

**Submission  
No 4**

**INQUIRY INTO LANDOWNER PROTECTION FROM  
UNAUTHORISED FILMING OR SURVEILLANCE**

**Organisation:** PETA Australia

**Date Received:** 6 July 2018

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PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS

**Australia**

PO Box 20308

World Square

Sydney NSW 2002

[Info@peta.org.au](mailto:Info@peta.org.au)

**SUBMISSION TO THE NSW LEGISLATIVE  
COUNCIL SELECT COMMITTEE  
INQUIRY INTO LANDOWNER PROTECTION  
FROM UNAUTHORISED FILMING OR  
SURVEILLANCE**

**8 JULY 2018**

All correspondence regarding this submission should be directed to:  
Ms Paula Hough  
Vice President & Deputy General Counsel, Asia-Pacific  
PETA Australia

**Affiliates:**

- PETA US
- PETA Asia
- PETA India
- PETA Germany
- PETA Netherlands
- PETA Foundation (UK)

## **A. *About PETA Australia***

People for the Ethical Treatment of Animals (PETA) Australia is the local affiliates of PETA US, the world's largest animal rights organisation with more than 6.5 million members and supporters worldwide. PETA is dedicated to establishing and protecting the rights of all animals, and operates under the simple principle that animals are not ours to eat, wear, experiment on, use for entertainment or abuse in any way.

PETA Australia works through public education, cruelty investigations, research, lobbying, celebrity involvement, and protest campaigns to focus international attention on the exploitation and abuse of animals for their flesh, for their skins, as living test tubes in laboratories, and for "entertainment".

## **B. *PETA's responses to the terms of reference***

The NSW Legislative Council Select Committee has invited PETA to provide a submission to the subject Inquiry. PETA's comments responsive to the published terms of reference are below.

PETA has never engaged in unlawful activity, and does not engage in conduct that would form the bases for the criminal offences ostensibly contemplated by this Inquiry. However, we do have concerns with its potential chilling effect on the exposure of animal suffering and the Inquiry's apparent intentions.

The Committee has not been explicit in these terms of reference regarding the ultimate intention of the Inquiry, nor the parameters of the input sought, but given that it has been initiated by the Shooters, Fishers and Farmers Party, and given the entire focus is on the rights of landholders without even a token nod to the rights of animals not to be abused behind closed doors, we have proceeded in our comments on assumptions flowing from that state of affairs.

### **1. *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.***

Landowners 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.

What the Inquiry appears to want to explore is the creation of new and additional protections only in relation to a select group of commercial enterprises in certain industries, either creating additional criminal offences to exist alongside those already on the books, or augmenting penalty levels only in relation to surveillance of those enterprises. Such kowtowing would result in a legal structure that is inequitable, discriminatory, and disproportionate.

Given the clanging silence of the terms regarding the acts of neglect and abuse repeatedly uncovered by such surveillance, the intention of the Inquiry appears clear: pander to commercial enterprises that profit from the use of animals and protect the profit margins of such enterprises at the cost of animal welfare and open public discourse.

Also glaringly absent from these terms of reference is any mention of penalties for those who witness neglect or abuse, or allow it to continue under their supervision, and walk on by – the Inquiry appears interested in establishing additional offences regarding the way in which suffering is documented – to criminally punish those who *make visual records* of cruelty only, so that the creation of damning visual proof that would be seen by consumers might be curtailed.

As the frequency of revelations of systemic suffering has increased – and with it, an increase in the number of criminal convictions of farm workers who abuse animals, cancelled customer contracts, and a drop in animal product consumption rates – so too have the calls by industry to criminalise the making of such revelations. And so, bills and inquiries such as this one aimed at concealing and insulating rather than weeding out and addressing abuse of animals continue to crop up. We must say this is the however the first we have encountered that doesn't make even a token effort to pretend it is aimed at protecting animals rather than profits – Mr Borsak's stating of his intentions so baldly is, if not refreshing, at least clarifying.

If the Committee is concerned about both unlawful surveillance and animal welfare, as it claims, we suggest – as does the RSPCA,<sup>1</sup> all animal protection groups, and large swathes of the public – that the Inquiry recommend the installation of CCTV cameras in farming enterprises, slaughterhouses, and all other venues where animals are raised and killed.

**2. 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.**

As noted above, the Inquiry appears to be seeking here to explore the imposition of higher penalties in relation to individuals that may unlawfully surveil in relation to animal-exploiting enterprises only, rather than an even-handed review of this area overall. Penalties already exist in relation to each existing criminal offence noted above.

**3. The implications with regard to self-incrimination of the request of disclosure by a person of any recordings made by that person.**

The only aspect of this head we currently wish to comment on is, should the Inquiry ultimately veer into exploring the introduction of such, immediate reporting requirements. Immediate reporting requirements are born of a fundamental misunderstanding of – or, more likely, a keen understanding of and

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<sup>1</sup> See eg [http://kb.rspca.org.au/will-closed-circuit-television-help-improve-the-welfare-of-farm-animals\\_494.html](http://kb.rspca.org.au/will-closed-circuit-television-help-improve-the-welfare-of-farm-animals_494.html), <https://rspca.org.au/media-centre/press-releases/2013-mr/rspca-renews-call-cctv-be-installed-all-abattoirs>

indifferent attitude towards – the reality of what animals used in animal enterprises endure throughout their lives. The agricultural industry and its parliamentary apologists would like the public to believe that animals raised and killed for human interests generally live and die without experiencing suffering or abuse. That occasionally, a frustrated worker having a bad day will lash out, or that an individual employee is failing in his duties, or that an animal enterprise will unwittingly employ a sadist who enjoys hurting animals for his pleasure. What investigations throughout the world, including throughout Australia, have consistently revealed is that instances of abuses are rarely isolated or confined to a sole act or individual – instead, investigations consistently uncover facility- or industry-wide problems that reveal animals are being abused repeatedly, over extended periods of time, in a manner encouraged, condoned, or acquiesced to by landowners and supervisors. 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. As RSPCA Policy Officer Jed Goodfellow noted in relation to PETA US’ exposé documenting extensive abuse of sheep in multiple Australian shearing sheds, “With the PETA shearing shed investigation, for example, if PETA had taken footage of one shearer punching one sheep in the nose and provided that footage to authorities, it’s likely that there would be no significant response”.<sup>2</sup> Should the Inquiry venture towards proposing the introduction of an immediate reporting requirement, PETA urges the Committee members to consult with law enforcement agencies and prosecutors and confirm the hobbling effect that such a move would have on their ability to pursue cruelty charges in such ingrained, institutional contexts.

#### **4. The implications of rapidly changing media environment, including social media platforms such as Facebook Live.**

The concern here appears to be the increased transparency that such a media environment allows – that the consuming public now has a greater opportunity to be informed about the conditions in which farmed animals are raised and killed, more quickly, more easily, and more broadly. The role of government should be to enliven and work to ensure free access of all citizens to data and material informing and strengthening public discourse and freedom of consumer choice, not feeling out ways to limit and stifle them. We reiterate our comments above and below on this front and our objection to a Senate Committee seeking to limit and suffocate the ability of investigators to disseminate to the public evidence concerning the realities of systemic and ongoing abuse for animals raised and killed in agricultural and industrial contexts. We would also note that the Committee risks venturing into exploration of imposing limitations on the freedoms not just of “animal welfare advocates” as described, but also journalists, employee whistleblowers or any other party who is or becomes aware of a culture of abuse and wishes to inform the public about it via the social media channels contemplated here.

No landowner enjoys an inherent right to, or to allow those on their property to,

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<sup>2</sup> See eg ‘Barnaby Joyce supports Liberal Senator Chris Back’s push to legislate against activists on farms’, *ABC Rural*, 16 July 2014, viewable at <http://www.abc.net.au/news/rural/2014-07-15/chris-back-animal-welfare-bill/5598938>, accessed 4 June 2018.

engage in illegal activity and expect the protection of privacy law simply because the crimes against animals are being committed on private property. Indeed, as the High Court noted in the seminal *Lenah Game Meats*<sup>3</sup> case, landowners do not enjoy an inherent right to engage in *legal* activity on their property and automatically expect the protection of privacy law – as Gleeson CJ explained, activists who had trespassed onto private property to place cameras that recorded the operations of a possum slaughterhouse had not recorded activities that were

relevantly private. Of course, the premises on which those activities took place were private in a proprietary sense. And, by virtue of its proprietary right to exclusive possession of the premises, the respondent had the capacity (subject to the possibility of trespass or other surveillance) to grant or refuse permission to anyone who wanted to observe, and record, its operations. The same can be said of any landowner, but it does not make everything that the owner does on the land a private act. Nor does an act become private simply because the owner of land would prefer that it were unobserved. The reasons for such preference might be personal, or financial. They might be good or bad. An owner of land does not have to justify refusal of entry to a member of the public, or of the press. The right to choose who may enter, and who will be excluded, is an aspect of ownership. It may mean that a person who enters without permission is a trespasser; but that does not mean that every activity observed by the trespasser is private.<sup>4</sup>

What the Inquiry appears to be questing for here is a system whereby the public has no direct access to photographic or video evidence of the conditions in which animals are living and dying or the abuses being perpetrated upon them, but instead hopes to continue with concealment, complacency, and outright deception so the misery may continue without accountability and without improvement. The terms of reference as stated are unabashedly aimed at concealing realities from the public, and actively seeking out the best way that can be done. Landowners claiming to care about their animals should be ashamed to advocate for the removal of the ability to expose systemic suffering in their industry rather than the removal of the suffering itself.

## **5. Any other related matter.**

### **a. The role of activists' surveillance footage in uncovering cruelty**

PETA acknowledges that in some circumstances animal activists create surveillance material that has been gathered unlawfully. We would emphasise however that, even that being so, animal suffering would continue unabated in many areas without such material being created and coming to light. Taking the recent example of revelations of live baiting in the greyhound racing industry, we assume even members of this Committee accept that it is a public good that the practices were uncovered - trainers have been stood down, an entire state racing board has stood down, taskforces have been established, a parliamentary inquiry launched, major sponsors have pulled all support, promises of increased scrutiny, funding, ramped up adoption programs, and so on have poured forth from government and representative bodies. The public was repelled by the material and demanded to know why nothing was done earlier. From no corner came an enquiry why nothing was done to curtail the

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<sup>3</sup>*Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63; 208 CLR 199

<sup>4</sup> At [43].

gathering of the necessary evidence by the investigators. When the NSW Deputy Premier and Minister for Racing was pressed to explain why it took a third party investigation to uncover the practice, he explained, “There’s a large difference between rumour and innuendo and actual proof. The proof was on TV screens for everyone to see and like the rest of the community I was shocked and appalled”.<sup>5</sup> With its obvious objective being to find ways to insulate industry rather than truly root out cruelty, this Inquiry aims to ensure that “proof...on TV screens for everyone to see” has no chance to be created. Does the Committee propose that the trainers’ abhorrent and illegal activities should have been allowed to continue, if (given the RSPCA knew of the likelihood of the practice for years but little was done<sup>6</sup>) the only way to expose them was through conduct that contravened the Surveillance Devices Act?

The live baiting example demonstrates that relying on industry self-regulation to stamp out acts of cruelty is doomed to fail, but it is far from the only example. PETA and its US affiliate have time and again been approached by employee whistleblowers telling of a pattern of ongoing, unchecked abuse in their workplaces that would otherwise not have come to light, or have consistently uncovered abuses following the launch of their own investigations. Trust that management would “do the right thing” in such situations and would not require further actions is misplaced. A small sampling of examples that highlight the more likely outcomes:

- In 2008 an investigator commenced employment at a large Iowa pig farm, and documented widespread and egregious abuse there which ultimately led to 22 criminal charges being filed against six workers, all of whom admitted guilt. The case resulted in the state’s first-ever convictions for the abuse of factory-farmed pigs. The investigation lasted three months. The perpetrators included supervisors, and the abuse continued unabated when the farm changed ownership and management. The investigator brought his observations about the abuses to management, and was immediately fired.
- With regards to abuse in Australian shearing sheds exposed in recent years, that has led to convictions of five men for dozens of charges of illegal cruelty, supervisors and contractors were not only present for and aware of the various abuses but partaking themselves.
- Those blowing the whistle on the live baiting practices discussed above, in the essentially self-regulated greyhound racing industry, report that they were variously intimidated, threatened, and ostracised. Even submissions

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<sup>5</sup> Quoted in ‘Entire NSW greyhound board steps down’, 20 February 2015.

<sup>6</sup> RSPCA NSW knew that small bait animals were being housed on the same properties as greyhounds, and thus told the NSW governmental inquiry that it “suspect[ed] it does happen but...there is a general awareness out there that the activity is illegal and, as a consequence, the people who may be involved are not necessarily broadcasting that it is going on. While we suspect that it happens there is very limited information or people who are prepared to make reports about it.” (‘Inquiry Into Greyhound Racing in NSW’, Senate Committee on Greyhound Racing in NSW, Transcript, Hearing 06/02/2014 #3, Testimony of RSPCA NSW Chief Inspector David O’Shannessy). Numerous reports of live baiting had been made to the RSPCA prior to the most recent exposé, but little effective action appears to have been taken by it – see complaints detailed in ‘Answers to Questions on Notice: RSPCA Australia’, RSPCA Australia, 1 March 2014, pp 3-4, [https://www.parliament.nsw.gov.au/lcdocs/other/8292/4n%20AQON\\_RSPCA.PDF](https://www.parliament.nsw.gov.au/lcdocs/other/8292/4n%20AQON_RSPCA.PDF), accessed 4 June 2018.

to the NSW parliamentary inquiry that detailed suspected parties' names and addresses were ignored.<sup>7</sup>

To expect that such ingrained problems will be solved absent the impact of revelations arising from investigative material gathered by animal activists is folly.

It is also without basis to claim that activists exposing systemic cruelty are unnecessary because the RSPCA, state agricultural departments, the police and any other entity tasked with investigating and prosecuting instances of cruelty to animals already ensure animal enterprises are conducting themselves lawfully. By their own admission the RSPCA is woefully under-resourced and unable to thoroughly investigate and pursue action regarding all complaints they receive, let alone comprehensively monitor the treatment of animals used by animal enterprises. In both the 2013-2014 and 2015-2016 periods, the RSPCA finalised prosecutions on 0.4% of the complaints it investigated,<sup>8</sup> 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. Facilities will for the most part only be scrutinised if evidence of ongoing, systemic cruelty is presented to the authorities. Animal activists gathering that evidence are an essential part of the transparency and accountability process.

#### **b. The public's right to knowledge**

Illegal treatment of animals raised for human use and consumption is an issue of public interest that extends beyond welfare issues to encompass various consumer concerns such as food safety and marketplace transparency. On the food safety front, consider the example of a slaughterhouse that continually encourages or allows its workers to beat sick, non-ambulatory cows to force them to stand and proceed to slaughter, thus threatening the public food supply and risking the sale of flesh from diseased animals to consumers. Consumers have a right to make choices based on all the information that can be made available to them, and it is as best inappropriate for a Senate Inquiry to be exploring ways to ensure that information is not conveyed.

In addition, it is indisputable that the Australian public (more than 10% of whom don't eat animals)<sup>9</sup> cares about animal welfare, and this concern is

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<sup>7</sup> 'Greyhound industry whistleblowers 'intimidated, threatened and ignored'', Sydney Morning Herald, <http://www.smh.com.au/sport/greyhound-industry-whistleblowers-intimidated-threatened-and-ignored-20150217-13gw6n.html>, accessed 20 February 2015

<sup>8</sup> See 'RSPCA report on animal outcomes from our shelters, care and adoption centres 2013-2014', RSPCA Australia, viewable at [http://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA Australia-Report on animal outcomes-2013-2014.pdf](http://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA%20Australia-Report%20on%20animal%20outcomes-2013-2014.pdf), and 'RSPCA report on animal outcomes from our shelters, care and adoption centres 2015-2016', RSPCA Australia, viewable at <https://www.rspca.org.au/sites/default/files/RSPCA%20Report%20on%20animal%20outcomes%2015-2016.pdf> accessed 4 June 2018.

<sup>9</sup> See eg 'More than 10% of Australians are now vegetarian', SBS, 17 August 2016, accessible at <https://www.sbs.com.au/topics/life/health/article/2016/08/17/more-10-australians-are-now-vegetarian>;



increasing. Issues such as live export, puppy mills, cosmetics testing, and the need for an independent body to monitor compliance with and enforce law relating to the treatment of animals all directly influence political campaigning promises and platforms and voter decisions. Curtailing the ability to create in-depth documentation directly informing such issues curtails the public's ability – and right – to inform themselves about the realities of animal enterprises and how important such realities are to them come election time. When industry and government makes improvements to the ways animals are treated, it is not born of altruism, but rather public demand. Those documenting systemic cruelty public have a right to communicate their findings to the public, the public has a right to address their reaction to such findings with their elected representatives and demand reform. This Inquiry seeks to identify means to suffocate that discussion.

We would also note the tension here between the common complaint of agricultural industries that “city dwellers” are becoming increasingly disconnected from their food and clothing sources and that they just don't understand what happens on the farm, and the apparent desire behind this Inquiry to limit consumers' ability to have all the possible information about the realities of farming available to inform their choices. It is a glaring discrepancy between what farmers say they want the public to know about their practices and what they do, when industry wishes public perception of animals' experiences to be those that are generally peaceful, content and free of suffering, but wants no evaluation of that claim to occur.

## **6. Concluding remarks**

Instead of looking for ways to conceal the frequency with which instances of neglect and abuse are happening in animal-exploiting industries, government inquiries should be exploring ways to stamp those instances out – such as the measures regularly proposed by various voices in the animal protection field to commit to transparency rather than increasing secrecy: place CCTV in all commercial animal enterprises including farming operations and slaughterhouses. In states where investigation and enforcement powers regarding animal protection laws are vested in agricultural departments, acknowledge the inevitable conflicts of interest and divest them (the recent restructure in Victoria that now sees the investigation of farmed animal cruelty cases housed within the portfolio of the Department of Economic Development, Jobs, Transport and Resources is a particularly indefensible example). 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 to address systemic cruelty. In short, look to good faith measures that actually work to alleviate rather than conceal and excuse animal abuse.

Instead of implementing such steps that would truly address entrenched animal suffering, this Inquiry will sniff around for ways to further criminalise the actions of those who work to expose it. The sole real boon that these types of inquiries provide

for animals then is laying bare for consumers the depth and breadth of animal-exploiting industries and their parliamentary ambassadors' desperation to hide the truth from them, thus inevitably driving even more consumers to reject products from operations increasingly shrouded in secrecy. It is inarguable that the Australian public persistently and increasingly calls for transparency in production processes related to their food, clothing, and personal care choices. Calls to find ways to limit consumers' access to information about what those processes truly involve serve only to foster suspicion, distrust, and dissatisfaction and communicate unambiguously to the public that such transparency is undesirable to industry. PETA will continue to make a wide range of resources aimed at making the transition to a vegan lifestyle easy and enjoyable available to consumers who reach such conclusions.