

AG-GAG LAWS IN AUSTRALIA

October 2021

This Fact Sheet is for general information purposes and is not legal advice. It provides a brief overview only of this area of the law. If you require legal advice relating to your particular circumstances you should contact the ADO or another solicitor.

WHAT ARE AG-GAG LAWS?

An 'ag-gag' (agricultural gag) law is a law that targets animal advocates or whistle-blowers whose actions threaten animal agricultural industries.[1]

Ag-gag laws can create specific criminal offences, such as:

- Collecting or publishing undercover footage from agricultural premises
- Using the internet to incite trespass or property damage on agricultural land
- Failing to report within a specified time animal cruelty captured on camera in animal enterprises (thereby making it difficult to amass evidence about systematic cruelty) [2]



AG-GAG LAWS—IN THE BEGINNING...

As factory farms and slaughterhouses began to operate on an industrialised scale in the second half of the 20th century, their operations became increasingly hidden from public scrutiny. In response, animal advocates turned to undercover investigations to reveal routine animal abuse in these establishments. The first ag-gag laws were introduced in the USA in the 1990s to try to silence these investigations.[3]

AG-GAG IN AUSTRALIA

Ag-gag legislation is increasingly being introduced in Australia by federal, state and territory governments. Some bills, such as the Criminal Code Amendment (Animal Protection) Bill 2015 (Cth) (a 'failure to report' type law as described above), failed to pass through Parliament. Others, as outlined below have been passed into law.

These uniquely Australian ag-gag laws focus on trespass penalties and biosecurity measures and are aimed directly at animal activists.

> Recent ag-gag law reform in NSW, Queensland and WA

The *Right to Farm Act 2019* (**NSW**) was partly an 'ag-gag' amendment Act. Schedule 2 to the Act amended NSW trespass laws to increase penalties and the circumstances in which 'aggravated' trespass on agricultural land can occur. The NSW Government made clear that this part of the Act was directed at animal activists.[4] In **Queensland** the omnibus *Agriculture and Other Legislation Amendment Act 2020* contained various 'ag-gag' provisions, such as an increase in the maximum penalties for 'unlawfully entering farming land' and for failing to comply with a biosecurity management plan relating to agricultural premises. In **WA** the Animal Welfare and Trespass Legislation Amendment Bill 2020 seeks to increase penalties and deterrence measures for trespassing on agricultural land. It also proposes a mandatory minimum sentence for trespasses on agricultural land of community service and a fine of at least \$2,400.

> Criminal Code Amendment (Agricultural Protection) Act 2019 (Cth)

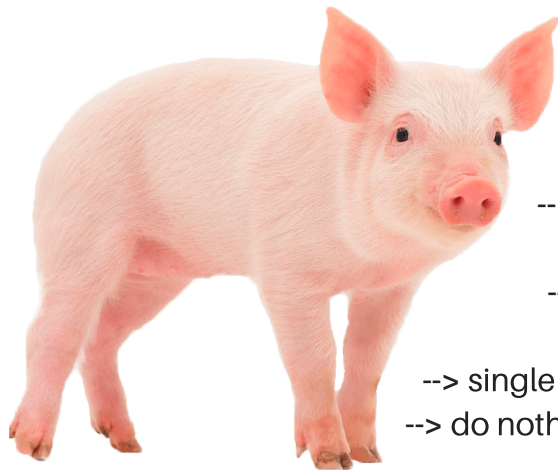
This Act was passed by the Australian Parliament in September 2019 (supported by both major political parties). It amends the *Criminal Code Act 1995* (Cth) by creating new criminal offences relating to the use of a 'carriage service', eg the internet or a mobile phone, to intend to incite trespass or property offences on agricultural land.[5] A person convicted of the new offences could face up to 5 years' imprisonment.

> Biosecurity laws

These laws, such as the *Biosecurity Act 2015* (NSW), may not be primarily directed at activists, but they are increasingly used by governments and industries that claim animal activists are biosecurity threats because they may cause biosecurity incidents (e.g. spread diseases) on farms. In Queensland, on-the-spot fines came into effect in April 2019 under biosecurity laws for anyone entering a farm or other animal business and not complying with a biosecurity management plan in place at the site.[6]

> Surveillance devices laws

Historically, activists were not the primary target of this kind of laws. More recently, however, they are used as ag-gag laws because they make it a criminal offence to install, use, or maintain a surveillance device without consent, except in very limited circumstances. The 2017 cases of *R v Delforce* and *R v Kiss* [7], where the defendants were both charged under the *Surveillance Devices Act 2007* (NSW), are regarded as the first ag-gag trials in Australia. All charges were dismissed. Mr Delforce was represented by ADO lawyers.



WHAT ARE THE CONCERNS?

Ag-gag laws are problematic because they:

- > criminalise the wrong thing ie *filming* or *protesting* about animal cruelty rather than *committing* it;
- > create new offences specifically targeting animal activists when general offences already exist (eg trespass; incite harassment);
- > single out one sector of the community (farmers) for special protections;
- > do nothing to make animal industries more transparent and accountable; and most importantly,
- > do not help animals whose suffering remains hidden behind closed doors.

DISCLAIMER

While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions we recommend you seek legal advice. The Animal Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information contained in this fact sheet.

[1] The term 'ag-gag law' was popularised by journalist Mark Bittman; see "Who Protects the Animals?", *The New York Times*, 26 April 2011: <https://opinionator.blogs.nytimes.com/2011/04/26/who-protects-the-animals/>

[2] For other types of ag-gag offences see Potter, W., 2017, "Ag-gag laws: Corporate attempts to keep consumers in the dark", *Griffith Journal of Law & Human Dignity*, vol. 5, no. 1, pp. 1-31.

[3] *ALDF, PETA and Meyer v Herbert and Reyes*, Case No. 2:13-cv-00679-RJS, p 3 <<https://utahanimalrights.com/wp-content/uploads/2017/07/AGGag-Order-Granting-Ps-SJ-Motion.pdf>>.

[4] Second Reading Speech, 17 September 2019, p2. The Act commenced on 21 November 2019.

[5] Sections 474.46 and 474.47.

[6] *Biosecurity and Other Legislation Amendment Regulation 2019* (Qld).

[7] Cootamundra Local Court, NSW, 8 August 2017.