties relating to the offence of destroying or damaging property need to take into account any such conduct that may result in bodily injury or death to individuals. With respect, drawing this connection is illogical, and overlooks the fact that, to our knowledge, not a single individual has been injured or killed as a result of activist investigations. In this way, the provision appears to be focused on 'fear mongering' and politicising activist activities, rather than serving a legitimate policy outcome.

4. The Bill creates a nebulous and unnecessary offence around inciting "reasonable fear", which has the potential to target otherwise lawful advocacy efforts.

4.1 Consistent with AETA, the Bill also introduces an unduly broad offence of acting in such a way as to interfere with an animal enterprise that incites "reasonable fear" in an individual.^{vi} As with the offence relating to property damage, it is difficult to see how this provision has anything to do with animal protection, and accordingly, how it is consistent with the stated objectives of the Bill.

4.2 The concept of inciting “reasonable fear” is subjective and vulnerable to inflammation, particularly from negative media and political discourse surrounding animal advocacy and activism.^{vii} For example, the casual association between ‘terrorism’ and ‘animal activism’ in the media and among politicians^{viii} has the potential to colour the normal threshold for what constitutes “reasonable fear”, which may in turn see otherwise lawful advocacy targeted. Further, the offences of “reasonable fear”, “harassment” or “intimidation” are not defined in the Bill, potentially providing for a broad interpretation and application of the Bill to target otherwise lawful animal advocacy efforts.^{ix} The Explanatory Memorandum fails to provide any guidance in this regard.

4.3 As with the property damage offence discussed at 3 above, the penalties imposed are unduly harsh and it is unclear why the provision deals with conduct that may result in death or serious bodily injury to individuals. Again, Voiceless is unaware of any activities undertaken by Australian animal activists or advocacy groups that have resulted in injury or death to an individual, making this connection unnecessary and, with respect, inflammatory. This point is particularly relevant with respect to the purported intention of the provision: to prevent activist conduct that may be said to incite ‘reasonable fear’ in individuals. The investigative activities the subject of the Bill have, to Voiceless’s knowledge, been peaceful, and could not reasonably be characterised as inciting ‘fear’ in the operators or workers of animal enterprises.

4.4 We note further that State and Territory laws already adequately protect individuals from the sort of offences contemplated under this provision, as discussed at 5 below.

5. There are already laws in place that adequately protect animal enterprises from the sort of activist activities contemplated under the Bill. In our view, the ultimate purpose of this Bill is to protect operators of animal industries from adverse public scrutiny, rather than addressing an apparent gap in the law.

5.1 As previously noted, States and Territories already have laws to prohibit trespass,^x undercover filming,^{xi} and to protect individuals and operators of animal industries from deliberate acts of property damage,^{xii} threats, harassment or intimidation.^{xiii} Strong legal protections already exist to protect both operators of animal industries and the general public from potential biosecurity threats presented by unlawful trespass.^{xiv}

5.2 Accordingly, in our view, the Bill will not operate to better protect operators of animal enterprises or their businesses. Instead, the Bill will operate (and in our opinion, is intended) to intimidate individuals who work to expose animal cruelty within animal industries, and in particular, to deter them from disseminating evidence of systemic animal cruelty to the media and the broader public.

5.3 In this way, we argue that the Bill will operate to protect animal enterprises from potentially negative publicity and economic loss arising from investigations exposing animal cruelty. With respect, protecting individuals or businesses that are conducting themselves in an unethical or illegal manner from adverse public scrutiny is an irresponsible justification for introducing new

legislation, particularly where that legislation has the potential to curtail the constitutionally implied freedom of political communication, discussed at 6 below.

6. Investigations by animal activists and animal protection groups are virtually the only means of detecting animal cruelty within animal industries. Preventing activist investigations will limit the public's ability to be informed of matters of public interest, and significantly curtail the constitutionally implied freedom of political communication.

- 6.1 Our supporters have expressed concerns about the lack of transparency surrounding animal industries. Many animal enterprises, such as factory farms and intensive breeding facilities, are conducted behind closed doors, hidden from public scrutiny. As far as Voiceless is aware, none of the significant exposés into systemic industrial animal cruelty have emanated from investigations conducted by relevant statutory animal protection authorities.
- 6.2 Footage provided by employees, whistleblowers and animal activists taken within these enterprises are some of the only insights the public has into the treatment of intensively raised animals. In light of this, surveillance by animal advocates serves an important public interest: namely creating transparency around animal industries and exposing evidence of animal cruelty and neglect that would otherwise not come to the attention of regulators.
- 6.3 Covert footage is admissible as evidence in court^{xv} and has been adduced as evidence against individuals or organisations accused of engaging in animal cruelty or neglect.^{xvi} Covert footage has also been critical in prosecuting individuals and corporations charged with breaching animal and consumer protection laws, examples of which have been provided in Appendix 1. Accordingly, activist investigators serve an important function in assisting in the monitoring, enforcement and prosecution of animal protection laws.
- 6.4 Such investigations have also resulted in policy and law reform. For example, 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 slaughterhouse in NSW, including “incompetency of slaughtering staff” and ineffective stunning.^{xvii} 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.^{xviii}
- 6.5 In preventing investigations into systemic cruelty, and imposing excessive criminal penalties on activists conducting investigations, we argue that the Bill may operate to prevent these investigations into animal cruelty from occurring, and will obstruct the ability of the public to be informed of important matters of public interest. For example, the ABC's *4 Corners*' expose on February 16th on the endemic use of “live baiting” in the greyhound racing industry attracted immense public outcry. The investigations exposing such animal cruelty would likely not have been possible, had the offences proposed by the Bill been enforceable.

6.6 It is Voiceless's view that the effect of the Bill will be to significantly curtail the media's ability to report on matters of public interest, and will stifle the constitutionally implied freedom of political communication. A similar point was articulated, albeit in a different context (pertaining to cruelty to possums), 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."^{xix}

6.7 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.

6.8 We note the Bill seeks to protect the constitutionally implied freedom of speech by incorporating an exclusion in s383.20(1)(a). However, by criminalising investigations into systemic animal cruelty, we argue that the Bill will operate to limit free speech in this important respect, and obstruct issues of legitimate public interest from reaching the media.

6.9 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 Federal Government permits big agribusiness to 'gag' its critics, it will set a dangerous precedent which will legitimise the suppression of genuine debate from other civil society groups and individuals.

7. Present efforts at monitoring and enforcing compliance with animal protection laws are inadequate, resulting in an over-reliance on undercover investigations to expose malicious acts of animal cruelty.

7.1 The public's concern around transparency stems, in part, from inadequacies in the present level of monitoring and enforcement of animal protection laws by relevant state and territory authorities. Despite state and territory police forces and certain departments of primary industries having a statutory mandate to monitor and enforce compliance with animal protection laws, responsibility to fulfil this obligation is largely left to private charitable organisations – like state and territory branches of the RSPCA.^{xx} Resource constraints and limited funding directly impact on the ability of these organisations to adequately protect animals – particularly in intensive animal enterprises. In our view, this is one of the core reasons why animal activists feel compelled to engage in undercover surveillance activities.

7.2 It is generally understood that animal advocates and animal protection organisations often provide footage of animal cruelty or neglect to the media before handing it over to animal welfare authorities. It is our experience that such advocates and organisations are often

disenchanted with the relevant authorities, due to a perception that a complaint to the authorities by itself would unlikely result in appropriate enforcement action being taken. Unfortunately, garnering public support is often the impetus required to ensure appropriate enforcement action is taken.

- 7.3 Some departments of agriculture are responsible for enforcing animal protection laws. However, their effectiveness is limited by a perceived conflict of interest inherent in their role and function – with many departments of agriculture being charged with both tasks of protecting animal welfare and fostering the growth of primary industries. This conflict is perhaps why certain animal advocates and organisations do not first tender evidence to authorities before handing it over to the media.
- 7.4 If the Federal Government is serious about improving animal protection and reducing activist investigations, it would seek to improve transparency in animal industries by strengthening the monitoring and enforcement of existing animal cruelty legislation.
- 7.5 In Voiceless' view, the establishment of a national Independent Office of Animal Welfare is necessary to ensure that compliance with animal protection laws are monitored and enforced by an independent statutory body, free from any real or perceived conflict of interest.
- 7.6 Greater investment by state and territory governments in inspection and monitoring programs for livestock facilities will restore the community's confidence in animal industries and their compliance with animal protection laws. As noted by RSPCA Victoria following the ABC's *Four Corners'* greyhound racing exposé, greater powers also need to be given to enforcement agencies to better monitor and enforce compliance with animal protection laws.^{xxi} An appropriate measure would also be requiring the installation of CCTV cameras in all factory farms, slaughterhouses and other intensive animal industries.

For these reasons, we submit that the Senate Rural and Regional Affairs and Transport Legislation Committee recommend this Bill be rejected.

Respectfully submitted by Emmanuel Giuffre, Legal Counsel, Voiceless

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",^{xxii} 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.^{xxiii}
- 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 the ABC's *Lateline*.^{xxiv} Controversially, all charges against the now defunct piggery have since been dropped by RSPCA NSW due to "evidentiary issues".
- 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 slaughterhouse in NSW, including "incompetency of slaughtering staff" and ineffective stunning.^{xxv} 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.^{xxvi}
- 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.^{xxvii} 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.^{xxviii}
- In the 2013 case of *Australian Competition and Consumer Commission v Turi Foods Pty Ltd*,^{xxix} 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 the 2013 case of *Australian Competition and Consumer Commission v Luv-a-Duck Pty Ltd*,^{xxx} 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 packaging, 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’s *Four Corners* and led to an employee being charged with three counts of animal torture.^{xxxix} Although the charges were later dropped due to a lack of evidence, the footage was critical in showing breaches of animal protection laws.
- Between 2013 and 2014, PETA obtained footage from 19 shearing sheds in NSW, Victoria and South Australia, showing employees violently stomping on sheep, beating them and leaving open wounds untreated. The release of the footage has prompted an investigation by the RSPCA and the industry to commit to reviewing their current welfare assurance standards.^{xxxix}
- The recent ABC’s *Four Corners* exposé (2015) on live baiting in the greyhound industry, entitled “Making a Killing”, has sparked a large public outcry. A review into the industry is underway with inquiries set up in multiple states, and the Board of NSW Greyhound Racing has stepped down.^{xxxix}

Endnotes

ⁱ There has been strong opposition to ag-gag laws and AETA, not just from animal advocates, but from a number of civilian groups. For example, a coalition of over 70 organisations has been formed to combat the proposals, consisting of groups representing civil liberties, the media and free speech, environmental protection, workers' rights, prosecutors, consumers and public health: Dan Flynn '2012 Legislative season ends with 'Ag-gag' bills defeated in 11 states' (30 July 2013) *Food Safety News* <<http://www.foodsafetynews.com/2013/07/2013-legislative-season-ends-with-ag-gag-bills-defeated-in-11-states/#.Uhm-EtL-Hm4>> accessed 4 March 2015.

The American Civil Liberties Union of Idaho sought to strike down such laws on the basis that they violated constitutionally protected rights to free speech: Laura Zuckerman, 'ACLU cites free speech in suit against Idaho's 'ag gag' law' (17 March 2014) *Reuters* <<http://www.reuters.com/article/2014/03/18/us-usa-idaho-livestock-idUSBREA2H05A20140318>> accessed 9 March 2015.

The media also claims that ag-gag laws stifle the freedom of the press: John Hollen, 'Ag-gag laws assault on freedom of press' (13 January 2015) *Lancaster Online* <http://lancasteronline.com/opinion/letters_to_editor/ag-gag-laws-assault-on-freedom-of-press/article_8bedbc7c-9900-11e4-9cb6-e3eda0a5aa87.html> accessed 9 March 2015.

ⁱⁱ Dan Flynn '2012 Legislative season ends with 'Ag-gag' bills defeated in 11 states' (30 July 2013) *Food Safety News* <<http://www.foodsafetynews.com/2013/07/2013-legislative-season-ends-with-ag-gag-bills-defeated-in-11-states/#.Uhm-EtL-Hm4>> accessed 4 March 2015.

ⁱⁱⁱ The Editorial Board, 'Eating with our eyes closed' (9 April 2013) *The New York Times* <http://www.nytimes.com/2013/04/10/opinion/eating-with-our-eyes-closed.html?_r=0> accessed 2 March 2015.

^{iv} RSPCA Australia, "Ag-gag laws in Australia?" (September 2013) <http://www.rspca.org.au/sites/default/files/website/media-centre/Press-releases/RSPCA_Australia-Ag_gag_laws_in_Australia-Discussion_paper.pdf> accessed on 2 March 2014.

^v A number of US states have sought to introduce mandatory reporting requirements, including the following: North Carolina introduced the Commerce Protection Act (SB 648) in April 2013. It includes mandatory reporting in s 14-105.1(c). Online source: <<http://www.ncleg.net/Sessions/2013/Bills/Senate/PDF/S648v1.pdf>> accessed 9 March 2015.

Nebraska state legislature introduced LB 204 in January 2013, with a focus on quick reporting on any incident under s 28-1017(3). Online source: <<https://legiscan.com/NE/text/LB204/id/685632>> accessed 9 March 2015.

New Hampshire introduced HB110 in January 2013, "requiring persons who record cruelty to livestock to report such cruelty and submit such recordings to a law enforcement agency". Online source: <<https://legiscan.com/NH/text/HB110/id/679691>> accessed 9 March 2015.

Tennessee state legislature introduced SB1248 in February 2013, including a mandatory reporting requirement under s 39-14-202. Passed but vetoed by Governor Bill Haslam. Sources: <<https://legiscan.com/TN/text/SB1248/2013>> accessed 9 March 2015.

^{vi} See *Animal Enterprise Terrorism Act* 18 U.S.C. §43(a)(2)(B). Online source: <<http://www.law.cornell.edu/uscode/text/18/43>> accessed 9 March 2014.

^{vii} Will Potter, 'Analysis of the Animal Enterprise Terrorism Act', p. 3 <<http://www.greenisthenewred.com/blog/wp-content/images/aeta-analysis-109th.pdf>> accessed on 4 March 2015.

^{viii} For example, in 2013 Katrina Hodgkinson MP publically likened animal activists to terrorists. See, 'Animal rights activists 'akin to terrorists', says NSW minister Katrina Hodgkinson' (18 July 2013) *ABC News* <<http://www.abc.net.au/news/2013-07-18/animal-rights-activists-27terrorists272c-says-nsw-minister/4828556>> accessed 4 March 2015.

^{ix} As noted by the Centre for Constitutional Rights, the AETA prohibits lawful protest activities of animal advocates, as opposed to protecting free speech as claimed by its proponents. See, Centre for Constitutional Rights, 'The Animal Enterprise Terrorism Act' <[http://ccrjustice.org/learn-more/faqs/factsheet%3A-animal-enterprise-terrorism-act-\(aeta\)](http://ccrjustice.org/learn-more/faqs/factsheet%3A-animal-enterprise-terrorism-act-(aeta))> accessed 4 March 2015. See also Will Potter, 'Analysis of the Animal Enterprise Terrorism Act', p. 3 <<http://www.greenisthenewred.com/blog/wp-content/images/aeta-analysis-109th.pdf>> accessed 4 March 2015.

^x *Inclosed Lands Protection Act 1901* (NSW) s 4; *Summary Offences Act 2005* (Qld) s 11; *Criminal Code Act 1913* (WA) s 70A; *Criminal Law Consolidation Act 1935* (SA) Part 6A; *Summary Offences Act 1966* (Vic) ss 9(1)(d); *Police Offences Act 1935* (Tas) s 14B; *Trespass Act* (NT); *Trespass on Territory Land Act 1932* (ACT).

^{xi} *Surveillance Devices Act 2007* (NSW) s 8; *Surveillance Devices Act 1999* (Vic) s 7; *Invasion of Privacy Act 1971* (Qld), *Criminal Code Act 1899* (Qld) s 227A(1); *Surveillance Devices Act 1998* (WA) s 6; *Listening and Surveillance Devices Act 1972* (SA) (note the *Surveillance Devices Bill 2014* has been introduced into Parliament); *Listening Devices Act 1991* (Tas) and *Police Offences Act 1935* (Tas) s 13 and 13A; *Surveillance Devices Act 2007* (NT) s 12; *Workplace Privacy Act 2011* (ACT) s 11 and *Listening Devices Act 1992* (ACT).

^{xii} *Crimes Act 1900* (NSW) s 195; *Summary Offences Act 1966* (Vic) s 9; *Criminal Code 1899* (Qld) s 469; *Criminal Code 1913* (WA) ss 67 and 444; *Criminal Law Consolidation Act 1935* (SA) Part 4; *Police Offences Act 1935* (Tas) s 37; *Criminal Code Act* (NT) s 241; *Crimes Act 1900* (ACT) s 116.

^{xiii} *Crimes Act 1900* (NSW) s 545B; *Crimes Act 1958* (Vic) s 21; *Criminal Code 1899* (Qld) s 75; *Criminal Code Act 1913* (WA) ss 75, 338B; *Criminal Law Consolidation Act 1935* (SA) s 19; *Criminal Code Act 1924* (Tas) s 192; *Summary Offences Act* (NT) ss 47AA, 47AB; *Crimes Act 1900* (ACT) ss 31, 35(2)(j).

^{xiv} *Ibid*, n x.

^{xv} *The Evidence Act 1995* (Cth) states in s 138(1) that, in both civil and criminal proceedings, the admission of improperly or illegally obtained evidence may be allowed in certain circumstances, mainly where the desirability of admitting the evidence outweighs the undesirability of the method used to obtain the evidence. The Court must, however, taken into account the nature of the offence under s 138(3)(c), and the difficulty of obtaining the evidence without contravention of an Australian law under s 138(3)(h).

^{xvi} For example, in early 2013, Animal Liberation NSW provided the ABC with covert footage of workers bashing and kicking turkeys at a facility operated by a major poultry producer. In March 2013, the ABC's *Lateline* program aired the covert footage. This resulted in criminal proceedings being brought in the Local Court of New South Wales against a person who is alleged to have been one of those recorded in the footage as carrying out the bashing and kicking. The undercover footage was adduced as evidence in those proceedings.

^{xvii} Animals Australia, 'Abattoir cruelty — history repeating?' (15 March 2013) <<http://www.animalsaustralia.org/features/abattoir-cruelty-history-repeating.php>> accessed 9 March 2015.

^{xviii} 'Chapter 8: Animal Welfare, Animal Health in Australia 2012' (2013) Animal Health Australia <<http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/01/CH8-Animal-welfare-AHIA-2012.pdf>> accessed 9 March 2015.

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

^{xx} Annabel Markham, 'Animal Cruelty Sentencing in Australia and New Zealand' in Peter Sankoff, Steven White, Celeste Black (eds), *Animal Law in Australasia* (2013, 2nd ed., Federation Press), 210.

^{xxi} Dr Liz Walker, CEO RSPCA Victoria, RSPCA Victoria (2015) 'Shocking evidence of illegal live lure baiting revealed' (16 February 2015) *Latest news* <<http://www.rspcavic.org/media/latest-news>> accessed 9 March 2015.

^{xxii} See for example, Sarah Ferguson, 'A Bloody Business' (30 May 2011) *ABC Four Corners* <http://www.abc.net.au/4corners/special_editions/20110530/cattle/> accessed 9 March 2015.

^{xxiii} See for example, 'Abattoir owner angry after charges dropped' (16 April 2013) *ABC News* <<http://www.abc.net.au/news/2013-04-16/abattoir-owner-angry-after-charges-dropped/4631864>> accessed 9 March 2015.

^{xxiv} '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>> accessed 9 March 2015

^{xxv} Animals Australia, 'Abattoir cruelty — history repeating?' (15 March 2013) <<http://www.animalsaustralia.org/features/abattoir-cruelty-history-repeating.php>> accessed 9 March 2015.

^{xxvi} 'Chapter 8: Animal Welfare, Animal Health in Australia 2012' (2013) *Animal Health Australia* <<http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/01/CH8-Animal-welfare-AHIA-2012.pdf>> accessed 9 March 2015.

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

^{xxviii} See for example, Bronwyn Herbert, 'Disturbing footage prompts calls for duck farming changes' Transcript, (19 June 2012) *ABC News* <<http://www.abc.net.au/news/2012-06-19/disturbing-footage-prompts-calls-for-duck-farming/4080436>> accessed 9 March 2015.

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

^{xxx} [2013] FCA 1136.

^{xxxi} Shannon Tonkin, 'Inghams worker vindicated over turkey abuse' (17 January 2014) *Illawarra Mercury* <<http://www.illawarramercury.com.au/story/2028570/inghams-worker-vindicated-over-turkey-abuse/>> accessed 9 March 2015.

^{xxxii} Lucy Barbour and Edwina Farley (2014) 'Welfare group targets abuse in Australian shearing sheds', (10 July 2014) *ABC Rural* <<http://www.abc.net.au/news/2014-07-10/peta-sheep-campaign/5587216>> accessed 9 March 2015.

^{xxxiii} Caro Meldrum-Hanna and Sam Clark, 'Making a Killing' (18 February 2015) *ABC 4 Corners* <<http://www.abc.net.au/4corners/stories/2015/02/16/4178920.htm>> accessed 9 March 2015.