

**Submission  
No 13**

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

**Organisation:** Animal Law Institute

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*Submission in relation to the Select Committee on Landowner Protection from Unauthorised Filming or Surveillance Inquiry into landowner protection from unauthorised filming or surveillance*

The Animal Law Institute is a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.

10 July 2018

Committee Secretary  
Select Committee on Landowner Protection from Unauthorised Filming or Surveillance  
Legislative Council  
Parliament House  
SYDNEY NSW 2000  
AUSTRALIA

## **Submission in relation to the Inquiry into landowner protection from unauthorised filming or surveillance**

### **Introduction**

The Animal Law Institute (**ALI**) welcomes the opportunity to make this submission in response to the public consultation on the Select Committee on Landowner Protection from Unauthorised Filming or Surveillance (**the Committee**) Inquiry into landowner protection from unauthorised filming or surveillance.

ALI is a registered charity and a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system. ALI is a member of peak bodies, the Victorian Federation of Community Legal Centres and the National Association of Community Legal Centres.

### **Summary**

ALI opposes the introduction of further restrictions on the filming of unlawful behaviour that are designed to prevent unlawful conduct being exposed to law enforcement and the general public.

ALI is of the view that existing protections for landowners, including trespass and surveillance devices laws, are sufficient to provide appropriate protections from unauthorised surveillance.

ALI also supports animal welfare issues being discussed openly in public forums. While individuals should not be encouraged to unlawfully enter onto private property, the solution to this issue is not to make penalties higher for those that do, but rather to provide law enforcement agencies sufficient resources to effectively police animal welfare laws – removing the need for private citizens to do so.

It is critical that where animal cruelty occurs that there are adequate mechanisms in place to respond proactively. Any changes that prevent this occurring, or fail to address this fundamental concern, should not be advanced by this Committee.

ALI makes the following recommendations:

1. The NSW Government review existing funding levels for law enforcement and regulatory enforcement agencies that undertake animal welfare enforcement to

ensure that these agencies have sufficient funding to secure positive animal welfare outcomes. This should include identifying opportunities to increase funding levels for the RSPCA.

2. The NSW Parliament repeal provisions under the *Biosecurity Act 2015* that inappropriately hinder the collection of surveillance to ensure compliance with NSW laws, including animal welfare obligations, by whistle-blowers and other persons authorised to be on private property.
3. The Committee notes the significant penalties already available for unlawful entry onto private property and unauthorised surveillance.

### Detailed reasons

#### “Ag-gag” laws hinder animal protection

The term “ag-gag” laws describes laws that seek to hinder animal rights advocates from seeking positive animal welfare outcomes by limiting or preventing them from recording the operations of individuals and businesses, including commercial farming, puppy farms and greyhound breeders.

While industry has argued that overt and covert surveillance by animal rights advocates threatens animal safety, this kind of behaviour is actually the very mechanism necessary for achieving positive animal welfare outcomes by improving transparency and accountability.

Laws that seek to stifle the ability for animal cruelty to be uncovered have significant deleterious impacts on the animals themselves and the broader public.

However, ALI is of the view that while this kind of behaviour has been successful in securing positive animal welfare outcomes, a change of course is necessary. It is not sustainable, nor appropriate, for individuals to be responsible for ensuring compliance by industry of animal welfare standards. Rather, law enforcement agencies should be properly funded, and sufficiently independent, to undertake proactive investigations and enforcement operations to prevent animal cruelty offences occurring, and to appropriately punish industry misconduct.

While chronically underfunded, the RSPCA undertakes a number of critical regulatory functions that ensure the protection of vulnerable animals. The RSPCA is responsible for the investigation of animal cruelty offences, care and treatment of animals seized during investigations, and often the prosecution of these offences. The RSPCA has been asked to take on a number of new functions, including assisting in the regulation of the greyhound racing industry, but has not been provided sufficient funding to ensure that it is able to meet its regulatory objectives. It is wholly unacceptable that an agency with these kinds of responsibilities is expected to rely so heavily on charitable donations to fund its regulatory activities. This must change.

The Committee should consider the value that the RSPCA and other law enforcement agencies provide, and recommend that these important regulatory objectives are properly

supported. This includes additional funding, as well as ensuring that law enforcement agencies have staff that are properly trained, and critically are independent from the industry that they are regulating. By undertaking these steps, the circumstances that have led to animal rights advocates taking the law into their own hands will become far less frequent, which will ensure better protections for private landowners.

### **Recommendation 1**

The NSW Government review existing funding levels for law enforcement and regulatory enforcement agencies that undertake animal welfare enforcement to ensure that these agencies have sufficient funding to secure positive animal welfare outcomes. This should include identifying opportunities to increase funding levels for the RSPCA.

While ALI does not support unlawful entry onto private property, it does support industry participants working with law enforcement and animal rights organisations to call out poor industry behaviour. This includes offering comprehensive protections to whistle-blowers and those who share footage of unacceptable and unlawful behaviour.

In this way, while the Committee's Terms of Reference are not clear on the issue, ALI calls on the Committee to carefully distinguish between surveillance that is not authorised because of unlawful entry onto property on the one hand, and surveillance produced by a person that is authorised to be on the property but who does not have authorisation to undertake the surveillance. This will allow an appropriate distinction between trespass and whistle-blowing.

Whistle-blowing strikes an appropriate balance and appears to be more in keeping with the outcome the Committee appears to be seeking to achieve. It requires individuals to be authorised to be on the property, while recognising that ensuring compliance with animal welfare standards also requires support from industry, including employees calling out bad behaviour of their employers.

By allowing this footage to be brought to the attention of government, the media and the public, these advocates are improving consumer protection by increasing the level of information available in the public space about how products are made. These kinds of actions by advocates have had significant impacts in recent years, including bans of animal testing, the increased demand for free-range eggs, and the recent suspension of a live exporter's licence.<sup>1</sup>

While ALI continues to support adequate funding to law enforcement agencies to allow lawful surveillance to occur, until this occurs, it supports an approach to this issue that recognises the value of this kind of surveillance in protecting animals. This is consistent with

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<sup>1</sup> Also noting that another live exporter has reduced their operations in response to community backlash, and that the Commonwealth and Western Australian authorities are conducting investigations into the abhorrent conditions faced by sheep that are exported from Australia.

the approach under the *Evidence Act 1995*, which recognises that evidence should be considered on its merits and its value, even when obtained improperly.<sup>2</sup>

ALI opposes the general use of ag-gag laws, and wishes to take this opportunity to make several points with respect to the *Biosecurity Act 2015*, which creates significant risks to the public interest:

- the Act introduces unnecessarily broad offences and duties that may apply to animal rights advocates based on “biosecurity impacts”,
- the Act imposes liability on individuals even where they themselves do not create the biosecurity risk or commit trespass, with broad incitement and accessorial liability offences appearing to intentionally capture animal rights advocates,
- the Act stifles public debate by creating implications for those who receive footage, which appears directly intended to stop animal rights groups and the media from holding industry participants to account for failing to abide by their legal requirements.

### **Recommendation 2**

The NSW Parliament repeal provisions under the *Biosecurity Act 2015* that inappropriately hinder the collection of surveillance to ensure compliance with NSW laws, including animal welfare obligations, by whistle-blowers and other persons authorised to be on private property.

### **Recent exposes into industry practices show the value of unauthorised surveillance**

Recent surveillance of the live exports industry has shown the importance of workers, veterinarians and other animal rights advocates calling out industry behaviour that does not meet the legal standard imposed on it by government.

While the Commonwealth Government has decided to not end the live export trade – deciding to adopt a non-evidence based approach to the issue that flies in the face of public opinion - the public response to revelations of the abhorrent treatment of animals exported by the live export trade shows that the use of unauthorised surveillance is justified in many cases. It is difficult to argue that the release of this footage was not in the public interest, and was not in the interests of the animals involved.

The footage of live exports, similar to those taken in commercial farming facilities, is often generated by those who work within the industry or those with intimate knowledge of what occurs behind closed doors. While this footage is not in the best interests of the offenders, which are often the business or land owners, this is not to say that there is not incredible value in allowing the truth to come out.

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<sup>2</sup> See section 138.

Some recent examples of how this kind of surveillance has provided a positive regulatory and animal rights outcome:

- in 2011, the Victorian industry regulator laid charges and forced the closure of the L.E. Giles abattoir after footage of mistreatment of pigs going to slaughter was provided to it by an animal rights advocate,<sup>3</sup>
- in 2012, Animal Liberation supplied the ABC with surveillance footage from a pig abattoir (Wally's Piggery in Yass), which was then released as part of a media report. Following this, the Government introduced mandatory animal welfare officers for abattoirs, as well as mandatory animal welfare training for those involved in the slaughter of animals and CCTV footage in all abattoirs,
- in June 2013, Pepe's Ducks, one of Australia's largest producers of duck meat, was convicted of misleading and deceptive conduct by the Federal Court,<sup>4</sup> following footage that was covertly recorded being aired on the ABC's 7:30.<sup>5</sup>

ALI also notes that following the release of covertly recorded footage on animal cruelty offences, the NSW Government announced a ban on greyhound racing. While the Government backtracked on this ban, despite broad public support to end the abhorrent industry, it did institute a number of new protections because of the footage taken on private property without the permission of the landowner (the landowner that was breaking the law).

**While ALI supports ag-gag laws being wound back, it is difficult to argue that there are not currently sufficient protections for landowners**

Incursions onto private property are already prohibited by trespass laws. Recent amendments to trespass laws, including amendments to section 4B (Aggravated unlawful entry on inclosed lands) of the *Inclosed Lands Protection Act 1901* by the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016* and *Rural Crime Legislation Amendment Act 2017* have enhanced protections afforded to landowners. Interestingly these Acts have also given new powers to police under the *Law Enforcement (Powers and Responsibilities) Act 2001* to more proactively engage with those seeking to trespass to remove items that may be used in the commission on an offence, including, but not limited to, 'lock on' devices.

The use/or installation of audio or visual surveillance devices is also prohibited in NSW under the *Surveillance Devices Act 2007*. Under section 8 of the *Surveillance Devices Act 2007* a person that installs, uses or maintains optical surveillance devices without consent

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<sup>3</sup> ABC News, "Abattoir owner angry after charges dropped" ABC News (16 April 2013)

<sup>4</sup> *Australian Competition and Consumer Commission v Pepe's Ducks Ltd* [2013] FCA 570

<sup>5</sup> Bronwyn Herbert, "Disturbing footage prompts calls for duck farming changes" Transcript, ABC News (19 June 2012) <<http://www.abc.net.au/news/2012-06-19/disturbing-footage-prompts-calls-for-duck-farming/4080436>>.

20 November 2013.

faces a maximum penalty of \$11,000 or 5 years imprisonment or both. This is a significant penalty that could be imposed for calling out unlawful behaviour. While it is unclear whether this offence provision has been used against animal rights advocates, ALI considers that these kinds of provisions may have a chilling effect on freedom of speech and effective oversight of industry.

### **Recommendation 3**

The Committee notes the significant penalties already available for unlawful entry onto private property and unauthorised surveillance.

### **The rapidly change media environment provides an opportunity to more effectively engage with industry and the public on animal welfare issues**

ALI notes that the Committee has identified how to respond to the implications of a rapidly changing media environment as a key issue for consideration.

In the same way that industry has increasingly looked to emerging media products, including social media, to engage with customers, so to must Government and the public look to emerging media products to engage with industry. These kinds of products provide an opportunity for industry to promote their products, gather information on their customers, and identify new ways of developing their businesses. This increased openness and engagement must continue to be about securing better outcomes for the consumer, which includes ensuring that the consumer has access to relevant information about business operations and the conditions in which their products are born, reared and slaughtered.

New media allows consumers to discuss products, and to find out the true impact on how a product is produced. Facebook and other social media mechanisms have already led to major wholesalers and fast food outlets shifting their business models to respond to consumer demands for free-range eggs and organic meat. This has in part been caused by increased access to information because of the work of animal rights advocates.

ALI supports this trend, as it shows that when presented with information on the true cost of production, including the impact on animals, that consumers will use their purchasing power to send messages back to producers about their expectations. As video streaming platforms provide a useful resource for consumers to see what is happening, ALI encourages animal producers to embrace these media products in the same way other businesses are doing so.

We thank you for considering our submission.

Should you have any questions regarding this submission, please do not hesitate to contact The Animal Law Institute via email at .

Yours sincerely

The Animal Law Institute