

2013-2014-2015

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Criminal Code Amendment (Animal
Protection) Bill 2015**

No. , 2015

(Senator Back)

**A Bill for an Act to amend the *Criminal Code Act
1995*, and for related purposes**

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A Bill for an Act to amend the *Criminal Code Act 1995*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Criminal Code Amendment (Animal Protection) Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The 28th day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Criminal Code Act 1995

1 After Part 9.6 of the *Criminal Code*

Insert:

Part 9.7—Protecting animals and animal enterprises

Division 383—Failing to report malicious cruelty to animals

383.5 Failing to report malicious cruelty to animals after recording it

- (1) A person commits an offence if:
- (a) the person makes a visual record of an activity engaged in, in Australia, by another person; and
Example: A video recording, whether or not with sound, or a photograph.
 - (b) the person makes the record because the person believes the activity to be malicious cruelty to animals; and
 - (c) either or both of the following subparagraphs apply:
 - (i) within one business day after the person makes the record, the activity is not reported to an authority of the Commonwealth, or of the State or Territory in which the activity occurred, with responsibility for enforcing laws relating to animal welfare;
 - (ii) within 5 business days after the person makes the record, the record is not given to such an authority; and
 - (d) subsection (4) applies.

Penalty: 30 penalty units.

- (2) For the purposes of paragraph (1)(b), it is immaterial whether the activity actually is malicious cruelty to animals.

- (3) A defendant bears an evidential burden in relation to the matter in paragraph (1)(c).
- (4) This subsection applies if:
 - (a) the record is made:
 - (i) by a federally regulated entity; or
 - (ii) in constitutional trade or commerce; or
 - (iii) in a Territory or a Commonwealth place; or
 - (b) the recorded activity is engaged in:
 - (i) by a federally regulated entity; or
 - (ii) in constitutional trade or commerce; or
 - (iii) in a Territory or a Commonwealth place.
- (5) Absolute liability applies to paragraph (1)(d).

Note: For absolute liability, see section 6.2.

383.10 Meaning of *malicious cruelty to animals*

- (1) A person engages in *malicious cruelty to animals* if the person engages in an unlawful activity for the purpose of inflicting unnecessary pain, injury or death upon domestic animals.
- (2) Humane slaughter for the purposes of food production, or for compassionate reasons, is not *malicious cruelty to animals*.

383.15 Visual records

Copies

- (1) A reference in this Division to a record is treated as including a reference to a copy of the record.

Alteration

- (2) To avoid doubt, giving a record that is altered (including through omission or addition) does not satisfy the requirement of subparagraph 383.5(1)(c)(ii).

383.20 Other matters

- (1) This Division does not apply to the extent (if any) that it would:
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- (a) infringe any constitutional doctrine of implied freedom of political communication; or
 - (b) affect the law relating to legal professional privilege.
- (2) This Division does not apply to a Commonwealth, State or Territory authority with responsibility for enforcing laws relating to animal welfare.
- (3) It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.

Division 385—Interfering with the carrying on of animal enterprises

385.5 Destroying or damaging property

Offence

- (1) A person (the **first person**) commits an offence if:
- (a) the first person engages in conduct that destroys or damages property:
 - (i) used in carrying on an animal enterprise; or
 - (ii) belonging to a person who carries on an animal enterprise; or
 - (iii) belonging to a person who is otherwise connected with, or related to, an animal enterprise; and
- Example 1: Property could include animals and records.
- Example 2: Persons connected with, or related to, an animal enterprise could include suppliers or customers.
- (b) the first person intends that the conduct will interfere with the carrying on of the animal enterprise; and
 - (c) subsection (3) applies.

Penalty:

- (a) in the case of an offence to which subsection 385.20(1) applies—imprisonment for 5 years; or
- (b) in the case of an offence to which subsection 385.20(2) applies—imprisonment for 10 years; or

- (c) in the case of an offence to which subsection 385.20(3) applies—imprisonment for 20 years; or
 - (d) in the case of an offence to which subsection 385.20(4) applies—imprisonment for life; or
 - (e) in any other case—imprisonment for 1 year.
- (2) For the purpose of this section, it does not matter whether the conduct actually interferes with the carrying on of the animal enterprise.

Constitutional basis

- (3) This subsection applies if:
- (a) the first person is a federally regulated entity; or
 - (b) the conduct occurs in a Territory or a Commonwealth place; or
 - (c) the property belongs to:
 - (i) a Commonwealth entity; or
 - (ii) a Territory; or
 - (iii) a federally regulated entity; or
 - (d) the animal enterprise is carried on by:
 - (i) a Commonwealth entity; or
 - (ii) a Territory; or
 - (iii) a federally regulated entity; or
 - (e) the interference with the carrying on of the animal enterprise would cause detriment to constitutional trade and commerce.
- (4) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

385.10 Causing fear of death or serious bodily injury

Offence

- (1) A person (the ***first person***) commits an offence if:
- (a) the first person engages in conduct involving threats, vandalism, property damage, criminal trespass, harassment, or intimidation; and

- (b) the conduct causes another person (the *second person*) reasonably to fear that any person will cause death or serious bodily injury to a person (the *targeted person*) who is:
 - (i) the second person; or
 - (ii) a close family member of the second person; or
 - (iii) an employee of the second person; or
 - (iv) a contractor engaged by the second person to participate in the carrying on of an enterprise; and
- (c) the second person or the targeted person:
 - (i) carries on an animal enterprise; or
 - (ii) is otherwise connected with, or related to, an animal enterprise; and

Example: Persons connected with, or related to, an animal enterprise could include suppliers or customers.
- (d) the first person intends that the conduct will interfere with the carrying on of the animal enterprise; and
- (e) subsection (3) applies.

Penalty:

- (a) in the case of an offence to which subsection 385.20(1) applies—imprisonment for 5 years; or
 - (b) in the case of an offence to which subsection 385.20(2) applies—imprisonment for 10 years; or
 - (c) in the case of an offence to which subsection 385.20(3) applies—imprisonment for 20 years; or
 - (d) in the case of an offence to which subsection 385.20(4) applies—imprisonment for life; or
 - (e) in any other case—imprisonment for 1 year.
- (2) For the purpose of this section, it does not matter whether the conduct actually interferes with the carrying on of the animal enterprise.

Constitutional basis

- (3) This subsection applies if:
- (a) the first person is a federally regulated entity; or
 - (b) the first person engages in the conduct by constitutional communication; or

- (c) the conduct occurs in a Territory or a Commonwealth place;
or
 - (d) the animal enterprise is carried on by:
 - (i) a Commonwealth entity; or
 - (ii) a Territory; or
 - (iii) a federally regulated entity; or
 - (e) the interference with the carrying on of the animal enterprise would cause detriment to constitutional trade and commerce.
- (4) Absolute liability applies to paragraph (1)(e).

Note: For absolute liability, see section 6.2.

385.15 Defences

This Division does not apply to conduct if the conduct is:

- (a) peaceful picketing, or some other legally sanctioned peaceful demonstration; or
- (b) done in good faith in connection with an industrial dispute or an industrial matter; or
- (c) publishing in good faith a report or commentary about a matter of public interest.

Note: A defendant bears an evidential burden in relation to the matters in this section: see subsection 13.3(3).

385.20 Aggravated offences

Aggravated offences

- (1) This subsection applies to an offence if the conduct results in economic damage exceeding \$10,000.
- (2) This subsection applies to an offence if the conduct results in:
 - (a) substantial bodily injury to any individual; or
 - (b) economic damage exceeding \$100,000.
- (3) This subsection applies to an offence if the conduct results in:
 - (a) serious bodily injury to any individual; or
 - (b) economic damage exceeding \$1,000,000.
- (4) This subsection applies to an offence if the conduct results in death to any individual.

Procedural matters

- (5) If the prosecution intends to prove an offence (an ***aggravated offence***) to which subsection (1), (2), (3) or (4) applies, the charge must allege the relevant aggravated offence.
- (6) If, on a trial for an aggravated offence against a section of this Division, the trier of fact:
 - (a) is not satisfied that the defendant is guilty of the aggravated offence; but
 - (b) is otherwise satisfied that the defendant is guilty of an offence against that section (including an offence to which subsection (1), (2) or (3) of this section applies);the trier of fact may find the defendant not guilty of the offence mentioned in paragraph (a), but guilty of the offence mentioned in paragraph (b).
- (7) Subsection (6) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the offence mentioned in paragraph (6)(b).

385.25 Division not intended to exclude State or Territory law

It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.

2 Dictionary in the *Criminal Code*

Insert:

animal enterprise includes:

- (a) a commercial or academic enterprise that uses, sells, houses or stores animals or animal products for:
 - (i) profit; or
 - (ii) food; or
 - (iii) fibre production;
 - (iv) agriculture; or
 - (v) education; or
 - (vi) research; or
 - (vii) testing; or

- (b) a zoo, aquarium, animal shelter, pet shop, breeder, furrier or circus; or
- (c) a rodeo or other lawful competitive animal event; or
- (d) any show or similar event intended to advance agricultural arts and sciences.

constitutional communication means communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

economic damage:

- (a) means any of the following:
 - (i) the costs of replacing lost or damaged property;
 - (ii) the costs of repeating an interrupted or invalidated experiment;
 - (iii) lost profits or an increase in costs; andExample: Property could include animals or records.
- (b) does not include the costs of any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental or business reaction to the disclosure of information about an enterprise.

federally regulated entity means:

- (a) a constitutional corporation; or
- (b) a trust, all of the trustees of which are constitutional corporations; or
- (c) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
- (d) a trust, if the proper law of the trust and the law of the trust's administration are the law of a Territory; or
- (e) any other entity (including an individual, a body corporate, a body politic, a trust or an unincorporated association or body of persons), if the core or routine activities of the entity are carried out in or in connection with a Territory.

serious bodily injury means:

- (a) injury posing a substantial risk of death; or
- (b) extreme physical pain; or
- (c) protracted and obvious disfigurement; or

- (d) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

substantial bodily injury means:

- (a) deep cuts and serious burns or abrasions; or
- (b) short-term or nonobvious disfigurement; or
- (c) fractured or dislocated bones, or torn members of the body;
or
- (d) significant physical pain; or
- (e) illness; or
- (f) short-term loss or impairment of the function of a bodily member, organ or mental faculty; or
- (g) any other significant injury to the body.

Part 2—Consequential amendments

Criminal Code Act 1995

3 Subsection 100.1(1) of the *Criminal Code* (definition of *Commonwealth place*)

Repeal the definition.

4 Subsection 380.1(1) of the *Criminal Code* (definition of *constitutional trade and commerce*)

Repeal the definition.

5 Subsection 390.1(1) of the *Criminal Code* (definition of *Commonwealth place*)

Repeal the definition.

6 Paragraph 400.2A(4)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

(b) by means of a constitutional communication; or

7 Dictionary in the *Criminal Code*

Insert:

close family member has the meaning given by section 390.1.

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

constitutional trade and commerce means trade and commerce:

- (a) with other countries; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories.

malicious cruelty to animals has the meaning given by section 383.10.