

## SUBMISSION to the Economy and Infrastructure Committee.

This Submission is made by Marilyn Nuske, Animal Rights Lawyer.

1. **Animal Cruelty Laws and Offences the Sentencing Advisory Council report “Animal Cruelty Offences in Victoria February 2019**
2. **Codes of Conduct – Farmed Animals and lack of mandatory care**
3. **Whistleblowers and Animal Activists**
4. **The Inquiry and Terms of Reference**
5. **The Future with Recommendations.**

### Animal Cruelty Laws and Offences

Relatively few Australian studies have been published on the sentencing of animal cruelty offences. Available research does, however, reveal that the most common sentencing outcome for animal cruelty offences tends to be a moderate fine, usually of no more than \$1,000.<sup>1</sup>

In 2019 the Sentencing Advisory Council prepared a report, “Animal Cruelty Offences in Victoria – Sentencing Advisory Council February 2019”

Between 2011 to 2017 (Department of Economic Development, Jobs, Transport and Resources) DEDJTR and DELWP, the bodies responsible for investigating and prosecuting livestock-related and wildlife-related animal cruelty, received 5,383, substantiated complaints charges laid DEDJTR and DELWP 3,173, but only 776 charges were sentenced. The most common animal cruelty complaints received by DEDJTR and DELWP were neglect-related offending, including failing to provide food, drink or shelter (1,714) and failing to provide treatment (1,313).<sup>2</sup>

It is suggested in the report that the cohort of 102 older male animal cruelty offenders might be primarily constituted by older farmers struggling to adequately care for their livestock.<sup>3</sup>

The primary cruelty offences in Victoria are in sections 9(1) and 10(1) of the Prevention of Cruelty to Animals Act, (POCTA Act.) Section 9(1) provides an extensive list of distinct behaviours that constitute cruelty. Section 10(1) prohibits aggravated cruelty, which involves a person engaging in one of the behaviours outlined in section 9(1) in a way that results in the serious disablement or death of an animal.

Section 6 (1) (a) specifically excludes, inter alia, “animals to be slaughtered”, and farm animals where there is an exception “*to the extent that it is necessary to rely upon a **Code of Practice***” and

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<sup>1</sup> Animal Cruelty Offences in Victoria – Sentencing Advisory Council February 2019 “ACOV”.

<sup>2</sup> ACOV

<sup>3</sup> ACOV

animals that fall victim to the application of toxic poisons pursuant to the Catchment and Land Protection Act from the POCTA Act.

### **Codes of Practice**

Codes of Practice are made under either the POCTA Act or Domestic Animals Act (Vic) 1994 (DAA) For the purpose of this Submission I shall refer to those Codes of Practice that relate to farm animals, for example, cattle, sheep, goats and pigs.

On review of any of the Codes of Practice it is clear there are no mandatory requirements for any of the basic needs of farm animals, the wording “should” appears throughout, not “must” which is a requirement mandating for the provision of appropriate care ranging from adequate feed, shelter, the checking of animals daily. All of these should be mandatory requirements to ensure that animals are not exposed to neglect or cruelty. At this time, it is discretionary upon a farmer to undertake any of these activities or to a standard that is chosen by a farmer. In other words there is no mandatory requirement for adequate care on any level, and is at a farmer’s discretion to which standard of care he or she provides and has led to charges being laid and prosecuted. Regrettably, it is evidence that, in the absence of adequate control or provision for routine investigation of farming properties it is likely there are many thousands of acts of animal cruelty and neglect that are simply not being exposed and/or arrested or prosecuted.

*The following cases contain a high volume of animal cruelty charges that may be indicative of this category of offenders, based on the offence types involved in each case:*

1. *In 2015, a 62 year-old man was sentenced for 53 animal cruelty offences, 37 of which were aggravated cruelty, 15 were failing to provide treatment and one was improperly loading, crowding or confining. He was sentenced to an aggregate fine of \$8,000.*
2. *In 2008, a 50 year-old man was sentenced for 43 animal cruelty offences, including five charges of failing to provide food, drink or treatment to an animal, 20 charges of causing or endangering pain or suffering and 18 charges of aggravated cruelty.*

But there are many other similar instances of cruelty of this nature that go undetected, the cruelty happens “behind closed doors”, on farms that are neither “policed”, inspected on a regular basis or followed up, and farmers, particularly those who fail any standards of proper care or treatment, go undetected and/or acknowledge in any way their behaviour amounts to cruelty.

Millions of animals in Australia suffer from cruel conditions on farms each year whether because of lack of proper medical treatment, cruel handling, lack of anaesthesia for medical procedures, lack of shelter for example sheep during lambing.

It has been estimated 15 million lambs die in Australia a year within 48 hours of birth; equal to one-third of the 42 million breeding ewes in Australia all losing a lamb every year.<sup>4</sup> This is largely because farmers practice winter lambing in order to produce the highest number of lambs at the lowest cost.

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<sup>4</sup> The Australian September 3, 2012 End to the silence about 15 million dead lambs

In most cases, sheep and their babies are not provided sufficient shelter from the wind, rain and frost, or protection from predators, resulting in massive mortality during the harsh winter months. For farmers, the millions of deaths are an “acceptable consequence” of reduced feed costs and heavier spring lambs.<sup>5</sup>

The writer believes and is joined by a vast majority of Australians these practices are simply cruel and also leave millions of animals that die in Australia each year due to poor animal husbandry, the effects of cruel and neglectful treatment by farmers.

*The law defines the acceptable treatment of animals according to their use rather than their capacity to suffer. Many practices which would qualify as 'cruelty' under the law if performed on a dog are instead 'legal' if done to a pig or chicken raised for food. From which we can reach the conclusion that farmed animals fail to meet the same standard of care as do other sentient creatures, the Law is failing farmed animals miserably While each state and territory has animal cruelty legislation in place, significant exemptions exist for the treatment of farmed animals. For example, in NSW it is an offence to fail to provide an animal with adequate exercise except if that animal is a cow, sheep, goat, pig or chicken<sup>6</sup>.*

*In 2014, the ACT became the first Australian state or territory to legislate against certain factory farming practices, by prohibiting the use of cages for commercial egg production, the debeaking of chickens and the use of sow stalls and farrowing crates for pigs. Tasmania has also made moves to ban construction of new battery cage facilities.<sup>7</sup>*

*According to scientific research, farmed animals are sentient, emotionally complex, intelligent and have rich experiences of the world. However, the writer believes the sentience of animals fails to be acknowledged in the current Victorian Legislation. For example: On factory farms, animals experience numerous impacts on their welfare, including: permanent confinement in cages or in sheds in such large numbers that they struggle to find space to move or reach their food, mutilation of sensitive areas without pain relief – the tails, teeth and genitalia of piglets and the beaks of chicks are clipped, as well as the horns, tails, and testicles of calves – because it is practical, cheap and, alarmingly, lawful to do so.<sup>8</sup>*

These activities take place out of the eyes of the public and as a consequence of the activities of “whistleblowers” have only historically been revealed to the public in video format and photographs with some of the horrendous treatment of farmed animals that actually takes place.

A recent 2019 report commissioned by the federal Department of Agriculture – Australia’s Shifting Mindset on Farm Animal Welfare – revealed the majority of Australians care about animals. The report found that 95 percent of respondents viewed farmed animal welfare with concern, and 91 percent want reform.<sup>9</sup>

In 2016, a Productivity Commission report suggested the current process for setting standards for farm animal welfare does not adequately value the benefits of animal welfare to the community.– It suggested the process for setting standards would be improved through the creation of a statutory

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<sup>5</sup> [www.alv.org.au](http://www.alv.org.au) Winter Lambs

<sup>6</sup> [Voiceless.org.au](http://Voiceless.org.au)

<sup>7</sup> [Voiceless.org.au](http://Voiceless.org.au)

<sup>8</sup> [Voiceless.org.au](http://Voiceless.org.au)

<sup>9</sup> <http://www.agriculture.gov.au/SiteCollectionDocuments/animal/farm-animal-welfare.pdf>

agency responsible for developing national farm animal welfare standards using rigorous science and evidence of community values for farm animal welfare.<sup>10</sup>

Australia is failing farmed animals that are being exposed to cruelty and are dying in millions each year due to poor animal husbandry.

### **Whistleblowers/Animal Activists**

Because there is no independent body responsible for the wellbeing of farmed animals that wellbeing has relied upon public conscience certain government agencies and animal activists to try to alleviate the pain and suffering of those animals that are being mistreated, where there has been no prosecution by the Departments, and/or where the mistreatment has gone undetected.

Without whistleblowers the public would not have known about the depths of cruelty to which animals are exposed during live export. Without whistleblowers the public would not be aware of many issues that relate to farmed animals but includes the issue of caged and factory farmed hens, the debeaking of young birds, the atrocities that take place in abattoirs and live animal export. The pain and suffering to which pigs are exposed on farms.

### **The Economy and Infrastructure Committee Inquiry**

This present parliamentary inquiry considers a number of matters that focus on activities of animal activists or whistleblowers, the implication being those people are behaving in an unauthorised way and may by some means harm the activities of farmers, farmed animals and be a biosecurity risk on farms.

The terms of reference focus on the activists not being invited on to farming properties, that they have trespassed in their attempts to intervene to observe what has been described as “cruel farming activities”.

It is important to note, there are already laws relating to Trespass, and any person is open to take action against Trespassers where the necessary elements exist. Accordingly, the writer is bemused by the Victorian Government’s terms of reference which infers the Government ought somehow play a role in an occupier’s rights. Generally speaking, trespass to land is not a criminal offence. Any damage done by a trespasser while trespassing may amount to the offence of criminal damage. Civil trespass is actionable in the court system and it is already open to farmers if they believe they have been exposed to Trespass to take action themselves.

The writer as a Lawyer does not support any person breaking the law, however, Victorian Greens Senator Janet Rice recently said : *“Civil disobedience is sometimes necessary to expose cruel and illegal practices,” “We know people have been appalled about what is going on with live sheep exports, and the cruelty of some poultry farm operations. “These practices have only come to light because people have been forced to break the law to collect evidence.”*<sup>11</sup>

As to Australia’s reputation it has a reputation for its cruel treatment of animals in live export, it is common knowledge, and it shall only be the disclosure and redress of any cruel treatment of Australia’s farmed animals that will save Australia’s poor reputation in the international arena already tarnished by the abominable activities in live animal export.

<sup>10</sup> <https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture-overview.pdf>

<sup>11</sup> The Weekly Times July 25, 2019 “ANIMAL activists breaking the law is “sometimes necessary”

As to any reference to biosecurity concerns, Livestock Disease Control Act 1994, Livestock Management Act 2010, and the Prevention of Cruelty to Animals Act 1986 the focus of whistleblowers is the wellbeing of farmed animals, the lack of awareness of animal cruelty that is perpetrated on farms and takes place behind closed doors, accordingly, it is unlikely to have been any breaches of these Legislations. Again, the writer is bemused by this reference.

### **The Future**

It is the writer's submission the current plan to punish whistleblowers for raising the flag on cruel treatment of farmed animals is unhelpful, unnecessary and does not redress the core problem, namely, the mis-treatment of farmed animals, and animal welfare concerns that can only be genuinely addressed if the treatment of farmed animals is opened to observation and discussion.

Legislation must be reviewed so that Codes of Practice particularly those that related to farmed animals provide for a mandatory level of treatment and care that should see animals treated in a humane way, with penalties fitting the crime clearly enunciated in the Codes and prosecution enabled by officers. Mandatory sentencing removes the current discretion.

CCT Cameras must be installed in abattoirs so that cruel treatment is able to be dealt with transparently.

It is the writer's submission the Victorian Government must establish an Independent body to oversee the welfare of farmed Animals as farmed animals are unrepresented and fall victim to those who exploit them in what has clearly been a cruel and often times inhumane way.

The Victorian Government should appoint suitably qualified and educated officers to regularly inspect farms, oversee farming activities on an equally regular basis and ensure that the clear guidelines are complied with and where not complied with, are prosecuted.

The Codes must clearly set out the types of shelters that must be provided for farmed animals failing which prosecutions ought be made with appropriate fines and sentencing.

Rather than silencing the voice of the whistleblowers, the Victorian Government can only with a clear conscience, address the issue of cruelty to farmed animals, alleviate the problem by establishing an independent body to oversee the welfare of farmed animals in the State of Victoria.

Marilyn Nuske