

## LEGISLATIVE COUNCIL SELECT COMMITTEE

### INQUIRY INTO LANDHOLDER PROTECTION FROM UNAUTHORISED FILMING OR SURVEILLANCE

Answers to questions on notice taken during the hearing: Mr Scott Hansen,  
Department of Primary Industries

#### Questions answered by Department of Justice

1. *Does the Surveillance Devices Act need to be updated? The Act talks about "the use of 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..." It does not include flying over the premises.*

The Government routinely considers the applicability of legislation to current and emerging technologies, such as drones.

2. *The RSPCA NSW has noted that they have had matters referred to them and, quoting from the Government's submission it says, "RSPCA NSW has noted they have had matters referred to them by people who have taken video footage at their place of employment. The legal standing of this footage is unclear." It seems to me this is a bit of an issue that arises from this legislation. If you are an employee, by the nature of your engagement, you are allowed onto the workplace in a paid capacity. If you film without telling your boss what is the status of that surveillance or information you have gathered, when you have measured this legislation against the legislative framework in New South Wales, have you looked at how that will affect particularly employees who may take footage? Mr HANSEN: It would appear to be a bit of a case-by-case approach at the moment because there have been various court decisions based on evidence provided by workers. So I do not think that there is a standard generic response; I think it does vary quite significantly. Does that need to be resolved through legislative rather than through case law? That might be something I would let the Department of Justice colleagues handle.*

Whether footage taken on private property is taken in contravention of Surveillance Devices Act will depend on the particular circumstances of the situation. Section 138 of the Evidence Act 1995 provides that evidence that was obtained in contravention of an Australian law, which would include, for example, video evidence obtained in contravention of the Surveillance Devices Act, is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence. This is determined on a case-by-case basis.

3. *We had a site visit and one of the things that was put to us was that there was some footage put up on a Facebook page, some photographs, but the statement was made to us that the photographs were drawn from a range of different enterprises, it would appear, and then put together in a manner that any reasonable person looking at that Facebook page would suspect or draw the conclusion they had all come from the same operation or enterprise. As it turns out, that is not the case. Has the Government looked at the legal provisions around ensuring that that does not happen? If you are the owner of that enterprise or organisation, what is your legal redress for being misrepresented in such a manner? Mr HANSEN: Again, I might have to take that one on notice for legal colleagues to come back to you with an answer on that. Obviously, there is a range of provisions that businesses have and individuals have in terms of seeking redress for*

*misleading or defaming accusations that are made, but I am not sure which of those provisions would best suit the electronic mediums you are talking about and what kind of wording would be required in those kinds of mediums to trigger such provisions.*

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.

- 4. Has the Government considered banning outright the use of surveillance technologies by anyone other than the owners of the land or occupiers of the premises where they are being used? A broader community ban on the use of Surveillance technology in a farm used covertly.*

The Department of Justice has not considered recommending the Government consider such a ban.

- 5. Would the Government consider changing copyright laws in New South Wales to allow for the automatic transfer to the owners of the property ownership of any footage that is taken illegally?*

The laws that govern copyright in Australia are the responsibility of the Commonwealth Government.

- 6. You make the point in relation to self-incrimination that there are some problems with that. Has the Government given any thought about what might be done to alleviate that difficulty? Mr HANSEN: Beyond the comments that are made in the submission, I am not aware of any other conversations or discussions. The CHAIR: Could you take it on notice that the Government might like to give some more thought to it?*

The NSW Government submission to the inquiry provided information about the privilege against self-incrimination in the context of the terms of reference of the inquiry.

### **Questions answered by Department of Primary Industries**

- 7. At some stage Minister Niall Blair announced there was, I think, an open farm day where people could visit farms to learn about how animals are kept. I think grain producing farms were also involved. What are the type of facilities that participated (e.g. battery hen facilities, meat chickens, piggeries with farrowing crates)?*

In 2017, the Department of Primary Industries began a new initiative to bring urban and farming communities closer through the 'Visit My Farm' agri-exchange. The online Visit My Farm platform provides an easy way for people to connect with a farmer and have a first-hand experience by visiting a farm for an hour, a morning, or a whole day.

There are currently 53 NSW farms listed on the Visit My Farm website, ranging in size from less than 6 hectares to over 40,000 hectares. The enterprises include cattle, sheep, dairy, camels, alpacas, cropping and horticulture, as well as some free range egg and pork producers.