

LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

Inquiry into the impact of animal rights activism on Victorian agriculture

Melbourne—Wednesday, 4 September 2019

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WITNESSES

Nichola Donovan, and

Moira Rayner.

The CHAIR: Good afternoon. Thank you, everyone. Welcome to the public hearing of the Economy and Infrastructure Committee. All evidence taken at this hearing is protected by parliamentary privilege; therefore you are protected against any action from what you say here today, but if you go outside and repeat the same thing, those comments may not be protected by this privilege. Before we start, can you please state your name for the Hansard record and allow us some time to ask you questions. Welcome.

Ms DONOVAN: Thank you. My name is Nichola Donovan.

Ms RAYNER: I am Moira Rayner.

Ms DONOVAN: I have an introductory statement which I will read from. I prepared written copies of this, but I will try to be a bit more brief than the written version.

I am a lawyer who has been in continuous practice for 21 years, and for the last 14 years I have been a proud participant in the animal rights movement. I give evidence today in my personal capacity and not in connection with any of the organisations with whom I associate or volunteer.

In response to term of reference 1, I submit that if ‘unauthorised activity’ may be considered synonymous with unlawful acts then I believe such activity is likely to be prevalent on Victorian farms, particularly on intensive farms as well as in related industries such as animal transportation, saleyards and slaughterhouses. In all of these places animals are treated as property under Victorian law, with no greater rights than the chairs on which we now sit. I believe everyone in this room knows that this is wrong, just as the slaveholders of many millennia knew that the humans that they legally owned were not really their property. I believe the time has come to tell the truth and to recognise and value the sentience of all animals, human or otherwise.

The *Prevention of Cruelty to Animals Act* or the POCTAA, as I will refer to it, states in section 6 that it does not apply to any act or practice with respect to the farming, transport, sale or killing of any farm animal which is carried out in accordance with the code of practice. Hence the cruelty provisions in the POCTAA apply only to the farming, transport, sale or killing of any farm animal when those activities do not comply with the code of practice or with the *Meat Industry Act* or another Commonwealth act. Despite the low standards—in my opinion—of animal care required under the Victorian codes of practice in contrast with world’s best practice or even Australia’s best practice, I consider it likely that even these basic standards are not fully met on many Victorian farms. My anecdotal experience and reports that I have received from the public who have been seeking assistance or referral from Lawyers for Animals, for whom I volunteer, tend to support this theory. With negligible enforcement, low farmgate prices for animal products and the critical profit motive all militating against compliance, the motivation for producers to cut corners on welfare, especially on factory farms, is simply too great, I believe. In almost all cases of unauthorised activity the perpetrators are those who farm, transport, sell or slaughter the farm animals for profit, rather than animal activists. I believe the amount of unauthorised activity undertaken by animal activists to be negligible and the cause of minimal suffering, in comparison with the harm inflicted by animal industry.

Over the years, I have become aware of several instances of farming, transport, sale and killing which did not comply with the relevant codes of practice and caused significant suffering to animals. As far as I know, each of these instances was reported to the relevant inspectors under the POCTAA, occasionally by me. Since the investigation of these reports is confidential, I do not know their outcomes, but none appears to have resulted in prosecution for I have never been called to give evidence.

Public access to statistics and information relating to the reporting and prosecution of farm animal cruelty is, in my experience, very limited. According to the Sentencing Advisory Council’s 2019 report on animal cruelty sentencing, each year between 2011 and 2017 in Victoria on average over 11 000 animal cruelty complaints were made, but that includes companion animals. Between 2008 and 2017 the agencies that prosecuted the

highest proportion of animal cruelty cases were the RSPCA Victoria, with 53 per cent, and Victoria Police, with 31 per cent. That leaves just 16 per cent of animal cruelty to DELWP, who are supposed to enforce animal cruelty laws for wild animals, and the department of agriculture combined. The department of agriculture's website states that there are 22.1 million animals in the industry, spread over 28 892 farm businesses, and that over the last five and a half years the department prosecuted 71 cases of cruelty. That is an average of 13 cases per year or one case per 1.7 million farm animals over a given year. This extremely low incidence of prosecution suggests enforcement of the animal cruelty laws is almost non-existent, with animal industry effectively self-regulating.

I suspect that the farm animal cruelty of which I have become aware is likely to be a drop in the ocean of the farm animal cruelty that is not brought to my attention.

The CHAIR: Can I draw your attention, Nichola, before you keep going, that we need time for questions. We have got a copy of this, and if you want to go through it just briefly, I understand—and we have your submission.

Ms DONOVAN: I might just move on to term of reference 5, then, because I consider that perhaps the most important one on which I can make a comment today.

The CHAIR: All right.

Ms DONOVAN: In term of reference 5 the Committee is asked to consider and:

... 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 ...

I would submit that it is a principle of democratic justice that in order to uphold the freedom of expression that is fundamental to democracy laws should be of general application rather than targeted to suppress individuals or groups holding opinions contrary to the majority.

Just as an aside, I certainly read with interest the Honourable Michael Kirby's submission to this Inquiry, and I refer to and adopt all the submissions made by the Honourable Justice Kirby.

One notable exception to the rule that freedom of expression requires laws of general application is when the interests of public safety are best served by overriding it. This freedom of expression is specifically protected by the *Charter of Human Rights and Responsibilities Act*, although the charter also provides that it:

... may be subject to lawful restrictions reasonably necessary—

...

for the protection of national security, public order, public health or public morality.

I specialise in refugee law, where laws of general application also become fundamental in determining whether a person who suffered persecution in a foreign country is entitled to protection in Australia. So I know how critical it is when laws may ostensibly look like they are generalist but are applied specifically to target certain groups whose opinions may not reflect the government of the day or the majority of the population. Nothing in the present circumstances of unauthorised animal activist activities, including the occasional open rescues, hidden surveillance or more recently the November 2018 and April 2019 protests, suggest to me a significant threat to national security, public health or public morality from animal activists. I want to allow time for the questioning of the Committee, so I will not go further. I will leave you to hopefully read the remainder of the submission.

Mr FINN: Thank you both for being here today. I note in your submission in the briefing papers that we have that you use the term 'speciesism', which is the idea that humans have greater moral rights than non-human animals. My understanding is that that is a term that has probably been made popular, if I can use that term, by Professor Peter Singer. Have you been greatly influenced by Professor Singer's writings on the rights of animals?

Ms DONOVAN: I could not say that the writings have had that much influence, because although I have very much intended to read many of his books—not just about animals but about how we should live—I have not found the time to do so. However, I was lucky to be one of his students in my second year of philosophy studies at Monash many years ago, and yes, let us just say the penny dropped when I was sitting in one of his lectures and he asked, ‘Why do we love our dogs so much but eat pigs, if they have similar personality traits, intelligence and feel pain in a similar way?’. That was a penny-dropping moment. So I guess that was influential, but I certainly have many, many moral views which do not reflect those of Professor Singer.

Mr FINN: I am just wondering if you subscribe to his view that some humans are of less value than animals—for example, a newborn baby with disability is of less value than an animal.

Ms DONOVAN: No, that is certainly one of the views that I encountered during my bioethics course where we differed.

Mr FINN: You differed? I am pleased to hear that. I am very pleased to hear that.

Ms DONOVAN: Yes. I believe I even challenged him in my writings on that. So, no, I do not agree with that assessment by Professor Singer.

Ms TERPSTRA: Thanks for your submission and for coming and giving evidence to the hearing today. Do you think there are policies that Government or industry could put in place to better enable community members to address their animal welfare concerns, and what sort of policies or initiatives could assist in better educating the community about practices that are being used in the industry and how they should change, for example?

Ms DONOVAN: That is a very good question and a very broad question. My fundamental problem, I suppose you would say, with the way in which the system currently works is that even if you find out about cruelty, even if you have the power to make a report to the relevant authorities, even if the relevant authorities take that report in mind and have every intention of trying to reduce animal cruelty—I am talking specifically about RSPCA Victoria—there simply is not the capacity within the current system to allow enforcement of the law. I have looked into the RSPCA. I have looked across the world at world’s best practice in relation to the enforcement of animal cruelty laws, and I have seen that the RSPCA is suffering in exactly the same way as the ASPCA in America does or the SPCAs in Canada and various other countries where they are charitable organisations. They are not part of government. They do not have the imprimatur or the resources of police. There are so many reasons. They do not have indemnity. In fact, as you may be aware, RSPCA Victoria is in debt because it was sued over a case of possible wrongful removal of cows from a property. I say ‘possible’ because I do not know the full facts of the case. I was not there and I did not see the evidence. They have had to take out a bank loan, I understand, to pay that back. In that situation, they probably thereafter handed over all responsibility for the protection of farm animals to the department of agriculture. I have made reports to the department of agriculture about farm animals in dire situations. I have never heard back. I cannot hear back—they tell me that it is confidential and they cannot tell me about their inquiries. I just know that they were not prosecuted.

So there are two problems here. There is a conflict of interest, which is at least perceived but probably apparent, reflected in the statistics, where the department of agriculture is also responsible for enforcing animal cruelty laws when clearly they represent the interests of farming and agribusiness, who also have a profit motive. There is also a problem with a charity undertaking what is inherently and quite obviously a government role in enforcing the law. The RSPCA says that it receives only about a third of its inspectorate funding, the funding it needs to undertake the, I am sorry, but to be honest, very minimal enforcement of the law, and again I know this from reporting over and over instances of profound cruelty—dogs thrown off balconies with their backs broken that never get followed up.

I mean, it is very frustrating to animal activists to find that when you can prove a case, when you want some justice, when the laws are actually in place you still cannot do anything. So I think there would need to be significant fundamental change to improve this. I think we can gradually do it. We have seen New York and now Ontario adopting a model of handing over inspectorate duties from the SPCAs to a dedicated animal policing unit. We have seen other states even—and certainly other countries—adopting independent offices of

animal welfare to separate animal welfare from the department of agriculture. I think they would be two fundamentals. I see some organisations recommending more transparency—so cameras in slaughterhouses, for example. Certainly when I see the footage from open rescues I am extremely distressed, and it seems to keep happening. It seems to be possibly not every open rescue that comes out with this footage. It is not just the open rescues but also the surveillance and the people who may in fact start working in the industry but then turn against it and start to film their colleagues. When I see that I think, ‘This is madness, and we have to stamp it out’, and maybe cameras are a way, but who is going to look at all the footage? I do not know.

Mr LIMBRICK: Thank you, Ms Donovan, for your submission. I loved your submission. I thought it was very great how you laid out very clearly your philosophy here. I love the Bentham quotes.

Ms DONOVAN: Thank you.

Mr LIMBRICK: You talked about the existing five freedoms of animals and also argued in your submission for state intervention to enforce that those freedoms exist for animals. One cannot but help to draw the conclusion from this that you are advocating—if we are going to uphold those freedoms—that state intervention would ultimately look like prohibiting animal agriculture, effectively. Would I be correct in coming to that conclusion?

Ms DONOVAN: In the very long term I guess it would, but if you would also note that the five freedoms have been adopted by the RSPCA, and the RSPCA provides labelling of many animal products. So there is interpretation, and this is—as you are probably aware—how law functions and how law has functioned for many years. You come up with a principle, but the law is then interpreted by the courts according to current norms and morals and standards of reasonableness. So I do not think it is going to be a radical change by any means. But in the very long term—probably way beyond my lifetime—yes, I do think it is quite inevitable that humans will have to move away from killing animals, because humans need to move away from violence.

Mr LIMBRICK: Okay. So I would like to explore that a bit further—the idea of violence. One of the costs of utilitarianism is that in many cases liberty must be sacrificed to enforce that utilitarianism. In the case of this, where we are talking about using state force, there will be people that will resist this because they will see using animals as intrinsic to their culture or to their religion, and they will need to be suppressed by the state. So I reject the idea that this is not violence. It is violence through the state as a proxy. How do you reconcile the idea that eventually, if we are going to have the state enforce this type of thing, those groups in our society who do not want to go down this path will need to be suppressed? How do you reconcile that?

Ms DONOVAN: I do not think that the abolition movement advocated violence by the state against the slaveholders. I do not think that there need be any violence by the state to enforce the law, unless you consider: is law a response to violence?

Mr LIMBRICK: Well, arresting someone that does not comply with it is a form of violence.

Ms DONOVAN: It is a form of self-defence, perhaps.

Mr LIMBRICK: We can argue whether or not that is violence, but okay, should they be suppressed through—

For the sake of argument let us say that is not violence. How do we go about reconciling this with these groups that do not want to—

Ms DONOVAN: I do not think we are going to need to in our lifetimes, member. I do not think we are going to get to that point in our lifetimes. I think we are going to gradually and slowly educate an entire society—and let’s face it, it has already started and you cannot stop it. We have seen the rise of veganism not just in Australia alone but across the world. It is already beginning. People are becoming more aware. Why it is happening now, I am not entirely certain.

Mr LIMBRICK: But you did mention in your submission the idea of one group believing that they have a superior value—those were the words that you used—and therefore if we have this group that has a superior value and also state-backed enforcement against this other group, which does not want to go along with that

value, then we are clearly having a difference of values and one group feeling that they have a superior value that should be enforced by the state. Isn't that what we are talking about?

Ms DONOVAN: Well, I guess that is what we are doing when we are enforcing the racial discrimination Act and we are enforcing the anti-discrimination Act and we are enforcing child protection and we are enforcing disability rights. I just do not see any real difference there. If there is—

Mr LIMBRICK: But humans have a right to cultural expression, though, of course, if it is part of their culture. That is what I am concerned about.

Ms DONOVAN: They do, but do they have the right to racial vilification? Do they have the right to—

Mr LIMBRICK: No, but they do have the right to consume animal products.

The CHAIR: All right. We have to move on. Andy?

Mr MEDDICK: Thank you for your testimony this afternoon. You and others have been critical of the investigation and enforcement of animal welfare, and you cite the strong historical lack of prosecutions in this area. Given that the public expect that animal welfare standards in animal agriculture should be high—and around I think 80 or 90 per cent of Australians believed that in recent surveys—do you believe that this makes an extremely strong case for an independent office of animal protection to uphold laws and prosecute, coupled with bringing in from the cold, as it were, animal practices and agriculture to POCTAA, as it stands at the moment or its replacement as it might stand coming up?

Ms DONOVAN: What a great question. I guess the fundamental answer is yes. I think it makes a very strong and compelling argument for there to be a division, as I mentioned earlier, between the laws relating to agriculture and agricultural practice and the laws relating to cruelty and enforcement of the two. So an independent office of animal welfare, or whatever name you may give it, yes, is definitely one of the five key points that I would refer to as needing to be changed gradually over time. That one I think really could be changed tomorrow without any fundamental and significant loss.

Mr MEDDICK: Do you believe that these things would then significantly reduce the need, as many animal activists see it, to participate in farm invasion, for instance?

Ms DONOVAN: I think it would restore faith on a level we have never before seen, and we need a gesture like that to restore any faith, given how broken many of us feel the system has become over time. It is degenerating: the number of animal cruelty reports are increasing, the number of prosecutions are not.

You mentioned also that the independent office of animal welfare could oversee the prosecutions, and in fact when I refer to the transfer of inspectorate powers from the RSPCA charity to a dedicated unit of, say, Victoria Police, I would prefer that that unit of Victoria Police be under the indirect authority, if you like, of an independent animal welfare office than under the department of agriculture or under another department. But the two do not need to be linked at this point. They have not been linked in other jurisdictions where this has happened, but yes, it would make sense. It makes logical sense, and it would be the better system.

How to stop the rise in this kind of unlawful activism, which I, too, oppose? I think, yes, it will require some fundamental shift—well, that is maybe putting it too strongly, because I think we are on the path to it. I have seen the Victorian Government contemplating including a reference to 'sentience' in the new prevention of cruelty act, as many other jurisdictions have done, and I think that is a good step.

As I said, everyone in this room knows that animals are not property. We just have to work out what they are. Not everyone in this room will have my opinion, obviously, and we will have to work out a compromise of what that might be. But yes, I do believe the independent office and the replacement of charitable law enforcement with State law enforcement of animal cruelty would make a big difference.

Mrs McARTHUR: Thank you, Nichola. I am not sure what Moira was going to tell us, but we did not hear from you.

Ms DONOVAN: Moira is my support person today.

Mrs McARTHUR: Okay, great. All right, thank you. Nichola, you have said that you think there should be stronger penalties and so on for people in farming practices and so on, but do you think it is okay for animal activists to break the law that exists? If we have a law for cruelty against animals and we have a law for trespass, isn't it appropriate that both those laws be upheld by the judicial system?

Ms DONOVAN: Yes, and I believe they are in relation to animal activists. I do not believe they are in relation to animal cruelty in general.

Mrs McARTHUR: So then you would accept that \$1 fines are perfectly agreeable when criminal acts are proven?

Ms DONOVAN: I was surprised by that, member. However, not knowing the full facts of the case, not knowing the financial situation of the person who had to pay, I think it was \$251—

Mrs McARTHUR: None of which has been paid.

Ms DONOVAN: Is that right? Okay. Not knowing the circumstances—also knowing that the Gippy Goat farm that was involved, I understand, use goats primarily to produce cheese, and they also use their baby goats as petting farm animals at the Gippy Goat Cafe—

Mr FINN: They did, anyway.

Ms DONOVAN: Sorry, yes, they did before they closed down, but also before those animals were slaughtered. So I know that there would be immense frustration on the part of the vegan activist. I know that she may have meant well, but I do not approve of her actions, no.

Mrs McARTHUR: Okay. Do you accept that if you change farming practices, then the market will also buy into it? For instance, there is a higher premium now paid for wool produced from non-mulesed animals. So are you in the camp that would have us do away with the animal production industry, or do you accept that there are farming practices that are acceptable so animal production can continue?

Ms DONOVAN: I am an incrementalist rather than a prohibitionist, but I do honour the notion of veganism in the long term. I do not prescribe it; I believe people need to come to veganism through education and through, in the last instances, through law—but through education, primarily. So I guess I am of the view that in the long term, as I have already pointed out, animal agriculture—

Mrs McARTHUR: Should be ended?

Ms DONOVAN: It will end, I believe. It is inevitable. We have seen, from the Enlightenment period—actually, earlier than the Enlightenment period—people commenting. We have never seen any refutation of those comments about sentient beings, just like we have not been—and why I disagree with the idea of—treating disabled humans as any less or less sentient than the rest of us. I do not see that there is any logical argument for doing this, and I think it will end. But do I think it will end immediately? I am an incrementalist, so I do believe that there is benefit in reducing the suffering of animals. Whether it be through ending mulesing or ending factory farming, it is all on a path.

Mrs McARTHUR: Well, what about the rats and mice and birds in plant-based production?

The CHAIR: Quick answer?

Ms DONOVAN: I just—

The CHAIR: No answer?

Ms DONOVAN: No, I just think that it is misleading. It is a misleading argument.

The CHAIR: All right. Thank you. In a few weeks you will receive a copy of the transcript for your proofreading. On behalf of the Committee, I would like to thank you for your time and your contribution.

Witnesses withdrew.