

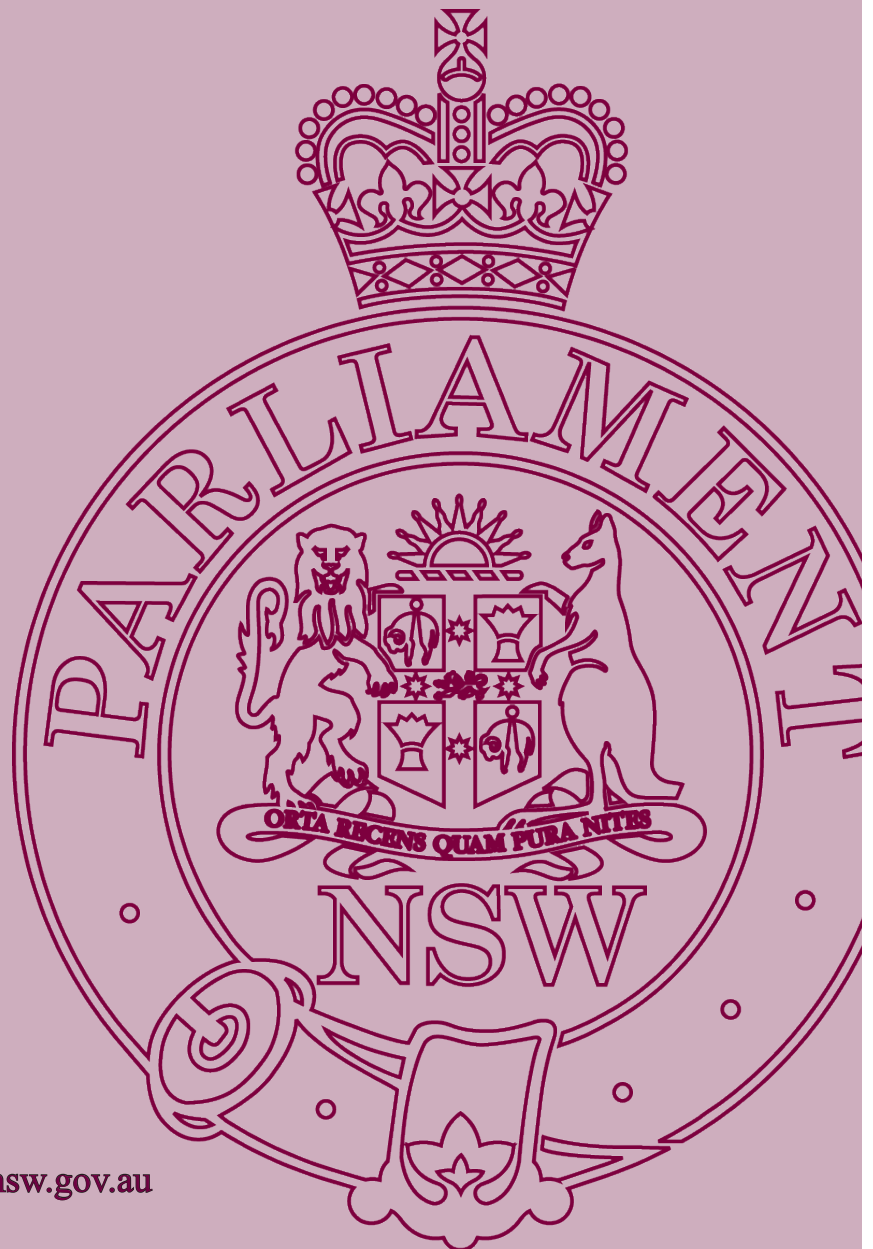


LEGISLATIVE COUNCIL

SELECT COMMITTEE ON LANDOWNER PROTECTION FROM UNAUTHORISED  
FILMING OR SURVEILLANCE

## Landowner protection from unauthorised filming or surveillance

October 2018



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Select Committee on Landowner Protection from  
Unauthorised Filming or Surveillance

# **Landowner Protection from Unauthorised Filming or Surveillance**

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## Terms of reference

1. That a select committee be established to inquire into and report on the extent of protection for landowners from unauthorised filming or surveillance and in particular:
  - (a) the nature of protection for landholders from unauthorised filming or surveillance, including but not limited to installation, use and maintenance of optical surveillance devices without consent under the Surveillance Devices Act 2007,
  - (b) the extent and appropriateness of penalties for unauthorised filming or surveillance, including but not limited to on-the-spot fines and/or relevant penalties under the Summary Offences Act 1988,
  - (c) the implications with regard to self-incrimination of the request of disclosure by a person of any recordings made by that person,
  - (d) the implications of rapidly changing media environment, including social media platforms such as Facebook Live, and
  - (e) any other related matter.

## Committee details

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### Committee members

<b>The Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	<i>Chair</i>
<b>Mr Scot MacDonald MLC</b>	Liberal Party	<i>Deputy Chair</i>
<b>The Hon Rick Colless MLC</b>	The Nationals	
<b>The Hon Courtney Houssos MLC</b>	Australian Labor Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Mark Pearson MLC</b>	Animal Justice Party	
<b>The Hon Mick Veitch MLC</b>	Australian Labor Party	

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## Chair's foreword

Continual incursions by animal welfare activists on farms are having a detrimental impact, not only on farmers and their businesses, but also their families and employees, and the broader community and industry. To have your privacy breached is one thing, and understandably upsetting, but to have distorted footage of your farming business taken and published online is another. The damage this does to one's business and reputation, aside from the personal impacts, is both difficult to quantify and rectify.

While animal welfare activists believe that such incursions help to shine a light on systemic animal cruelty practices, what they fail to recognise is that these incursions themselves can cause considerable stress and injury to the animals they disturb.

Unfortunately though, this inquiry highlighted that there is no simple and easy answer to deal with these illegal activities. What became clear through this inquiry was that both sides of the debate – farmers and animal welfare activists – are concerned with animal welfare. Given this, improving the transparency of animal industries may assist in building public confidence, which is why we have recommended that the NSW Government investigate schemes to increase transparency about food production and animal husbandry practices.

Ensuring that the RSPCA can act effectively to investigate and address animal cruelty is also important. This too may reduce the perceived need for animal activists to trespass on landholder's properties and install unauthorised surveillance devices.

These measures, however, are unlikely to prevent all farm incursions from occurring. Unfortunately there is a cohort of animal welfare activists who have a strong philosophical objection to the killing of animals for human benefit, which is why the laws need to be strengthened to ensure trespass and unauthorised surveillance offences are duly investigated and prosecuted as a particularly serious offence.

As it currently stands, the law is not adequately dealing with these issues, which is why we urge the NSW Government to review the existing legislative framework, in order to identify barriers to enforcement and successful prosecutions. The government needs to focus on how it can enforce the existing laws to make it easy for farmers to continue their business in an economic way without continual interruption from animal welfare activists.

To all that participated in this inquiry, I thank you for your contribution. I would also like to thank my fellow committee members and the committee secretariat.



Hon Robert Borsak MLC  
**Committee Chair**

## Recommendations

**Recommendation 1****23**

That the NSW Government review the resources and powers of the RSPCA in regard to the monitoring and enforcement of animal welfare measures, and consider means by which the RSPCA and the NSW Police can work together more effectively to protect animals from mistreatment.

**Recommendation 2****23**

That the NSW Government encourage animal industries to be proactive in engaging with the community, and collaborate with animal industries to investigate schemes to increase transparency about food production and animal husbandry practices.

**Recommendation 3****23**

That the NSW Government review the *Surveillance Devices Act 2007* to consider whether to insert a public interest exemption for unauthorised filming or surveillance.

**Recommendation 4****35**

That the NSW Government establish a whole of government working group to review the current legislative framework around unauthorised filming and surveillance and identify barriers to enforcement and successful prosecutions.

**Recommendation 5****35**

That the NSW Government review the laws and penalties of trespass and unauthorised surveillance to consider the responsibility of those planning illegal activities and whether the offences of trespass and unauthorised surveillance should be extended to office bearers of organisations planning and financing these illegal activities.

**Recommendation 6****36**

That the NSW Government, through the Council of Australian Governments, raise the need for a comprehensive approach to the regulation of drones across state and federal jurisdictions, with particular regard to the potential privacy and security impacts of the increasing use of drone technology.

## Conduct of inquiry

The select committee was established by the Legislative Council with its terms of reference for the inquiry on 17 May 2018.

The committee received 18 submissions and held one public hearing at Parliament House in Sydney. The committee also conducted a site visit to Cordina Chicken Farms.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



## Chapter 1 Protections for landowners

This chapter briefly outlines the existing legislative framework providing protections for landowners related to trespass, biosecurity risks and unauthorised surveillance—including the use of drones and other devices—as they relate to the terms of reference. This chapter also gives a brief overview of recent reviews of protections for landholders. The adequacy of the current framework will be examined in the final chapter, Chapter 4.

### Existing legislative framework

1.1 The NSW Government noted that it is 'committed to ensuring that farming businesses treating their animals in a lawful and responsible manner are permitted to carry out their business undisturbed by the unlawful actions of animal activists.'<sup>1</sup> The key pieces of legislation or regulation responsible for providing the protections to landowners against unauthorised filming and surveillance are:

- *Inclosed Lands Protection Act 1901*
- *Crimes Act 1900*
- *Biosecurity Act 2015*
- *Surveillance Devices Act 2007*
- Civil Aviation Safety Regulations 1998 (Cth)

### Trespass

1.2 The *Inclosed Lands Protection Act 1901* relates to the protection of inclosed lands from intrusion and trespass. Under Section 4, it is an offence for any person to enter into inclosed land without a lawful excuse or the consent of the owner or occupier of the land.<sup>2</sup> For the purposes of the Act, inclosed land is a prescribed premises, or land inclosed by any fence or other feature by which boundaries may be known or recognised.<sup>3</sup>

1.3 All agricultural businesses and meat processing businesses are protected from intrusion and trespass under this legislation as they meet the definition of inclosed lands under the Act.<sup>4</sup>

1.4 The Act includes aggravating factors for unlawful entry on inclosed lands, including when an individual interferes with the conduct of the business or undertaking<sup>5</sup> or where where the unlawful entry introduces or increases the risk of a biosecurity impact on the property.<sup>6</sup>

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<sup>1</sup> Submission 6, NSW Government, p 6.

<sup>2</sup> *Inclosed Lands Protection Act 1901*, s 4.

<sup>3</sup> *Inclosed Lands Protection Act 1901*, s 3.

<sup>4</sup> Submission 6, NSW Government, p 6.

<sup>5</sup> *Inclosed Lands Protection Act 1901*, s 4B(1)(a).

<sup>6</sup> *Inclosed Lands Protection Act 1901*, s 4B(1)(c).

- 1.5 The Act includes an unlawful entry on inclosed lands offence of 5 penalty units (\$550) and an aggravated entry on inclosed lands offence with a maximum penalty of 50 penalty units (\$5,500).<sup>7</sup>
- 1.6 The NSW Government outlined that there are also 'a range of offences under the *Crimes Act 1900* for damaging property, causing violence or threatening violence against another person, or for injuring another person which carry imprisonment penalties'.<sup>8</sup>

### **Biosecurity**

- 1.7 Good biosecurity is a critical aspect of any farming enterprise.<sup>9</sup> The NSW Farmers' Association noted that intensive farming operations in particular 'follow strict biosecurity protocols aimed at ensuring positive health and welfare outcome for animals by preventing the spread of disease' and that illegal incursions put the effectiveness of these protocols at risk.<sup>10</sup>
- 1.8 The *Biosecurity Act 2015* contains provisions that relate to the introduction and spread of plant and animal pests and diseases, which can result from unauthorised access to farming properties.
- 1.9 Penalties under the Act are particularly strong for those who intentionally or recklessly create a biosecurity risk or spread a pest/disease. The maximum penalties range from \$220,000 to \$1.1 million and imprisonment for up to three years in the case of an individual, or from \$440,000 to \$2.2 million in the case of a corporation.<sup>11</sup>

### **Surveillance**

- 1.10 The primary legislative protection for landowners from unauthorised filming and surveillance are contained within the *Surveillance Devices Act 2007*. The Act provides protections against the installation, use, and maintenance of optical and audio surveillance devices and against the publication of surveillance material.
- 1.11 Under Section 8 of the Act, it is an offence for a person to use an optical surveillance device on or within premises to record an activity if the use of the device involves entry onto or into the premises without the consent of the owner or occupier.<sup>12</sup> For the purposes of the Act, an optical surveillance device means any device capable of being used to visually record an activity.<sup>13</sup>

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<sup>7</sup> Submission 6, NSW Government, p 6.

<sup>8</sup> Submission 6, NSW Government, p 6.

<sup>9</sup> Submission 6, NSW Government, p 4.

<sup>10</sup> Submission 15, NSW Farmers' Association, p 16.

<sup>11</sup> Submission 6, NSW Government, p 6.

<sup>12</sup> *Surveillance Devices Act 2007*, s 8.1

<sup>13</sup> *Surveillance Devices Act 2007*, s 4.

- 1.12 Section 7 of Act provides protection against unauthorised use of listening devices.<sup>14</sup> It is an offence for a person to use a listening device to record private conversations, whether the person is a part of the conversation or not, unless all parties consent to the recording.<sup>15</sup>
- 1.13 Section 11 of Act makes it an offence to publish any recording of a private conversation or the carrying on of activities that has come to the person's knowledge as a result of the use of a listening or optical surveillance device.<sup>16</sup> The NSW Government points out that this may capture some recordings taken by trespassers.<sup>17</sup>
- 1.14 The maximum penalty for the offence of using an optical surveillance device without consent is \$55,000 for a corporation or \$11,000 and/or five years imprisonment for an individual. This means that for an individual, optical surveillance without consent is a serious indictable offence, which is the most serious category of offence.<sup>18</sup>
- 1.15 However, the NSW Government noted that the legality of a video recording taken by a staff member of a business is unclear:

The employee has the owner's consent to enter the premises, and as long as the employee does not interfere with the premises, a vehicle or other object, it is unclear if s8(1) would apply. It is possible that s8(1) may not apply to an employee who films wearing a body worn camera, even though the employee does not have the owner's consent to film.<sup>19</sup>

### **Surveillance with 'drones' or Remotely Piloted Aircraft Systems**

- 1.16 The use of Remotely Piloted Aircraft Systems or 'drones' is addressed under Commonwealth legislation. Users must comply with the federal Civil Aviation Safety Regulations 1998 (Cth), made under the *Civil Aviation Act 1988*. The Civil Aviation Safety Authority (CASA), not the New South Wales Police, is the only entity with authority to take action on offences related to the use of drones.<sup>20</sup>
- 1.17 The rules relating to recreational drone flying primarily relate to aviation safety, not security or privacy issues. The rules provide that recreational drones can only be flown in daylight hours and the drone must remain in visual line-of-sight by the operator's eyes.<sup>21</sup> However, they are not clear regarding the flying of drones over private land:

... airspace over private land is not inclosed and as long as an RPAS [or drone] is flown over land quickly and at a height that does not detract from the landholders use and enjoyment of the property, no trespass is committed under the ILP Act [*Inclosed Lands*]

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<sup>14</sup> *Surveillance Devices Act 2007*, s 7.

<sup>15</sup> Submission 6, NSW Government, p 7.

<sup>16</sup> *Surveillance Devices Act 2007*, s 11.

<sup>17</sup> Submission 6, NSW Government, p 7

<sup>18</sup> Submission 6, NSW Government, p 7.

<sup>19</sup> Submission 6, NSW Government, p 9.

<sup>20</sup> Submission 6, NSW Government, p 8.

<sup>21</sup> Submission 6, NSW Government, p 8.

*Protection Act 1901*]. However, it is not clear on what height the RPAS would need to be flown to avoid trespassing on private land.<sup>22</sup>

- 1.18** Offences under the *Civil Aviation Safety Regulations 1998* are summary offences and administrative offences punishable by fine via infringement notice or court action.<sup>23</sup>

## Recent review of protections for landowners

- 1.19** In 2015, the NSW Minister for Primary Industries, the Hon Naill Blair MLC, and the Commonwealth Minister for Agriculture, the Hon Barnaby Joyce MP, hosted a national Farm Trespass Roundtable to discuss a coordinated national approach to protect farmers from farm trespass, particularly by animal welfare activists. The round table was attended by representatives from government, industry and enforcement agencies including NSW Police and the RSPCA.<sup>24</sup>
- 1.20** This was followed in 2016 by an announcement from the Deputy Premier and Minister for Justice and Police, the Hon Troy Grant MP, of a review into stock theft and trespass in New South Wales to be conducted by former NSW Police Force Assistant Commissioner Steve Bradshaw. The NSW Stock Theft and Trespass Review (the Bradshaw Review) sought to analyse the crimes of stock theft, rural trespass and illegal hunting and made a number of recommendations regarding rural trespass and offences and the associated penalties.<sup>25</sup>
- 1.21** In response to the Bradshaw Review, the NSW Government introduced the Rural Crime Legislation Amendment Bill 2017. The bill strengthened the existing legislative provisions that address trespass and unlawful surveillance and monitoring.<sup>26</sup> The bill amended the *Inclosed Lands Protection Act* to introduce a new offence for aggravated unlawful entry on inclosed lands where the entry introduces or increases the risk of a biosecurity impact.<sup>27</sup> This offence is particularly relevant to intensive animal operations and meat processing operations.<sup>28</sup>
- 1.22** The Rural Crime Legislation Amendment Bill 2017 also amended the *Crimes (Sentencing Procedure) Act 1999*, to make specific reference to a victim's geographical isolation as an aggravating factor to be taken into account in determining the appropriate sentence for an offence.<sup>29</sup>

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<sup>22</sup> Submission 6, NSW Government, p 8.

<sup>23</sup> Submission 6, NSW Government, p 8.

<sup>24</sup> Media Release, Hon Naill Blair MLC, Minister for Primary Industries and Hon Barnaby Joyce MP, Commonwealth Minister for Agriculture, 'National focus on farm trespass', 3 August 2015.

<sup>25</sup> Steve Bradshaw, *NSW Stock Theft and Trespass Review: Final Report*, June 2016.

<sup>26</sup> Evidence, Mr Scott Hansen, Director General, Department of Primary Industries, 28 August 2018, p 2.

<sup>27</sup> Rural Crime Legislation Amendment Bill 2017, s 1.4(1)(c).

<sup>28</sup> Submission 6, NSW Government, p 6.

<sup>29</sup> Rural Crime Legislation Amendment Bill 2017 s 1.2.



## Chapter 2 Impacts of trespass and unauthorised surveillance on landholders

Unauthorised filming and surveillance have significant impacts on farmers, their families, their employees, their communities, their businesses – and can even affect Australia's reputation as a food producer. This chapter focuses on three key impacts: the biosecurity risks caused by those moving between properties where protocols are not appropriately followed, the financial and reputational impacts of trespass and unauthorised surveillance on farming operations, and the personal and emotional impact privacy intrusions can have on farmers and their families.

### Biosecurity impacts

- 2.1 One of the risks posed by those entering farms unlawfully is that pests or diseases are introduced or spread, adversely impacting on farming operations. To manage these risks strict biosecurity protocols must be followed by those entering and moving between properties.
- 2.2 Farmers and industry bodies expressed significant concerns about the impact of unauthorised entry on to properties where biosecurity protocols are contravened. The National Farmers' Federation argued that activists 'do not take necessary (and legally mandated) steps before entering farms and interacting with animals, potentially introducing pests and disease'. It added that 'a disease outbreak can have far reaching consequences, not just for individual farms, but for farming regions and across commodities'.<sup>30</sup>
- 2.3 Likewise, Australian Pork Limited stated that the 'damage caused by a disease-carrying trespasser (even endemic diseases) could be irreparable to an individual's business, livelihood and the animals they produce'.<sup>31</sup> To demonstrate the risk this poses, Australian Pork Limited noted that 48 piggeries were allegedly 'raided' across New South Wales, Queensland, Victoria and Western Australia between August 2012 and March 2015, with intrusions in certain areas often occurring on consecutive nights.<sup>32</sup>
- 2.4 In terms of the damage that could potentially be caused by biosecurity breaches, two key aspects were raised by stakeholders – the financial impact to a business and the broader impact on the industry, including agricultural trade and food security.
- 2.5 Australian Pork Limited estimated that the costs of reckless trespass on a pig farm within a quarantine period could escalate 'into the tens of millions of dollars'. It added that 'in extreme cases, with emergency diseases involved, it could mean the shutting down of one or more livestock sectors'. Highlighting how this could seriously damage an industry, it said:

Industry and government collectively spend millions of dollars each year on traceability systems and biosecurity measures to ensure that the industry remains

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<sup>30</sup> Submission 16, National Farmers' Federation, p 2.

<sup>31</sup> Submission 5, Australian Pork Limited, p 1.

<sup>32</sup> Answers to supplementary questions, Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, 25 September 2018.

free from disease, yet an unbridled activism movement risks undermining this entire system unless serious steps are taken.<sup>33</sup>

- 2.6** Australian Pork Limited stressed just how severely an exotic disease could affect a producer's business:

Animal activists are a vector and are a severe threat to disease risk. An exotic disease taking hold in a piggery would require the euthanising of an entire herd, and financial ruin for the producer affected. An endemic disease may also require the depopulation of the herd, sterilisation of the facilities and then repopulation – a very significant cost to any business.<sup>34</sup>

- 2.7** The NSW Farmers' Association raised similar concerns, noting that 'illegal farm incursions are a major risk to biosecurity protocols of farms', particularly intensive farming operations such as piggeries, and poultry meat and egg farms. It outlined how the accreditation of livestock operations as having minimal diseases is crucial to the access of markets.<sup>35</sup>

- 2.8** The NSW Government equally noted that biosecurity concerns on Australian farms can potentially damage international agricultural trade partnerships: 'Misrepresentations of practices on Australian farms have the potential to compromise markets for Australian agricultural products'.<sup>36</sup>

- 2.9** The National Farmers' Federation emphasised the extent to which intrusions and misleading footage can harm the reputation of farmers and more broadly Australian agricultural business:

The Australian agricultural brand has an international reputation for quality and cleanliness, in large part because of the robustness of our farming systems and the regulation which promotes them. We are concerned that the defamatory activities of people...may damage not just the operations of the individual farms which are targeted, but the value of that brand nationally and even internationally.<sup>37</sup>

- 2.10** At both a local and industry level, the committee heard about the risks of spreading certain diseases such as foot and mouth disease or avian or equine influenza. Mr Scott Hansen, Director General, Department of Primary Industries, highlighted the potential for diseases such as foot and mouth to spread easily, given the short distance between airports, international ports and intensive farming business and operations. He said 'it does not take much for the spread of a disease into one facility to then see that transmitted across multiple facilities'. Reflecting on the damage that could be caused by foot and mouth disease, Mr Hansen added that '...even the presence of it in the country creates a market access problem that shuts down many of our global markets...'.<sup>38</sup>

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<sup>33</sup> Submission 5, Australian Pork Limited, p 1.

<sup>34</sup> Answers to supplementary questions, Mr Spencer, p 2.

<sup>35</sup> Submission 15, NSW Farmers' Association, p 16.

<sup>36</sup> Submission 6, NSW Government, p 4.

<sup>37</sup> Submission 16, National Farmers' Federation, p 3.

<sup>38</sup> Evidence, Mr Scott Hansen, Director General, Department of Primary Industries, 28 August 2018, p 3.

- 2.11 Mr Hansen acknowledged that the biosecurity risks caused by those entering properties unlawfully is the same regardless of whether they are caused by an activist trespassing on to a farm or a 'weekend tripper' who jumps a farm fence to take a photo.<sup>39</sup>
- 2.12 Although it can be difficult to verify the cause of disease outbreaks, Mr Andrew Spencer, Chief Executive Officer of Australian Pork Limited, noted that an incursion several years ago caused the re-emergence of an endemic disease not seen for 30 years.<sup>40</sup>
- 2.13 The spread of disease by trespassers can also potentially impact food security. Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, emphasised the extent to which this can harm the industry and government:
- ... if we are exposed to a biosecurity outbreak due to an activist break-in not only could we be faced with hundreds of millions of dollars worth of damages which would be subject to a cost recovery with government, but we would be facing food security issues because we would not have enough eggs. How do you quantify that? I am not sure.<sup>41</sup>
- 2.14 While some stakeholders suggested animal activists trespassing on properties do not follow strict biosecurity protocols, this was disputed by Ms Lynda Stoner, Chief Executive Officer, Animal Liberation. Ms Stoner told the committee that when members of her organisation enter properties they take all biosecurity precautions necessary. She said that they ensure they have not been to another facility with similar animals for weeks prior and wear 'hazmat suits, gloves and hair coverings' and disinfect their footwear.<sup>42</sup>

### Damage to property and stock disturbance

- 2.15 Inquiry participants also raised concerns about the physical damage that may be caused to property when someone trespasses on to a landholder's business. For example, Cordina Chicken Farms Pty Ltd noted that the feed and drinker lines in chicken sheds can be easily damaged, either by 'people bumping into them in the dark, or birds damaging them during a panic in response to an unexpected shed entry'.<sup>43</sup> It also reported instances in which the covert installation of surveillance devices on farms could have created a safety and fire risk due to use of the electrical circuitry in the shed.<sup>44</sup>
- 2.16 The NSW Government also pointed to other damage that may be caused, leading to the need for repair of equipment or infrastructure.<sup>45</sup> In addition, other business impacts were highlighted, such as reduced production due to the disruption caused by trespass and implementation of measures required to minimise risks, as well as loss of product due to possible contamination.<sup>46</sup>

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<sup>39</sup> Evidence, Mr Hansen, 28 August 2018, p 3.

<sup>40</sup> Evidence, Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, 28 August 2018, p 34.

<sup>41</sup> Evidence, Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, 28 August 2018, p 39.

<sup>42</sup> Evidence, Ms Lynda Stoner, Chief Executive Officer, Animal Liberation, 28 August 2018, p 49.

<sup>43</sup> Submission 18, Cordina Chicken Farms Pty Ltd, pp 1- 2.

<sup>44</sup> Submission 18, Cordina Chicken Farms Pty Ltd, p 2.

<sup>45</sup> Submission 6, NSW Government, p 3.

<sup>46</sup> Submission 6, NSW Government, p 3.

Farming operations may also be impacted by the additional costs of security, with some farming families paying \$25,000 a month for security guards to patrol their properties.<sup>47</sup>

- 2.17** Australian Pork Limited rejected any attempts that trivialise the impact caused by trespass on primary producers. It said that 'in all cases, trespass by activists requires additional measures to be taken to ensure the regular operation of the piggery, as no producer can be certain that activists have not stolen pigs, contaminated feed or sabotaged equipment'.<sup>48</sup>
- 2.18** The National Farmers' Federation said that in addition to the biosecurity issue, the activities of animal activists have impacted the productivity of farms and resulted in damage to property and the theft of livestock.<sup>49</sup>
- 2.19** There can also be negative impacts on animals, such as injury or death. The NSW Farmers' Association highlighted how significant disturbance to livestock can have serious consequences. It gave the example of disturbance to ewes that are due for lambing where the startling caused by someone entering a property unlawfully could disrupt the birth process for the ewe, 'endangering the lives of both the ewe and the lamb'.<sup>50</sup>
- 2.20** Echoing this view, Cordina Chicken Farms Pty Ltd stressed that when intruders use flashlights in the middle of the night there is often panic among the birds. It suggested that this can lead to 'unexplained mortalities in their flocks'.<sup>51</sup>
- 2.21** Mr Andrew Spencer, Chief Executive Officer of Australian Pork Limited, also said that 'attacks cause animal welfare concerns, including the injury and death of piglets and sows'.<sup>52</sup> Emphasising the animal welfare impacts of intrusions and consequential financial costs, Australian Pork Limited added:

Animal welfare impacts from such activism ranges from sows requiring euthanasia following a broken leg, the drowning of 100 piglets and the spread of endemic diseases across two piggeries free of micro plasma pneumonia for three and four decades respectively. Additionally, the stress of late-night visits by unfamiliar people often causes productivity issues for sows including stillbirths and crushing of newborn piglets. There is *always* a degree of financial cost that producers are exposed to following an illegal raid.<sup>53</sup>

- 2.22** The National Farmers' Federation observed that '...quite unsurprisingly animals experience distress when unfamiliar people invade their habitats at abnormal hours'.<sup>54</sup> The Federation concluded that: 'ironically the activities of these people, who are frequently not familiar with the

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<sup>47</sup> Answers to questions on notice, Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, 25 September 2018, p 3.

<sup>48</sup> Answers to supplementary questions, Mr Spencer, p 2.

<sup>49</sup> Submission 16, National Farmers' Federation, p 2.

<sup>50</sup> Submission 15, NSW Farmers' Association, p 12.

<sup>51</sup> Submission 18, Cordina Chicken Farms Pty Ltd, p 1.

<sup>52</sup> Evidence, Mr Spencer, 28 August 2018, p 34.

<sup>53</sup> Answers to supplementary questions, Mr Spencer, p 2. Emphasis as per original.

<sup>54</sup> Submission 16, National Farmers' Federation, p 3.

realities of farm practices, may actually harm the animals and welfare/rights which they think they are promoting'.<sup>55</sup>

## Personal impact

**2.23** Stakeholders told the committee about the personal toll unauthorised entry and surveillance can have on farmers, their families, their employees and local communities. Much of this relates to the invasion of privacy when people enter their homes and property unlawfully.

**2.24** As noted by several stakeholders, individuals and the broader community have high expectations in relation to personal privacy. The NSW Government said that individuals want to be able to live freely in their own homes without being subject to privacy intrusions. It acknowledged that 'any intrusion into privacy...can result in significant public humiliation and associated mental health problems'.<sup>56</sup>

**2.25** The NSW Farmers' Association emphasised how an individual can feel when their privacy is invaded, regardless of whether the entry is to a farm business or family home:

Farm trespass...is akin to break and enter in urban communities. It is an invasion of privacy and erodes what should be a natural sense of security in the home. Be it a farm business or a family home, the experience of having unwelcome and unwanted persons on a property undermines the feeling of safety for a landholder and their family.<sup>57</sup>

**2.26** Indeed, it can lead to high stress and anxiety, as the Egg Farmers of Australia reported based on farmers' experiences of such events:

These concerns are expressed personally by farmers who, having survived the fear of such events, must deal again with the incident by having their practices impugned online. These acts are unlawful. They acts cause significant and unreasonable anxiety and stress.<sup>58</sup>

**2.27** The National Farmers' Federation, reflecting on these intrusions being a gross violation of a farmer's privacy and personal security, said that 'it is understandably unsettling, even frightening, for farmers and their families to be woken in the middle of the night (or next morning) to find strange people sneaking about on their land and handling their property'.<sup>59</sup>

**2.28** The emotional impacts can be heightened by the reputational damage where farming operations are misrepresented. As Cordina Chicken Farms Pty Ltd explained, the aim of those unlawfully entering farms is to discredit farmers and cause reputational harm, such as by surveillance footage being edited and publicly released.<sup>60</sup>

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<sup>55</sup> Submission 16, National Farmers' Federation, p 3.

<sup>56</sup> Submission 6, NSW Government, p 4.

<sup>57</sup> Submission 15, NSW Farmers' Association, p 15.

<sup>58</sup> Submission 17, Egg Farmers of Australia, p 2.

<sup>59</sup> Submission 16, National Farmers' Federation, p 3.

<sup>60</sup> Submission 18, Cordina Chicken Farms Pty Ltd, pp 2-3.

- 2.29** Cordina Chicken Farms Pty Ltd told the committee how one of their chicken farmers had their property broken into, and when the farm owners were told about the breach, they 'broke down emotionally, not only because someone had violated their privacy and misrepresented their farming operation, but also because they saw it as a threat to their livelihood'.<sup>61</sup>
- 2.30** When footage is placed online, and selectively edited, farmers may be subjected to aggressive online abuse. Australian Pork Limited, reflecting on the frustration farmers feel at having to keep an 'ongoing watch on whether their piggery will be broken into', noted that producers are frequently abused online, with some even receiving death threats against them and their families.<sup>62</sup>
- 2.31** The NSW Government reported that farmers may feel as though they have little opportunity to defend themselves or correct any misrepresentations, which can lead to ongoing negative impacts on their families, staff and the local community.<sup>63</sup>
- 2.32** Highlighting the extent to which farmers feel they have to defend themselves, Mr Andrew Spencer, Chief Executive Officer of Australian Pork Limited, stated:
- Farmers are confronted by activists in person, via email, phone and social media, often in aggressive and abusive ways. Farmers are having to invest in expensive security systems to protect themselves from harassment and intimidation.<sup>64</sup>
- 2.33** In the case study below, Mr Ean Pollard, Chair of the Pork Committee for NSW Farmers' Association, recounted the impact of having animal welfare activists illegally enter his farm to take unauthorised surveillance.

**Case study – Ean Pollard**<sup>65</sup>

Mr Pollard, a second generation pig producer, appeared before the committee to give a first hand account of the impacts caused to him, his family and his business by trespass and unauthorised surveillance. In 2013, animal welfare activists entered Mr Pollard's piggery in the middle of the night and took footage of his dry sow section, where the pregnant sows are housed.

The footage taken showed his sows squealing, given the intruders entered the property in the morning when the sows thought they were going to be fed. Upon realising they were not being fed, the sows became agitated and started frothing at the mouth.

Mr Pollard had no knowledge that this trespass occurred until he was contacted by a media outlet who wanted to interview him about how the pig industry works. The reporter then informed him that they had footage of his piggery, taken from when activists entered his property illegally. He subsequently found out that the footage had also been uploaded to the internet.

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<sup>61</sup> Submission 18, Cordina Chicken Farms Pty Ltd, p 2.

<sup>62</sup> Submission 5, Australian Pork Limited, p 5.

<sup>63</sup> Submission 6, NSW Government, p 3.

<sup>64</sup> Evidence, Mr Spencer, 28 August 2018, p 34.

<sup>65</sup> Evidence, Mr Ean Pollard, Chair, Pork Committee, NSW Farmers' Association, 28 August 2018, pp 26-30. This case study is not taken verbatim from the witness, but is an accurate reflection of how the witness presented his story to the committee.

Mr Pollard described the personal impact this incident had on his family, staff and business. Not only were there phone calls, emails and letters of 'hatred', which interfered with the operation of his business. His staff were particularly concerned about being surveilled and potentially confronted by intruders when commencing work in the early hours of the morning.

Mr Pollard and his daughters were also personally impacted. One daughter, a potential third generation farmer studying agricultural business at university, questioned whether she wanted to be a farmer, given the impact of the situation on the family and business. Mr Pollard, when telling his story to the committee, was still visibly upset about the damage these activists caused.

He also explained that his piggery business started to slow down, so much so that he questioned whether his family should continue farming. Despite the views of others, and the incitement of those who wanted to vent on his family, he realised he should keep farming. He said: "That was the damaging part, the thing that really knocked us. My family had considered, "Is this what I want to do?" It is not that I do not like farming; it is just weathering this unpredictable vent from people viewing the footage.'

Subsequently, Mr Pollard partnered with Australian Pork Limited to create videos of his pig production, in an effort to help people understand how pig farming works. He said that his family are 'quite proud of what we do and...proud of the way we produce food for society'.





## Chapter 3 Public interest in animal welfare and transparent production practices

This chapter discusses the public interest in the ethical treatment of animals and ensuring that cases of animal cruelty are brought to light. Here, the key issues are whether animal welfare regulators have sufficient powers and resources, the protections for whistleblowers and journalists who seek to expose animal cruelty, and the potential introduction of a requirement to immediately report animal cruelty. The chapter concludes by considering how greater transparency on the part of the farming industry could allay concerns about animal mistreatment.

### Public interest in uncovering animal cruelty

- 3.1 Throughout this inquiry, participants on both sides of the debate – animal advocacy groups and intensive farming representatives alike – acknowledged the important role that whistleblowers have played in exposing shocking cases of animal cruelty. The challenge lies in achieving a balance between the right of the public to be informed about cruel and inhumane treatment of animals, on the one hand, and on the other, the rights of landholders to be protected from trespass and unauthorised filming and surveillance.
- 3.2 Issues raised in evidence include whether regulators including the RSPCA have sufficient powers and resources, protections for whistleblowers and journalists seeking to expose cases of animal cruelty, and reporting obligations that should apply to those with evidence of suspected animal abuse.

### Capacity of regulators to oversee animal welfare

- 3.3 Inquiry participants told the committee that regulators need to have sufficient powers and resources to monitor animal welfare effectively. In New South Wales, any suspected animal welfare offences are reported to the NSW Police, the RSPCA or the Animal Welfare League NSW under the *Prevention of Cruelty to Animals Act 1979*. Authorised inspectors from these agencies have the power to enter land and undertake inspections.<sup>66</sup>
- 3.4 A number of inquiry participants told the committee that the RSPCA and other regulatory agencies are inadequately resourced to properly oversight complaints about the mistreatment of animals. The submission from PETA Australia informed the committee that:

In both the 2013-2014 and 2015-2016 periods, the RSPCA finalised prosecutions on 0.4% of the complaints it investigated, obviously only some of which looked to the more than half a billion farmed animals in Australia. As we know from the constant flow of revelations of farmed animal abuse, this is not for lack of criminal activity occurring – it is simply because the empowered agencies or departments are hamstrung or inadequately equipped.<sup>67</sup>

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<sup>66</sup> Submission 6, NSW Government, p 6.

<sup>67</sup> Submission 4, PETA Australia, p 7.

**3.5** Ms Lynda Stoner, Chief Executive Officer, Animal Liberation, called for the RSPCA to have greater resources and powers, asserting that 'the RSPCA should be able to obtain warrants and should go in and make unannounced inspections of farms'.<sup>68</sup> Ms Stoner recommended that 'there should be at least double the amount of inspectors',<sup>69</sup> and also raised concerns about whether the RSPCA's spot inspections were truly 'unannounced', telling the committee: 'That is the feedback that we get, that at times there may be phone calls before inspections are undertaken – not always but sometimes.'<sup>70</sup>

**3.6** The Animal Defenders Office recommended that regulators be given stronger enforcement powers to enter land and conduct unannounced inspections, alongside more funding:

The public's confidence in how farmed animals are treated could be greatly increased if enforcement powers of officers authorised under animal welfare laws were strengthened. For example, increased powers of entry to land could be given to authorised officers under the *Prevention of Cruelty to Animals Act 1979* (NSW). The ability to conduct random, unannounced inspections could also be strengthened both through legislative amendment and greater funding of enforcement bodies.<sup>71</sup>

**3.7** Mr Malcolm Caulfield, Principal Solicitor, Animal Law Institute, argued that the RSPCA is not the appropriate organisation to deal with allegations of animal mistreatment. Mr Caulfield told the committee that 'the RSPCA has a fundamental problem primarily because it is not a government agency', claiming that 'governments across the board have embraced the idea of a non-governmental organisation which is a charity basically providing a cheap animal cruelty police force'.<sup>72</sup> Mr Caulfield advocated greater involvement of the rural division of the police in investigating reports of animal cruelty.

**3.8** The Australian Veterinary Association supported the need for regulators to be better resourced, observing that it would enable regulators to undertake 'proactive monitoring' rather than rely on tip-offs from the public:

Animal welfare inspectors currently rely on complaints from the public to alert them to breaches such as the existence of puppy farms, substandard livestock operations or serious abattoir negligence. Additional state resourcing to permit proactive monitoring by regulators under formal monitoring schemes would help to improve this situation...<sup>73</sup>

**3.9** Further, the Australian Veterinary Association noted that if regulators were given more resources and powers to conduct random inspections, this would weaken the argument that unauthorised surveillance is the only means to expose animal mistreatment:

Greater government investment and resourcing of animal welfare enforcement agencies, increased investigative powers and strengthening of existing animal welfare legislation is urgently needed ... Empowering regulators to conduct random audits

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<sup>68</sup> Evidence, Ms Lynda Stoner, Chief Executive Officer, Animal Liberation, 28 August 2018, p 52.

<sup>69</sup> Evidence, Ms Stoner, 28 August 2018, p 52.

<sup>70</sup> Evidence, Ms Stoner, 28 August 2018, p 55.

<sup>71</sup> Submission 12, Animal Defenders Office, p 3.

<sup>72</sup> Evidence, Mr Malcolm Caulfield, Principal Solicitor, Animal Law Institute, 28 August 2018, p 20.

<sup>73</sup> Submission 8, Australian Veterinary Association, p 2.

would go a long way towards reducing the perceived need for undercover surveillance by members of the public.<sup>74</sup>

- 3.10** PETA Australia recommended that oversight responsibility be allocated to an independent, taxpayer funded body, and that laws to address animal cruelty be strengthened:

Address the nation's over-reliance on private charities that are similarly empowered to investigate and enforce cruelty laws, as such entities are perpetually under-funded and -resourced and subject to a barrage of industry and political pressures. Instead place such powers in the hands of an independent and taxpayer-funded regulatory body. Bolster the laws that such a body may look to address systemic cruelty.<sup>75</sup>

### **Protections for whistleblowers and journalists**

- 3.11** Some stakeholders called for whistleblowers and journalists seeking to shine a light on animal mistreatment to be protected from the heavy penalties for unauthorised filming or surveillance.

- 3.12** Ms Stoner from Animal Liberation gave evidence of numerous cases where activists had exposed instances of animal cruelty and mistreatment, which resulted in improvements to animal welfare. Ms Stoner concluded that 'without the work of peaceful activists and groups like Animal Liberation none of these things would ever see the light of day'.<sup>76</sup>

- 3.13** Ms Sarah Waladan, Head of Legal and Regulatory Affairs, Free TV Australia, noted that the *Surveillance Devices Act* does not have an exemption for public interest reporting, for example the exposure of alleged animal cruelty and mistreatment.<sup>77</sup> Commenting on this issue, Mr Mark Maley, Editorial Policies Manager (News), ABC, said that the absence of a public interest exemption was a significant barrier to good quality journalism:

...far and away the biggest practical impediment that we face in this area in doing good quality, well-researched stories in the public interest is the lack of a public interest defence in the Surveillance Devices Act in New South Wales, which sets New South Wales legislation apart and makes it more onerous than any other jurisdiction I am aware of in the English-speaking democracies.<sup>78</sup>

- 3.14** Mr Maley also called for greater protection of whistleblowers, noting that at present there is 'very, very little protection for whistleblowers'. He commented:

Whistleblowers do exist. There are people who work in these areas who are distressed by what they see and they take it upon themselves to record it and come to the media. Essentially, the most prominent example of genuine whistleblowers has been with the live sheep trade.<sup>79</sup>

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<sup>74</sup> Submission 8, Australian Veterinary Association, p 4.

<sup>75</sup> Submission 4, PETA Australia, p 7.

<sup>76</sup> Evidence, Ms Stoner, 28 August 2018, p 50.

<sup>77</sup> Evidence, Ms Sarah Waladan, Head of Legal and Regulatory Affairs, Free TV Australia, 28 August 2018, p 42.

<sup>78</sup> Evidence, Mr Mark Maley, Editorial Policies Manager (News), ABC, 28 August 2018, p 43.

<sup>79</sup> Evidence, Mr Maley, 28 August 2018, p 43.

**3.15** The RSPCA Australia supported the need for a public interest exemption:

The [surveillance devices] legislation must contain appropriate exemptions for the disclosure and communication of material that is in the public interest. Without such exemptions the legislation may prevent the public from knowing about matters in which it has a legitimate interest, and in some cases, a right, to know about.<sup>80</sup>

**3.16** In supporting a public interest exemption for exposure of animal cruelty, the Animal Defenders Office noted that the South Australian *Surveillance Devices Act*, which commenced in December 2017, contains a defence if the surveillance device is used in the public interest.<sup>81</sup>**3.17** The Australian Privacy Foundation similarly supported 'the introduction of a public interest based media shield/whistleblowing statute'.<sup>82</sup> According to the Foundation, the definition of 'public interest' should be 'a compelling and transcendent public good, articulated by the High Court and NSW Supreme Court over several decades, rather than merely what attracts public curiosity or is deemed "newsworthy..."<sup>83</sup>**3.18** Some representatives of animal enterprises told the committee that they also supported greater protection for whistleblowers who are genuinely committed to exposing animal mistreatment – as opposed to animal activists, who may be motivated by the desire to discredit animal enterprises. For example, the submission from Cordina Chicken Farms Pty Ltd stated:

Individuals who act in good faith in an attempt to expose criminal activity should be protected under the legislation, as distinct from individuals who are simply on a 'fishing expedition' and break the law just for the purpose of disrupting the business activities of law abiding businesses, or in the 'hope' that they can capture some images that they may be able to manipulate in some way to wrongly incriminate law abiding businesses.<sup>84</sup>

**Potential requirement to immediately report suspected animal cruelty****3.19** Some inquiry participants told the committee that allegations of animal cruelty should be reported as soon as possible, to prevent any further harm. For example, Australian Pork Limited supported the immediate disclosure of footage showing potential animal cruelty, such as proposed in the Criminal Code Amendment (Animal Protection) Bill introduced to the Senate in 2015, on the ground that this would enable timely investigation of the allegations. Australian Pork Limited qualified this by noting that they also support an exemption 'for individuals who act in good faith in an attempt to expose criminal activity'.<sup>85</sup>**3.20** However, other stakeholders, such as the NSW Government, raised concerns that the introduction of an immediate reporting requirement could jeopardise the privilege against self-incrimination, which is a common law right that a person should not be required to provide

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<sup>80</sup> Submission 11, RSPCA Australia, p 2.

<sup>81</sup> Submission 12, Animal Defenders Office, p 2.

<sup>82</sup> Submission 1, Australian Privacy Foundation, p 4.

<sup>83</sup> Submission 1, Australian Privacy Foundation, p 4.

<sup>84</sup> Submission 18, Cordina Chicken Farms, p 4.

<sup>85</sup> Submission 5, Australian Pork Limited, p 3.

evidence that could incriminate that person.<sup>86</sup> The NSW Government advised that: 'A person who enters land without consent and records an activity may be entitled to refuse to provide any recording to police on the grounds of self-incrimination as the recording could implicate that person in the commission of an offence...'<sup>87</sup>

**3.21** The committee was also told that an immediate reporting requirement could prevent activists and whistleblowers documenting cases of systemic mistreatment and cruelty to animals, which can only be built up over time. Ms Stoner gave evidence that 'to have any chance of prosecution, which is rare in itself, to have systemic evidence is far more powerful. Otherwise, it could be a case of this is one bad apple.'<sup>88</sup>

**3.22** The submission from PETA Australia advised that investigations into animal mistreatment generally take a long time because instances of abuse are usually systemic, and 'rarely isolated or confined to a sole act or individual'. PETA Australia observed that it was important for not only perpetrators but those in positions of responsibility to be held accountable:

To build a case that has any chance of bringing justice to bear on the perpetrators – not just those committing individual acts of abuse but also those in positions of responsibility allowing it to continue – takes time.<sup>89</sup>

**3.23** In giving evidence to the committee, representatives of media organisations said that the introduction of an immediate reporting requirement could prevent the media reporting on allegations of systemic animal mistreatment. For example, Mr Maley gave evidence that:

... by making the requirement to report so quick, when you look at the really significant cases of animal welfare that the media has reported domestically, they have generally been over a period. The most spectacular example of that is the greyhound case ... Many, many weeks of hard work went into corroborating that footage to make sure that it was what it said it was.

To go about that work in an environment where, if after the first 24 hours of the first footage being recorded, that had to be reported to the authorities, then it would have effectively prevented the investigation which the animal welfare organisations did.<sup>90</sup>

**3.24** Ms Waladan of Free TV Australia gave evidence that immediate reporting requirements would put both journalists and whistleblowers at risk of self-incrimination:

... any legislation that compels immediate disclosure to authorities of evidence about animal cruelty puts journalists and their sources at risk, not only in relation to self-incrimination but also in relation to disclosing confidentiality of sources and whistleblowers as well as exposure to criminal conviction and jail terms for simply doing their job.<sup>91</sup>

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<sup>86</sup> Submission 6, NSW Government, p 7.

<sup>87</sup> Submission 6, NSW Government, pp 7-8.

<sup>88</sup> Evidence, Ms Stoner, 28 August 2018, p 51.

<sup>89</sup> Submission 4, PETA Australia, p 3.

<sup>90</sup> Evidence, Mr Maley, 28 August 2018, p 45.

<sup>91</sup> Evidence, Ms Waladan, 28 August 2018, p 42.

**3.25** Ms Waladan concluded that immediate reporting requirements would have a 'chilling effect' on whistleblowers coming forward in future and undermine the public exposure of animal mistreatment.<sup>92</sup> The submission from the Joint Media Organisations further noted that immediate reporting would mean that:

... sources risk their identities being exposed and suffering retribution, for example losing their employment or in the worst case scenarios, incriminating themselves.

In this respect, legislation compelling disclosure is contrary to the *Evidence Act 1995 (NSW)* which expressly provides a privilege against self-incrimination.<sup>93</sup>

**3.26** Joint Media Organisations noted that there are already existing requirements to report animal cruelty, including penalties for concealing a serious indictable offence:

... if unauthorised surveillance is obtained which amounts to evidence of animal cruelty, there are already provisions in place which require parties to provide that material to authorities ... For example, section 316 of the *Crimes Act* makes it an offence to conceal a serious indictable offence which includes failing to provide information to the Police Force that might assist in apprehending offenders.<sup>94</sup>

**3.27** Mr Maley noted that if the mainstream media was prevented from investigating allegations of animal cruelty by the introduction of immediate reporting requirements, then the only avenue for whistleblowers would be to turn to 'activist websites, where there is no effective control of corroboration'.<sup>95</sup>

## Transparency in animal industries

**3.28** Inquiry participants, animal welfare advocates and landholders alike, agreed that greater transparency around animal welfare practices may go some way to addressing the motivation behind unauthorised filming and surveillance by animal activists. Indeed, farmers were very positive about opening up their businesses to interested community members, to educate the public about food production and animal husbandry practice.

### Calls for greater transparency

**3.29** A number of inquiry participants called for greater transparency of animal industries, believing that in these matters, 'sunlight is the best disinfectant'. The RSPCA Australia observed that transparency is the best way to build public confidence in animal industries, while more restrictive laws that may inhibit discussion could lead to a perception that animal industries have something to hide:

In an era of unprecedented concern for animal welfare, the best way forward for animal industries is through increasing the transparency of their operations and continued investment in improving animal welfare outcomes. This is the most effective way of

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<sup>92</sup> Evidence, Ms Waladan, 28 August 2018, p 48.

<sup>93</sup> Submission 14, Joint Media Organisations, p 4.

<sup>94</sup> Submission 14, Joint Media Organisations, p 2.

<sup>95</sup> Evidence, Mr Maley, 28 August 2018, p 44.

building public trust and confidence. Laws that stifle public and political communication and information about animal husbandry practices are counterproductive to this objective. They only serve to generate community distrust thereby incentivising the very behaviour they are designed to curb.<sup>96</sup>

- 3.30** Further commenting on the need for transparency, the RSPCA voiced opposition to any attempt to emulate overseas attempts to introduce so-called 'ag gag' laws:

The RSPCA is strongly opposed to laws that are designed precisely to prevent the public from knowing about animal husbandry and other practices. Legislation, dubbed 'ag-gag laws' in the United States has led to vigorous opposition, not only from the animal welfare organisations but also from a large cross-section of civil society groups.<sup>97</sup>

- 3.31** The submission from Humane Society International described Ag Gag laws as a "shoot the messenger" approach to dealing with a single symptom of a far larger animal welfare issue in Australia'.<sup>98</sup>

- 3.32** The committee heard that Australian farmers are already working to educate the community about animal husbandry practices. The submission from Egg Farmers of Australia advised that the egg industry is committed to engaging with the community, including animal activists:

EFA is working to better understand the details and nuance of the anger expressed by those with radical agendas. Indeed, far from overlooking or dismissing the reality of these concerns, egg farmers are committed to a better understanding of them. We hope this can allow farmers to respond to any substantive and justified concerns.<sup>99</sup>

- 3.33** However, Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, expressed farmers' frustration with trespass and unlawful filming and surveillance, noting: 'we wonder why people are poking around the back door with a torch when the front door is open'.<sup>100</sup> Mr Dunn went on to emphasise the egg industry's message: 'if you want to understand we are here to show you, if you want to know more the door is open – ditch the torch, burn the balaclava and start engaging'.<sup>101</sup>

- 3.34** Inquiry participants told the committee that there is a growing disconnect between urban communities and food producers, leading to misconceptions about how food is produced, and misunderstandings of animal management practices. The NSW Farmers' Association advised that in a 2012 national survey of students, 75 per cent thought cotton socks were an animal product, 27 per cent thought yoghurt was a vegetable product and 45 per cent did not identify bread, bananas or cheese as being farmed products. Another 2017 survey by the National Farmers' Federation found that 83 per cent of respondents described their connection with farming as distant or non-existent.<sup>102</sup>

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<sup>96</sup> Submission 11, RSPCA Australia, p 2.

<sup>97</sup> Submission 11, RSPCA Australia, p 2.

<sup>98</sup> Submission 10, Humane Society International, p 5.

<sup>99</sup> Submission 17, Egg Farmers of Australia, p 2.

<sup>100</sup> Evidence, Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, 28 August 2018, p 35.

<sup>101</sup> Evidence, Mr Dunn, 28 August 2018, p 40.

<sup>102</sup> Submission 15, NSW Farmers' Association, p 15.

- 3.35** Ms Annabel Johnson, Policy Director, Livestock, NSW Farmers' Association, highlighted in evidence the 'disconnect' between the urban and rural communities. Ms Johnson observed:

There is no longer an understanding about why production systems and practices operate the way they do. Back in the day, everyone had a family member who was part of the country, and they got hands-on experience learning what happens on a farm, the behaviour of animals.<sup>103</sup>

- 3.36** The NSW Farmers' Association recommended that the government make a 'significant commitment to improving food and fibre education in both schools and the broader community to strengthen understanding of the activity of farming and the value of food safety and security'.<sup>104</sup>

- 3.37** However, inquiry participants observed that transparency alone will never be a complete fix, given that animal activists will never support the breeding and killing of animals for human use. Australian Pork Limited observed that:

Philosophically, activists do not want animals to be used for food, clothing, research or sports. Claims for 'more transparency' are part of an iterative approach for a movement that wants to use any means necessary to shut down an industry.<sup>105</sup>

### **Schemes to promote transparency around animal industries**

- 3.38** The Australian Veterinary Association is a strong proponent of schemes to promote greater transparency, describing this as 'the key to restoring public faith in animal-use enterprises'.<sup>106</sup> The Association pointed to transparency as a more effective means to combat unauthorised filming and surveillance than a legislative approach to preventing farm trespass:

The focus on preventing farm trespass may have the unintended consequence of creating a perception that animal industries have something to hide. A better approach would be to resource schemes which promote transparency and restore community confidence, such as independent auditing schemes and farms which 'open their doors' to public scrutiny.<sup>107</sup>

- 3.39** In Australia, some industries are already 'opening the farm gate' to enable greater transparency, as noted by the Australian Veterinary Association:

Some industries have already realised this and are making moves to "open the farm door" either physically or virtually. This includes web cams established on free range egg farms, inside farm sheds and farm tours, and is a critical educational approach to increase understanding of agriculture among consumers.<sup>108</sup>

<sup>103</sup> Evidence, Ms Annabel Johnson, Policy Director, Livestock, NSW Farmers' Association, 28 August 2018, p 28.

<sup>104</sup> Submission 15, NSW Farmers; Association, p 6.

<sup>105</sup> Answers to questions on notice, Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, 25 September 2018, p 2.

<sup>106</sup> Submission 8, Australian Veterinary Association, p 3.

<sup>107</sup> Submission 8, Australian Veterinary Association, p 2.

<sup>108</sup> Submission 8, Australian Veterinary Association, p 3.



**3.40** The committee also notes government initiatives in this area, with the NSW Government informing the committee of the 'Visit My Farm' agri-exchange. The online platform began in 2017 and lists 53 farms offering people the opportunity to have first-hand experience by visiting a farm.<sup>109</sup>

**3.41** Inquiry participants noted that the farming sector can now take advantage of technological developments to increase transparency around food production practices. Here, the ability to live stream footage may benefit landholders, as noted by the NSW Government:

The ability to live stream video footage can also be lawfully used to increase transparency. Accredited quality assurance and auditing programs can help support consumer confidence in animal welfare in livestock production. These programs may include the installation of web cams that are streamed live to assure consumers of the high animal welfare standards that are employed by the firm. This practice is widespread in parts of the European Union.<sup>110</sup>

**3.42** Indeed, the Animal Defenders Office asserted that in order to increase transparency, 'as an absolute minimum, CCTV could be installed in animal enterprises and made publicly available'.<sup>111</sup>

**3.43** However, the committee notes the information received from Australian Pork Limited about the potential costs to farming enterprises of installing CCTV equipment. Australian Pork Limited estimated that 'it would cost every piggery and abattoir in excess of \$100,000 each to install and monitor a CCTV system for pig welfare', at a cost to the industry as a whole of \$300 million.<sup>112</sup>

**3.44** Egg Farmers of Australia noted various industry initiatives to educate the public about egg production, including inviting industry critics to tour egg farms. Egg Farmers of Australia described their experience of community engagement to date as positive:

Our experience has been that engagement with the general public has allowed dialogue between parties and a mutual sharing of community questions and farmer knowledge. We acknowledge it is important to show community members who farmers are, and to explain the context of a farmers' decisions. On this basis, we have found it critical to undertake engagement on-farm.<sup>113</sup>

**3.45** Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, gave evidence that pig farmers have already taken measures to educate the public about the practices in their industry including through videos published on the Australian Pig Farmers website:

Australian Pig Farmers is about what happens on Australian pig farms and there you can go and see exactly everything that happens on an Australian pig farm and you can see what happens in an Australian pig processing plant, including pigs being stuck. It is

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<sup>109</sup> Answers to questions on notice, Mr Scott Hansen, Director General, Department of Primary Industries, 28 September 2018, p 2.

<sup>110</sup> Submission 6, NSW Government, p 9.

<sup>111</sup> Submission 12, Animal Defenders Office, p 3.

<sup>112</sup> Answers to questions on notice, Mr Spencer, p 1.

<sup>113</sup> Answers to questions on notice, Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, 25 September 2018, p 1.

not for everyone and we warn people that you may not like what you see, but we are interested in transparency and engaging with the community ...<sup>114</sup>

- 3.46** Australian Pork Limited noted that there were videos on the Aussie Pig Farmers website depicting 'farrowing, teeth clipping, tail docking, artificial insemination and semen collection' and 'stunning and slaughter'.<sup>115</sup>
- 3.47** Ms Johnson of the NSW Farmers' Association also noted that Australian Pork Limited runs a program 'Pigs in Schools' which is designed to enable school kids to become familiar with the animal.<sup>116</sup>
- 3.48** Mr Ean Pollard, Chair, Pork Committee, NSW Farmers' Association, told the committee that he greatly enjoys the opportunity to educate school children about the pork industry during school visits to his property, including practices such as farrowing. Mr Pollard said that he tells the visiting children:

The reason for the farrowing crate is to protect the offspring from their mother and also to protect my workers from the sow. Because there will be times when piglets might be on the wrong side of the sow, she is laying down, so if one of my staff, and I have females in the farrowing shed, decide to pick that piglet up and take it around to the side where the udder is they want to know that they are protected from a 250-kilo sow that might think, "I'm wanting to protect my young here." It is about trying to create an environment where we have the maximum welfare for all involved. That is the debate that we try to encourage with the kids and that is what we try to offer and we let them see that.<sup>117</sup>

- 3.49** The Australian Veterinary Association also highlighted overseas developments as a possible model for Australia to follow:

Some US and Canadian slaughter plants have voluntarily established video auditing by third party auditors for this very reason. In England, CCTV will be introduced in all slaughterhouses in 2018 following support from both industry and the public.<sup>118</sup>

## Committee comment

- 3.50** The committee firmly believes that the onus should be on preventing animal mistreatment in the first place, rather than leaving it to whistleblowers or indeed animal activists to report such mistreatment.
- 3.51** Measures should be taken to promote greater transparency of animal industries and enforce existing legislation to prevent the cruelty and mistreatment of animals. These measures may

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<sup>114</sup> Evidence, Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, 28 August 2018, p 41.

<sup>115</sup> Answers to supplementary questions, Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, 25 September 2018, p 4.

<sup>116</sup> Evidence, Ms Johnson, 28 August 2018, p 30.

<sup>117</sup> Evidence, Mr Ean Pollard, Chair, Pork Committee, NSW Farmers' Association, 28 August 2018, p 33.

<sup>118</sup> Submission 8, Australian Veterinary Association, p 3.

assist to combat the perceived need for animal activists to trespass on to landholders' properties and install unauthorised surveillance devices. These measures include reviewing the resources available to and the powers of the regulator, the RSPCA, to engender confidence in the key animal welfare regulator in this state, as well as considering how the RSPCA and rural police can work together to more effectively monitor and enforce animal welfare standards.

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**Recommendation 1**

That the NSW Government review the resources and powers of the RSPCA in regard to the monitoring and enforcement of animal welfare measures, and consider means by which the RSPCA and the NSW Police can work together more effectively to protect animals from mistreatment.

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- 3.52** Animal industries have already taken steps to 'open the farm gate' and engage with the community. There is a pressing need for such schemes, not only to address animal welfare concerns, but to also address the alarming disconnect between urban dwellers and food producers. The committee applauds schemes to 'open the farm gate' and underscores that transparency is the best way to build public confidence in animal intensive industries. The committee urges the NSW Government to collaborate with animal intensive industries to encourage continued community engagement, and to investigate schemes to promote transparency of food production and animal husbandry practices.

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**Recommendation 2**

That the NSW Government encourage animal industries to be proactive in engaging with the community, and collaborate with animal industries to investigate schemes to increase transparency about food production and animal husbandry practices.

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- 3.53** However, the committee acknowledges that greater transparency and a stronger regulator can only go so far – animal activists have a philosophical objection to the killing of animals for human benefit, and will never be completely satisfied by such measures. Hence the need for landholders to have the full protection of the law from unauthorised filming or surveillance, as addressed in the following chapter.
- 3.54** While the onus should be on greater transparency and measures to prevent animal cruelty, there will continue to be circumstances where genuine whistleblowers will be the only way to expose animal cruelty. The committee supports a review of the surveillance devices legislation to consider a new defence if the surveillance is used in the public interest, such as to expose animal cruelty.

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**Recommendation 3**

That the NSW Government review the *Surveillance Devices Act 2007* to consider whether to insert a public interest exemption for unauthorised filming or surveillance.

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- 3.55** Stakeholders held various views on the introduction of a requirement to make an immediate report to the police when a person came into possession of footage or images documenting suspected animal cruelty. An immediate reporting requirement would protect against further cruelty caused by a delay in reporting. However, an immediate reporting requirement may jeopardise documentation of systemic animal cruelty, place whistleblowers at risk of exposure, and jeopardise the privilege against self-incrimination.
- 3.56** The committee notes that it is already an offence to conceal a serious indictable offence – such as unauthorised surveillance – from the police. Until such time as there is more compelling evidence on this issue, the committee does not recommend the introduction of an immediate reporting requirement.

## Chapter 4 Adequacy of existing legislative framework

This final chapter assesses the adequacy of the existing legislative framework to protect landholders from unauthorised filming or surveillance. Key questions are whether the legislation is being enforced effectively, and whether trespass against landholders is treated as seriously as trespass in a private home in an urban area. This chapter also examines whether the current framework is keeping pace with the rapidly changing media and technological environment, resulting in online publication of illegally obtained footage and increasingly, the threat posed by drone surveillance.

### Concerns around existing legislative framework and its enforcement

- 4.1 A number of stakeholders told the committee that the existing penalties and protections from unauthorised filming and surveillance may be adequate on paper, but they are not being implemented effectively. They called for tougher action to ensure that landowners in rural areas have the same protections from trespass and invasion of privacy as those in the cities.

#### Adequacy of existing protections and penalties

- 4.2 Chapter 1 outlined the key legislation that protects farmers from unauthorised filming or surveillance. The penalties under the legislation include:

- *Inclosed Lands Protection Act 1901* – penalties for trespass from \$550 to \$5,500
- *The Biosecurity Act 2015* – penalties for intentionally or recklessly creating a biosecurity risk or spreading a disease; from \$220,000 to \$1.1 million, and up to three years' imprisonment, for individuals
- *Surveillance Devices Act 2007* – penalties for use of optical surveillance devices without consent of \$11,000 and/or five years' imprisonment for an individual
- *Crimes Act 1900* – penalties for damaging property or causing violence or injuring another person, including imprisonment
- *Civil Aviation Safety Regulations 1998* (Cth) – penalties for unsafe use of drones punishable by fine.

- 4.3 The submission by the NSW Farmers' Association described the current legislative framework as 'ineffective'.<sup>119</sup> It informed the committee that in a recent survey of its members:

- 89 per cent of respondents considered that the current penalties for illegal surveillance were not effective
- 89 per cent thought that current laws disadvantaged farmers in deterring illegal surveillance
- 59 per cent thought that laws have not kept pace with new technology
- 21 per cent thought it is too hard to gather evidence

<sup>119</sup> Submission 15, NSW Farmers' Association, p 7.

- 21 per cent thought the burden of proof is too high.<sup>120</sup>
- 4.4 The National Farmers' Federation concluded that 'prima facie it does seem that the current regulatory environment across all jurisdictions is insufficient from both the perspectives of enforcement and deterrence'.<sup>121</sup>
- 4.5 The NSW Farmers' Association observed that the *Surveillance Devices Act* is yet to be tested by the courts, making it difficult to determine its effectiveness, but noted that it is very difficult to gather the evidence necessary to achieve a prosecution under the Act:

A major issue with the effective enforcement of the Act is being able to obtain sufficient evidence for a case to be successfully taken to court. It is extremely difficult for enforcement agencies to gather sufficient evidence to fulfil the requirements of the unlawful surveillance device provisions, primarily because these activities are undertaken covertly.<sup>122</sup>

- 4.6 NSW Farmers also observed that the *Surveillance Devices Act* 'is silent on giving victims means to limit or remove the broadcasting of content' obtained unlawfully, meaning there is little redress for farmers who seek to have the content removed from the public domain.<sup>123</sup>
- 4.7 Further, the NSW Farmers' Association asserted that the offences within the *Inclosed Lands Protection Act*, *Crimes Act* and *Biosecurity Act* are not being enforced.<sup>124</sup> NSW Farmers therefore recommended 'That the Government establish a cross-agency working group to review existing regulation and legislation on illegal farm incursions, and identify barriers to successful prosecutions and enforcement'.<sup>125</sup>
- 4.8 However, other inquiry participants argued that there is no need to bolster existing protections and penalties. For example, the Animal Defenders Office described the surveillance devices scheme in New South Wales as 'one of the toughest in the country', observing that 'the penalties relating to unauthorised filming or surveillance in NSW are already strict and do not need to be strengthened'.<sup>126</sup>
- 4.9 PETA Australia agreed that the current penalties are adequate:
- Landholders already enjoy a broad range of legal protections from illegal conduct taking place on their land – criminal offences already exist in relation to acts of trespass, theft, vandalism, property damage and destruction, harassment and intimidation, biosecurity, and, as noted, use of surveillance devices in ways that contravene the provisions of the surveillance devices act.<sup>127</sup>

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<sup>120</sup> Submission 15, NSW Farmers' Association, p 14.  
<sup>121</sup> Submission 16, National Farmers' Federation, p 2.  
<sup>122</sup> Submission 15, NSW Farmers' Association, p 8.  
<sup>123</sup> Submission 15, NSW Farmers' Association, p 8.  
<sup>124</sup> Submission 15, NSW Farmers' Association, p 9.  
<sup>125</sup> Submission 15, NSW Farmers' Association, p 9.  
<sup>126</sup> Submission 12, Animal Defenders Office, pp 2-3.  
<sup>127</sup> Submission 4, PETA Australia, p 1.

- 4.10 This view was supported in the submission from the Joint Media Organisations: 'landowners enjoy sufficient protection and penalties are adequate under the existing legislation provided that legislation is properly implemented'.<sup>128</sup> The submission further expressed the view that tougher penalties might not deter unauthorised filming or surveillance:

It is doubtful that people are encouraged to breach landowners' rights in obtaining unauthorised surveillance because the penalties are too lenient. Rather, people appear to be motivated to expose practices such as animal cruelty, regardless of the severity of the penalty if apprehended.<sup>129</sup>

- 4.11 The committee also heard that it was misguided to focus on increased protections for landowners, instead calling for increased penalties to address animal cruelty and mistreatment in the first place, rather than penalties to deal with those who expose it. The Animal Defenders Office argued that penalties in New South Wales are too lenient and require urgent attention:

Members of the public are becoming particularly intolerant of cruelty towards animals used in agricultural enterprises. Yet in NSW, financial penalties for animal cruelty are the lowest in Australia. The maximum financial penalty for a person found guilty of aggravated cruelty under the *Prevention of Cruelty to Animals Act 1979* (NSW) is \$22,000. This is the lowest 'maximum' in all Australian jurisdictions, and compares with approximately \$261,000 in Queensland. The ADO submits that animal cruelty penalties require urgent attention, rather than the penalties relating to unauthorised filming or surveillance of landholders and businesses.<sup>130</sup>

#### **Is trespass in rural areas being treated seriously?**

- 4.12 The committee was told that the legislative provisions relating to trespass and unauthorised filming or surveillance apply equally, regardless of geographic location. According to Mr Scott Hansen, Director General of the Department of Primary Industries: 'An illegal trespass into a house in Bondi is as illegal as an illegal trespass onto a property in Bourke'.<sup>131</sup>
- 4.13 However, inquiry participants raised concerns that trespass onto rural properties is not treated as seriously as it would be if someone came into a private home in a town or a city. Australian Pork Limited observed that while the penalties under the *Surveillance Devices Act* are sufficient, they are not being enforced in cases of rural trespass:

APL does not believe, however, that authorities are utilising the full extent of the legislative framework with respect to these actions and reiterates that there is clearly a different standard applied to crimes committed on rural properties compared to crimes committed against urban residences.<sup>132</sup>

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<sup>128</sup> Submission 14, Joint Media Organisations, p 3.

<sup>129</sup> Submission 14, Joint Media Organisations, p 2.

<sup>130</sup> Submission 12, Animal Defenders Office, p 4.

<sup>131</sup> Evidence, Mr Scott Hansen, Director General, Department of Primary Industries, 28 August 2018, p 6.

<sup>132</sup> Submission 5, Australian Pork Limited, p 3.

- 4.14 Cordina Chicken Farms Pty Ltd agreed that 'on the surface, the provisions of the Surveillance Devices Act 2007 appear to be sufficient'. However they also questioned the extent of enforcement:

So why do people continue to do it? Perhaps the problem is the rigour with which such crimes on farms are prosecuted compared to crimes committed against homes and businesses in urban areas.<sup>133</sup>

- 4.15 Inquiry participants discussed the merits of introducing laws specifically to protect landowners in rural areas. In relation to unauthorised surveillance, Ms Samantha Gavel, NSW Privacy Commissioner, said: 'I would also urge caution in rushing to develop regulatory systems that are narrowly focused on one sector'.<sup>134</sup> The Australian Privacy Foundation supported this view, observing that unauthorised surveillance should be addressed on a 'holistic basis' and that this view 'is consistent with a succession of reports by the Australian Law Reform Commission, other law reform commissions, parliamentary inquiries and judgments in Australian courts'.<sup>135</sup>
- 4.16 Indeed, PETA Australia asserted that the introduction of additional protections focused on agricultural enterprises in the agricultural sector would result in 'a legal structure that is inequitable, discriminatory, and disproportionate'.<sup>136</sup>
- 4.17 The Government advised that it had sought to address concerns about farm trespass, including those raised during the Bradshaw Review, by making specific reference to a victim's vulnerability due to geographical isolation as an aggravating factor on sentencing. The Government further informed the committee that it had improved police training about this issue:

The NSW Police Force has improved officer training and education by updating the rural crime manual, introducing workshops led by the Department of Primary Industries and experienced regional officers, and placing specially trained police in the areas they are needed most.<sup>137</sup>

- 4.18 Australian Pork Limited urged the Government to 'take full advantage of the recent Bradshaw Review on Rural Crime' to prosecute animal activists.<sup>138</sup>

## **The changing media and technological environment**

- 4.19 Inquiry participants expressed concern that the legislative and regulatory framework is not keeping pace with the rapidly changing media and technological environment, making it ineffective in dealing with unauthorised filming or surveillance. These changes include the ease with which images or footage can be published on social media platforms – and the difficulty of having them taken down – and the increasing use of drones to film private property.

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<sup>133</sup> Submission 18, Cordina Chicken Farms, p 3.

<sup>134</sup> Evidence, Ms Samantha Gavel, NSW Privacy Commissioner, 28 August 2018, p 11.

<sup>135</sup> Submission 1, Australian Privacy Foundation, p 1.

<sup>136</sup> Submission 1, PETA Australia, p 1.

<sup>137</sup> Submission 6, NSW Government, p 5.

<sup>138</sup> Submission 5, Australian Pork Limited, p 3.



- 4.20 On the other hand, the committee heard that changes in technology can also be used to assist farming operations, with some farmers installing their own surveillance systems to protect against trespass. However, property owners are not always aware of their obligations in relation to the installation of surveillance devices.

**Is the legislative framework keeping pace with changes in media and technology?**

- 4.21 The rise of social media platforms like Facebook has changed the way unauthorised recordings and images can be disseminated. Those posting the material can connect directly with their audience, with no need for this material to be vetted for authenticity, as the committee was told would happen in the traditional media environment.
- 4.22 The Information and Privacy Commission NSW observed that technological developments have the potential to facilitate breaches of privacy, and that laws have not kept pace with these developments:

Developments in technology such as the miniaturisation of cameras, GPS tracking and drone technology have facilitated an increase in the physical surveillance of individuals in public and private locations. Laws to date have not kept pace with these developments particularly in respect of the potential for real-time streaming of recordings via social media platforms.<sup>139</sup>

- 4.23 As a result of the changing media and technological environment, the Australian Privacy Foundation advised the committee that 'use/misuse of privacy invasive media is becoming normalised: technologies for surveillance and dissemination are increasingly low cost, robust and user friendly'.<sup>140</sup>
- 4.24 Landowners told that the committee that they have been subjected to the fraudulent representation of animal cruelty online where, for example, images were posted with no context, or where several images were posted together, suggesting that they were from the one farming enterprise, where in fact they were not. Egg Farmers of Australia gave evidence of the severe impact of posting 'doctored' footage online:

Many of the illegally obtained footage you may see are doctored footage that are published without oversight from government. It is disheartening for farmers to see normal husbandry practices depicted deliberately doctored with the intent to mislead. These sorts of illegally obtained videos are depicting lies that can destroy the reputations of businesses that provide food for thousands of Australians.<sup>141</sup>

- 4.25 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, cited examples of activists taking footage and images with the intention of painting the pork industry in the worst possible light:

We have had situations where dead piglets have been brought back into the shed from outside composting pits, put into pens and then photographed to make a point. We

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<sup>139</sup> Submission 3, Information and Privacy Commission NSW, p 2.

<sup>140</sup> Submission 1, Australian Privacy Foundation, p 5.

<sup>141</sup> Answers to questions on notice, Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia, 25 September 2018, p 2.

have had dead piglets moved from one farm to another to emphasise these cruel pictures. One producer put up his own camera and he found activists in his shed. It was during the 2010 floods, I think. He had a wet area at the end of his shed and they were herding the pigs so they would be standing in the mud with the water up to their bellies so that they could get video of them to make it look as bad as possible. This is the "any means to an end" mentality. It is a philosophical objection to what we do. It is not about animal welfare.<sup>142</sup>

**4.26** Australian Pork Limited described the impact of the changing media environment as follows:

Changes in technology means that video material can be captured, edited and promoted instantly. Using technology and social media, animal activists can summon significant numbers of people at short notice to physically overwhelm businesses, and encourage thousands of people to harass and intimidate farmers online.

This is vastly different from the practicalities of mainstream media law that currently exist. Registered media outlets are no longer the only source of information available to the general public, and consequently, rules of ethics and journalism do not always apply.<sup>143</sup>

**4.27** As noted earlier online publication of images or footage can have severe impacts on the affected landholders, who not only have their reputation as food producers tarnished, but whose ethics and morals are called into question by the accusations of irresponsible and sometimes abhorrent treatment of their animals. The NSW Farmers' Association noted the amplified impacts of online publication:

In 2014, a number of piggeries were targeted through mediums such as Facebook and some of the comments were so negative that Facebook intervened to have a number removed. The immediacy of social media not only gives a new meaning to online harassment but shows the lack of protections in this media rich online environment. For some farmers the concern is so great that one member has reported that "*the risk of harm to my business and my family is terrifying*".<sup>144</sup>

**4.28** However, the submission from the Joint Media Organisations argued that existing defamation laws applied equally to online content, and are therefore sufficient to deal with the changing media environment:

To the extent that potential reputational damage to landowners via new technologies is a concern, this is unfounded. Australian publishers are subject to onerous defamation laws, which apply to existing and new technologies alike where defamatory material about an identified party is communicated to more than one recipient.<sup>145</sup>

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<sup>142</sup> Evidence, Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, 28 August 2018, p 36.

<sup>143</sup> Submission 5, Australian Pork Limited, p 4.

<sup>144</sup> Submission 15, NSW Farmers' Association, p 20.

<sup>145</sup> Submission 14, Joint Media Organisations, p 6.

### Online publication via social media platforms

- 4.29** It is challenging for landowners whose operations have been subjected to unauthorised filming or surveillance to seek to have material taken down by social media platforms such as Facebook which are hosted overseas. The committee heard that it can be difficult not only for individual landholders to have action taken, but also for the police, if they become involved. According to the NSW Farmers' Association:

There is little recourse for illegally obtained footage or photography to be dealt with once it has been loaded on social media sites, websites and, in some instances, with broadcasting agencies. A common issue that arises for farmers trying to have content taken down from online is the content being housed on a site that is based in another country. For example, if the hosting site is registered in the USA, as the content has not infringed any US law, there is no legal power or recognised model code of practice to block access to sites that contain illegal or misleading information in the jurisdiction in which the filming activity was undertaken.

While individual farmers have attempted litigation to remove unauthorised content, this has been exceptionally difficult through the inability to identify perpetrators, legislation not keeping pace with technology, and precedents set from other cases.<sup>146</sup>

- 4.30** NSW Farmers noted that in response to a survey of their members, those who became aware of unauthorised footage of their operations did not know if they had legal authority to have the information removed, especially for websites hosted overseas.<sup>147</sup>
- 4.31** Concerns were raised about what penalties could be applied for misleading or deceptive images or footage posted online. In response to a question taken on notice by Mr Hansen, the NSW Government advised the committee that: 'If a person does post material that is defamatory in nature, a person who has suffered reputational damage may have legal recourse through defamation law. This will depend on the facts of individual matters.'<sup>148</sup>

### Increasing use of drones

- 4.32** The Australian Privacy Foundation observed that 'the use of drones by both business and activists is increasing as costs decline alongside increases in functionality, and in the coming decade the use of high definition imaging from satellites will be normalised'.<sup>149</sup>
- 4.33** The Information and Privacy Commission NSW identified drones as the technology most likely to breach privacy expectations:

The potential for these emerging technologies to facilitate breaches of privacy are most clearly illustrated by the example of the growing use of unmanned aircraft (more

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<sup>146</sup> Submission 15, NSW Farmers' Association, p 21.

<sup>147</sup> Submission 15, NSW Farmers' Association, p 21.

<sup>148</sup> Answers to questions on notice, Mr Scott Hansen, Director General, Department of Primary Industries, 28 September 2018, p 2.

<sup>149</sup> Submission 1, Australian Privacy Foundation, p 3.

commonly referred to as drones ... Currently, there is no comprehensive regulation of drone technologies NSW or other Australian jurisdictions.<sup>150</sup>

**4.34** The Government advised that various legislative protections against unauthorised filming or surveillance of animal enterprises may not apply to filming or surveillance conducted by drones:

- offences under the *Surveillance Devices Act* may not apply if the property has been lawfully accessed, for example if a neighbouring landholder gives permission for a drone to operate on their side of the fence and the drone is used to film the adjoining property
- trespass offences under the *Inclosed Lands Protection Act* would not apply if a drone is flown over land quickly and at a sufficient height, as the airspace over private land is not inclosed – although it is unclear what height would be needed to avoid trespassing
- voyeurism offences in the *Crimes Act* are unlikely to apply to observing farming practices.<sup>151</sup>

**4.35** While landholders raised concerns during the Bradshaw that drones might be used as first step in surveying a property with view to future trespass, the NSW Government informed the committee that 'there have not been any incidents reported to the NSW Police Force to date where drones were used with a view to commit a property crime'.<sup>152</sup>

**4.36** It is the Civil Aviation Safety Authority (CASA) – and not the police – that is responsible for regulating the use of drones. As noted by the Government, CASA's role is to regulate aviation safety, not police security or privacy issues:

NSW Police officers are not authorised to commence proceedings against any person found committing offences for the misuse of RPAS. The Civil Aviation Safety Authority (CASA) is the only entity with authority to take action on offences committed by RPAS, which are primarily related to aviation safety and do not address security or privacy issues.<sup>153</sup>

**4.37** On this issue, the NSW Farmers' Association commented that 'CASA only provides safety protocols and rules surrounding trespass and privacy incidents are unclear... Further, there are no specific regulations which protect the privacy of individuals regarding the use of UAVs [Unmanned Aerial Vehicles]'.<sup>154</sup>

**4.38** While CASA is responsible for regulating drones, NSW Farmers advised that: 'It is apparent that many landholders are unaware that the NSW Police Force has no authority when reporting sightings of unauthorised surveillance equipment'.<sup>155</sup>

**4.39** Further, NSW Farmers noted that the NSW Police are restricted to notifying CASA of any complaints made to them, and only become involved if called on by CASA to assist in an investigation:

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<sup>150</sup> Submission 3, Information and Privacy Commission NSW, p 2.

<sup>151</sup> Submission 6, NSW Government, p 8.

<sup>152</sup> Submission 6, NSW Government, p 3.

<sup>153</sup> Submission 6, NSW Government, p 8.

<sup>154</sup> Submission 15, NSW Farmers' Association, p 11.

<sup>155</sup> Submission 15, NSW Farmers' Association, p 16.

The NSW Police Force is not authorised to commence proceedings against any person found to be committing offences for the misuse of RPAS. Currently, the only entity with authority to commence action for offences committed by RPAS is CASA. The NSW Police Force is restricted under law to encourage the community to report unsafe operations, incidents, accidents or other suspected violations to CASA. It is only if a primary producer landholder chooses to make a report to NSW Police, that the police then notify CASA. CASA may then call upon NSW Police to assist them by collecting evidence and conducting interviews.<sup>156</sup>

### Means to address changes in media and technology

4.40 In response to changes in media and technology, the Australian Privacy Commission advocated a 'coherent and reasoned legal framework' that is technology neutral, acknowledges disregard of privacy as a harm, is not focused on a particular sector and is proportionate.<sup>157</sup> The Foundation noted that much work has already been done in this area by the Australian and New South Wales Law Reform Commissions. The Commission cautioned the committee that as the use of drones continues and becomes increasingly normalised, 'a NSW "ban the drone" statute will be ineffective as both disproportionate and readily subverted'.<sup>158</sup>

4.41 While acknowledging the difficulties involved, Egg Farmers of Australia called for a regulatory response to the online publication of 'frequently misleading and defamatory information', noting that:

... farmers who, having survived the fear of such events, must deal with again with the incident by having their practices impugned online...And whilst these acts may be difficult to legislate against; they must be stopped and their impact redressed.<sup>159</sup>

4.42 However, the submission from the Joint Media Organisations argued that changes in technology do not justify changes to the regulatory environment: 'Rapidly changing media has the potential to change the form but not the substance of the threat of unauthorised surveillance. Accordingly, no additional protections are necessary to protect against it'.<sup>160</sup>

4.43 The Joint Media Organisations argued that while it may be easier to disseminate material online, the protections under the *Surveillance Devices Act* remained sufficient:

It has become easier for people to make a recording and upload it to the internet. This does not create a need for bolstered protection for landowners from unauthorised filming or surveillance.

Cameras with recording capabilities have been installed on mobile phones for many years. Whilst platforms such as Facebook Live make the recording process simpler, they do not pose an altogether new threat.

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<sup>156</sup> Submission 15, NSW Farmers' Association, p 16.

<sup>157</sup> Submission 1, Australian Privacy Foundation, p 5.

<sup>158</sup> Submission 1, Australian Privacy Foundation, p 3.

<sup>159</sup> Submission 17, Egg Farmers of Australia, p 1.

<sup>160</sup> Submission 14, Joint Media Organisations, p 8.

The device used to make a recording is an irrelevant consideration as to whether the recording was made in breach of the *Surveillance Devices Act*.<sup>161</sup>

- 4.44 Other inquiry participants related the issue of unauthorised filming or surveillance to calls for legislative protection for breaches of privacy. For example, the Australian Privacy Foundation recommended:

...the establishment of effective remedies for disregard of privacy, in particular a statutory cause of action (aka the Privacy Tort) that provides compensation for injury attributable to that disregard, irrespective of whether injury was caused by government, business, an individual or political activist.<sup>162</sup>

- 4.45 The Foundation's Chair, Mr David Vaile, however, gave evidence that it may not be a breach of privacy to publish footage of farming operations if the footage does not contain personal or identifying information. Mr Vaile observed that in relation to publication of unauthorised surveillance of a farming operation, 'the concept of privacy, per se, may not come up'.<sup>163</sup>

#### **Use of surveillance devices by landholders**

- 4.46 The NSW Farmers' Association advised that landholders are using developments in surveillance devices to protect themselves from unauthorised filming or surveillance. In response to a survey of their members, NSW Farmers indicated that a number of their members had installed their own surveillance to protect against trespass – including by animal activists – and that the devices included still camera, video cameras and motion sensor lighting.<sup>164</sup>

- 4.47 However, 55 per cent of respondents had not provided any information to employees, contract workers or visitors to inform them that they were under surveillance.<sup>165</sup> The NSW Farmers' Association advised that this suggests that employers are not aware of their legislative obligations to inform employees and visitors they are under surveillance, with Ms Johnson noting that:

It is important that they recognise that if they are undertaking surveillance or filming of their operations to provide themselves with protection, there could be obligations in terms of making sure that they inform their workforce, contractors if they are employed, and there might a requirement that they inform their visitors.<sup>166</sup>

#### **Committee comment**

- 4.48 Animal cruelty is unacceptable. It is equally unacceptable that farmers who are simply doing their jobs are not adequately protected from trespass and frightening night time incursions. A farmer's family home is often situated on their property, sometimes in close proximity to animal

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<sup>161</sup> Submission 14, Joint Media Organisations, p 6.

<sup>162</sup> Submission 1, Australian Privacy Foundation, p 2.

<sup>163</sup> Evidence, Mr David Vaile, Chair, Australian Privacy Foundation, 28 August 2018, p 13.

<sup>164</sup> Submission 15, NSW Farmers' Association, p 10.

<sup>165</sup> Submission 15, NSW Farmers' Association, p 18.

<sup>166</sup> Evidence, Ms Annabel Johnson, Policy Director, Livestock, NSW Farmers' Association, 28 August 2018, p 29.

sheds, and unlawful intrusions will have the same personal impact that any break and enter would have on a victim who lived in a residential area in the city. Indeed, farmers may experience even greater impacts extending to suffering by their animals as well as financial and reputational impacts on their businesses.

- 4.49** More clearly needs to be done to protect landowners. Stakeholders told the committee that while the current penalties for unauthorised filming or surveillance appear adequate on paper, landholders are left vulnerable because the existing provisions are not being enforced. While the Bradshaw reforms were a good first step, the reforms need to be enforced, along with more active enforcement of the other existing penalties.
- 4.50** The committee supports the recommendation of the NSW Farmers' Association, that the NSW Government establish a whole of government working group to review the current legislative framework around unauthorised filming and surveillance and identify barriers to enforcement and successful prosecutions. The committee notes the evidence that one means to overcome these barriers is more training for rural police on responding to farm trespass.

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**Recommendation 4**

That the NSW Government establish a whole of government working group to review the current legislative framework around unauthorised filming and surveillance and identify barriers to enforcement and successful prosecutions.

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- 4.51** Evidence was taken by animal liberation groups of planning (such as around biosecurity protocols) and execution of illegal activities including trespass and unauthorised surveillance. Advocacy and protest are important features of our society, but when advocacy operates outside of the law, the proponents have to be accountable, and their actions balanced against the public interest.

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**Recommendation 5**

That the NSW Government review the laws and penalties of trespass and unauthorised surveillance to consider the responsibility of those planning illegal activities and whether the offences of trespass and unauthorised surveillance should be extended to office bearers of organisations planning and financing these illegal activities.

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- 4.52** The changing media and technological environment amplifies the audience for unauthorised filming or surveillance of animal enterprises. The committee was told that activists sometimes post material with the intention of misrepresenting the images and footage to show animal industries in the worst possible light. Those affected told the committee that they had limited means of redress and were unsure of who to turn to for help.
- 4.53** Stakeholders gave contrasting evidence about whether additional legislative protections are needed to respond to the changing media and technological environment. Some stakeholders called for the introduction of a 'privacy tort' to offer broad protection for privacy breaches, regardless of the means they occurred. This complex issue was addressed in the 2016 report of the Standing Committee on Law and Justice into *Remedies for the serious invasion of privacy in New*

*South Wales*, culminating in a recommendation that the NSW Government introduce a statutory cause of action for serious invasions of privacy.<sup>167</sup> This committee urges the government to again consider this recommendation, amid community concerns about the use of technology, including social media and surveillance technology, in ways which intrude upon and negatively impact people's day-to-day lives.

- 4.54 Another issue of concern is the role played by drones in privacy breaches, and the use of drone surveillance as a first step to farm trespass. Drones are regulated by CASA in relation to aviation safety without regard to security or privacy issues. NSW Police do not have a role to play in investigating complaints about the use of drones, unless called on by CASA to assist in their investigations.
- 4.55 This is another complicated issue that extends beyond the farming sector. Recent inquiries by committees of the Australian Parliament have examined issues relating to drones in detail, including the potential privacy and security impacts of increasing drone usage, and the need for a comprehensive approach to regulation of drones across state and federal jurisdictions.<sup>168</sup>
- 4.56 The committee recommends that the NSW Government, through the Council of Australian Governments, raise the need for a comprehensive approach to the regulation of drones with its state and federal counterparts, particularly with regard to the potential privacy and security impacts of the increasing use of drone technology.

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### **Recommendation 6**

That the NSW Government, through the Council of Australian Governments, raise the need for a comprehensive approach to the regulation of drones across state and federal jurisdictions, with particular regard to the potential privacy and security impacts of the increasing use of drone technology.

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<sup>167</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Remedies for the serious invasion of privacy in New South Wales* (2016), p 57.

<sup>168</sup> Rural and Regional Affairs and Transport References Committee, Australian Senate, *Current and future regulatory requirements that impact on the safe commercial and recreational use of Remotely Piloted Aircraft Systems (RPAS), Unmanned Aerial Systems (UAS) and associated systems* (July 2018); Standing Committee on Social Policy and Legal Affairs, Australian House of Representatives, *Eyes in the sky: Inquiry into drones and the regulation of air safety and privacy* (July 2014).



## Appendix 1 Submissions

No.	Author
1	Australian Privacy Foundation
2	Australian Livestock & Property Agents Association
3	Information and Privacy Commission NSW
4	PETA Australia
5	Australian Pork Limited
6	NSW Government
7	Animal Liberation
8	Australian Veterinary Association
9	Confidential
10	Humane Society International Australia
11	RSPCA Australia
12	Animal Defenders Office
13	Animal Law Institute
14	Joint Media Organisations
15	NSW Farmers
16	National Farmers' Federation
17	Egg Farmers of Australia
18	Cordina Chicken Farms Pty Ltd

## Appendix 2 Witnesses at public hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Tuesday 28 August 2018 Macquarie Room, Parliament House, Sydney</b>	Mr Scott Hansen	Director-General, Department of Primary Industries NSW
	Ms Samantha Gavel	NSW Privacy Commissioner
	Ms Sonia Minutillo	Director, Investigating and Reporting, Information and Privacy Commission NSW
	Mr David Vaile	Chair, Australian Privacy Foundation
	Ms Katherine Lane	Vice Chair, Australian Privacy Foundation
	Mr Malcolm Caulfield	Principal Solicitor, Animal Law Institute
	Ms Tara Ward	Executive Director, Animal Defenders Office
	Ms Kathy Rankin	Policy Director, Rural Affairs and Economics, NSW Farmers Association
	Ms Annabel Johnson	Policy Director, Livestock, NSW Farmers Association
	Mr Ean Pollard	Chair, Pork Committee, NSW Farmers Association
	Mr Andrew Spencer	Chief Executive Officer, Australian Pork Limited
	Mr Alister Oulton	Policy Analyst, Australian Pork Limited
	Mr John Dunn	Chief Executive Officer, Egg Farmers of Australia
	Ms Angela Griffin	Policy Adviser, Egg Farmers of Australia
	Ms Sarah Waladan	Head of Legal and Regulatory Affairs, FreeTV Australia
Mr Theo Dorizac	Senior Legal Counsel, SBS	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Mark Maley	Editorial Policies Manager (News), ABC
	Ms Lynda Stoner	Chief Executive Officer, Animal Liberation
	Mr Alex Vince	Farmed Animal Campaign Coordinator, Animal Liberation

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## Appendix 3 Minutes

### Minutes no. 1

22 May 2018

Select Committee on Landowner Protection from Unauthorised Filming or Surveillance  
Members' Lounge, Parliament House, Sydney, 6.36 pm

#### 1. Members present

Mr Borsak, *Chair*  
Mr Colless  
Mr Khan  
Mr MacDonald  
Mr Pearson  
Mr Veitch

#### 2. Apologies

Mrs Houssos

#### 3. Tabling of resolution establishing the committee

The chair tabled the resolution of the House establishing the committee, which reads as follows:

1. That a select committee be established to inquire into and report on the extent of protection for landowners from unauthorised filming or surveillance and in particular:
  - (a) the nature of protection for landholders from unauthorised filming or surveillance, including but not limited to installation, use and maintenance of optical surveillance devices without consent under the Surveillance Devices Act 2007;
  - (b) the extent and appropriateness of penalties for unauthorised filming or surveillance, including but not limited to on-the spot fines and/or relevant penalties under the Summary Offences Act 1988;
  - (c) the implications with regard to self-incrimination of the request of disclosure by a person of any recordings made by that person;
  - (d) the implications of rapidly changing media environment, including social media platforms such as Facebook Live; and
  - (e) any other related matter.
2. That, notwithstanding anything to the contrary in the standing orders, the committee consist of seven members comprising:
  - (a) three Government members, being Mr Colless, Mr Khan, and Mr MacDonald;
  - (b) two Opposition members; and
  - (c) two crossbench members, being Mr Borsak and Mr Pearson.
3. That the Chair of the committee be Mr Borsak.
4. That members may be appointed to the committee as substitute members for any matter before the committee by providing notice in writing to the Committee Clerk, with nominations made as follows:
  - (a) nominations for substitute Government or Opposition members are to be made by the Leader of the Government, Leader of the Opposition, Government or Opposition Whip or Deputy Whip, as applicable; and
  - (b) nominations for substitute crossbench members are to be made by the substantive member or another crossbench member.

5. That a committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:
  - (a) the Chair is present in the meeting room;
  - (b) all members are able to speak and hear each other at all times; and
  - (c) members may not participate by electronic communication in a meeting to consider a draft report.
6. That, unless the committee decides otherwise:
  - (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration;
  - (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement;
  - (c) the sequence of questions to be asked at hearings alternate between opposition, crossbench and government members, in that order, with equal time allocated to each;
  - (d) transcripts of evidence taken at public hearings are to be published;
  - (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness; and
  - (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

#### **4. Election of Deputy Chair**

The Chair called for nominations for the Deputy Chair.

Mr Khan moved: That Mr MacDonald be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Mr MacDonald elected Deputy Chair.

#### **5. Conduct of committee proceedings – media**

Resolved, on the motion of Mr Khan: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair's Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

#### **6. Conduct of the inquiry into landowner protection from unauthorised filming or surveillance**

##### **6.1 Closing date for submissions**

Resolved, on the motion of Mr Khan: That the closing date for submissions be 8 July 2018.

##### **6.2 Stakeholder list**

Resolved, on the motion of Mr Macdonald: That members have until 5.00pm Thursday 24 May 2018 to nominate additional stakeholders to the stakeholder list.

### 6.3 Hearing dates

Resolved, on the motion of Mr Veitch: That the committee hold up to two hearings in August 2018, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

### 7. Adjournment

The committee adjourned at 6.43 pm.

Tina Higgins  
**Committee Clerk**

### Minutes no. 2

Monday 27 August 2018

Select Committee on Landowner Protection from Unauthorised Filming or Surveillance

NSW Parliament, Hospital Road Entrance, 27 August at 9:30 am

#### 1. Members present

Mr Borsak, *Chair*

Mr MacDonald, *Deputy Chair*

Mr Colless

Mrs Houssos

Mr Pearson

Mr Veitch

#### 2. Apologies

Mr Khan

#### 3. Inquiry into Landowner Protection from Unauthorised Filming or Surveillance

##### 3.1 Site visit

The committee conducted a site visit to Cordina Farms Girraween processing facility. The committee toured the facility after which a presentation and question and answer session was held with Mr John Cordina, Cordina Farms Managing Director. During the visit, the committee met with:

- Mr John Cordina, Cordina Farms Managing Director
- Mr Daniel Cordina, Cordina Chickens General Manager.

##### In camera witness

##### 3.2 Resolved, on the motion of Mr Veitch: That

- That the committee take evidence in camera from the author of Submission 9.
- That the committee allow the witness giving evidence in camera to be accompanied by a support person.

#### 4. Adjournment

The committee adjourned at 12.40 pm, until 9:20 am, Tuesday 28 August at the Macquarie room of NSW Parliament for a public hearing.

Tina Higgins  
**Committee Clerk**

**Minutes no. 3**

28 August 2018

Select Committee on Landowner Protection from Unauthorised Filming or Surveillance  
Macquarie Room, Parliament House, Sydney, 9.20 am

**1. Members present**

Mr Borsak, *Chair*  
Mr MacDonald, *Deputy Chair*  
Mr Colless  
Mr Fang (substituting for Mr Khan)  
Mrs Houssos  
Mr Pearson  
Mr Veitch

**2. Previous minutes**

Resolved, on the motion of Mr Veitch: That draft minutes no. 1 be confirmed.

**3. Correspondence**

The Committee noted the following items of correspondence:

***Received***

- 31 July 2018 – email from Ms Nicola Beynon, Head of Campaigns, Humane Society International Australia, to secretariat, declining to appear as witness at 28 August hearing
- 1 August 2018 – email from Ms Paula Hough, Vice President and Deputy General Counsel, Asia-Pacific, People for the Ethical Treatment of Animals (PETA) Australia, to secretariat, declining to appear as witness at 28 August hearing
- 13 August 2018 - email from Mr Mark Harvey-Sutton, General Manager Rural Affairs, National Farmers' Federation, to secretariat, declining to appear as witness at 28 August hearing
- 17 August 2018 – email from Dr Melanie Latter, Head of Policy and Advocacy, Australian Veterinary Association, to secretariat, declining to appear as witness at 28 August hearing
- 3 August 2018 – email from Mr John Cordina, Managing Director, Cordina Farms, to the committee with material regarding unauthorised surveillance activities; and
- 21 August 2018 – email from Jeni Fidan, Executive Assistant, RSPCA Australia, to secretariat, declining to appear at 28 August hearing on behalf of the RSPCA.

**4. Inquiry into landowner protections from unauthorised filming or surveillance**

**4.1 Submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos 1 to 8 and submission nos. 10 to 16.

Resolved, on the motion of Mr Veitch: That the committee authorise the publication of submission nos. 17 and 18.

**4.2 Confidential submission**

Resolved, on the motion of MacDonald: That the committee keep submission no. 9 confidential, as per request of the author.

**4.3 Report tabling due date**

Resolved, on the motion of Mr Colless: That the report be tabled by 19 October 2018.

**4.4 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Scott Hansen, Director-General, Department of Primary Industries.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Samantha Gavel, NSW Privacy Commissioner
- Ms Sonia Minutillo, Director, Investigation and Reporting, Information and Privacy Commission NSW
- Mr David Vaile, Australian Privacy Foundation
- Ms Katherine Lane, Australian Privacy Foundation.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Tara Ward, Executive Director, Animal Defenders Office
- Mr Malcolm Caufield, Principal Solicitor, Animal Law Institute.

Ms Tara Ward tendered the following documents:

- Penalties under Australian Surveillance Laws, tendered by Ms Tara Ward, Animal Defenders Office
- Maximum Penalties for Animal Cruelty Offenders, tendered by Ms Tara Ward, Animal Defenders Office.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kathy Rankin, Policy Director, Rural Affairs and Economics, NSW Farmers' Association
- Ms Annabel Johnson, Policy Director, Livestock, NSW Farmers' Association
- Mr Ean Pollard, Chair Pork Committee, NSW Farmers' Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited
- Mr Alister Oulton, Policy Analyst, Australian Pork Limited
- Mr John Dunn, Chief Executive Officer, Egg Farmers of Australia
- Ms Angela Griffin, Policy Advisor, Egg Farmers of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Sarah Waladan, Head of Legal and Regulatory Affairs, FreeTV
- Mr Theo Dorizac, Legal Counsel, SBS
- Ms Emma McDonald, Head of Public Affairs, ABC
- Mr Mark Maleny, Editorial Policies Manager (News), ABC.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

#### **4.5 Deliberative meeting**

The committee deliberated.

#### **4.6 Public hearing (continued)**



The following witnesses were sworn and examined:

- Ms Lynda Stoner, Chief Executive Officer, Animal Liberation
- Mr Alex Vince, Farmed Animal Campaign Co-ordinator, Animal Liberation.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.00 pm.

#### **4.7 Deliberative meeting**

Mr Pearson informed the committee that he has had contact in the past with the witnesses providing evidence to the committee in camera.

#### **4.8 In camera hearing**

Resolved, on the motion of Mr Colless: That the sister of submission author no.9 also be able to provide evidence *in camera* to the committee.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Tina Higgins, Mr Alexander Cobb, Ms Nessa Abad, Ms Madeleine Foley and Hansard reporters.

The following witnesses were sworn and examined:

- Witness A
- Witness B

The evidence concluded and the witnesses withdrew.

#### **4.9 Tabled documents**

Resolved, on the motion of Mrs Houssos: That the committee publish the following documents:

- Penalties under Australian Surveillance Laws, tendered by Ms Tara Ward, Animal Defenders Office
- Maximum Penalties for Animal Cruelty Offenders, tendered by Ms Tara Ward, Animal Defenders Office.

### **5. Adjournment**

The committee adjourned at 5.00 pm, *sine die*.

Tina Higgins  
**Committee Clerk**

### **Draft Minutes no. 4**

22 October 2018

Select Committee on Landowner Protection from Unauthorised Filming or Surveillance  
Room 1136, Parliament House, Sydney, 9.38 am

#### **1. Members present**

Mr Borsak, *Chair*  
Mr MacDonald, *Deputy Chair*  
Mr Colless  
Mrs Houssos  
Mr Martin (substituting for Mr Khan)  
Mr Pearson  
Mr Veitch

#### **2. Previous minutes**

Resolved, on the motion of Mr Veitch: That draft minutes no. 3 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- 21 September 2018 – email from Ms Kathy Rankin, Policy Director, NSW Farmers to secretariat, requesting to add a clarification to her response in the transcript taken during the 28 August 2018 hearing.
- 24 September 2018 – email from Ms Harriet Skinner, Executive Assistant, Office of the Director General, NSW Department of Primary Industries to secretariat, requesting an extension until 28 September 2018 to provide corrected transcript and response to questions on notice.

### 4. Inquiry into landowner protections from unauthorised filming or surveillance

#### 4.1 Request for transcript clarification

Resolved, on the motion of Mr Veitch: That the correspondence dated 21 September 2018 from the NSW Farmers' Association requesting to add a clarification to his response in the transcript taken during the 28 August 2018 hearing be published.

#### 4.2 Answers to questions on notice and supplementary questions

The committee noted that the following questions on notice and supplementary questions were published under the authorisation of the resolution appointing the committee:

- Australian Pork Limited, received 25 September 2018
- Animal Liberation, received 25 September 2018
- Egg Farmers Australia, received 25 September 2018
- FreeTV, received 27 September 2018
- Department of Primary Industries, received 28 September 2018.

#### 4.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Landowner protection from unauthorised filming or surveillance*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Colless: That recommendation 3 be amended to omit 'with a view to inserting a public interest exemption for unauthorised filming or surveillance, if it is proven to be in the public interest' and insert instead 'to consider whether to insert a public interest exemption for unauthorised filming or surveillance'.

Resolved, on the motion of Mr MacDonald: That the following new paragraph be inserted after paragraph 4.50 and recommendation 4:

'Evidence was taken by animal liberation groups of planning (such as around biosecurity protocols) and execution of illegal activities including trespass and unauthorised surveillance. Advocacy and protest are important features of our society, but when advocacy operates outside of the law, the proponents have to be accountable, and their actions balanced against the public interest'.

Resolved, on the motion of Mr MacDonald: that the following new recommendation be inserted before paragraph 4.51:

#### **'Recommendation x**

That the NSW Government review the laws and penalties of trespass and unauthorised surveillance to consider the responsibility of those planning illegal activities and whether the offences of trespass and unauthorised surveillance should be extended to office bearers of organisations planning and financing these illegal activities'.

Resolved, on the motion of Mrs Houssos: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- That the report be tabled by Thursday 25 October 2018.

**5. Adjournment**

The committee adjourned at 10.10 am, *sine die*.

Tina Higgins  
**Committee Clerk**





