

Voiceless Animals and Their Activists: Barriers Experienced in Their Attempts to Access Justice

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The Oxford Dictionary defines the word ‘gag’ to mean ‘a piece of cloth put in or over a person’s mouth to prevent them from speaking’.¹ This literal meaning of the word ‘gag’ can be applied to describe the recent proposals from state Parliaments in Australia. In South Australia, the *Surveillance Devices Bill 2014 (SA)* was introduced in early June,² much to the consternation of animal rights groups who fear that they will be ‘gagged’ or rather, prevented from speaking up for animals because under this Bill, it will be illegal to publish footage obtained from factory farms.

Upon closer examination of the *Surveillance Devices Bill*, it becomes apparent that it falls under the category of ‘ag-gag’ laws because certain provisions of this Bill aim to ‘gag’ animal rights advocates by restricting their freedom to expose the morally reprehensible and often horrific nature of agricultural farming practices. Under sections 4 and 5 of the proposed *Surveillance Devices Bill*,³ the installation of audio and visual taping devices is prohibited which makes it a crime for animal rights activists to record what actually goes on in factory farms. However, section 8 of the Bill goes further by stipulating that any material recorded illegally will be prohibited from being used or published.⁴ It can be seen that ‘ag-gag’ laws such as the *Surveillance Devices Bill*, seek to silence animal rights activists because their attempts to expose animal cruelty in the agricultural industry will be criminalised. Consequently, this means that animal rights campaigners will be ‘gagged’ because they are effectively prevented from speaking out for animals. Animal rights

advocates strive to provide a voice for animals who cannot speak for themselves but proposed legislative action from state parliaments will ‘gag’ them and prevent them from being able to do so. South Australia has taken practical steps to implement ‘ag-gag’ laws and other states in Australia may soon follow suit.⁵ This article intends to illustrate how animal rights advocates – and of course, factory farmed animals themselves – will experience a barrier in their attempts to access justice if ‘ag-gag’ laws, punishing people who expose animal cruelty, are passed.

Animals are literally voiceless in the sense that they cannot speak for themselves. This is where animal rights activists come in: they provide a voice for animals and speak up for them by defending their rights. In Australia’s legal system, animals are not given a voice because they are considered property, their status being equivalent to that of inanimate objects and therefore they are given no legal standing.⁶ Under Australian law, animals only have proprietary status and are not regarded as sentient beings which lead some to justify the mistreatment of animals in factory farms.⁷ Without a voice in Australia’s legal system, animals cannot access justice for the harm they experience and this is why animal rights advocates are so important: they provide a voice for animals who cannot speak. It is only through the footage obtained by animal rights activists that the mistreatment of animals comes to light which leads to change. Yet, ‘ag-gag’ laws have hefty penalties assigned to those that expose what happens in factory farms.

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In South Australia’s *Surveillance Devices Bill*, sections 5(1) and 8(1) both stipulate a maximum penalty of \$15 000 or 3 years imprisonment in the case of a natural person who publishes material covertly obtained from factory farms.⁸ It is evident that the work of activists must be clandestine in order to effectively capture the reality of the situation within the slaughterhouses of factory farms. The legislative approach of South Australia could be described as ‘shooting the messenger’ because the issue of animal abuse and mistreatment in factory farming is not actually dealt with. Rather, animal rights activists who expose the nature of factory farming practices are the ones being punished. However, shouldn’t animal cruelty be criminalised instead of whistle blowing? Moreover, prosecuting animal rights campaigners who expose mistreatment is a flawed approach: so fervently committed to animal welfare, activists are unlikely to be deterred by ‘ag-gag’ laws and will likely risk prosecution to continue exposing animal cruelty.

In addition, ‘ag-gag’ laws seem to prioritise the interests of commercial factory farms and as a result, they have been described as ‘corporate-backed’. The recording of animal mistreatment in factory farms is criminalised because ‘ag-gag’ laws seek to keep consumers unaware of how their food is produced because if people knew, there would be a possibility that consumers would boycott products which would lead to a loss in profit. This was illustrated when a member of the non-profit animal

rights organisation Mercy for Animals recorded workers hitting, kicking and sexually abusing the cows whilst working undercover at Bettencourt Dairy in Idaho in the United States. The release of this footage on to the internet resulted in large corporations such as Wendy’s and Burger King Worldwide pledging that they would no longer use products produced by Bettencourt Dairy.⁹ This action also resulted in numerous other companies boycotting to reassure the public that they did not condone the physical and sexual abuse of cows. As a result, Bettencourt Dairy suffered a significant loss in profits.¹⁰ Following this, half a dozen states within the United States responded by adopting ‘ag-gag’ laws in order to safeguard the profits of factory farms.¹¹ Moreover, criminalising



whistle blowing in the interests of enabling factory farmers to retain their profits erodes transparency.

‘Ag-gag’ laws stifle the voices of animal rights campaigners and so their capacity to engage in public debate is restricted. Michael Kirby, Former Justice of the High Court, espoused this idea in his judgment:

Parliamentary democracies, such as Australia, operate effectively when they are stimulated by debate promoted by community groups. To be successful, such debate often requires media attention. Improvements in the condition of circus animals, in the transport of live sheep for export and in the condition of battery hens followed such community debate ... vegetarian groups are entitled, in our representative democracy, to promote their causes, enlisting media coverage.¹²

Kirby’s commentary substantiates the notion that these ‘ag-gag’ laws pose a threat to democracy because freedom of speech is quashed. Moreover, Kirby raises the important issue of how positive changes flow from the whistleblowing of animal rights activists. Hence, it is counterintuitive that ‘ag-gag’ laws prevent people from exposing animal mistreatment in factory farms because

such exposure would probably lead to constructive and progressive change in the way that animals are treated.

However, Federal Agriculture Minister Barnaby Joyce, alongside NSW Primary Industries Minister Katrina Hodgkinson, both maintain that these proposed laws seek to actually protect the welfare of livestock rather than ensuring the silence of animal rights activists. It has been argued that these laws safeguard the welfare of animals by preventing trespass from animal rights campaigners because chickens are easily scared by strangers and may pile up into a corner, crushing other chickens to death.¹³ However, this statement is unlikely to hold much weight in reality as research suggests chickens are often contained in extremely cramped conditions where there is no space and rather than be crushed to death, they are more likely to suffocate.¹⁴ Attempts to justify 'ag-gag' laws by claiming that they will ensure the protection of farmed animals can be described as sophistry: the reasoning seems legitimate and in the interests of the animal's welfare, but ultimately after careful research, it can be found that this reasoning is indeed erroneous. Proposed 'ag-gag' laws operate under the guise of safeguarding the welfare of animals, however it appears instead that these laws effectively criminalise the exposure of animal mistreatment and cruelty.

CONCLUSION

If such 'ag-gag' laws are implemented in South Australia, access to justice will be denied. Not only are animal rights activists denied justice because their ability to speak up is limited but animals themselves are also denied justice, the voice of those who traditionally protected animal rights will be 'gagged'. Therefore, it is imperative that the 'ag-gag' laws be repealed so that animal rights campaigners have the freedom, without fear of prosecution, to reveal and publicise the injustices faced by factory-farmed animals, in order to protect their access to justice.



REFERENCES

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1. Oxford Dictionaries, Oxford University Press <<http://www.oxforddictionaries.com/definition/english/gag>>.
2. *Surveillance Devices Bill 2014 (SA)* ("Surveillance Devices Bill").
3. *Ibid* ss 4, 5.
4. *Ibid* s 8.
5. Jeremy Story Carter, 'Farmers Push for 'Ag-Gag' Laws', ABC Rural (online), 18 June 2014 <<http://www.abc.net.au/news/2014-06-18/farmer-support-for-ag-gag-laws/5532122>>; Nicole Hasham, 'Animal Cruelty Activists Targeted by Tough New Biosecurity Measures', *Sydney Morning Herald* (online), 15 June 2014 <<http://www.smh.com.au/environment/animals/animal-cruelty-activists-targeted-by-tough-new-biosecurity-measures-20140615-zs8jt.html#ixzz39mUDzXMU>>.
6. LexisNexis, *Halsbury's Laws of Australia* (at 2 June 2014) 20 Animals, '1 Property in Animals' [20]-[50]; *Saltoon v Lake* [1978] 1 NSWLR 52.
7. Elizabeth Ellis, 'Our Relationship With Animals' (2010) 74 *Hot Topics* 1, 4.
8. *Surveillance Devices Bill 2014 (SA)* ss 5(1), 8(1).
9. The Associated Press, 'Idaho Workers Charged with Animal Cruelty at Bettencourt Dairies' Dry Creek Dairy', *New York Daily News* (online), 11 October 2012 <<http://www.nydailynews.com/news/national/watch-animal-cruelty-filmed-idaho-dairy-article-1.1180094#WQ63F7r6k3Ui4Dcl.97>>.
10. *Ibid*.
11. Will Potter, 'Australia Risks Copying US 'Ag-Gag' Laws to Turn Animal Activists into Terrorists', *Sydney Morning Herald* (online), 1 May 2014 <<http://www.smh.com.au/environment/animals/australia-risks-copying-us-aggag-laws-to-turn-animal-activists-into-terrorists-20140501-37k8i.html>>.
12. *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, 218.
13. Jeremy Story Carter, 'Farmers Push for 'Ag-Gag' Laws', ABC Rural (online), 18 June 2014 <<http://www.abc.net.au/news/2014-06-18/farmer-support-for-ag-gag-laws/5532122>>.
14. Neville G Gregory, *Animal Welfare & Meat Production* (CAB International, 2007).