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Greens NSW



Committee Secretary

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Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Re: Criminal Code Amendment (Animal Protection) Bill 2015

Thank you for the opportunity to provide a submission to the Committee on the Criminal Code Amendment (Animal Protection) Bill 2015. We make this submission in our capacities as Greens NSW Animal Welfare Spokesperson and Justice Spokesperson.

The Greens NSW are deeply concerned by the proposed bill and the impact it would have on animal welfare activists as well as consumers' rights to information. This is a bill that will result in the penalties for those exposing instances of animal cruelty being greater than those who commit them.

The Greens NSW principal concern with this bill is that it would criminalise investigations into systemic animal cruelty. Instances of animal cruelty that have been identified and exposed in commercial or industrial settings are rarely 'one-off' cases. By not allowing evidence to be collected over a period of time, animal welfare investigators would not be able to collect the evidence required to establish a pattern of abuse.

For example, in the last few years, Animal Liberation NSW has revealed severe acts of cruelty at the Hawkesbury Valley Meat Processors through secretly recorded footage. In response, the NSW Food Authority conducted a full review of domestic slaughterhouses across our State and the meat processors in question, who eventually elected voluntarily to install surveillance cameras to improve transparency. This outcome would not have been possible without demonstrating a pattern of animal cruelty over time.

Similarly, Committee members would have recently seen an undercover investigation by the ABC TV Program, Four Corners, entitled 'Making a Killing'. The expose showed ongoing animal cruelty in the greyhound racing industry, including 'live baiting'. These revelations have led to the resignation of the entire board as well as the CEO of Greyhound Racing NSW. There are now plans to establish a Special Commission of Inquiry into the industry. This systemic abuse and the resulting investigations would have been criminal if this bill were in effect at the time the abuse was committed.

We have the following specific concerns with the bill:

- Limitations on human rights (in this case, potentially limiting freedom of thought, conscience, and expression and creating penalties of imprisonment which will ultimately deprive people of their liberty) must be aimed at achieving a legitimate objective and also be reasonable, necessary and proportionate. That is not evident in the drafting or justification of this Bill.
- Proposed section s383.5 criminalises an omission rather than a positive act (failing to bring a recording to an authority), which is contrary to the legality principle. Liability for omissions has long existed where a pre-existing duty can be established between two parties – there is no such duty in this case. Such an omission as that criminalised in the proposed offence is not instinctively criminal, and requires knowledge of this particular provision. It will therefore unfairly affect those individuals who are most vulnerable, such as children and people with limited or no literacy. It also criminalises conduct which does not even reach a standard of negligence. It is difficult to see any justification for such an offence at all.
- Proposed section s383.5 rests on a subjective mental element (the person makes the record “because the person believes the activity to be malicious cruelty to animals”) which offends the right to freedom of thought and conscience (see Article 18, ICCPR), and the right to hold opinions without interference and freedom of expression (see Article 19, ICCPR). To criminalise taking recordings if they are not immediately handed over to government authorities gives government a monopoly, removing the ability for individuals to express legitimate political and social views, to document conduct in the public interest, and to retain the newsworthiness of the information. The High Court has given an extremely restrictive definition to the constitutional doctrine of implied freedom of political communication, and so s383.20(1)(a) is unlikely to assist at all in balancing the public interest in this offence provision.
- Proposed section s383.5 is drafted dangerously broadly, especially because it does not require that the activity is actually malicious cruelty to animals. It would criminalise a person who filmed a circus act or a muzzled dog where they intended to seek advice on whether the act was in fact cruel. It is difficult to see how s383.20(1)(b) protects any ability to seek legal advice, when the offence is made out by making a recording and failing to act within 1 business day.
- There is no justification for creating the new offence in s385.5. In our view the current criminal damage provisions in NSW are sufficient to deal with a broad spectrum of criminal damage, and there is no reason to single out this particular industry.
- There is no justification for such severe penalties in the offence in s385.5, which are grossly out of step with criminal damage offences generally (5 years maximum in NSW unless caused by fire or explosives). There is no comparable offence that privileges one class of private victims for a separate category of victim for criminal damage – and the victims

chosen here are not particularly vulnerable. It is difficult to see the policy need for this draconian measure, and courts are likely to face significant public policy conflicts (such as the bedrock principle in sentencing that no one life is more or less worthy than another) when applying it.

- There is no justification for creating the new offence in s385.10. In our view, the current trespass, property damage, intimidation and assault provisions in NSW are sufficient to prohibit the target conduct. For example see NSW Crimes Act 1900, s545B, intimidation or annoyance by violence or otherwise, for which the maximum penalty is 2 years.
- There is no justification for the aggravated form of the offence s385.10 where there is bodily injury or death – in NSW these situations are adequately covered in the assault/murder/manslaughter provisions of the Crimes Act 1900 (NSW).
- In s385.20 (aggravated offences), the test “if the conduct results in death to any individual” is not sufficiently particularised, particularly as the penalty is life imprisonment. It deviates from hundreds of years of jurisprudence on the law of homicide, which require causation, malice, and an intention to cause death or grievous bodily harm: a completely different, and more onerous, test. It is unclear what “results in” means. This provision is drafted dangerously broadly, and offends long standing principles of specificity in criminal law.
- The offence in s385.10 is drafted dangerously broadly, particularly the phrase “engages in conduct involving...”. This is not sufficiently clearly particularised to be able to be complied with, which also offends the principle of legality. This is a vague element and the word “involving” is likely to capture an improperly broad range of activities, which might be only tenuously connected with threats, vandalism, property damage, criminal trespass, harassment, or intimidation. There is no policy justification for such a vague concept to be attached to criminal liability.
- There is no justification for such severe penalties in the offence in s385.10, which are grossly out of step with established criminal offences in NSW and the Commonwealth for harassment, intimidation, trespass, and assaults. In particular, “substantial bodily injury” is not a term defined in the Criminal Code Act (Cth). The term “serious injury” is used, and presumably has had some judicial consideration (in NSW, the terms “actual bodily harm”, “wounding” and “grievous bodily harm” are used).

In conclusion, the Greens consider this bill to be a form of ‘ag gag’ law, a law which seeks to obstruct animal welfare investigations by criminalising and hindering recording of animal cruelty by animal welfare activists. This bill is the latest in a concerted global effort. Such ‘ag gag’ laws have been proposed or introduced in many states in the United States to prevent transparency in factory farming and have also damaged the reputation of the agricultural sector.

The Greens have long advocated for a range of alternative measures to improve animal welfare in the agricultural sector, such as establishing an Office of Animal Welfare as well as mandatory and monitored CCTV cameras in slaughterhouses.

The Government should be in the business of helping to improve animal welfare outcomes by working with industry to introduce enhanced standards, not trying to avoid scrutiny and criminalising those who expose animal mistreatment.

Please do not hesitate to contact our offices for further information.

Kind Regards

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