

**Submission
No 5**

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

Organisation: Australian Pork Limited

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The Hon Robert Borsak MLC
Chair
Select Committee on Landowner Protection
from Unauthorised Filming or Surveillance
Legislative Council
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

By email: Landowner.Surveillance@parliament.nsw.gov.au

Dear Chair

Inquiry into landowner protection from unauthorised filming or surveillance

Australian Pork Limited (“APL”) welcomes the opportunity to make a submission to the Inquiry into landowner protection from unauthorised filming or surveillance (“the Inquiry”).

APL is the peak national representative body for Australian pig producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry. The Australian pork industry employs more than 36,000 people in Australia and contributes \$5.2 billion in gross domestic product to the Australian economy.

The unauthorised filming and surveillance of pig production facilities has been an increasingly common occurrence in recent years. Pig producers undertaking lawful businesses are being targeted by activist vigilantes intent on undertaking illegal activities (e.g. trespass) with the sole objective of causing the industry harm, and stop consumers eating pork. These actions result in animal welfare impacts and immense distress for individual farmers and their staff. Carefully designed biosecurity protocols are being ignored by trespassers who often move from farm to farm within a region to place hidden cameras, which they will then edit to create misleading and sensationalised videos.

Damage caused by a disease-carrying trespasser (even endemic diseases) could be irreparable to an individual’s business, livelihood and the animals they produce. Furthermore, reckless trespass of other pig farms within the quarantine period could cause a farm or regional biosecurity incident, with losses that could escalate into the tens of millions of dollars. In extreme cases, with emergency diseases involved, it could mean the shutting down of one or more livestock sectors. Industry and government collectively spend millions of dollars each year on traceability systems and biosecurity measures to ensure that the industry remains free from disease, yet an unbridled activism movement risks undermining this entire system unless serious steps are taken.

APL does not condone animal cruelty. We welcome good faith notifications to relevant authorities where cruelty is present or standards are being blatantly ignored. However, there is a need to deal with those with an ideological agenda to stop the consumption of meat and tackle their incentive to trespass onto properties and publish misrepresentative videos. By applying targeted controls on surveillance so that actual incidents of animal cruelty can be presented to the authorities, incentives for a media stunt can be minimised while allowing the appropriate regulatory authorities to undertake an investigation.

With respect to the terms of reference of the Inquiry, APL makes the following comments:

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

APL believes that the provisions in the *Surveillance Devices Act 2007* are sufficient insofar as they extend to penalties for unauthorised filming, however, there are several shortcomings with the legislation that could be reviewed.

- Video footage and photographs that are obtained as a result of trespass are subsequently used as material to campaign against livestock production. APL requests that the Inquiry look at mechanisms for the intellectual property in illegally obtained footage to be surrendered in favour of the person or entity on whose property the images were taken.
- The websites on which illegally obtained images are broadcast are often hosted in overseas jurisdictions, making it difficult to compel these websites to remove the images, even with Australian court orders. APL requests that the Inquiry look at ways to rectify this issue, perhaps by having penalties for supplying foreign-hosted websites with images that were illegal in the jurisdiction they were made. The Inquiry could also consider changes to compel activists to remove copies of illegal images of theirs that are online.
- While the *Surveillance Devices Act* contains penalties for making illegal recordings, charges are rarely laid. APL recommends the Inquiry seek an explanation from the NSW Director of Public Prosecutions as to why animal activists that break the law appear to have a different standard applied to others. These shortcomings also extend to offences in the *Biosecurity Act 2015* and *Crimes Act 1900* that also fail to apply to activists.

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*

Existing mechanisms are clearly not strong enough to deter trespassers who, in full knowledge of the potential consequences, choose to break the law anyway. This is evidence of an inappropriately designed deterrence and a failure to protect the agricultural sector. Animal activists are proudly and openly flouting laws, as evidenced by a recent farm invasion that saw activists wearing t-shirts with the slogan “One has a moral responsibility to disobey unjust laws.”

Trespass onto private property with the intention of damaging a person’s business, either physically or reputationally, has the potential to cause significant financial loss. This fact distinguishes the acts of trespass and unauthorised filming from those offences contained in the *Summary Offences Act 1988*, and makes it comparable to serious offences such as break and enter or burglary. To this end, APL believes that section 8 of the *Surveillance Devices Act 2007* that imposes a five-year imprisonment is a sufficient penalty for these actions. 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.

APL urges the NSW Government to take full advantage of the recent Bradshaw Review on Rural Crime. This extensive review recommended a new offence of aggravated trespass and we recommend that it is used to prosecute animal activists. When considering the damage to the property owner, and the flow-on risk to the entire industry, the NSW Police and Director of Public Prosecutions ought to be seriously considering using these aggravated trespass laws to deter animal activists from wilfully breaking the law.

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

Legislation compelling the immediate disclosure of recordings has been debated in the past, most notably in the *Criminal Code Amendment (Animal Protection) Bill* that was introduced into the Commonwealth Senate in 2015. The basis for these earlier iterations have been that a person who suspects they have witnessed a crime, namely animal cruelty, should immediately present their evidence to authorities so that any alleged crime can be investigated and any perpetrators brought to justice in a timely fashion.

APL supports this policy, and also the policy of exempting those who seek to expose legitimate instances of cruelty from any self-incrimination. Protections could be made available for individuals who act in good faith in an attempt to expose criminal activity, as distinct from individuals who are aware that no criminal activity is being committed, yet wish to trespass on and disrupt law abiding businesses. Strategically editing and publishing video footage of agricultural production, (whether cruel or otherwise) in an attempt to damage an entire industry is a very different act to reporting instances of cruelty as they are discovered.

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

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. Where media organisations are challenged, as was the case with the recent decision of *Australian Broadcasting Corporation v SAAW Ltd [2018] WASCA 29*, courts can make decisions which they can ensure will be followed. In that case, the ABC was prevented from publishing footage that contravened the law in Western Australia. Had this footage been obtained and published on Facebook by an activist, it would have been almost impossible to suppress, regardless of the illegality or otherwise of how the material was obtained and portrayed on social media. It is essential that laws that are made to support a specific policy ought to apply across the media landscape, and not just to those organisations who, for reputational or other reasons, are compelled to follow it.

5. *Any other related matter*

APL has made several submissions in various jurisdictions on the topic of unauthorised surveillance on farms. The threat to pig producers is ongoing, and requires significant investments in security infrastructure to deter trespassers. The scale of the threat of trespass and disruption permeates entire communities and regions, and farmers are at a loss to explain why governments are not responding to the scourge.

It is well established that the incentive to trespass is to “expose cruelty”, which activists interpret to mean the recording of normal and legal farming practices, applying post-production edits such as shadows, music and animal vocalisations, and presenting it on social media as “evidence of cruelty”. APL has attempted to respond to this with images and videos of sow housing, pig husbandry and humane slaughter, to show the public what unedited footage of intensive agriculture looks like. This can be viewed on the Aussie Pig Farmers website (www.aussiepigfarmers.com.au).

Despite these attempts to inform the public, the network of activists is widespread, the tactics are changing regularly, and truthful messages are often difficult to get heard. Furthermore, the organisation of activists, usually designated as a charitable organisation, shields their activities from being found misleading or deceptive under the Australian Consumer Law or relevant state legislation.

APL recommends that the Inquiry look at ways to protect producers from false and misleading claims through the *Fair Trading Act 1987*, *Charitable Fundraising Act 1991* or any other relevant legislation. This could include adding protections for businesses against false or misleading claims being made by charities, or their representatives. We refer the

Inquiry to discussions that were raised in 2016 during the NSW Farm Trespass Working Group to challenge the charitable status of organisations that have a clear purpose of breaking the law to disparage legal operations, and request that these deliberations are re-examined within the scope of charities and trust law.

The tide of animal activism has reached a stage where it is becoming untenable for producers to seek any redress from the police or through civil litigation. Activists organise their destructive activities using unincorporated associations or charities rather than corporations, making it almost impossible to seek effective legal action. Furthermore, sympathetic lawyers including 'Lawyers for Animals' and the 'Barristers Animal Welfare Panel' are providing *pro bono* advice and representation in any cases that are litigated. The result is that there is no real protection for farmers in either the criminal or civil jurisdiction to prevent crimes or civil wrongs from taking place.

Summary

Farmers who operate within the law should not have to keep an ongoing watch on whether their piggery will be broken into, their animals hurt, killed or stolen, or whether they or their businesses will be defamed on online posts. The reality is that producers are frequently abused online, and some have received death threats against them and their families. It is a perpetual frustration of the double standards that farmers are faced with and is a situation that would not be tolerated in any other sector, or indeed any aspect of the broader community.

To support our submission, we have attached some supporting material, including social media posts that have been made online which are designed to disrupt lawfully operating piggeries. APL is willing to provide evidence at the Committee hearings to discuss any of these issues should that be of assistance.

If you require further information or have any questions, please do not hesitate to contact APL's General Manager of Policy, Deb Kerr on _____ or _____

Yours faithfully

Andrew Spencer
CEO