

‘Ag-gag’ laws in Australia?

Introduction

A rigorous debate has recently taken place in various state legislatures throughout the United States (US) in response to the introduction of legislation designed to curb the rise in animal activist monitoring and investigative activities within the agricultural sector. Since 2011, over 20 state bills have been proposed containing at least one or more of the following provisions:

1. A prohibition on taking photographs or video footage on or in an agricultural facility or property without the permission of the proprietor;
2. A prohibition on publishing or otherwise distributing such photographs or video footage;
3. A prohibition on seeking employment with an agricultural business under false pretences or without disclosing ties to animal rights organisations; and
4. A requirement that any documentary evidence of animal mistreatment is reported to relevant authorities within a 24 to 48 hour timeframe.

The American media has labelled these legislative proposals “Ag-gag” laws, as they are perceived to be an attempt by livestock industries to stifle free speech and public debate on animal welfare issues associated with livestock production.¹

The recent surge of interest in enacting such legislation corresponds with a sharp increase in the use of direct monitoring and investigative activities by animal activists.² Animal protection organisations such as the Humane Society of the United States, PETA, Mercy for Animals, and Compassion Over Killing have all adopted such strategies as a key means of pursuing their objectives. Prominent investigations by these organisations have led to felony cruelty charges, the forced closure of various livestock operations, the largest meat recall in US history, and national media coverage of documented cruelty.³

Similar trends in animal activist activities have been occurring in Australia. Most notably, investigations into Australia’s live export trade have led to national media coverage, trade suspensions,⁴ multiple parliamentary inquiries,⁵ and the introduction of new regulatory requirements.⁶ Additionally, several high profile investigations into the treatment of animals in Australian processing and production facilities have resulted in the filing of criminal charges,⁷ the forced closure of abattoirs,⁸ and enforcement action by the Australian Competition and Consumer Commission.⁹

Some of the key reasons given by animal activists for increasing their investigations include the perceived clandestine nature of many livestock production practices, particularly in relation to intensive systems of production, and a lack of confidence in government compliance monitoring and inspection functions.¹⁰ The rising prevalence and demonstrated effectiveness of their investigations has now led a number of politicians and livestock industry groups to call for the introduction of similar US-styled Ag-gag laws in Australia.¹¹ But is this a desirable course of action for Australia’s livestock industries to take? How will such proposals be received by the Australian public and media? How will they influence the public’s perception of livestock industries? And will such laws be effective in achieving their desired aims?

This discussion paper has been developed to consider these questions in light of the policy discussion taking place that such laws be introduced in Australia. The paper surveys the US experience in debating these issues over the last three years before considering the potential effectiveness of Ag-gag laws. Upon considering these issues, the RSPCA has formed the belief that Ag-gag laws will be counterproductive as they will not stop activists from attempting to expose

animal cruelty and they will damage the reputation of livestock industries by giving the impression that such industries have something to hide. The RSPCA believes the best approach is for Australian livestock industries to focus on promoting transparency in their production practices so as to generate greater consumer trust and to invest further in improving animal welfare standards in the required areas.

The US experience

The surge in Ag-gag bills across the US has been met with vigorous opposition, not only from the animal protection lobby but also from a large cross-section of civil society groups. Notably, a coalition of over 70 organisations has been formed to combat the proposals consisting of groups representing civil liberties, the media and free speech, environmental protection, workers' rights, prosecutors, consumers and public health.¹²

Perhaps unsurprisingly, given the extent of the opposition, Ag-gag bills have had a very low rate of passage into law. Of the 20 bills proposed since 2011, only four have been successful.¹³ All 11 bills proposed in 2013 were defeated.¹⁴ In the few jurisdictions where Ag-gag bills have been successfully enacted into law there has never been a successful prosecution. The nation's first attempted prosecution, in the state of Utah in April 2013, was dropped amid intense public criticism.¹⁵ Shortly after the District Attorney's decision to discontinue the prosecution, a consortium of animal protection organisations, journalists, activists and academics filed a civil lawsuit challenging the constitutionality of the Utah law on the basis that it violates freedom of speech.¹⁶

The degree of opposition to the bills and the public attention they attract has actually led opponents of the laws to describe them as "the best thing that has happened to the animal protection movement".¹⁷ Each time Ag-gag legislation is proposed and debated in state legislatures, media coverage follows. In most cases the coverage is negative and is accompanied by the very footage of animal cruelty the bills are attempting to suppress. The wide-spread publicity has served to generate further scepticism and concern on behalf of the public. This was encapsulated in the following passage from a *New York Times* editorial on 10 April 2013:

*The Ag-gag laws guarantee one thing for certain: increased distrust of American farmers and our food supply in general. They are exactly the wrong solution to a problem entirely of big agriculture's own making.*¹⁸

Why such opposition?

To anticipate the reception such laws may receive if proposed in Australia, it is helpful to consider the primary reasons for why they have been so vigorously opposed in the US. Certainly, a significant theme that permeated the media and political debates in that country was a concern about transparency in food production, particularly relating to animal products. Part of this concern stems from a perception that governance and regulatory oversight of animal production and processing is inadequate,¹⁹ creating a sense of distrust among consumers and the general public. This distrust is then accentuated when livestock industries take proactive steps to suppress what may be seen as the only form of third party scrutiny such industries are subjected to.

The Ag-gag laws have also been perceived to be an infringement upon freedom of speech²⁰ and the protection of whistleblowers.²¹ Some Ag-gag laws not only seek to prohibit the taking of unauthorised photographs and video footage but also the possession and distribution of such material. This aspect of the laws has certainly evoked the strongest opposition from media groups.

It is also important to note that concerns about transparency, government oversight and free speech do not relate solely to animal welfare issues. As reflected by the diversity of interest groups opposing the Ag-gag laws, environmental standards, labour rights, consumer protection and public health are all perceived to be directly impacted by such laws.

The sources of opposition to Ag-gag laws in the US are widespread and diverse, and there is no reason to believe the situation will be any different in the Australian context. The US experience demonstrates that even when such laws successfully pass the scrutiny of state legislatures, the damage to the reputation and public perception of livestock industries can be profound.

Are Ag-gag laws effective in achieving their objectives?

Proponents of Ag-gag laws in the US state that their primary objective is to deter activists from engaging in their monitoring and investigative activities, so as to:

- protect private property rights;
- deter trespass;
- protect animal biosecurity; and
- prevent damage to the reputation of livestock industries.

It is notable that current criminal and biosecurity laws in the US and Australia already prohibit trespass and other actions that threaten biosecurity. Opponents of the laws claim that the real objective of the proposed laws is to shield livestock industries from public scrutiny and prevent consumers from finding out about common husbandry practices that may cause alarm. Whether Ag-gag laws will be successful in preventing activist investigations can only be answered with the passage of time. But without taking steps to address the community's underlining concerns about transparency, it is probably unlikely.

It is acknowledged that the motivations of many animal activists go well beyond a desire to simply see greater transparency and scrutiny of livestock production practices. It is no secret that many activists would like to see an end to livestock production altogether. While this view may not hold mainstream appeal, the actions of activists nevertheless gain a degree of legitimacy in the eyes of the broader community as they appeal to the public's desire to see greater transparency in livestock production. This legitimacy is, in part, evidenced by the growing amount of mainstream media coverage afforded to activist investigations.²²

Attacking what may be perceived as the *symptoms* of a frustrated demand for greater transparency is only likely to lead to greater suspicion and distrust of livestock production practices. In this sense Ag-gag laws effectively support what animal activist organisations say about livestock industries - that they do not want the public to find out about what they are doing to animals. These sentiments were expressed by US media coverage of the Ag-gag debates and are reflected in the following passage from a *Washington Post* editorial:

*Society demands a level of openness, and America has a proud tradition of people doing good by showing what's wrong. As you next cut into a steak or crack an egg, ask yourself why an industry that claims it has nothing to hide demands protections afforded to no other.*²³

This perception of Ag-gag laws will only serve to reinforce the social legitimacy of activist investigations, which may indeed provide greater encouragement for activists to engage in such activities despite the potential for tougher penalties.²⁴

What is the RSPCA's view?

The RSPCA does not support any kind of illegal activity in pursuit of animal welfare objectives. The RSPCA chooses to promote animal welfare through formal government and democratic processes and occupies a position of trust within the community for doing so.

The RSPCA shares the concerns of livestock industries relating to biosecurity risks to animal health and private property rights. Equally however, the RSPCA shares the community's concern about transparency in food production, particularly in relation to the treatment of livestock. Ag-gag laws

fail to address all of these concerns. They generate distrust within the community and may in fact be counterproductive in providing greater social legitimacy to the actions of activists. There is a high degree of sensitivity within the Australian community about the treatment of animals in farming contexts. Much of this can be attributed to investigations into controversial livestock production practices, both domestically and abroad. Proposing Ag-gag laws in this climate will further damage the reputation of Australia's agricultural industries and may further accentuate tensions between city and rural communities.

Transparency and the treatment of livestock are primary concerns within the community. The RSPCA believes that livestock industries should pro-actively engage with consumers to address these concerns. Improving animal welfare on farm, during transport and at slaughter requires on-going commitment from all participants along the supply chain. Acknowledging the need for incremental improvements, setting targets for achieving them, and keeping the community informed about progress will go a long way to building trust and confidence and ensure the long-term future of livestock production. Other strategies for promoting transparency may include greater method of production labelling schemes including rigorous third party auditing, the installation of closed circuit television cameras (CCTV) within livestock facilities, and the development of farm visitation programs to allow the public to meet with producers and view operating farms. Additionally, greater investment by state and territory governments in inspection and monitoring programs for livestock facilities will help to restore community confidence in the regulatory framework for farm animal welfare.

The RSPCA believes the interests of livestock industries are far better served by strategies aimed at building consumer confidence through greater community engagement and a more open and transparent operating environment than through the introduction of Ag-gag laws.

References

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- ¹³ See, Animal Visuals, 'Ag-gag laws and factory farm investigations mapped' <<http://www.animalvisuals.org/projects/data/investigations/2013>>.

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