

Submission
No 304

**INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM
BILL 2019**

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Partially
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MY BACKGROUND AND INTRODUCTION

Thank you for the opportunity of making a submission.

For twenty years I lived on a dairy and beef farm in northern Victoria. I used to accompany our local vet on his rounds, because I wanted to study veterinary science. Ours was not the intensive-farming enterprises which we have nowadays and which are much larger with animals confined in battery cages and feedlots. Our animals had names and were more able to exhibit their natural behaviours compared with now.

I saw all sorts of farming practices first-hand. I saw the distress of calves having their horn buds destroyed with hot iron cautery. I saw the de-horning of older cattle. I saw the castration of young animals by burdizzo. (A device with a clamp designed to break the blood vessels leading into the testicles.) All these procedures took place without pain relief. I saw five-day old bobby calves put on trucks to the market and then the abattoir. They were so young their legs could hardly hold them up. I heard cows bellowing for days after their new-born calves were taken. One Saturday I saw sheep in an abattoir holding pen in 40-degree heat without shade as they awaited their slaughter the following Monday.

These images have remained with me. Nowadays pain relief is readily available for castration, mulesing etc, but it is often not used because of its cost to farmers – the pain ‘cost’ to the animal is ignored. Moreover, there are major problems, corruption even, with the way agriculture is regulated and the standards are framed, which allow these cruel practices to continue. Few codes of practice are mandatory - and there is no way of knowing what happens on individual farms or behind the gates of intensive-farming enterprises.

Our farm has experienced trespass. We were once trespassed by carloads of duck-shooters wielding guns and wanting to shoot on our wetlands, as the previous owner had allowed. My father told them that was not to be on his farm. Some nights he had to confront shooters on the farm perimeter when they were spotlighting illegally and shooting across paddocks, putting stock at risk. We have had thieving from petrol bowsers and people who think it is ok to come through fences on mushrooming expeditions. There is a difference --- animal activists are NEVER interested in hurting animals or farmers.

At the Canberra hearings the farm industry representatives said they had no statistical evidence of any increase in trespass by animal activists.

Indeed, Senator Carr observed that farmers are also activists – there is the ‘Lock the Gate’ alliance and farmers’ strident opposition to fracking, coal seam gas and water pipelines, as well as trespass on mining company land. Senator Carr also recalled how activists in Victoria, while monitoring abattoirs, have exposed illegal activities such as drug smuggling in carcasses and meat substitution, the latter being a far greater risk to our billion dollar export markets than any activist activity.

For the past 10 years I have advocated for farm animals. And I know plenty of people - from rural and regional areas and the city - who share my views. They want to know where their food comes from - and they want reassurance that farm animals are well treated. Unfortunately, I cannot give

them that reassurance. When I talk to people about 'routine farming practices' and so-called 'wastage', they register disbelief. Few know about the 'wastage' of more than 700 000 male calves annually in the dairy industry, because they can't produce milk, and about the millions of male chicks in the poultry industry thrown alive into macerators or gassed because they can't lay eggs - all this death despite the availability of cutting-edge technology that could prevent their birth in the first place. See links: [h](#)

Scientists and animal rights campaigners in Germany have come up with an alternative to the mass-slaughter of the 45 million male chicks born into the country's egg industry each year. A company called Seleggt has developed technology that will determine the sex of each fertilised egg before the chick inside develops — enabling the removal of all male-identified eggs from the hatchery and leaving only the female eggs to hatch. Seleggt aims to provide this technology free to hatcheries in Germany by 2020. 'Chick shredding' could soon be a thing of the past in Germany — which could make it the first country in the world to end the cruel practice. See the link:

If Australian agriculture believes it has world-best practice, it should be adopting modern farming practices like this.

WHY AUSTRALIANS AND ACTIVISTS CARE ABOUT FARM ANIMALS AND ARE TAKING ACTION

Those who advocate for farm animals are ordinary members of the Australian community who seek truth and transparency in agriculture. They want those sentient creatures to have a voice. Farm animals who die to provide us with food are living, breathing, intelligent beings who – I can attest from personal experience – feel happiness, pain and fear just like we do.

I agree that farmers have a right to farm. But we are a free country and Australians have a right to protest when they see injustice. And there is plenty of injustice in farming today, especially associated with intensive farming. So, this is the reason young activists are impatient – it is the lack of transparency, the secrecy, and the inadequacy of the existing codes and standards and the failure to enforce them, such as they are.

FARMERS NEED A SOCIAL LICENCE. The industry should achieve this through transparency. It should not be seen to hide behind tougher laws and higher penalties. If the perfectly adequate trespass laws already in place were properly enforced, the activists would not need to be the policeman for the animals. They would not need to expose the horrors that they invariably find.

Talking about the Victorian government's planned mandating of pain relief for mulesing, the Victorian Farmers Federation Livestock Group chair said the use of pain relief was important in protecting farmers' **social licence** to farm. He said:

"We don't have a God-given right to be farmers anymore," he said. "We are very subject to public perception of what we do and we must be very open and transparent about what happens on our farms."

This sort of positive attitude by industry is the best way to promote animal welfare and help alleviate the outrage of activists who are frustrated with the all-too-many system failures

FARM WELFARE STANDARDS NEED TO IMPROVE URGENTLY

The federal Department of Agriculture website states:

State and territory governments are responsible for animal production and welfare laws and their enforcement. The states and territories set and enforce animal welfare standards through administration of state legislation for animal welfare or the prevention of animal cruelty.

I argue that the best way to prevent/deter trespass on farms is to vastly improve the farm animal welfare standards with effective monitoring, compliance and penalties. **This would leave activists with no motive to trespass.** Incidents of unauthorised activity on farms are miniscule in the scheme of things, so the current trespass law are more than adequate, whereas the process of setting standards for farm animal welfare is in need of urgent review.

A more useful line of inquiry for this committee would be: 'WHY is farm trespass taking place? The simple answer is the lack of transparency in agricultural industries leading to lack of trust in the community

Interestingly, a 2017 CSIRO study on 'Public concerns about dairy-cow welfare: how should the industry respond?' concludes:

Animal agriculture is coming under greater public scrutiny. Hiding practices, for example, using ag-gag legislation, is unlikely to help and may contribute to a loss in public trust

So, trust and transparency and ag-gag laws do not go together. Two major reports shed light on why activism has increased, and I shall refer to each of them in detail.

FIRST MAJOR REPORT - PRODUCTIVITY COMMISSION REPORT 2016

The first major report to which I refer has already done the groundwork. Its findings and recommendations can be found in its 'Regulation of Australian Agriculture, Productivity Commission Inquiry report No 79, 15 November 2016'. (copy above) I commend to committee members 'Chapter 5 Regulation of farm welfare' beginning at page 199. In my opinion if the Commission's recommendations on transparency, community input and the inclusion of compliance and enforcement measures in regulations had been adopted, activism would have reduced. I highlight below some relevant passages from the report:

• Conflict of interest, bias and collusion in standard setting

Some submitters to the report expressed concern about a conflict of interest in the arrangements for farm animal welfare regulation in Australia. The report found (Page 224) that at all levels of government, the regulation and governance of animal protection has been delegated to government departments that possess a real or perceived conflict of interest as they are also responsible for ensuring the profitability of the agricultural industry. This raises concern that animal welfare laws are not being appropriately enforced.

The report refers to submitters' concerns about impartiality, transparency and accountability in the standards development process because of disproportionate industry influence. Animals Australia is quoted as wanting :

... to remove the bias and inherent conflicts of interest that pervade animal welfare standard-setting and enforcement regimes which are dominated by industry capture and government agriculture department oversight.

And RSPCA Australia commented:

Even when a set of standards has been finalised by stakeholder reference committees and endorsed for implementation by state and territory agriculture ministers, political lobbying by industry groups can nevertheless result in last minute changes ...

At page 226 (Box 5.9 Time-off feed for bobby calves) the report refers to a case where research conclusions appear to be unfounded based on the evidence. That standard was implemented in 2011 and it is now legal for 5-day-old calves to go without milk for up to 30 hours between leaving the farm and their slaughter. I know from my farming experience that new-born calves should not go 30 hours without milk, let alone cope with being pushed around in markets and then trucked long distances to be unloaded and penned at abattoirs. A worker told me the worst aspect is having the starving calves desperately sucking his fingers before slaughter. The standards that legalise this practice were allegedly 'science-based'. Often the dairy and other industries pay for 'research' when establishing standards, which raises issues of bias. This abuse of the standards process is all grist for the mill of activists.

The community saw further examples of industry interference in standard-setting when NSW was leading the national review of poultry standards in 2017. See links below, which are damning of the whole process, with one governance expert calling it collusion and corruption:

Despite the community's overwhelming opposition to cage eggs and their banning or phasing out of them in Europe and other countries, the Australian standards continue to legalise battery cages. Obviously, Australia does not have world-best practice.

• **Adopting the Productivity Commission recommendations on regulation, with rigorous monitoring and enforcement, will reduce activism**

Legislation is needed to monitor and enforce farm regulations, because at present the system is reliant on complaints. To paraphrase the report's findings (page 241) it was observed by the Law Society of South Australia that any complaints are likely to be limited for intensive farming facilities, because animals and operations are usually in closed buildings or in remote areas. This makes it difficult for members of the public to observe animal farming practices. It was also found that in Victoria for example there were no current routine compliance monitoring systems related to animal welfare in place (other than for abattoirs), and only in Tasmania were 'unannounced' inspections the norm.

RSPCA Australia, a charity, (page 242) said regulations are not appropriately enforced mainly through lack of funding. Its website states:

In addition to investigating cruelty, RSPCA Inspectors spend a significant portion of their time preparing animal cruelty cases and attending court. Whilst the RSPCA has an excellent prosecution record, the financial penalty of losing a case can be extremely high. Court cases and potential appeals can be extremely costly and difficult to anticipate. Fines imposed by the court are allocated to the State Government and whilst costs can be awarded to the RSPCA these are often difficult to recover from the offender.

The Law Society of South Australia and others told the commission that as a result, **the detection of contraventions of animal welfare law has, in large part, been left to individuals and animal welfare groups. Had it not been for the work of these parties, illegal activities resulting in the abuse of animals would likely remain undetected. Circumstances where individuals and charities are required to take on the role of investigating and detecting contraventions indicate that there is a significant deficiency in the enforcement of the law.**

The Australian Veterinary Association told the Productivity Commission:

A section of the public has lost its confidence in the power of government and nongovernment agencies to adequately enforce existing legal protections for animals. Some animal welfare advocates have felt compelled to take matters into their own hands.

A Google search throws up many examples of penalties for farmers and activists. In the case below, the farmer was depriving hens of food and water to induce moulting to extend his hens' egg-laying life, **a practice banned in Europe**. This perpetrator said the practice was '**common in the industry**'. He received a five-year ban from owning animals; I believe he should never own animals again. Activists are rightly outraged when weak penalties are imposed. **And remember: this cruelty was uncovered by activists, not through routine monitoring by government authorities.**

I would like the committee therefore to inquire into farmers' compliance with the law, instead of focusing only on activists. If 'rogue' farmers get away with cruelty and/or receive light penalties that allow them to continue farming, it tars all farmers with the same brush in the eyes of activists.

- **Community Expectations, Transparency and Trust**

Page 227 of the Productivity Report states:

There is significant scope for greater rigour in the process of developing national farm animal welfare standards and guidelines. And importantly, for science and (soundly elicited) community values to play a more prominent role

The Commission (p 219) said the main way that community values will be achieved in the development of standards is through public consultation. The Australian Veterinary Association pointed to concerns that community groups are underrepresented in standard-setting and suggested that additional expertise from veterinarians and animal welfare scientists may lead to the development of more defensible animal welfare standards.

At page 22 the report states:

Standards and guidelines should be more evidence-based, drawing on the existing body of evidence on animal welfare science and research on community views of animal welfare... Surveys of

community values for animal welfare should be statistically robust and transparent ... It is critical that the community has confidence in the system used to regulate ...

The community was so outraged at the failure of live export regulations following the expose of the Awassi Express journeys where thousands of sheep suffered and died in 2017 that then Minister Littleproud asked former Integrity Commissioner, Philip Moss, to review the regulatory capability and culture of his own department. Recommendation 30 of Mr Moss was:

That the department establish appropriate forums to consult with stakeholders and assess community expectations.

The ABC reported on 6 November 2018 that following whistle-blowers' reports, Minister Littleproud had asked a former head of the Australian Crime Commission, Mr John Lawler, to investigate his department. Mr Littleproud is reported as having said:

There are seven (staff) that have made allegations that they wished to bring forward evidence of wrongdoing by export companies but were advised by their senior officers not to raise them because there could be repercussions...

Despite this investigation, nothing has been reported since. Were the senior officers Mr Littleproud mentioned dealt with appropriately? The live export regulations are to this day unfinished and the community is left with **little trust** in government regulations generally.

BIOSECURITY

• International Reputation

The second-reading speech states that there is a 'world-class biosecurity regime in NSW'.

That is not the view of some British importers. The British government has just released the results of a 14-day consultation on a Free Trade agreement with Australia, post-Brexit. The article states that the consultation uncovered fears that this would lead to a spate of salmonella in Britain – with submissions linking Australia's 'lower standards of animal welfare' to 'high rates of food poisoning' in Australia. (See P. 31 in link below)

The rates of food poisoning (notably salmonella) in Australia were also highlighted in a number of NGO responses. Here, the respondents linked high rates of food poisoning with lower standards of animal welfare

At the recent Canberra hearings on the Criminal Code Amendment Bill, neither the RSPCA nor the Australian Veterinary Association said they knew any cases where animal activists had caused a disease outbreak.

Intensive farms are hotbeds for disease and can be unhealthy for the workers and for the public who eat their products. Victorian Farmers Federation egg group president and an owner of the Bridgewater Poultry farm - where workers were filmed inflicting terrible cruelty on hens - sums up 'succinctly' in the link below exactly what is wrong with workplaces like his. The article states in part:

Bridgewater Poultry also faced controversy back in March after having to recall a number of products due to a potential salmonella outbreak.

According to The Age, both Coles and Woolworths stopped stocking eggs from the farm in March.

One of the Bridgewater Poultry owners is Victorian Farmers Federation Egg Group president Tony Nesci.

He told the publication he was “horrified” by the video, adding the contractors were hired following the disease outbreak.

“Trying to get people to go into a quarantined farm is like trying to find gold nuggets in pig sh*t,” he said.

“We in the egg industry are at the mercy of only a handful for people who are prepared to do this job.”

Mr Nesci says only a ‘handful’ of people want to slaughter hens. I will not go into the psychological reasons why that may be.

Farmers have a responsibility to vet carefully the type of people they hire to look after and/or slaughter hens - ‘doing the jobs no-one else wants to do’. Obviously, the perpetrators in this instance are totally desensitised to the sentience and suffering of the animals in their care. The animals are treated like ‘things’. Even agriculture minister, Bridget McKenzie, said ‘It is clear this footage includes some disturbing behaviour that cannot be condoned’ (‘Probe into gross animal cruelty’, Age 22.6.19.)

Footage of egregious cruelty inflicted on these animals in intensive farms and in abattoirs is far too common to be isolated incidents. If not for the activist footage, the cruelty would continue unchecked. The next link shows yet another atrocity, which the regulator PrimeSafe had failed to identify despite regular audits.

Consideration must also be given to the mental trauma of those workers who cannot stand it any longer, and despite the dangers of losing their jobs, which are often hard to get in rural areas where these farms operate, become whistle-blowers and expose footage of cruelty.

The government and industry often talk about biosecurity issues. What could be more harmful to biosecurity than the picture below which was captured in a battery cage farm?

Does this farm look bioscure?



They called it 'state of the art' — but these are the lives led by 'forgotten' hens trapped inside this factory farm in NSW. Here, dozens of abandoned hens were found 'living' among enormous towers of rotting faeces — surviving on scraps, beetles and eggs. (Website of Animals Australia, August 21, 2014)

A Humane Society of the United States public health report entitled 'Human Health Implications of Intensive Poultry Production and Avian Influenza' concludes:

Genetic selection for productivity and the stressful, overcrowded, and unhygienic confinement of animals in industrial poultry production systems facilitate immune suppression in birds already bred with weakened immunity, offering viruses like avian influenza ample opportunities for spread, amplification, and mutation. Placing genetically un-diverse birds into these kinds of unsanitary environments with inadequate ventilation and sunlight exposure is believed to provide a ripe "breeding ground" for the emergence and spread of such diseases as virulent avian influenza — diseases with human public health implications. (my emphasis)

Intensive farming establishments are not only bad for workers' physical and mental health, they also have implications for public health. Judging by the events reported at Bridgewater Poultry farm and its difficulty finding workers, I think the brave activists who enter such places risk their own health to expose the truth. As described in the link below, activists, whose sole motive is animal welfare, are mindful of biosecurity risks and are careful to disinfect their footwear and take precautions before entering.

The Productivity Commission report mentions biosecurity at page 331:

Trespass on farms is unlawful and can lead to biosecurity risks. Reviewing the monitoring and enforcement of animal welfare standards and improving transparency around farms' operations (with

the use of industry-led initiatives such as web cams), should reduce the motivation for trespass. (My emphasis)

At page 342 the report states that **stricter laws and penalties to deter trespass may simply be treating the symptom rather than the cause** and offers a solution:

... addressing activists' underlying motivation to trespass appears to be a better solution. Several participants agreed that this was the better approach. (My emphasis)

The RSPCA said:

We believe this [activism] is partly associated with **a loss of confidence in the government's role in monitoring and upholding animal welfare standards** and therefore agree with the Commission's observation [in its draft report] that 'one way of reducing it is to remove the motivation for it' by increasing 'confidence within the community that livestock welfare outcomes are being achieved. (My emphasis)

World Animal Protection argued that the best strategy to discourage trespass is improved transparency and trust. Industry initiatives to improve transparency through installing CCTV and web cams offer a good response to this need. Compulsory use of independently monitored CCTV should be considered for stages of production where animal welfare is particularly at risk. The PC report recommended at page 343 that:

... state and territory governments review their monitoring and enforcement of farm animal welfare standards, and suggests ways to encourage industry-led initiatives, including quality assurance systems, that can increase transparency around farms' operations.

Implementing these initiatives can avoid potential regulatory costs which can arise from adjusting trespass laws and have the potential to improve the community's understanding of livestock industries' welfare practices. (My emphasis)

The calls to address 'trespass' or 'biosecurity' concerns is all about spin and fear-mongering and keeping consumers in the dark about cruel practices. There is plenty of scope for the NSW government to lead the way in transparency and trust.

SECOND MAJOR REPORT - Futureye - Commodity or Sentient Being?

In 2018 the federal government commissioned a report entitled 'Commodity or Sentient Being: Australia's Shifting Mindset on Farm Animal Welfare' - Futureye'. The report shows the Productivity Commission was right to emphasise community input into regulation-making. A copy can be obtained via the link below.

A reading of both reports makes it evident that inflicting higher penalties or jail terms for trespass will be counterproductive. The community is seeking greater transparency and, **as the Futureye report found, the community is increasingly siding with activists and whistle-blowers.**

After seeing footage of cruelty in factory farming and live export and then seeing industry groups and the government defending and **even subsidising these industries**, causes outrage in the community and causes people to question what happens on farms generally.

Rogue industries like live export are tarnishing the community's view of ALL farming. People wonder why farmers continue to send their animals overseas when they know they will suffer egregious cruelty. Even countries like Mongolia are banning live exports, while here in Australia

taxpayers have just contributed \$2.2 million to trial dehumidifiers for live export ships. This is despite the fact that animals that survive the voyage will still suffer heat stress on disembarking in the Middle East summer. That money would be better spent on phasing out the industry. No wonder activism is on the increase. Source: See links below:

The links below, including those from farmers' perspectives, discuss what the Futureye report tells us about Australian community attitudes toward farm animal welfare and activists.

The 'Farm Weekly' link above states:

... there's distrust of government agencies charged with regulating farm animal welfare, and the livestock industry is too secretive about on-farm activities.

These factors are driving growing outrage about farm animal welfare.

That sounds like the report's authors surveyed activist groups and echoed their views.

But the report isn't referring to the views of activists but the results of national surveys and focus groups of everyday Australians.

And, in a wake-up call for producers, the report found a growing section of the public sympathises with activists. [My emphasis]

Indeed, 76 per cent of Australians say whistleblowing by activists about farm animal welfare should be encouraged, with 20pc undecided and only 4pc disagreeing with the whistle-blowing.

Australians are taking a keener interest than ever before on what happens to animals on farms.[My emphasis]

The 'Farm Weekly' link further states on trespass and ag-gag laws:

... With farm animal welfare, Australia is at the "challenging stage" when activism intensifies.

This has developed rapidly over the past eight years with key incidents driving growing public outrage.

These include shocking revelations over the way Australian cattle were slaughtered in Indonesia in 2011, highly publicised documentaries confronting people with on farm animal treatment and slaughter, whistle-blowing exposes of live sheep suffering onboard export ships and attempts to stop undercover investigations via proposals for 'ag-gag' laws in some States.

Like demands for stronger trespass laws, the public sees 'ag-gag' as trying to shut them out.

This issue is bigger than a few activists invading farms in WA.

The increase in animal-based activism is part of a global trend and shows no sign of abating. [My emphasis]

The Futureye report found that 95% of the community view farm animal welfare to be a concern and 91% want reform to address those concerns. The concerns are spread evenly across states and territories, and between capital cities, regional towns and rural areas. **Importantly, the report provides considerable insight into why activism has increased and increasing concern about how farm animals are treated.**

I quote below some snippets from the Futureye report – **the federal government commissioned report** - which go to issues of trust and transparency and support for activists. Futureye found that secrecy, ‘ag-gag’ laws, jail terms and higher penalties for trespass will further inflame community outrage and adversely affect farmers:

There is a gap between societal expectations and the regulatory reality.

Animals are seen as sentient beings that have capabilities, rights, and freedoms.

There is a high alignment with activist views on the treatment of animals.

The public is demanding stricter regulation and effective solutions.

There is a high level of concern about the treatment of farm animals and current regulation.

The majority of the public is concerned about how farm animals are treated.

The public’s distrust of the industry and government, and the **perceived lack of transparency are driving outrage on farm animal welfare.**

... as the younger generations mature they are likely to become highly involved around issues of animal welfare ... and thus **demand significant reform.**

Public has clear expectation for effective regulation to uphold these systems and expect highly transparent practices, regulation and enforcement.

‘Browsers’ are watching issues develop through news or online media ... watching how ‘highly involved’ and ‘attentive’ stakeholders are treated and often will decide to get further involved if they perceive this treatment as poor or not sufficiently addressing their concerns.

Page 10 ‘Working with animals has changed my perception of them. I see them as sentient... and having a will to live’.

Page 11 Because regulation of farm animals is less strict than for companion animals, **there is higher concern about the treatment of farm animals.** [My emphasis]

This was also mentioned in the Productivity Commission report. We need the same strict regulation for farm animals that we have for companion animals. They are both sentient: they feel the same pain, hunger and discomfort.

On page 18 Futureye recommends what the federal agriculture department should do, **including activist and stakeholder engagement.** On page 24 it describes how animal activism is not a sudden phenomenon and how it has evolved over many years. **It says in 2018 vegetarianism and veganism emerged as the fastest growing lifestyles worldwide.** Page 88 lists the ‘outrage factors’ relating to farm animal welfare among participants in the survey. **Under ‘Solutions’ some participants suggested people pursue lab grown meat or adopt plant-based diets.**

THE BIG CHANGE COMING - PLANT-BASED FOOD AND LAB MEAT

The Futureye report does not elaborate on the trend for plant-based and lab meat alternatives which is gathering momentum and which will change farming as we know it.

The link above describes one of many new companies in the USA, Memphis Meats, whose investors include billionaires like Bill Gates and Richard Branson and even huge traditional meat-producing multinationals like Cargills and Tyson Foods. A recent report in June by consultants AT Kearney (See link below) predicts that by 2040, cultured or lab meat will make up 35 per cent of meat consumed worldwide and plant-based alternatives to meat will compose 25 per cent.

Almost weekly the media reports a new start-up company with scientists and innovators in various countries producing plant-based products and lab meat to feed markets that are clamouring for more. Consumers are becoming increasingly concerned that farming animals for meat and milk is unsustainable for the **environment**, bad for their **health** and bad for the **animals**. Industry and regulators are out of step with community expectations on this trend. These new advances avoid all the welfare problems associated with the production of animals for food.

While governments, some politicians and the farming community talk about tougher penalties for activists, companies like Coles and Safeway and myriad other companies around the world have listened and responded to consumer calls for the phasing out of battery cages and sow stalls and are stocking plant-based products next to the meat aisle. Countless fast food outlets like Subway, McDonalds et al have also responded to consumer demand by using plant-based food.

As I have said – if the government regulated agriculture effectively and met community expectations about animal welfare, the activists would have no motivation to trespass. **The activities of animal advocates to date have brought about major improvements in animal welfare and enabled the community to make informed choices about the products they buy. Because governments have failed to enforce standards, the community is listening to these advocates.**

AG-GAG LAWS WILL NOT WORK

My submission attachment lists additional articles and links on responses of other jurisdictions - state by state in Australia and in the USA. In the EU, especially France and UK, independently monitored CCTV is being implemented in abattoirs to support regulators to audit effectively.

From these articles, it is obvious that wherever so-called ag-gag laws have been enacted, problems have arisen due to community outrage about the loss of free speech. Any bill/act on trespass should make clear that animal abuse is a matter of public interest, and individuals and organisations who publicise evidence of animal abuse should not be criminalised.

Further, individuals and organisations that use materials obtained from surveillance devices that have already been published and are in the public domain should not be prosecuted. Recent exposés into the greyhound racing industry, for example, would not have been possible without the publication of undercover footage by animal protection groups other than the RSPCA. **I am concerned that systemic animal cruelty in animal-use industries will escape detection if these groups cannot gather information and publish.** Instead of targeting the messengers, legislators need to focus on ways to strengthen the monitoring and enforcement of existing laws and farm

animal standards. In the USA, where 10 states have ag-gag legislation, public outcry has caused challenges in higher courts, because the laws are deemed unconstitutional and an affront to free speech. The link below states in part:

24 January 19

The leading case on this subject is the 2001 case ABC v Lenah Game Meats. Activists had placed a hidden camera without permission inside a factory in Tasmania's Lenah Valley. They later retrieved the camera, which contained evidence of cruelty to brush-tail possums being processed for export.

On objection from the meat processors, a lower court granted an injunction, banning the ABC's 7.30 Report from airing it on the show. The ABC appealed to the High Court. The High Court lifted the injunction. It decided that although the footage had been filmed without the owners' permission and involved a trespass, it was more important for the evidence of animal cruelty to be screened. The public interest in witnessing greater transparency into suspect meat processing methods trumped the interests of a private business trying to shield its practices from public scrutiny

The link below contains a treatise by Elizabeth Englezos in the Griffith Journal of Law and Human Dignity, Page 272. It comments on the Lenah case and the implications for ag-gag legislation in Australia and elsewhere.

WHO ARE ANIMAL ACTIVISTS?

It is wrong to lump all animal advocates together. Not all animal advocates are vegans. My family has marched against live export alongside our meat-eating friends and other members of the community – that is the community the Futureeye report talks about. People are driven to march because governments refuse to listen, let alone act. Marchers are trying to direct community attention to the need for better farm animal welfare laws. Sometimes marchers block intersections. I do not recall the taxi-driver protest about Uber that blocked Flinders street suffering the same vilification as the recent animal activist blockade -- both groups were exercising their right to free speech. Ag-gag laws such as those being proposed in various Australian states and federally will offend many Australians who value transparency and free speech. The links below discuss civil disobedience and other pertinent issues.

A quote from the link directly above:

'If animal agriculture is indeed a massive systemic injustice as many have argued, then I submit vegan activists can reasonably claim to be part of a long tradition of morally justifiable civil disobedience'.

CONCLUSION

My submission shows how the NSW government and industry can protect farmers' privacy, businesses and the integrity of our biosecurity system as well as improving animal welfare by encouraging their federal and state government colleagues to take on board the results of the

Futureye report and to implement the recommendations of the Productivity Commission. This would be a good start.

I believe **the existing laws on trespass are adequate; they just need to be enforced**. The best strategy to discourage trespass is to remove the motivation for trespass by having rigorous farming animal standards -- and that they include stringent monitoring and enforcement with strong penalties for breaches. Transparency in agricultural industries will give the community trust and confidence that farm animals are treated humanely, just like their companion animals. Rather than appointing an Agriculture Commissioner, there should be a **national Animal Welfare Commissioner** as recommended by the Productivity Commission.

Its recommendation (No. 5.1) is for a stand-alone statutory organisation to be established to set welfare standards — to be called the Australian Commission for Animal Welfare. The report also recommended that State and Territory governments should review, by the end of 2017, the way in which their farm animal welfare regulations are monitored and enforced, and make necessary changes so that:

- there is separation between agriculture policy matters and farm animal welfare monitoring and enforcement functions
- a transparent process is in place for publicly reporting on monitoring and enforcement activities
- adequate resourcing is available to support an effective discharge of monitoring and enforcement activities ...

Because the above recommendations were not acted on by the federal government, it is not surprising that since 2016 when the report was written, distrust and activism have risen. Fundamental change is needed – not a knee-jerk reaction with higher penalties and prison for activists.

As _____ wrote in the Melbourne Age letters page recently citing revelations of cruelty in egg farms and the treatment of sheep shipped to the Middle East ‘... I have to support the work of animal activists in general, even if I don’t care for some of them in particular’.

I think she speaks for the 95% of the community referred to in the Futureye report.

Jan Kendall

October 2019

ATTACHMENT

Useful additional references concerning developments and experience of Ag-gag legislation in Australia and the USA

Ag-gag issues generally

1 – A treatise by A. S. Whitfort. 'Achieving effective animal protection under the threat of 'Ag-gag' laws' on how Europe has achieved much for animal welfare but that ag-gag laws are being enacted in USA (where laws in Idaho and Utah are being challenged) and in Australia (2018)

https://www.wageningenacademic.com/doi/abs/10.3920/978-90-8686-869-8_52

2 - A treatise by Amanda Whitfort 'Justice and the Vulnerable: extending the duty to prevent serious crimes against children to the treatment of agricultural and research animals'. The Abstract states:

... Legal protection for farm animals has been further eroded by the introduction of so-called 'ag-gag' laws. Historically, the recognition of the special vulnerability of children and animals caused their legal protections to develop in tandem. This article examines the case for extending the duty to prevent serious violent crimes against children in the home, to animals in laboratories, abattoirs and on farms. It concludes that effective protection of animals requires the imposition of a new legislative duty to prevent their unlawful serious harm.

<http://www.austlii.edu.au/au/journals/AdelLawRw/2018/5.pdf>

3 - Will Potter, 'Ag-gag Laws: Corporate Attempts to Keep Consumers in the Dark' (2017) Volume 5, Issue 1, Griffith Journal of Law and Human Dignity. This discusses ag-gag in the USA, the threats to free speech, the fact that ag-gag coalesces animal welfare groups, and finally discusses the public backlash to ag-gag laws, which the pork industry says are not helping its industry. He notes that every time an ag-gag bill is introduced it provides an opportunity to discuss issues the agriculture industry is trying to hide.

<https://griffithlawjournal.org/index.php/gjlhd/article/view/934/856>

4 – J.A. Robbins et al, 'Awareness of ag-gag Laws Erodes Trust in Farmers and Increases Support for Animal Welfare Regulations' (2016) 61 Food Policy 121, 124. Psychological research suggests that ag-gag laws may be counterproductive as reducing information flow often reduces feelings of trust and their study showed ag-gag laws led to increase in support for animal welfare regulations.

https://econpapers.repec.org/article/eeejfpoli/v_3a61_3ay_3a2016_3ai_3ac_3ap_3a121-125.htm

5 - This link refers to pork industry concerns about activists – but acknowledges that introducing ag-laws and tougher penalties will generate negative publicity for the industry.

<https://www.abc.net.au/news/2014-05-25/pork-industry-tougher-penalties-animal-activists-illegal-filming/5474958>

6 - The links below from Voiceless and the Guardian contain some background on ag-gag laws in Australia and internationally.

<https://www.voiceless.org.au/hot-topics/ag-gag>

<https://www.theguardian.com/commentisfree/2014/may/05/ag-gag-laws-the-battle-for-animal-welfare-is-a-battle-over-information>

7 – A 2014 RSPCA submission against ag-gag laws

<https://www.rspca.org.au/media-centre/news/2015/rspca-tells-senate-ag-gag-won%E2%80%99t-protect-australian-animals>

NSW

1 - This link refers to NSW proposals regarding activists and the first Animal Justice Party MP

<https://www.smh.com.au/national/nsw/animal-justice-mp-mark-pearson-wants-to-ban-battery-hens-20150502-1mye7i.html>

2 - Submission of RSPCA to NSW committee on the way that enacting draconian ag-gag laws is not in the public interest and touches on US experience stating: ... 'a coalition of over 70 organisations has been formed in the US to combat the proposals consisting of groups representing civil liberties, the media and free speech, environmental protection, workers' rights, prosecutors, consumers and public health'.

<https://www.parliament.nsw.gov.au/lcdocs/submissions/60992/0011%20RSPCA%20Australia.pdf>

3 - Adjournment speech by Mark Pearson MLC, NSW on ag-gag and the lack of transparency to inform the public

<https://markpearson.org.au/tag/ag-gag/page/2/>

4 - As a result of cruelty at abattoirs, NSW has mandated the appointment of animal welfare officers in all abattoirs. The RSPCA and other welfare bodies say self-regulation does not work and monitored CCTV as in Europe would be a better option. The link below provides useful commentary on developments.

<https://www.smh.com.au/environment/conservation/multiple-deficiencies-uncovered-in-nsw-abattoirs-20120517-1ytn0.html>

<https://www.sydneycriminallawyers.com.au/blog/nsw-government-silences-animal-rights-activists/>

SA

1 – comments on SA legislation and risk to free speech

<https://www.abc.net.au/news/2015-12-03/ag-gag-bill-surveillance-devices-sa-parliament/6994516>

2 - In February 2016 in South Australia the Surveillance Devices Bill passed both houses (See link below). A previous bill in 2014 was defeated following community outcry about animal welfare. In April 2016 the South Australian Greens introduced an amendment bill to protect animal advocates and clarify that animal welfare issues are within the public interest. I understand the amendment was lost. See links:

SA bill - http://classic.austlii.edu.au/au/legis/sa/consol_act/sda2016210/

<https://www.abc.net.au/news/2015-12-03/ag-gag-bill-surveillance-devices-sa-parliament/6994516>

VIC

1 - Wodonga rendering company saying that ag-gag will not work and you need to stop cruelty first

<https://www.bordermail.com.au/story/2358996/forget-ag-gag-laws-animal-cruelty-just-shouldnt-happen-full-stop-abattoir-says/?cs=11>

2 - June 2014 Article about when Napthine Victorian coalition government was thinking about introducing ag-gag laws

<https://newmatilda.com/2014/06/25/know-what-battery-cage-looks-thank-animal-activist/>

Queensland

1 - Qld bill <https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2019-036>

2 – In the link a barrister claims the new act in Qld will not stop farmers being ‘doxed’ – that is, the publishing of private or identifying information somewhere as part of an animal activist campaign.

<https://www.northqueenslandregister.com.au/story/6267861/will-new-anti-farm-trespass-laws-help/?cs=4770>

WA

Link shows RSPCA WA submission on ag gag:

[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/1F7FBF8DDED267E748257E8B001154E0/\\$file/ra.rpa.060.150702.sub.Neale+Blackwood.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/1F7FBF8DDED267E748257E8B001154E0/$file/ra.rpa.060.150702.sub.Neale+Blackwood.pdf)

USA

1 - How public outcry helped to stop the effectiveness of ag-gag laws in USA (Utah)

<https://www.smh.com.au/environment/conservation/australia-risks-copying-us-aggag-laws-to-turn-animal-activists-into-terrorists-20140501-37k8i.html>

2 - This article discusses health and safety issues for staff in feed lots suffering headaches, eye irritation, and nausea as an apparent result of the emissions from the feedlots. The health and environmental concerns have driven down nearby property values ...

‘These feedlots are tough to fight because of so-called “ag-gag” laws in seven [now 10] states, which bar the recording of undercover videos, photographs, or sound recordings at farms. Farms and livestock producers say the laws are aimed at protecting their homes and businesses from intruders, but critics say they have a chilling effect on whistle-blowing or investigative work’.

Two “ag-gag” laws are currently being challenged in federal court in Idaho and Utah, according to USA Today.

- <https://www.businessinsider.com.au/mishka-henners-photos-of-american-feedlots-2014-8>

3 -This link gives history of ag-gag in USA and describes how the laws are controversial being unconstitutional and violating free speech.

<https://www.cnbc.com/2019/06/12/alleged-animal-abuse-at-indiana-farm-puts-ag-gag-laws-in-spotlight.html>

4 – Early days of ag gag laws in US and, similar to Futureye, it was found that over 94% of Americans want farm animals to be free of abuse and cruelty and 71 percent support undercover investigative efforts by animal welfare organizations to expose animal abuse on industrial farms.

https://www.huffpost.com/entry/animal-cruelty_b_2194615

5 - Utah's ag-gag law was declared unconstitutional in July 2017. See link below:

<https://www.npr.org/sections/thetwo-way/2017/07/08/536186914/judge-overturms-utahs-ag-gag-ban-on-undercover-filming-at-farms>

6 - Informative article from 2019 below about what is happening in the US and in Australia with ag-gag etc.

<https://sentientmedia.org/animal-farmers-press-charges-against-activists-cruelty-continues/>

7 - Link below is a RSPCA discussion paper on ag-gag in USA

https://www.rspca.org.au/sites/default/files/website/media-centre/Press-releases/RSPCA_Australia-Ag_gag_laws_in_Australia-Discussion_paper.pdf

8 - Link below has RSPCA comments on issued of trust and Ag Gag - 2019

<https://kb.rspca.org.au/knowledge-base/what-are-ag-gag-laws-and-how-would-they-affect-transparency-and-trust-in-animal-production/>

Other recommended reading:

Garrett M Broad, 'Animal Production, Ag-Gag Laws, and the Social Production of Ignorance: Exploring the Role of Storytelling' (2016)

https://www.academia.edu/9018809/Animal_Production_Ag-gag_Laws_and_the_Social_Production_of_Ignorance_Exploring_the_Role_of_Storytelling