



Animal Defenders Office
Using the law to protect animals

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

The Secretary
Legislative Council Economy and Infrastructure Committee
Inquiry into the Impact of Animal Rights Activism on Victorian Agriculture
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

via: aglawsinquiry@parliament.vic.gov.au

Submission from the Animal Defenders Office

Dear Sir/Madam

Thank you for the opportunity to provide a submission to the Inquiry by the Legislative Council's Economy and Infrastructure Committee into the Impact of Animal Rights Activism on Victorian Agriculture ("the Inquiry").

The Animal Defenders Office ("ADO") is a nationally accredited community legal centre that specialises in animal law. The ADO provides pro bono advice and representation services, produces information to raise community awareness about animal protection issues, and works to advance animal interests through law reform.

The ADO is a member of the National Association of Community Legal Centres Inc.¹

Our submissions, based on the Terms of Reference for the Inquiry, are set out below.

a. the type and prevalence of unauthorised activity on Victorian farms and related industries, and the application of existing legislation

The ADO submits that there are sufficient existing protections available to farmers, landowners and agricultural and associated industries in Victoria. These include the offences of trespass, burglary, theft and damage to property.² Severe penalties apply.³ Furthermore, it is noted that The Hon Jaclyn Symes, Victorian Minister for Agriculture, is reported as stating that 'Over the past 12 months, there have been no reports of violence or damage to property, from animal activists'.⁴

¹ Further information about the ADO can be found at www.ado.org.au

² *Summary Offences Act 1966* (Vic) section 9 and *Crimes Act 1958* (Vic) sections 76, 74, 197

³ The offences under the *Crimes Act 1958* in footnote 2 include imprisonment for up to 10 years

⁴ Andrew Miller, 'Agriculture Minister seeks animal activist inquiry changes', *Stock & Land*, 7 May 2019, see website stockandland.com.au

In addition, agricultural and associated industries are protected from unauthorised filming or surveillance without consent under the *Surveillance Devices Act 1999* (Vic) (“the SD Act”). The SD Act makes it an offence to install, use and maintain a listening device or optical surveillance device, except in very limited circumstances, or to publish or communicate material obtained in contravention of the SD Act.⁵ Strict penalties apply, including a possible sentence of imprisonment. Unlike similar legislation in South Australia, there is no defence in Victoria for the use of a surveillance device in pursuit of the ‘public interest’,⁶ an issue which will be discussed further below.

Overall, the ADO submits that farmers, landowners and other agricultural and associated industries are already afforded comprehensive protections under a range of state-based legislation. Arguably, the best protection for farms and other animal agricultural and associated industries against unauthorised activity is complete transparency and visibility.

b. the workplace health and safety and biosecurity risks, and potential impacts of animal activist activity on Victorian farms, to Victoria’s economy and international reputation

The ADO submits that the greater vulnerability for biosecurity risks arises from the activities of animal enterprises themselves and not the actions of animal activists. By way of example, swine flu outbreaks in NSW and Queensland were reported as being transmitted by human workers at both sites.⁷ The economic impact of these types of outbreaks is arguably far greater than the putative impact of animal activists, given the extensive operations and number of workers involved in animal enterprises across Victoria.

The ADO submits that the mistreatment of animals on Victorian farms, and especially the unconscionable conditions of animals kept in intensive confinement on Victorian farms, are far greater risks to Victoria’s local and international reputation, and therefore its economy, than ‘animal activist activity’.

c. animal activists’ compliance with the Livestock Disease Control Act 1994, Livestock Management Act 2010, and the Prevention of Cruelty to Animals Act 1986

Statutes relating to livestock management and disease control

The ADO is unaware of any reported instances of non-compliance by animal activists with the *Livestock Disease Control Act 1994* (Vic) or the *Livestock Management Act 2010* (Vic), or how animal activists have not met the objectives and/or purposes of these Acts. The question of activists’ compliance with these Acts therefore appears to be a non-issue. Moreover, these statutes appear to apply to industry participants ie persons working in, and related to, animal

⁵ Refer sections 6, 7 and 11

⁶ Section 6 of the *Surveillance Devices Act 2016* (SA)

⁷ Jonathon Dart, ‘Piggery shut due to swine flu outbreak’, *Sydney Morning Herald*, 1 August 2009 and Jessica Marszalek, ‘Tests confirm swine flu at Qld piggery’, *The Age*, 26 August 2009

enterprises and related activities.⁸ The ADO submits that it would therefore be more fruitful to focus on industry's compliance with these two Acts rather than compliance by animal activists.

Anti-cruelty laws

The ADO is unaware of any instances of animal activists being convicted of animal cruelty towards farm animals in Victoria. We submit that any intentional animal cruelty by genuine animal activists is inconceivable given their fundamental ethical interest in protecting the welfare and wellbeing of animals.

By contrast, there are several documented instances of industry participants committing and being convicted of animal cruelty, even during the consultation period for this Inquiry. In July 2019 it was reported that a cattle producer from Mooroopna North in Victoria was convicted of animal cruelty charges in the Shepparton's Magistrates Court for failing to care for his cattle.⁹ And on the day submissions for this Inquiry close, reports are emerging of animal cruelty at an alleged illegal abattoir near Melbourne.¹⁰

Moreover, monitoring enforcement action under the *Prevention of Cruelty to Animals Act 1986* (Vic) ("POCTAA") in relation to animal agricultural enterprises is notoriously low. RSPCA Victoria's data on 'inspectorate prosecution outcomes' for 2019 reveal no prosecutions involving farmed food animals.¹¹

The last recorded statistics by RSPCA Australia on cruelty prosecution by type of animal is in 2011-12.¹² Livestock made up just 9% of the prosecutions by animal type. This compares to 70% of prosecutions being in relation to dogs (58%) and cats (12%).

Given the astronomically high numbers of animals and farm businesses involved in animal agriculture in Victoria,¹³ and the extremely poor record of inspection and enforcement activity under POCTAA in relation to animal enterprises,¹⁴ the ADO submits that industry compliance

⁸ For example, the application of the relevant offence in the *Livestock Management Act 2010* (Vic) is limited to 'a person who engages in a regulated livestock management activity' (section 50).

Similarly, the objectives of the *Livestock Disease Control Act 1994* (Vic) include prevention, monitoring and control of livestock diseases and risks of transmission to humans but the offences relate primarily to travel and sale of diseased livestock and non-compliance with disinfection or quarantine notices (sections 12, 112 and 114)

⁹ <https://www.beefcentral.com/news/vic-producer-pleads-guilty-to-animal-cruelty-charges/>

¹⁰ <https://www.abc.net.au/news/2019-08-02/video-footage-reveals-alleged-cruelty-at-illegal-slaughterhouse/11375854>; see also <https://www.sheepcentral.com/cruel-treatment-of-sheep-in-victorian-abattoir-condemned/> (22/8/2018)

¹¹ <https://www.rspcavic.org/services/inspectorate/prosecutions/inspectorate-prosecution-outcomes>

¹² <https://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA%20Australia%20National%20Statistics%202011-2012.pdf>

¹³ Agriculture Victoria states that 'In total there are 22.1 million animals in the industry spread over 28,892 farm businesses': <http://agriculture.vic.gov.au/agriculture/livestock>

¹⁴ In 2011-12 there were only 19 'routine inspections' of 'animal enterprises' in Victoria (op.cit, footnote 12). By 2015-16 (the last report period) there were only 6 such inspections in Victoria:

with POCTAA is of far greater concern than putative non-compliance by animal activists.

d. the civil or criminal liability of individuals and organisations who promote or organise participation in unauthorised animal activism activities

It is not clear what is meant by ‘unauthorised’ animal activism activities. Not all activism activities need to be ‘authorised’. However, for the purposes of this submission we presume term 1(d) relates to the issue of third party promotion of *illegal* activism activities.

Illegal activism is a concern regardless of the type of activism or activist. Moreover, attempts to target particular activists in specific offences can result in bad law. For example, a recent attempt by the Australian Government to criminalise the use of carriage services by animal advocates has resulted in proposed offences that would arguably proscribe lawful exercises of the rights to freedom of expression, political communication and access to information.¹⁵ In this context it is worth noting that animal welfare was accepted as a proper subject of political debate by Justice Kirby in the High Court case of *Australian Broadcasting Corporation v Lenah Game Meats*.¹⁶ Moreover state and federal laws already capture the mischief that the proposed law purports to deter and punish. These include, but are not limited to, laws relating to conspiracy and attempts to commit illegal activities, and the particular offence of using a carriage service to menace, harass or cause offence¹⁷.

Finally, the ADO submits that requiring transparency in animal-use industries would be a more effective way of dealing with any illegal animal activism activities targeting animal agriculture facilities. This is because transparency would negate the purpose of such activities, being to expose the conditions and treatment of the animals.

e. analyse the incidences and responses of other jurisdictions in Australia and internationally

Of particular relevance to this Inquiry is the 2018 Inquiry by the NSW Legislative Council’s Select Committee on Landowner Protection for Unauthorised Filming or Surveillance. The Final Report of the Select Committee (“the Report”)¹⁸ made a number of relevant recommendations, including that the NSW Government:

- encourage animal industries to be proactive in engaging with the community, and collaborate with animal industries to investigate schemes to increase transparency about food production and animal husbandry practices (Recommendation 2); and

<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202015-2016%20.pdf>

¹⁵ See the Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth)

¹⁶ (2001) 208 CLR 199

¹⁷ Section 474.17 of the *Criminal Code Act 1995* (Cth)

¹⁸ Report of the Legislative Council Select Committee on Landowner Protection from Unauthorised Filming or Surveillance, NSW Parliament, October 2018

- review the *Surveillance Devices Act 2007* to consider whether to insert a public interest exemption for unauthorised filming or surveillance (Recommendation 3).

On 20 January 2019 the NSW Government announced its support for all recommendations in the Report.¹⁹

As noted above, there is no ‘public interest’ exemption in Victorian surveillance devices legislation for recording and publishing ‘private activities’ involving cruelty to animals. This distinguishes the Victorian legislation from the equivalent legislation recently introduced in South Australia.²⁰ The ADO submits that the *Surveillance Devices Act 1999* (Vic) should be amended to include such an exemption. Such an amendment would provide proper protection of both the public’s right to be informed about the treatment of animals involved in food production, and animals’ interests in not being mistreated.

f. provide recommendations on how the Victorian Government and industry could improve protections for farmers’ privacy, businesses, and the integrity of our biosecurity system and animal welfare outcomes, whether through law reform or other measures

While the use of animals for food remains legal, animal welfare outcomes could be improved by increasing penalties for animal cruelty offences under the *Prevention of Cruelty to Animals Act 1986* (Vic) (“POCTAA”). Current terms of imprisonment under POCTAA arguably do not provide a sufficient deterrent against mistreatment of livestock and other animals under the control of agricultural enterprises. For example penalties for cruelty and aggravated cruelty offences are imprisonment for 12 months and 2 years, respectively.²¹ These are the equal lowest in Australia, and compare with 7 years in Queensland.²²

The ADO therefore submits that penalties for cruelty are reviewed and brought into line with other large jurisdictions in Australia such as Queensland.

The public’s confidence in how farmed animals are treated could also be greatly increased if enforcement powers of officers authorised under animal welfare laws were strengthened. For example, increased powers of entry to land could be given to authorised officers under POCTAA. The ability to conduct random, unannounced inspections could also be strengthened both through legislative amendment and greater funding of enforcement bodies. As an absolute minimum, CCTV could be installed in animal enterprises and made publicly available.²³

Finally, while we do not accept that farmers’ privacy or businesses require greater protections

¹⁹ Refer letter from The Hon Niall Blair MLC, Minister for Primary Industries, dated 20 January 2019, to the Clerk of the Parliaments and Clerk of the Legislative Council, NSW

²⁰ Section 6 of the *Surveillance Devices Act 2016* (SA)

²¹ Sections 9 and 10

²² *Animal Care and Protection Act 2001* (QLD) s 18(1). See <https://www.ado.org.au/penalties-for-animal-cruelty-and-ne>

²³ See for example the Prevention of Cruelty to Animals Amendment (Stock Animals) Bill 2015 that was introduced to the NSW Legislative Council by The Hon Mark Pearson MLC

than for any other sector in our community, we submit that the single most effective way that the Victorian Government and industry could protect against any perceived threat to animal agriculture would be to increase the transparency and visibility of animal agricultural businesses in that State.

This is not a radical suggestion. We note the Final Report of the NSW Legislative Council's Select Committee on Landowner Protection for Unauthorised Filming or Surveillance stated that 'greater transparency around animal welfare practices may go some way to addressing the motivation behind unauthorised filming and surveillance'.²⁴

The ADO therefore submits that Victoria needs more open doors to its farms, and more 'instant' forms of broadcasting activities in animal enterprises, rather than devising new ways to shut out the light, and therefore the eyes of the public, from these enterprises.

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Animal Defenders Office

2 August 2019

²⁴ Page 18 of the Parliamentary Select Committee Report (above footnote 18)