



SUBMISSION ON THE AGRICULTURAL COMPETITIVENESS GREEN PAPER

12 November 2014

Voiceless Limited

ACN 108 494 631
2 Paddington Street
Paddington NSW 2021

P +61 2 9357 0703

F +61 2 9357 0711

Disclaimer: Voiceless Limited ACN 108 494 631 ('Voiceless') is a company limited by guarantee. Voiceless is not a legal practice and does not give legal advice to individuals or organisations. While Voiceless makes every effort to ensure the accuracy of information presented on its behalf, Voiceless does not guarantee the accuracy or completeness of that information. Information is provided by Voiceless as general information only and any use of or reliance on it should only be undertaken on a strictly voluntary basis after an independent review by a qualified legal practitioner (or other expert). Voiceless is not responsible for, and disclaims all liability for, any loss or damage arising out of the use of or reliance on information it provides. To learn more about Voiceless, please visit <http://www.voiceless.org.au>

ABOUT VOICELESS

As an innovator, capacity builder and ideas-generator, Voiceless plays a leading role in the development of a cutting edge social justice movement, animal protection.

With a highly professional and well-educated team, Voiceless brings together like-minded compassionate Australians from the legal, academic, non-profit and education sectors to form strong and effective networks.

Voiceless believes in the provision of quality information, analysis and resources to inspire debate and discussion and to empower individuals and organisations to generate positive social change.

Voiceless is a non-profit Australian organisation established in May 2004 by father and daughter team Brian and Ondine Sherman.

To build and fortify the animal protection movement, Voiceless:

- gives grants to key projects which create the groundswell for social change;
- cultivates the animal law community through the provision of leadership, educational opportunities and resources; and
- raises awareness of animal protection issues within the education system in order to strengthen democratic skills, promote critical thinking and encourage advocacy amongst students.

PATRONS

J.M. COETZEE, Nobel Prize for Literature Winner 2003, author of 'Lives of Animals' and 'Elizabeth Costello'

BRIAN SHERMAN AM, businessman and philanthropist

DR JANE GOODALL, world-renowned primatologist and animal advocate

THE HON MICHAEL KIRBY AC CMG, former judge of the High Court of Australia

AMBASSADORS

HUGO WEAVING, Actor: Oranges and Sunshine, Last Ride, Little Fish, Lord of the Rings Trilogy, Matrix Trilogy, The Adventures of Priscilla Queen of the Desert

EMILY BARCLAY, Actor: Prime Mover, Piece of my Heart, Suburban Mayhem, In My Father's Den

ABBIE CORNISH, Actor: w.e., Suckerpunch, Limitless, Bright Star, Stop Loss, Elizabeth: The Golden Age, A Good Year, Somersault, Candy

For further information visit <http://www.voiceless.org.au>

All correspondence in relation to this submission should be directed to:

Mr Emmanuel Giuffre
Voiceless
2 Paddington Street
Paddington NSW 2021 AUSTRALIA
T: + 612 9357 0713
F: + 612 9357 0711
Email: emmanuel@voiceless.org.au

© 12 November 2014

1. Introduction

- 1.1 This submission addresses the Agricultural Competitiveness Green Paper (the **Green Paper**).
- 1.2 Voiceless commends the Minister for Agriculture Senator Barnaby Joyce for inviting submissions from the public on the Green Paper.
- 1.3 Voiceless is concerned that the Green Paper does not adequately consider the welfare needs of animals used in Australian agriculture. It is Voiceless's position that the Department of Agriculture has sought to maximise the competitiveness of Australian primary industries to the exclusion of animal welfare.
- 1.4 While the Green Paper has emphasised that animal welfare is a State and Territory issue, Voiceless is of the view that the Federal Government also has a fundamental role to play in promoting and ensuring the welfare of animals used in Australian agriculture.
- 1.5 The below submission outlines these concerns.

2. Summary of initial recommendations

- 2.1 In our submission dated 7 April 2014, Voiceless provided a number of comments and recommendations in response to the Federal Government's initial call for submissions on the Agricultural Competitiveness White Paper's Issues Paper and Terms of Reference (**Initial Submission**).
- 2.2 Voiceless is of the view that none of the comments and recommendations contained in our Initial Submission were addressed or reflected in the Green Paper. Accordingly, Voiceless incorporates by way of reference all of our comments and recommendations from our Initial Submission into this submission.
- 2.3 By way of summary, our key comments and recommendations from the Initial Submission are as follows:
 - 2.3.1 While Voiceless acknowledges that competitiveness is an important consideration for the Australian agriculture industry, it should not be sought to the exclusion of other important factors, such as animal protection. The White Paper must focus on developing a sustainable agricultural industry for the future, which includes considerations about animal protection, as well as food safety and the environment.
 - 2.3.2 Voiceless acknowledges the Government's emphasis on innovation and the need for industry to invest in research, development and extension (RD&E). However, Voiceless submits that this investment should also extend to improving industry knowledge about the importance of animal welfare and developing practices and procedures that improve animal welfare.

2.3.3 Voiceless is firmly opposed to all forms of intensive factory farming. Until all Australian State and Territory laws expressly prohibit intensive factory farming, millions of animals will continue to be subjected to cruel, inhumane and degrading practices and continue to experience lives of immense pain and suffering. These practices include (but are not limited to):

2.3.3.1 the use of sow stalls and farrowing crates for pregnant pigs;

2.3.3.2 the use of battery or enriched cages for hens;

2.3.3.3 the permanent confinement of animals, including chickens, ducks, pigs and dairy cows; and

2.3.3.4 the use of mutilation practices, including, but not limited to, de-beaking (of hens), tail-docking (of pigs and cattle), teeth-clipping (of pigs), dehorning and disbudding (of cattle) and other such mutilation practices that are regularly conducted without the use of appropriate pain relief.

It is incumbent on the Federal Government to strongly advocate for intensive factory farming practices to be expressly prohibited under State and Territory laws. Alternatively, and as discussed in paragraph 3.8 below, the Federal Government has sufficient Constitutional powers to legislate in the area of animal welfare, and should consider using this power to enact positive law reform.

2.3.4 There is a clear relationship between increased productivity and declining levels of animal welfare. This is particularly the case with intensive factory farming practices. Government and industry must acknowledge and further explore this relationship through RD&E, and introduce stronger legislative safeguards to guarantee minimum standards of animal welfare. This includes, without limitation, the immediate prohibition on intensive factory farming practices.

2.3.5 Studies show that, to a certain extent, optimising animal welfare can have a positive effect on productivity. Of course, this is limited by the fact that there will always be a point where increased productivity will have a deleterious effect on animal welfare. Voiceless submits that investment in RD&E is needed to further highlight the benefits that optimising animal welfare can have on productivity. Industry and government must invest in disseminating this information to farmers and assist businesses in transitioning to more animal friendly practices.

2.3.6 While it is Voiceless's position that animal welfare is a public good, and should be protected and promoted by government and industry in its own right, there are incentives for Australian business to transition towards more animal friendly farming practices. There is a growing market for ethically derived produce and Australian farmers are well placed to meet this ever growing market demand. Accordingly, Voiceless submits that government and industry should invest in and

promote these potential business opportunities and assist Australian businesses in transitioning to meet this demand.

2.3.7 To ensure the success of a market-based transition towards higher welfare farming, Voiceless recommends that nationally consistent truth-in-labelling legislation is needed to allow consumers to differentiate ethical products and in order to make more informed, animal friendly decisions. At the time of writing, the NSW Government is in the process of developing a national standard on free range eggs. Voiceless supports this initiative, and would like to see greater community consultation in the development of these standards – not simply government consultation with the egg industry. In particular, Voiceless strongly supports standards that promote:

2.3.7.1 genuine “free range” stocking densities of no greater than 1,500 birds per hectare; and

2.3.7.2 a prohibition on the de-beaking of hens.

2.3.8 Voiceless believes that it is inappropriate for government to place the responsibility for the protection of animal welfare on consumers. Given that price will continue to be a priority for consumers, government and industry must recognise the importance of animal welfare and develop initiatives to assist businesses to convert to more ethical farming practices.

2.3.9 Live animal exports is a cruel and inhumane trade and serves only to benefit a relatively small portion of the Australian agriculture industry. The trade is widely unpopular amongst members of the Australian public and across the agriculture sector. The regulatory regime in place to ensure animal welfare is maintained has failed and will continue to fail. Accordingly, Voiceless submits that the only solution is for the Australian government to bring this trade to an end.

3. Key recommendations on the Green Paper:

3.1 In addition to the recommendations contained in section 2 above, Voiceless makes the following recommendations and comments on the Green Paper:

Wild dogs

3.2 The Green Paper makes a number of references to the need to control "wild dog" populations in Australia. For example, the Green Paper states (at page 20):

"Wild dog control: The Government is working with the States and Territories, including providing \$10 million for pest management through the February 2014 drought package".

3.3 Voiceless is opposed to all lethal means of managing or controlling animal populations, irrespective of whether they are classified as "pests" by the Government.

- 3.4 In our view, the term "wild dogs" is scientifically misleading and is being used as a political tool to allow widespread and indiscriminate methods of lethal population control, such as baiting and aerial shooting. The phrase "wild dogs" also groups several species together without considering the very diverse implications that these measures will have on those species, as well as domestic dogs and surrounding ecosystems.¹
- 3.5 Voiceless acknowledges the financial impact that dingoes can have on graziers. However, this expense must be weighed against the significant animal welfare concerns associated with lethal methods of population control, which are often cruel and result in extensive suffering to animals. Many domesticated dogs and other small native mammals meet a slow and painful death each year as a result of the 1080 poison baiting campaigns. In addition, these methods are driving extinction rates and the erosion of primary productivity due to the release of smaller predators (cats and foxes) and herbivores, which will have flow on effects for smaller native predators and herbivores.²
- 3.6 Critically, it is argued that lethal methods of population control are ineffective and costly. Lethal destruction can fracture pack structures, leading to a breakdown of territorial boundaries and higher breeding and immigration rates, all of which have been shown to exacerbate predation of livestock.³
- 3.7 Data further suggests that controlling wild dogs to protect calves on extensive beef cattle enterprises is unnecessary in most years because wild dogs do not routinely prey on calves. In those seasons when wild dog predation might occur, baiting can be counter-productive. Baiting appears to produce perturbations that change the way surviving or re-colonising wild dog populations select and handle prey and/or how they interact with livestock.⁴
- 3.8 Voiceless considers non-lethal measures to be the only acceptable population control method, such as sterilisation, relocation and use of guard animals. These offer a sustainable and economically viable approach to 'pest management' and are more socially acceptable to landholders, farmers and the wider public.
- 3.9 For example, the use of guard animals such as Maremma sheep dogs has been shown to be an effective way to deter predators and maintain livestock safety. There is strong evidence to suggest guard dogs efficiently protect livestock against predators such as dingoes because they establish an exclusive territory, which effectively deters these predators.⁵
- 3.10 Animal welfare concerns need to be considered in the Government's approach to pest management. Voiceless recommends that a percentage of the \$10 million allocated for

¹ Advice from Louise Boronyak, Arian Wallach and Brad Purcell, Centre for Compassionate Conservation.

² Advice from Louise Boronyak, Arian Wallach and Brad Purcell, Centre for Compassionate Conservation.

³ Arian Wallach, Euan Ritchie, John Read and Adam O'Neill, 'More than Mere Numbers: The Impact of Lethal Control on the Social Stability of a Top-Order Predator' *PLOS ONE* 4(9) (2009), 5.

⁴ Lee R. Allen, 'Wild dog control impacts on calf wastage in extensive beef cattle enterprises' *Animal Production Science* 54(2) (2013), 214-220.

⁵ Linda van Bommel and Chris N Johnson, 'Good dog! Using livestock guardian dogs to protect livestock from predators in Australia's extensive grazing systems' *Wildlife Research* 39(3), 220-229.

pest management should be allocated to trialling and implementing more ethical, economical and non-lethal approaches to population control.

Animal welfare:

3.11 We note the Green Paper states (at page 23):

"The Australian Government recognises that animal welfare is a concern for the Australian community. No-one, including the Australian Government, supports animal cruelty, least of all farmers and all those that rely on agriculture for a living. Each State and Territory government is responsible for implementing and enforcing domestic animal welfare legislation. It is important that States and Territories drive reform in this area. Reform includes enforcing animal welfare legislation and developing and implementing animal welfare standards and guidelines to achieve good animal welfare outcomes."

3.12 In our view, the Green Paper demonstrates the Federal Government's reluctance to take responsibility for animal welfare issues. This is illustrated by a number of policy decisions that have further removed the Federal Government from animal welfare matters, including:

3.12.1 the abolition of the Australian Animal Welfare Advisory Committee (AAWAC) as part of its drive to cut 'unnecessary and inefficient regulation';

3.12.2 the handing over of responsibility for the delivery of the Australian Animal Welfare Strategy (AAWS) to states and territories; and

3.12.3 rejection of the Gillard Government's proposal to create the position of an Inspector General of Animal Welfare and Live Animal Exports.

3.13 With respect, the Federal Government cannot legitimately and responsibly promote the competitiveness and productivity of primary industries without considering how this may impact on animal welfare. As noted in our Initial Submission, there is a clear relationship between increased productivity and declining levels of animal welfare. This is particularly the case with intensive factory farming practices. If the Federal Government seeks to develop policy initiatives to promote the competitiveness of primary industries, it must also take responsibility for engaging with State and Territory governments to strengthen animal protection laws and their enforcement.

3.14 Alternatively, the Federal Government has the power to show leadership in this area and enact legislation of its own at the Federal level. Voiceless acknowledges that the Commonwealth Constitution does not give the Federal Government express power to legislate for animal welfare. However, the Constitution does provide the Federal Government with several indirect powers, including the trade and commerce power contained in s51(i), quarantine power contained in s51(ix), fisheries power contained in s51(x) and external affairs power contained in s51(xx). Accordingly, the Federal Government has the necessary Constitutional power to regulate with respect to animal

welfare matters when it comes to animals used in commercial agriculture, and if necessary, should exercise this power accordingly.

Legislation targeting animal activism:

3.15 We note the Green Paper states (at page 23):

"Without detracting from the fact that no government should condone animal cruelty, it is also important that the States and Territories take action to protect farmers, their homes and their places of business from disruptive and illegal activities undertaken by animal activists. Stakeholders suggested, and the Australian Government encourages, that States and Territories strengthen their laws to stop trespass on farms and to meet the challenges of new invasive technology including surveillance devices."

3.16 Voiceless is concerned with the introduction in Australian States and Territories of US-style 'ag-gag legislation' - draconian laws that seek to 'gag' animal advocates, employees, whistle-blowers and the media from making public evidence of illegal animal cruelty. This type of legislation is not sought to address gaps in the law, but rather to stifle transparency: to prevent evidence of animal cruelty from being distributed to the media and, in turn, the public.

3.17 Voiceless does not endorse unlawful activities. We wish to acknowledge that it is already unlawful to trespass onto private property and to use undercover surveillance devices in the manner proposed by ag-gag legislation.

3.18 Strong legal protections already exist to protect both producers and the public from potential biosecurity threats presented by unlawful trespass.

3.19 As such, ag-gag legislation serves to only shield the commercial interests of intensive farming operations and to stifle transparency about the standard practices on factory farms. This is an illiberal response which is inconsistent with the Australian public's rights to free speech, freedom of information and freedom of the press. As such, it will have significant implications for animals, consumers, media and for all members of the Australian public.

3.20 Most farmed animals in Australia are raised behind closed doors, deliberately hidden from public scrutiny. Footage provided by employees, whistle-blowers and animal activists taken within factory farms is one of the only insights we have into the treatment of intensively farmed animals.

3.21 Surveillance footage has also exposed evidence of animal cruelty, neglect and violations of animal protection laws within factory farms, and has proved an effective enforcement tool in exposing cruelty that would have otherwise gone undetected. Covert footage is admissible as evidence in court,⁶ and indeed, has been critical in prosecuting individuals

⁶ The Evidence Act 1995 (Cth) states in section 138(1) that, in both civil and criminal proceedings, the admission of improperly or illegally obtained evidence may be allowed in certain circumstances.

and corporations charged with breaching animal and consumer protection laws (examples of which have been provided in Appendix 1). Based on this historical evidence, it is clear that if ag-gag laws are introduced in States and Territories, they will operate to conceal incidents of cruelty as they occur on factory farms.

- 3.22 Ag-gag laws also obstruct consumers' ability to make ethical decisions about their food. The lack of transparency surrounding factory farming is crippling for those consumers seeking genuine cruelty-free produce. In the absence of nationally consistent truth-in-labelling laws requiring producers to adequately disclose information about production methods, consumers are prevented from knowing the truth about the conditions in which food animals are kept.
- 3.23 With greater dissemination of information about factory farming practices, shifting consumer sentiment has driven demand for free-range and higher welfare products in Australia. It is clear that Australian consumers care about animal welfare, and if ag-gag laws are introduced, they will only operate to stifle consumer choice, the progression towards greater consumer awareness and producer transparency.
- 3.24 The most alarming aspect of ag-gag laws is that they prohibit the dissemination of information derived from surveillance and in so doing, suppress free speech and the media's ability to inform the public. The broader policy implication of this is that ag-gag laws shield the agricultural industry from public and political scrutiny. A similar point was articulated, albeit in a different context, by the former Justice of the High Court, the Hon. Michael Kirby in *Lenah Game Meats Pty Limited v Australian Broadcasting Corporation*, stating:
- "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 ... The form of government created by the Constitution is not confined to debates about popular or congenial topics, reflecting majority or party wisdom. Experience teaches that such topics change over time. In part, they do so because of general discussion in the mass media."*⁷
- 3.25 Freedom of the press is pivotal in encouraging genuine public debate, and is important in shedding light on contentious issues, sparking debate, shaping public opinion, encouraging progressive business practices, and influencing positive law reform on social justice issues.
- 3.26 Critically, ag-gag laws will not only have ramifications for animal advocates, but for all civil groups and individuals - whether involved in consumer protection, environmental protection or civil liberties. If the Government permits big agribusiness to 'gag' its critics, it will set a dangerous precedent which will legitimate the suppression of genuine debate from other civil groups and individuals.

⁷ *Lenah Game Meats Pty Limited v Australian Broadcasting Corporation* (2001) 208 CLR 199.

- 3.27 For these reasons, we submit that the Green Paper should not advocate for the introduction of ag-gag laws in Australia.
- 3.28 Further, Voiceless notes that ag-gag laws will do nothing to address the underlying problems that have given rise to this level of animal activism: namely, inadequate animal protection laws that permit cruel factory farming practices; a lack of transparency in the way in which food animals are treated and the conditions in which they live in factory farms; and inadequate monitoring and enforcement of animal protection laws at a State and Territory level. It is in these areas that Voiceless submits the Federal Government ought to consider reform.

Appendix 1

Covert surveillance has been successful in exposing animal cruelty in a number of cases, including the following:

- In 2011, ABC's *Four Corners* exposé, "A Bloody Business",⁸ revealed footage of Australian cattle being abused in Indonesian slaughterhouses. The public and political reaction resulted in the Gillard Government suspending trade with Indonesia, and introducing a more stringent regulatory regime to govern live exports: the Export Supply Chain Assurance Scheme (ESCAS).
- In 2011, Victorian industry regulator, PrimeSafe, laid charges and forced the closure of the L.E. Giles abattoir at Trafalgar after it viewed video footage obtained from an animal advocate showing the mistreatment of pigs going to slaughter.⁹
- In 2012, Animal Liberation supplied the ABC with surveillance footage from a pig abattoir (Wally's Piggery in Yass) showing workers at the Murrumbateman piggery kicking piglets and beating sows with a sledgehammer, which was later aired on *Lateline*.¹⁰ The investigation prompted a government review which resulted in the introduction of mandatory animal welfare officers being employed by abattoirs, as well as mandatory welfare training for those who conduct slaughter.¹¹
- In June 2013, Pepe's Ducks, one of Australia's largest producers of duck meat, was convicted of misleading and deceptive conduct by the Australian Federal Court.¹² The Australian Competition and Consumer Commission (ACCC) pursued an action against Pepe's Ducks under the Australian Consumer Law. This action was pursued shortly after the screening of covert footage aired on the ABC's 7.30, showing Pepe's ducks were not in fact raised "open range" or "grown nature's way" as depicted on marketing material, but were in fact intensively farmed.¹³

⁸ See for example Sarah Ferguson, "A Bloody Business", ABC Four Corners (30 May 2011) <http://www.abc.net.au/4corners/special_editions/20110530/cattle/>.

⁹ See for example ABC News, "Abattoir owner angry after charges dropped" ABC News (16 April 2013) <<http://www.abc.net.au/news/2013-04-16/abattoir-owner-angry-after-charges-dropped/4631864>>.

¹⁰ 'NSW piggery owners face animal cruelty charges', ABC News (08 October 2013), <<http://secure.isidewith.com/news/article/nsw-piggery-owner-faces-animal-cruelty-charges>>.

¹¹ 'Chapter 8: Animal Welfare, Animal Health in Australia 2012', Animal Health Australia (2013), <<http://www.animalhealthaustralia.com.au/wp-content/uploads/2011/01/CH8-Animal-welfare-AHIA-2012.pdf>>.

¹² *Australian Competition and Consumer Commission v Pepe's Ducks Ltd* [2013] FCA 570.

¹³ See for example Bronwyn Herbert, "Disturbing footage prompts calls for duck farming changes" Transcript, ABC News (19 June 2012) <<http://www.abc.net.au/news/2012-06-19/disturbing-footage-prompts-calls-for-duck-farming/4080436>>.

- In *Australian Competition and Consumer Commission v Turi Foods Pty Ltd*,¹⁴ the Federal Court found two of Australia's largest poultry producers, Baiada Poultry Pty Ltd and Bartter Enterprises Pty Ltd, as well as the Australian Chicken and Meat Federation Inc., in breach of the *Trade Practices Act 1974* (Cth) and the *Australian Consumer Law 2010*. The respondents had engaged in misleading or deceptive conduct and made false representations by using the words "free to roam" on advertising, packaging and publication materials. In reality, undercover surveillance had shown that the stocking densities of meat chickens in Baiada and Bartter facilities did not allow for chickens to roam freely.
- In *Australian Competition and Consumer Commission v Luv-a-Duck Pty Ltd*¹⁵ the Federal Court found in favour of the ACCC, and fined Luv-a-Duck \$360,000 for misleading and deceptive conduct under the Australian Consumer Law. Various packing, logos, advertising, website material and brochures issued by the company claimed that their ducks were "range reared and grain fed" in the "spacious Victorian Wimmera Wheatlands." However, covert footage obtained by animal rights activists show the ducks to be confined in barns.
- In 2013 Animal Liberation obtained footage of employees of Inghams Enterprises, kicking and stomping on turkeys. The footage was aired on the ABC and led to an employee being charged with three counts of animal torture.¹⁶ Although the charges were later dropped due to a lack of evidence, the footage was critical in showing breach of animal protection laws.

¹⁴ (No 5) [2013] FCA 1109.

¹⁵ [2013] FCA 1136.

¹⁶ Shannon Tonkin, 'Inghams worker vindicated over turkey abuse' (17 January 2014) Illawarra Mercury (online), <<http://www.illawarramercury.com.au/story/2028570/inghams-worker-vindicated-over-turkey-abuse/>>.