

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**

Contents

1	Short title	1
2	Commencement	1
3	Schedules	2
Schedule 1—Amendments		3
Part 1—Main amendments		3
<i>Criminal Code Act 1995</i>		3
Part 2—Consequential amendments		12
<i>Criminal Code Act 1995</i>		12

1 **A Bill for an Act to amend the *Criminal Code Act***
2 ***1995, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
---------------	--	--

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Criminal Code Act 1995*

4 **1 After Part 9.6 of the *Criminal Code***

5 Insert:

6 **Part 9.7—Protecting animals and animal**
7 **enterprises**

8 **Division 383—Failing to report malicious cruelty to**
9 **animals**

10 **383.5 Failing to report malicious cruelty to animals after recording**
11 **it**

12 (1) A person commits an offence if:

13 (a) the person makes a visual record of an activity engaged in, in
14 Australia, by another person; and

15 Example: A video recording, whether or not with sound, or a photograph.

16 (b) the person makes the record because the person believes the
17 activity to be malicious cruelty to animals; and

18 (c) either or both of the following subparagraphs apply:

19 (i) within one business day after the person makes the
20 record, the activity is not reported to an authority of the
21 Commonwealth, or of the State or Territory in which the
22 activity occurred, with responsibility for enforcing laws
23 relating to animal welfare;

24 (ii) within 5 business days after the person makes the
25 record, the record is not given to such an authority; and

26 (d) subsection (4) applies.

27 Penalty: 30 penalty units.

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

- 1 (3) A defendant bears an evidential burden in relation to the matter in
2 paragraph (1)(c).
- 3 (4) This subsection applies if:
4 (a) the record is made:
5 (i) by a federally regulated entity; or
6 (ii) in constitutional trade or commerce; or
7 (iii) in a Territory or a Commonwealth place; or
8 (b) the recorded activity is engaged in:
9 (i) by a federally regulated entity; or
10 (ii) in constitutional trade or commerce; or
11 (iii) in a Territory or a Commonwealth place.
- 12 (5) Absolute liability applies to paragraph (1)(d).
13 Note: For absolute liability, see section 6.2.

14 **383.10 Meaning of *malicious cruelty to animals***

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

20 **383.15 Visual records**

21 *Copies*

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

24 *Alteration*

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

28 **383.20 Other matters**

- 29 (1) This Division does not apply to the extent (if any) that it would:
-

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

10 **Division 385—Interfering with the carrying on of animal**
11 **enterprises**

12 **385.5 Destroying or damaging property**

13 *Offence*

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

28 **Penalty:**

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

- 1 (c) in the case of an offence to which subsection 385.20(3)
2 applies—imprisonment for 20 years; or
3 (d) in the case of an offence to which subsection 385.20(4)
4 applies—imprisonment for life; or
5 (e) in any other case—imprisonment for 1 year.

- 6 (2) For the purpose of this section, it does not matter whether the
7 conduct actually interferes with the carrying on of the animal
8 enterprise.

9 *Constitutional basis*

- 10 (3) This subsection applies if:
11 (a) the first person is a federally regulated entity; or
12 (b) the conduct occurs in a Territory or a Commonwealth place;
13 or
14 (c) the property belongs to:
15 (i) a Commonwealth entity; or
16 (ii) a Territory; or
17 (iii) a federally regulated entity; or
18 (d) the animal enterprise is carried on by:
19 (i) a Commonwealth entity; or
20 (ii) a Territory; or
21 (iii) a federally regulated entity; or
22 (e) the interference with the carrying on of the animal enterprise
23 would cause detriment to constitutional trade and commerce.

- 24 (4) Absolute liability applies to paragraph (1)(c).

25 Note: For absolute liability, see section 6.2.

26 **385.10 Causing fear of death or serious bodily injury**

27 *Offence*

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

- 1 (b) the conduct causes another person (the *second person*)
2 reasonably to fear that any person will cause death or serious
3 bodily injury to a person (the *targeted person*) who is:
4 (i) the second person; or
5 (ii) a close family member of the second person; or
6 (iii) an employee of the second person; or
7 (iv) a contractor engaged by the second person to participate
8 in the carrying on of an enterprise; and
9 (c) the second person or the targeted person:
10 (i) carries on an animal enterprise; or
11 (ii) is otherwise connected with, or related to, an animal
12 enterprise; and
13 Example: Persons connected with, or related to, an animal enterprise could
14 include suppliers or customers.
15 (d) the first person intends that the conduct will interfere with the
16 carrying on of the animal enterprise; and
17 (e) subsection (3) applies.

18 **Penalty:**

- 19 (a) in the case of an offence to which subsection 385.20(1)
20 applies—imprisonment for 5 years; or
21 (b) in the case of an offence to which subsection 385.20(2)
22 applies—imprisonment for 10 years; or
23 (c) in the case of an offence to which subsection 385.20(3)
24 applies—imprisonment for 20 years; or
25 (d) in the case of an offence to which subsection 385.20(4)
26 applies—imprisonment for life; or
27 (e) in any other case—imprisonment for 1 year.

- 28 (2) For the purpose of this section, it does not matter whether the
29 conduct actually interferes with the carrying on of the animal
30 enterprise.

31 *Constitutional basis*

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

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

9 (4) Absolute liability applies to paragraph (1)(e).

10 Note: For absolute liability, see section 6.2.

11 **385.15 Defences**

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

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

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

21 **385.20 Aggravated offences**

22 *Aggravated offences*

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

1 *Procedural matters*

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

18 **385.25 Division not intended to exclude State or Territory law**

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

22 **2 Dictionary in the *Criminal Code***

23 Insert:

24 ***animal enterprise*** includes:

- 25 (a) a commercial or academic enterprise that uses, sells, houses
26 or stores animals or animal products for:
27 (i) profit; or
28 (ii) food; or
29 (iii) fibre production;
30 (iv) agriculture; or
31 (v) education; or
32 (vi) research; or
33 (vii) testing; or

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

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

9 **economic damage:**

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

20 **federally regulated entity** means:

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

32 **serious bodily injury** means:

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

- 1 (d) protracted loss or impairment of the function of a bodily
2 member, organ or mental faculty.
- 3 ***substantial bodily injury*** means:
- 4 (a) deep cuts and serious burns or abrasions; or
5 (b) short-term or nonobvious disfigurement; or
6 (c) fractured or dislocated bones, or torn members of the body;
7 or
8 (d) significant physical pain; or
9 (e) illness; or
10 (f) short-term loss or impairment of the function or a bodily
11 member, organ or mental faculty; or
12 (g) any other significant injury to the body.

1 **Part 2—Consequential amendments**

2 *Criminal Code Act 1995*

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

5 Repeal the definition.

6 **4 Subsection 380.1(1) of the *Criminal Code* (definition of**
7 ***constitutional trade and commerce*)**

8 Repeal the definition.

9 **5 Subsection 390.1(1) of the *Criminal Code* (definition of**
10 ***Commonwealth place*)**

11 Repeal the definition.

12 **6 Paragraph 400.2A(4)(b) of the *Criminal Code***

13 Repeal the paragraph, substitute:

14 (b) by means of a constitutional communication; or

15 **7 Dictionary in the *Criminal Code***

16 Insert:

17 *close family member* has the meaning given by section 390.1.

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

20 *constitutional trade and commerce* means trade and commerce:

21 (a) with other countries; or

22 (b) among the States; or

23 (c) between a State and a Territory; or

24 (d) between 2 Territories.

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