

REPORT ON PROCEEDINGS BEFORE

**SELECT COMMITTEE ON LANDOWNER PROTECTION
FROM UNAUTHORISED FILMING OR SURVEILLANCE**

**LANDOWNER PROTECTION FROM UNAUTHORISED FILMING OR
SURVEILLANCE**

CORRECTED

At Macquarie Room, Parliament House, Sydney on Tuesday, 28 August 2018

The Committee met at 9:28.

PRESENT

The Hon. Robert Borsak (Chair)
Mr Scot MacDonald (Deputy Chair)
The Hon. Rick Colless
The Hon. Wes Fang
The Hon. Courtney Houssos
The Hon. Mark Pearson
The Hon. Mick Veitch

The CHAIR: Welcome to the first hearing of the Select Committee on Landowner Protection from Unauthorised Filming or Surveillance. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the elders past and present of the Eora nation and extend respect to other Aboriginals present. Today the Committee will hear evidence from the following organisations: the New South Wales Government, Information and Privacy Commission NSW, the Australian Privacy Foundation, the Animal Defenders Office, the Animal Law Institute, the NSW Farmers' Association, Australian Pork Limited, Egg Farmers of Australia, joint media organisations and Animal Liberation.

Before we commence, I would like to make some brief comments about procedures for today's hearing. Today's hearing is open to the public and is being broadcast live by the parliamentary website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the general public gallery should not be the primary focus of any filming or photography. I would also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, and so I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In the circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. Witnesses are advised that any messages should be directed to the Committee members via the Committee staff. To aid the audibility of the hearing, I remind both Committee members and witnesses to speak into the microphones. In addition, seats have been reserved near loudspeakers for persons in the public gallery who have hearing difficulties. Finally, I request everyone to turn their mobile phones to silent for the duration of the hearing.

SCOTT HANSEN, Director-General, Department of Primary Industries, sworn and examined

The CHAIR: I welcome our first witness from the New South Wales Government, Mr Scott Hansen. Would you like to start by making a short opening statement?

Mr HANSEN: Obviously, you have the Government's submission, and I would like to add some pieces to that submission. The New South Wales Government recognises that unauthorised filming and surveillance is an issue of concern for individuals, businesses and the community, and has acted to take measures to strengthen both the legislative and policy frameworks aimed at preventing and reducing the impact of such incidents. The New South Wales Government has been proactive in establishing a strong legislative framework to support primary producers as they undertake their businesses. Offences relating to trespass are contained within the Inclosed Lands Protection Act 1901 and the Crimes Act 1900 and include financial penalties and, in some cases, imprisonment. Particularly relevant to intensive animal industries, abattoirs and meat processors, in 2017 the Inclosed Lands Protection Act was strengthened to include a new aggravated unlawful entry on inclosed lands offence, where the unlawful entry introduces or increases the risk of a biosecurity impact on the property.

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. In addition, the Surveillance Devices Act 2007 contains the primary protections against unauthorised filming or surveillance for landowners. Under this Act there are financial penalties for offences committed by companies and financial and imprisonment penalties for individuals. The New South Wales Government commends farmers who are proactive in providing suitable care for their animals. Some farmers are using advances in technology, such as live streaming video footage, to increase their transparency and demonstrate their high animal welfare standards to the community.

The Hon. MICK VEITCH: Mr Hansen, are you taking questions about the whole-of-government submission and will you take on notice any questions you are unable to respond to?

Mr HANSEN: That is right, with the exception of the Biosecurity Act, all the other Acts I mentioned that fall into the domain of the Department of Justice. If I cannot answer questions in that space, I am happy to find someone who can answer for you.

The Hon. MICK VEITCH: That is good. I take it the Government has measured existing and proposed legislation against the existing legislative framework in New South Wales. Is that right?

Mr HANSEN: Yes, the Government has been actively making amendments and strengthening the existing legislative provisions that cover both the issues of trespass and unlawful surveillance and monitoring and has tried to strengthen those in the last years. The Rural Crimes Legislation Amendment Act last year carried a number of provisions to try to strengthen the existing legislative provisions to address this issue.

The Hon. MICK VEITCH: This arises from the Bradshaw review?

Mr HANSEN: That is right, a combination of the Bradshaw review and stakeholder feedback.

The Hon. MICK VEITCH: One thing the terms of reference look at is the rapidly changing technological environment in which we live—for instance, the advent of drones and remotely piloted aircraft systems [RPAS]. How is the Government measuring the existing legislative framework against technology advances, such as robots?

Mr HANSEN: With drones and the majority of the legislation surrounding drones, this falls under Federal legislation administered by the Civil Aviation Safety Authority [CASA]. The question of technology advances is a two-way question, because on one hand it increases risk and opportunities for unlawful surveillance or surveillance that is carried out without the permission of the landowner, whether that landowner be in Bondi or Bourke, and it allows activities that previously may not have been contemplated when looking at the Inclosed Lands Protection Act and other pieces of legislation that surround it. At the same time, it provides tools for landowners to make sure that they can utilise new technologies to better protect themselves, better protect their properties and, in a lot of cases, maintain constant surveillance and monitoring despite geographical isolation from either the property or where they happen to reside.

The Hon. RICK COLLESS: The Surveillance Devices Act comes under the Justice portfolio. Is that correct?

Mr HANSEN: That is correct.

The Hon. RICK COLLESS: When that Act came into being, drones may have been available but not as publicly available as they are today. Does that 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.

Mr HANSEN: No. I am happy to take on notice the relevant interpretations and provisions; I am sure the Department of Justice can assist with that. Whilst section 8 deals with the legality of devices via unlawful entry onto the land, there are other provisions within the Act around recording conversations and so forth that do not have a requirement around entry onto a property. Because that goes to the complexity of the Surveillance Devices Act, I will take that question on notice and the Department of Justice will come back to you on that. I am sure that it will be a central piece to the Committee's deliberations.

The Hon. RICK COLLESS: Thank you.

The Hon. MICK VEITCH: At the bottom of page 7 of the Government submission you talk about the legal concept of privilege against self-incrimination. Has the Government measured this legislation against that legal concept?

Mr HANSEN: It has considered it and it has also looked at where are the gaps in the current legislative framework in terms of providing protections, and that is the fundamental angle from which it has been assessed, which is where are the gaps in providing protections for landowners against illegal trespass and against illegal surveillance? That should be irrespective of location, irrespective of purpose, irrespective of motive of those who commit it. How do we ensure that people are legally carrying out businesses or legally going about day to day have enough protections under laws to compensate for changing technologies and for changing community attitudes?

Mr SCOT MacDONALD: Can I just go back to biosecurity? What does failure look like to you? What is the worst case scenario in terms of incursions into these intents of industries, whether they be pigs or poultry or whatever it might?

Mr HANSEN: Doomsday scenarios are many, but probably the most publicly known and talked-about ones is something like foot and mouth disease [FMD], which obviously we have increased risk due to increased traffic between both passengers as well as increased cargo and parcel traffic into Australia. It is a short distance between Botany and our international airports and our international ports and a number of our intensive farming businesses and operations. It does not take much for the spread of a disease into one facility to then see that transmitted across multiple facilities and even in some of these disease cases, say it is FMD, even the presence of it in the country creates a market access problem that shuts down many of our global markets and leaves producers—

Mr SCOT MacDONALD: So even if we could contain it, even if we identified it, contained it, quarantined it, so to speak, relatively quickly, just the mere fact that it has hit the shores immediately throws up access issues?

Mr HANSEN: It does, in the same way that when we have customers abroad who have notifications of detections of exotic diseases we equally act quickly and swiftly to make sure we put in the best protections in place for our borders and for our producers. Other countries do the same. So any detection of an exotic disease, any spread of it is automatically a trigger for a significant impact on market access. The extent and the spread and the speed at which we can resolve it determines how long that lasts for.

Mr SCOT MacDONALD: Coming down from FMD, is there top of mind any next level of disease, so to speak?

Mr HANSEN: We have seen some of the impacts of avian influenza or equine influenza in terms of the spread of diseases across the State and the impact that has not just on agricultural communities but on the local community, on recreational activities, and that is just confining the commentary to animal diseases, which are sometimes the easiest to observe and sometimes the ones that gain the most notoriety. But at the same time, we run equal risks from weekend trippers who come out to view the canola fields out in the central west and jump the fence to go and stand in the middle of the fields to take photographs, moving from paddock to paddock in doing so, and the potential spread of disease across those, whilst not having the same impact on a whole industry, can have a devastating impact on individual producers because of the spread of disease from one block to another.

The issue of illegal trespass is one that takes many shapes and forms and in each case poses an individual risk. It is about how you balance up, how do you provide the right legislative protections, how do you provide the right awareness and communications, because in many cases the trespass is not done with the intent to cause harm but unknowingly is significantly exposing risk.

The Hon. MICK VEITCH: Just to move on to another item, which moves on from my previous question around the concept of not incriminating oneself. 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.

The Hon. MICK VEITCH: I missed that last bit. The Department of Justice—

Mr HANSEN: They might be best to come back to you with an answer and a response to that one.

The Hon. MICK VEITCH: Would you take that on notice and get some information back to us? I think it is an important matter for us to give consideration to. 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.

The Hon. MICK VEITCH: If you could take it on notice? Has the whole of Government had a chance to look at all the submissions to this inquiry to maybe make a further submission and to respond to some of the statements made? Has that happened?

Mr HANSEN: We have certainly had a chance to look at all the submissions to the inquiry. I am not aware of some of these submissions that may have been made verbally to you on site visits, nor from those that will follow today. Obviously we will be monitoring closely and looking to see that if anything does come up through those that warrants us to either address or clarify, I am sure that will be a decision that is made.

The Hon. MICK VEITCH: Were there any statements made in the submissions that you think the Government should respond to today to set the record straight or to put the Government's position on some of the statements they have made?

Mr HANSEN: We might wait until we hear the submitters' comments today to see whether they clarify or whether they can elaborate on them and help us maybe understand why they have arrived at some of those conclusions.

The Hon. COURTNEY HOUSSOS: I just wanted to come back to your statement where you said that people are provided with protection irrespective of their intention. One of the issues that this inquiry is looking at is the issue of intention when people are undertaking these activities. We received submissions from one particular farmer who has said that there should be provisions for people who are acting in the best interests of the animals and differentiate from those who seek to disrupt the businesses generally. Are you able to do that under existing legislation?

Mr HANSEN: There has been at least one court case that I am aware of in which the Federal Court has made such a determination and arrived at a similar conclusion about intent. It came down on the side of saying that if an incursion occurs, for the purposes of either shining a light or bringing to attention practices that, whilst legal and lawful by those carrying them out, are viewed to be unethical or inappropriate, that that does not provide a protection or a purpose or cause for committing trespass. I guess there have been numerous court rulings all the way through to the Federal Court that have looked at that intent and have tried to draw a line between were the actions of the individuals specifically designed to rescue or save an animal or to intervene or to actually carry out

a public good, versus is it promotion of an ideology or a purpose for which they believe but if we were to head down that track would basically open up and remove provisions or protections from every citizen to have trespass occur if someone believed that they were doing something that they did not like as opposed to being illegal?

The Hon. COURTNEY HOUSSOS: Do you think this is something that we should address or do you think that is not appropriate?

Mr HANSEN: At the moment it appears as though the case law is starting to address that and to provide the determinations. Obviously, anything that comes out of the inquiry and any of your findings that lead to whether there is increased clarity that can be provided in that framework I am sure would be considered.

The Hon. WES FANG: Looking at remotely piloted aircraft or drones, it amazes me that if you are flying an aircraft you have a height restriction of 1,000 feet over built-up areas or 500 feet over unoccupied areas but, as you said in the submission, when operating a drone there is really no height at which you would be considered to be trespassing on private land. We are talking about a Federal restriction with the Civil Aviation Safety Authority [CASA] but do you think it would not be unreasonable to impose height restrictions on drones similar to those on piloted aircraft?

Mr HANSEN: I think that is a matter for CASA and for the Federal agencies to work through but obviously there is a framework in place that has been used for manned aircraft; we are talking about unmanned aircraft. While some of the risks are significantly different, I am sure that this is a debate which is only going to need to intensify and for clarity to be provided federally soon because of the increase in use. There is not only recreational and private use but more and more public agencies are also using drones for activities. The sooner that there is clarity around those operations and making sure that an appropriate framework is in place that is national the better.

The Hon. WES FANG: Do you have an opinion on it from a New South Wales perspective?

Mr HANSEN: No.

Mr SCOT MacDONALD: Can you draw on experiences in Europe or the United States about the risks, where we should be going, what society is expecting and responses from government? I will stick to biosecurity because I think that is more your domain. Have you looked at what is happening overseas and how we might respond?

Mr HANSEN: We do obviously have a close relationship with all of our States and Territories here as well as internationally. The linkage and connection here is that the risk of illegal trespass is a psychological one and it is an economic one. There are considerable impacts that come, but one of the impacts that we are just really starting to get our heads around—we have been lucky to be able to watch and witness other countries where they have had significant outbreaks of diseases see how important good biosecurity is about entry to farms and exiting from farms. We have been able to watch countries that have had their outbreaks of foot-and-mouth disease track the movement of trucks and vehicles from one farm to another to see how it has spread and to see the damage that it has caused to be able to start to put in place appropriate mechanisms to try to counter that. From our perspective this just increases yet another one of the risk angles that come from the unlawful trespass. It is one that was tried to be strengthened up last year off the back of the Bradshaw review and off the back of that rural crimes amendment legislation which sought to include a category of aggravation in the Inclosed Lands Protection Act around that trespass increasing the risk of biosecurity risk to the premises.

Mr SCOT MacDONALD: Is that where the United Kingdom or the European Union is going, that sort of aggravated trespass legislation?

Mr HANSEN: I am not aware of the legislative frameworks over there. The EU and UK have a very different risk profile than what we have here in Australia—both the geographical surrounds and the porous borders that they have. But, equally, the numerous walking trails that exist across farmland mean that they need to tackle their biosecurity risk from a different angle to what we necessarily do. They also have the unfortunate recent memories of the destruction of economies, rural economies and regional economies, over there as a result of foot-and-mouth disease and so they have thrown a lot of effort into working out how they track livestock better. A lot of those efforts have led them to where we are now with schemes and systems that have been put in place in Australia over a decade before. But obviously even the events we have at the moment—we are very lucky that we are in an era and a period where agritourism is on the rise.

More and more Australians are wanting to get out of the city and go and see where their food comes from and visit farms. There is more and more conversation amongst those farmers happening about how we can make sure that there are appropriate biosecurity measures at the farm gate so that they can continue to welcome and encourage that agritourism whilst at the same time reducing the risk of spread of diseases. It is a constant

discussion amongst those with orchards and vineyards around the State who are wanting to welcome people onto the properties to be able to show to them and explain to them and let them enjoy the visits whilst at the same time providing appropriate protections against biosecurity incursions. They can only do that when they know that people are entering, when they know that they are coming, when they know where they have come from, and can apply appropriate risk mitigation methods. When they have no idea where they are coming from, when they have no idea where they have been, they cannot apply any of those and so the risk is more substantial.

The CHAIR: In the Government's submission that you are talking to there seems to be a plethora of laws that in some part or not address what we are talking about. In other words, you quote the Surveillance Devices Act, the Criminal Procedure Act, the Summary Offences Act, the Inclosed Lands Protection Act, the Crimes Act and various biosecurity Acts and regulations. There is obviously a lot of Acts of Parliament that seem to address a wide range of offences but they seem to be singularly ineffective when it comes to dealing with criminal trespass by animal rights people onto properties.

Yesterday we went to Cordina Farms. They are having their farm trespassed on. Why does the Government not act and make specific legislation dealing with this activity rather than, as you were saying a few minutes ago, seek to make amendments to the inclosed lands Act or to the biosecurity act and regulations? Why not just go to the heart of the problem and deal with it? The issue is not about self-incrimination; the issue is about stopping people doing illegal things before they even get started.

One of the complaints we have had from Mr Cordina, for example, is that even if these people are caught they get a slap on the wrist rather than what should happen, which is they should be penalised to a much greater standard that is more in keeping with the damage they are doing to businesses and people's livelihoods. The Government says in its submission that the sort of trespass that goes on at these properties would not be acceptable in urban Sydney or anywhere else in the State, but because it is on a farm it is somehow or other okay, it is a university-level protest. That is not the case, in my view. Where does the Government stand? Why not write specific legislation to fix this?

Mr HANSEN: We would be keen to see the outcomes from this Committee's deliberations. There is no delineation in the Acts currently. An illegal trespass into a house in Bondi is as illegal as an illegal trespass onto a property in Bourke. If anything, the amendments that were made last year to the Crimes (Sentencing Procedure) Act took into account a victim's vulnerability, and isolation was one of those added to the list of what vulnerability was, to try to take into account the fact that up until then there had been nothing to put the spotlight on illegal trespass on farms.

The CHAIR: We are hearing in submissions from people, and again yesterday from Mr Cordina, there is a marked reluctance by police to prosecute. Can you shed any light on that?

Mr HANSEN: No, I cannot shed any light on that. What I can say is that the legislation that is in place should not be subject to the intent or the perceived purpose of the trespass. There is a significant amount of illegal trespass on farms—as Bradshaw found—that is crime related and nothing to do with ideology around animal welfare.

The CHAIR: You are not going to get any argument from us over that. This Government has a significant interest in ramping up the activities of the rural crimes squad, and I applaud them for it. Yesterday we saw something which indicated that they are now starting to take an interest in this sort of illegal trespass. It is a big State with a lot of animal farming activities. Does this not deserve legislation of its own to ensure that we address the issues around the specific problems created by this sort of trespass?

Mr HANSEN: At the same time should we not just treat illegal trespass as illegal trespass, regardless of the intent?

The CHAIR: I am talking about approaching it from an animal welfare point of view. If the purported reason for the trespass is to prevent animal cruelty—and I would assert that farmers have a vested interest in not being cruel and treating their animals properly, and again that was said by Mr Cordina yesterday—should they not be the first ones to know about it and be able to fix it?

Mr HANSEN: There are two things there. The first one; I totally agree, that good animal husbandry is good animal production and good animal welfare outcomes. The farmer is primarily the one who should be made aware of any concerns that anyone witnesses. Secondly, the very next people who should be made aware of any concerns or any accusations should be the enforcement agencies that we have in this State who can carry out their job in terms of enforcing animal welfare standards.

The CHAIR: At the conclusion of the Government's submission you say:

Anyone who has a concern relating to animal welfare is encouraged to alert relevant authorities rather than undertaking unauthorised filming of farm operations for the purpose of providing the footage to media companies or to upload on social media.

Again my question is: Why does the Government not think about specific legislation to make sure that does happen in relation to animal welfare?

Mr HANSEN: We completely agree that the first recourse should be to those compliance agencies who can carry out actions. We have already discussed this morning the fact that in a number of cases the unlawful collection of the footage has put at jeopardy and at risk potential prosecutions and potential action to protect animals. It is about how you get that balance right between ensuring that illegal trespass is illegal trespass, regardless of what they are intending to go on there to do. How do we make sure that we are providing the same protections for all?

The CHAIR: I put it to you Mr Hansen, I think that is pretty simple. It gets down to intent. If you are running around the place at night with night vision goggles and a balaclava on, that is a lot different to someone walking into a field taking pictures of themselves amongst the yellow flowers. They are two very different things.

Mr HANSEN: They are.

The CHAIR: I think it is pretty easy. That is a bit of a cop-out, is it not?

Mr HANSEN: But I think that they are both illegal trespass.

The CHAIR: Of course, but one you would penalise rather badly, and the other one you would probably do as they do now, ignore it. I am talking about approaching it from the angle of animal welfare-specific trespass and the law relating to that. On another issue—

The Hon. MARK PEARSON: Mr Chair, I have some questions.

The CHAIR: You have plenty of time. Has the Government considered banning outright the use of these technologies by anyone other than the owners of the land or occupiers of the premises where they are being used?

Mr HANSEN: Banning outright?

The CHAIR: The use of surveillance technology?

Mr HANSEN: So, broader community ban on the use of?

The CHAIR: Surveillance technology in a farm used covertly?

Mr HANSEN: That is something I will take on notice.

The CHAIR: 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?

Mr HANSEN: Again, I have to take that on notice.

The CHAIR: 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?

Mr HANSEN: Yes.

The Hon. MARK PEARSON: Is there any evidence that an animal activist or a person who has entered a property and taken photos, videos and documentation, has brought a disease to any farm in New South Wales?

Mr HANSEN: I am not aware of any evidence of that. We have had circumstances where, upon identifying trespass on a farm, a farmer was subsequently found to have had a highly virulent disease in the flock in the shed which had been trespassed. That does pose a risk and we are still unsure as to how that risk might play out in terms of that being spread to backyard chickens or other farm production facilities. But we are yet to identify and make a link.

The Hon. MARK PEARSON: If there is a disease outbreak on a farm, how is that communicated around the farm on the sheds or at the entrances to different sheds?

Mr HANSEN: If there is already an identified disease on the place, there will be biosecurity notices up, there will be prohibition movements and notices up around the property. In the absence of us knowing that there is one, you will still find most intensive agriculture industries will have biosecurity notices up identifying the fact that there is a biosecurity risk and that entry is unlawful.

The Hon. MARK PEARSON: If there is a disease outbreak, as opposed to the risk of a disease outbreak, there would be further notices and clear communications on the doors and entrances to the sheds that there is an outbreak of a disease on this property, correct?

Mr HANSEN: If it was known to us and currently under control, yes.

The Hon. WES FANG: To clarify the event that you are talking about: There was a trespass on a property, subsequent to which an outbreak was identified. Potentially one of two things has happened: The person who has trespassed on that property has brought the infection into the zone, or has transmitted the outbreak from that zone elsewhere, unknowingly because they have trespassed.

Mr HANSEN: That could be a scenario, but it is not a scenario that has been able to be verified.

The Hon. MARK PEARSON: What stimulated the Bradshaw review to occur?

Mr HANSEN: A number of triggers but I think specifically the fact that, unlike most other categories of crime, rural crime is one that has continued to increase rather than decrease.

The Hon. MARK PEARSON: The report from that review found, according to the Government submission, that there were 442 reported incidents for farm trespass during 2015. Only a couple—so at the most two—of these were farm incursions by animal activists. Is that correct?

Mr HANSEN: That is what was reported in the Bradshaw review. It was also commented that farm trespass is seriously under-reported.

The Hon. MARK PEARSON: The ratio would probably be about the same, would you agree?

Mr HANSEN: On the basis of the evidence there, yes.

The Hon. MARK PEARSON: Were the other 440 reported incidents mainly in relation to hunting and pursuing animals onto people's property, or looking for animals to shoot?

Mr HANSEN: That might be yet another category. But theft, illegal trespass and stock theft are also drivers of that.

The Hon. MARK PEARSON: Do you have any idea what percentage was hunting?

Mr HANSEN: No, I do not.

The Hon. MARK PEARSON: The RSPCA is the main administrative body that the Government looks to to investigate and to administer the Prevention of Cruelty to Animals Act [POCTA Act] and to prosecute where required. Is it correct that the RSPCA is the key body the Government looks to?

Mr HANSEN: There are three bodies we turn to: the NSW Police Force, the RSPCA NSW and the Animal Welfare League.

The Hon. MARK PEARSON: But one would say that the Government looks to the RSPCA as the major body with the carriage of the POCTA Act in terms of its numbers and its resources?

Mr HANSEN: Yes. It has 31 inspectors and last year it carried out, I think, more than 14,000 inspections. It is certainly one of the most active of our three compliance agencies.

The Hon. MARK PEARSON: Does it have the power to obtain a warrant to enter a property?

Mr HANSEN: I do not believe it does, but the other compliance agency—the NSW Police Force—obviously does.

The Hon. MARK PEARSON: The POCTA Act is a criminal Act, is it not?

Mr HANSEN: Yes.

The Hon. MARK PEARSON: Is there any other criminal Act or any other Act like that that deals with crime; that is, where the main carriage of the administration, investigation and prosecution is carried out by a charitable organisation?

Mr HANSEN: I am not aware. It should be borne in mind that that organisation is not the only compliance and enforcement agency.

The Hon. MARK PEARSON: But there is only one other charitable organisation; that is, the Animal Welfare League.

Mr HANSEN: That is right. But the NSW Police Force is also available, and a department and compliance agency can instigate investigations and compliance activities in its own right. Obviously, it is not a charitable organisation.

The Hon. MARK PEARSON: Yes, but is it not true that the police will often refer animal cruelty or allegations of animal cruelty or suffering to the RSPCA because it is clear to them that the main carriage of POCTA Act is with the RSPCA?

Mr HANSEN: In a number of cases they work hand-in-hand. They work together in local communities in those activities. However, for the most part, the RSPCA leads the investigations.

The Hon. MARK PEARSON: Would you agree that one of the main reasons this Committee has been established is that most farm animals are out of public view? I am talking about poultry, pigs, feedlots, egg layers. The vast majority are in sheds.

Mr HANSEN: I would probably say that the vast majority are on enclosed land. Some of them are in sheds, but some are on extensive grazing properties, and standing on public access roads you will be able to see them.

The Hon. MARK PEARSON: Yes, but most of the current farm animals would be in sheds and would not be able to be seen by the public even if the shed were next to a main road.

Mr HANSEN: That would be the case.

The Hon. MARK PEARSON: Your submission states:

The POCTA along with its supporting Regulation, national model codes of practice and NSW codes, standards and guidelines set the minimum standard by which production animals should be kept and articulate acceptable industry standards ...

It goes on to state:

... set in line with community expectations.

Is that true?

Mr HANSEN: Yes.

The Hon. MARK PEARSON: How do you know?

Mr HANSEN: The elected representatives of those communities make amendments and changes and set the POCTA Act through the legislative frameworks. That is now under review. I think members are aware that the Government announced earlier this year that the existing legislative framework we have on animal welfare needs to be reviewed and that it needs to make sure we continue to reflect the community sentiments around minimum standards. We also need to change the approach to animal welfare from being how we prevent cruelty to how we encourage animal welfare to continue to drive improvements rather than looking for what is the very worst.

The Hon. MARK PEARSON: But is the Government more interested in protecting the landowner or industry's business model in placing animals in animal production facilities rather than maintaining the minimum the community would expect in the treatment of animals?

Mr HANSEN: Those two things are not disjointed. The people who produce animals as part of their business sell to a market that is made up of those community members who choose by their purchasing patterns whether they continue to support or otherwise the practices of those businesses and industries. For producers in this State, not only maintaining but also exceeding their customers' expectations is a critical part of their success.

The Hon. MARK PEARSON: 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.

The Hon. MICK VEITCH: Egg producers did it recently.

Mr HANSEN: The Australian Lot Feeders' Association has numerous feedlots that have community groups and school groups visiting.

The Hon. MARK PEARSON: Were any of the farms that participated battery hen facilities?

Mr HANSEN: I am not sure.

The Hon. MARK PEARSON: Meat chickens?

Mr HANSEN: Again, I am not sure which farms were visited. We could work down the list.

The Hon. MARK PEARSON: What about piggeries with farrowing crates?

Mr HANSEN: I am not sure.

The CHAIR: We should call the questioning to a halt now.

Mr HANSEN: You can keep going down the list.

The Hon. MARK PEARSON: So the answer is, "Don't know", "Don't know." Will you take the questions on notice?

Mr HANSEN: Sure, I will take them on notice.

The CHAIR: You have taken a number of questions on notice. The secretariat will contact you about them and you will have 21 days in which to answer them. Thank you very much for coming to today and for being so helpful.

(The witness withdrew)

SAMANTHA GAVEL, NSW Privacy Commissioner, sworn and examined

SONIA MINUTILLO, Director, Investigating and Reporting, Information and Privacy Commission NSW, sworn and examined

DAVID VAILE, Chair, Australian Privacy Foundation, affirmed and examined

KATHERINE LANE, Vice Chair, Australian Privacy Foundation, affirmed and examined

The CHAIR: Would anyone care to make a short opening statement?

Ms GAVEL: I have an opening statement. I appreciate the opportunity to address the Committee today. Developments in technology such as the miniaturisation of cameras, global positioning system [GPS] tracking devices and unmanned aircraft have facilitated an increase in deliberate and unintentional surveillance of individuals in private and public locations. Technological developments can bring a new challenge for government regulation or add new dimensions to existing challenges. In some instances, current laws are insufficient to address these challenges and require government to turn its mind to the development of appropriate regulatory systems.

However, this should not be considered the default position in every instance. Careful consideration is required to determine whether existing laws and regulatory systems are able to address and respond to the challenges posed by new technologies. I would also urge caution in rushing to develop regulatory systems that are narrowly focused on one sector. Surveillance technologies have a multitude of applications and the inappropriate or intrusive use of these technologies can impact on individuals across all sectors of the community. I welcome the opportunity to examine the issue of the use of surveillance devices and suggest that this issue requires a careful balancing of the privacy rights of individuals with the potential public benefits that can arise from the exposure of inappropriate behaviours to relevant regulatory agencies. I hope I am able to assist the Committee in its deliberations on this issue.

The CHAIR: Anyone else?

Mr VAILE: I will make a brief opening comment. I agree with my colleagues at the desk on the value of avoiding a sector or technology specific regulatory approach in this area. I think it is a great opportunity to bring the reality of the effects of the abuse of privacy, confidentiality, personal information security, perhaps necessary secrecy in some areas. Those are abstract values, if you like. Often it can be hard for people to appreciate the personal impact or the business impact of abuses or intrusions, so from that perspective it is useful that it focuses its attention on something practical, concrete, that you do not have to be too theoretical about it. You can understand the implications of the abuse, but rather than look for a single specific technology or sectoral cure or remedy, as we have suggested in our submission, the appropriate approach is to recognise that there has long been a glaring absence in the law in this area—in New South Wales in particular but also at the Federal level—in that effectively there is no real remedy for any of these breaches of privacy.

The second point I make is that the focus has been on the Surveillance Devices Act. Recently I have had the honour of providing advice to a Federal agency where I reviewed the Surveillance Devices Act across many States and Territories. It seems to me that in some ways there is some good law in it in that it has proper restraints and limitations that require the active involvement of law enforcement officials in authorising and saying that a particular prosecution is required, or that the surveillance is necessary for law enforcement purposes. In many other respects it is not a particularly effective law. By focusing on a criminal offence, you have the problem of selective enforcement. There will be many, many things that will be covered by an expansion of surveillance devices in this area. Most of them would never be investigated and most of those investigated would never result in a prosecution. So you would be relying on very rare or vanishingly rare prosecutions for a new or expanded offence and you would be relying on essentially deterrence—the idea that because there was an offence you would get some sort of benefit from the harms that you are looking at. Whereas because they occur so rarely, the prosecution is unlikely to have a deterrent effect.

Stronger criminal law in this area sounds like a good thing but in terms of encouraging broader respect for people's rights about the limitations on surveillance, that sort of thing, and also looking for a remedy in a particular instance, again, relying on surveillance devices law and its criminal remedies is appealing, if you like, but unlikely to be particularly effective. For both of those reasons, the focus of our submission is looking to build upon the nearly 30 years of inquiries at Federal and State levels for a need for a broad-based civil right to take legal action if someone has trampled on your expectations of privacy or confidentiality and to use all of the existing work in respect of those inquiries both in this Parliament and at a Federal level on all of the things that could possibly go wrong, the necessary exceptions, or the recognition of legitimate public interests. We should not be

trying to start that again in a narrow sectoral solution. We should be treating this as an example to revive the longstanding calls from many directions for a generic privacy tort, if you like. Thank you very much.

The Hon. MICK VEITCH: On this issue of a narrow definition of surveillance, essentially what you are saying is that if a drone can be used to collect footage from an intensive feed lot, for instance, and that footage is then posted to an internet platform, it should be dealt with in the same manner as a drone being used to take footage through a bedroom window of a unit block in Sydney and posting that footage to an internet platform?

Ms LANE: That is exactly what we are saying. We think people should have comprehensive rights to privacy.

The Hon. RICK COLLESS: That is an interesting point. In your submission, Mr Vaile, you make the point that what is observable from a public place is not private.

Ms LANE: That is correct.

The Hon. RICK COLLESS: Where do we go with airspace above inclosed lands?

Ms LANE: It is public space. Again, exactly the same principles apply.

The Hon. RICK COLLESS: While it is against the law to enter that space and take photographs, it is legal to fly over the top of it and take photographs?

Ms LANE: That is right.

Mr VAILE: Another thing that is worth noting is that technology is changing and improving all the time. At the moment we think of a drone as the size of a dog that goes up in the air. Conceivably, as time goes on, it can go higher and higher. The range becomes longer and longer and the resolution of the cameras are constantly going up. At a certain point it starts to look like a high-level observation plane or a satellite in the sense that it could possibly see many miles and kilometres all around. It can pick out things. The problem with drones is that they can be almost—not quite over the horizon, but they can be invisible, inaudible. In the past, they still had a relatively narrow range in terms of the drones and the resolution, but both of those things are constantly increasing. You are raising a particular instance. When you extrapolate that increased functionality, you realise that it becomes a very difficult question to deal with just by thinking, "Well, we can spot them when they come over the border," or that we can have a particular resolution to that.

The Hon. MARK PEARSON: I have a follow-on question. Even though the device—a drone or a camera—is used while being in a public space for filming, the question is: What is the unconscionable or otherwise intent? If a drone flying over a property is filming untreated animals dying from starvation or flystrike, or whatever, versus filming a family swimming nude in their swimming pool and the drone operator decides to publish one picture as opposed to another, is that not when the legislation catches them, because of the intent and the whole notion of what is private and what is private but may be of public interest?

Ms LANE: In our view—this is a matter of public record—we believe that privacy is a fundamental human right. As a consequence, the tort of privacy should exist, as per the Australian Law Reform Commission recommendations and the New South Wales Law Reform Commission recommendations. What we have proposed in the submission is that there should be—there is—clearly a public interest issue for any type of thing, whether is torturing animals or doing anything illegal. There is clearly a public interest part of that, as is keeping people or torturing them. All those things are obviously matters of public interest.

That does not change people's rights to privacy. What you need to do is to make sure that there is transparency in the way people farm animals, and the rights of government, on reasonable suspicion, to go to places. And there need to be comprehensive whistleblowing laws. Our argument would be—and we put this in the submission—that, yes, there should be protections for people to make sure that there is not illegal activity occurring. We all agree on that, but it does not change people's rights to privacy in relation to their fundamental rights to privacy on their own land.

The Hon. MARK PEARSON: Is there a difference between privacy in your own kitchen, bedroom or backyard as opposed to a business you are running, where you have 200 breeding bitches in a shed, and that is documented? Is there a difference in the weight of privacy versus public interest?

Mr VAILE: When I started off with the range of terms or values that are worth protecting I did not just include that privacy; it included confidentiality, information security—including personal information security—and some other protected forms of secret information, including some banking secrecy, although that is becoming more and more limited. There is a constellation of values that are around privacy. Privacy is focused on personal information.

So you have a number of different models of what you are trying to protect. Is it a landowner's right to the integrity of their borders? That is, in a sense, nothing to do with privacy; it happens to overlap in some areas. Is it the proper use of personal information? In New South Wales that is not something that individuals can protect because they do not have a tort that they can use, or is it some other value of confidentiality? If someone had come onto your land by invitation, did they have an obligation to respect that confidence that they might have had?

I think you need to look at whether you are dealing with personal information—information that could identify someone. The example that you give is of some rural sort of facility with animals in it, where there may be interest, and where there may be limited personal information involved. So the concept of privacy, per se, may not come up. But if a certain person is the handler of these animals, if it is the farmer on the land or maybe it is an inspector engaged there, that connection with an individual would trigger privacy rights.

What is interesting is that the surveillance devices law focuses on the use of certain devices. By the way, I note that the new Federal plan to extent surveillance device law removes that focus on devices and just talks about information collection, whereas privacy law focuses on the type of information involved.

The Hon. MARK PEARSON: In your submissions, it seems that you make the point that really this is not an issue for the Parliament to grapple with. There are four pieces of legislation, at least, that are in place and which cover the field. At the end of the day, the judiciary has to look at all the facts and weigh the facts against each other and determine how a trespasser or a person has obtained information by the act of trespass or otherwise. That judgement or that determination can be made by a court, already, and in the right balance.

Ms LANE: No, we think that the law is inadequate. We think there needs to be a privacy tort.

Mr VAILE: At the moment you cannot get into court.

Ms LANE: There is no court—it is not going to go to court.

The CHAIR: I think one of the key concerns that you address in your paper is that there needs to be a proper development of a coherent body of law dealing with privacy, not just in New South Wales but in Australia.

Ms LANE: That is right. I will be utterly frank—this has been well covered by the Australian Law Reform Commission and the New South Wales Law Reform Commission—it simply has not been enacted. Until we get that in place, and it has been well considered, then we are not going to be able to fix this in any comprehensive way, because there is just no access to justice on this, because there is no fundamental right protection.

The CHAIR: Well, there is no right to privacy in Australia.

Ms LANE: That is right.

Mr VAILE: There is no enforceable right. There are privacy laws—

Ms LANE: Sort of.

The CHAIR: There is a sort of right.

Mr VAILE: —that creates mechanisms for complaint and standards. In one sense that is better than nothing, but when it comes to the crunch if you cannot make a complaint to the commissioner, or the commissioner declines to follow up a complaint, or they do not give you the answer that you would like—

The CHAIR: The commissioner's role in New South Wales has been considerably weakened and underfunded over the years.

Ms LANE: Yes.

The CHAIR: It is certainly going nowhere fast. I am sorry to say that.

Ms LANE: We agree with that.

Mr VAILE: We would support the work that the commissioner has done within the constraints of their jurisdiction and the resources. The real question is that if that does not work, for whatever reason, you cannot swamp a very small, underfunded office trying to solve all of the problems for millions and millions of people. Also, you cannot say to people, "Your only solution is to go down this pathway here with a regulator." In most other areas, if something goes wrong there may be some criminal law that is involved. Often that does not work and you do not have control of it as an individual—

Ms LANE: To sum it up, there is no access to justice here.

The CHAIR: In terms of privacy?

Ms LANE: In terms of privacy. So all the people who have matters—whether there is a public interest issue or whatever—they have never been aired in the courts because there is no access to justice.

The CHAIR: That is right. I think your position is summarised in your submission when you say:

The Foundation considers that such law reform will meet the needs of NSW landowners, in particular small and large-scale livestock enterprises, and will not inappropriately inhibit media activity, law enforcement and the constitutionally implied freedom of political communication. Reform will not impose an onerous burden on taxpayers.

Ms LANE: That is right.

The CHAIR: What you are saying is that you need this reform if the landholders and operators of these animal enterprises are going to be able to get proper justice.

Ms LANE: Just to make the point, this is not just about landholders; this is about everyone.

The CHAIR: It is about everybody.

Ms LANE: It is about politicians who fall from grace and get covered by the media. It is about people having drones outside. It is also about landowners. They are severely affected.

The CHAIR: We are specifically, here, dealing with landowners and unauthorised trespass.

Ms LANE: But this would be a benefit for everyone.

The CHAIR: Of course.

The Hon. MARK PEARSON: You seem to be indicating in your submission that it is probably unwise to narrow it down to one specific sector for this whole dialogue —

Mr VAILE: Absolutely.

The Hon. MARK PEARSON: —and suggest that we bring in legislation to deal with just one sector of concern. If there is going to be a law reform it should apply across all possible situations.

Ms LANE: That is our point, yes.

Mr VAILE: The benefit of taking advantage of the nearly 30 years of review of this in law reform commissions at the State and Federal levels, is that many of the questions of how you balance a public interest—whether it is to do with media involvement or other claims to be able to bypass whatever protection you put in place—has been almost done to death. There have been repeated examples and a quite refined body of solutions that try to build upon the existing idea of protecting people from surveillance and abuses of privacy.

Another concern that we would have about being technology specific or sector specific—as is one of the proposals here—is that you miss the benefits of the investment of years of thinking and consultation about how to get the balance right and how to have a fairly strong protection but make sure that you have exceptions, public interest or law enforcement provisions on the side, which do not undermine the core idea that people should have a right to pursue their own interests, but deal with some of the difficulties at the edges of it. That is all there in the other area. If you start from scratch with something that is very narrow it rapidly runs out of date if technology changes. If this turns all into data surveillance rather than visual device surveillance and if you find there is another industry that has a different problem you have to replicate it. That is the basis for our submission.

The Hon. RICK COLLESS: To go back to the issue of a public place, if I pull up on the side of the road and get out of my car, I am in a public place until such time as I jump over the fence onto the farmer's property. Is that the case?

Mr VAILE: You physically?

The Hon. RICK COLLESS: Yes. When do you get into public space? How high is it above the ground?

Mr VAILE: For what purpose?

The Hon. RICK COLLESS: Does it matter for what purpose?

Mr VAILE: For air traffic control purposes at a certain point you are interfering with air navigation.

The Hon. RICK COLLESS: For air traffic control purposes that is 500 metres above the ground. In terms of the public place, how far above the ground does a public place start? Has that ever been defined?

The Hon. MARK PEARSON: Has it not been defined by a court in England where it is 10 metres above the land?

Ms LANE: Yes.

The Hon. MARK PEARSON: That 10 metres above the property is owned by the property owner and between 10 and 30 metres is public air space, I understand, as long as the drone does not interfere with the reasonable activities of the person that owns the land.

Ms LANE: It depends on the land laws how far your property goes above the land

The Hon. RICK COLLESS: How high your buildings are?

Ms LANE: Yes. I tried to look it up. It is complicated. I looked up overseas in America and England and they are all arguing about the same thing. You have air space up here, then you have land and it goes to some place I cannot work out.

The Hon. RICK COLLESS: Sheds or buildings could be 10 or 15 metres high.

Ms LANE: And then there is the middle zone where drones live. To be honest it is a nightmare.

The Hon. MICK VEITCH: It does not matter where the advanced pilot assistance systems [APAS] or the drone is launched from.

Ms LANE: Once they are in public space, they get in trouble if they are in air space.

The Hon. MICK VEITCH: Too high, that is right.

Ms LANE: Again, enforcement is difficult because there is not stuff in space all the time. Then you have the place where the drones are drifting around. My understanding of the law is that as long as they are in public space they can telescopically look at anything.

The Hon. MICK VEITCH: So you can launch the APAS or drone from private land but, if it goes into a public space, it could take footage through a bedroom window and then post that footage to an internet forum or Facebook, whatever. It could do the same thing with an intensive feedlot: You could be on the farm and launch but once it goes into public space they can then take the footage and put the footage on to a public forum.

Ms LANE: Yes.

The Hon. MICK VEITCH: That essentially can take place.

Ms LANE: If you talk about community expectations if you ask the people of Australia everybody would agree that is not okay. If you put it to a poll everybody agrees that it is not okay, except for the people doing the spying.

The Hon. MICK VEITCH: The next stage which the Hon. Mark Pearson spoke about is measuring the intent of the gathering of the information. What is the intention of the use?

Mr VAILE: That becomes more significant when you focus on the concept of a criminal offence. Someone has committed a crime by doing this where that is the mental element of the crime. If you are looking at the civil tort where the land owner could sue or the person in the house could do that, in some cases the intent is relevant and some cases not. If you are trying to protect from intrusion of unreasonable surveillance and unreasonable breach of privacy, in a sense it does not really matter what the intent is. If it was to bridge whatever the standard turns out to be of the reasonable expectation or the rights that come with living in an enclosed space or having a private property it will probably be involved at the periphery, but that will not be a primary thing. It will not be the thing that the prosecution will stumble on. There will not be a prosecution because it will not be a criminal matter in most cases, except for the most extreme, and it would be focusing on whether you had breached the person's privacy or expectation not to be surveilled.

Ms LANE: Unfortunately we have not got a comprehensive right to privacy. But this is supposed to be a balanced process where you have a right to privacy and then there is a clear public interest government regulation that needs to be enforced in a balanced and conscious of people's human rights way. You have to balance those two things. At the moment we have not got a comprehensive right to privacy with a tort and we need protection for people and animals and whistle blowers and they are not mutually exclusive. We should have those basic rights in place and if the intention was to protect animals then you think about how to do that in a comprehensive transparent way. But that does not negate the need for a right to a tort of privacy and the court would be able to consider those public interest issues.

The Hon. RICK COLLESS: It is an interesting situation where, if you put a drone over the farm and discover something illegal is occurring, that is fine. If the same drone flies over the same place and what is occurring is done legally—whether or not it is deemed to be ethically right by the animal liberation movements, if it is still a legal operation in terms of what the law states—then how do you balance that?

Mr VAILE: If you had essentially a public interest test, and you may want to have specific clarity about the sort of issues you want to take into account, the classic one is journalism. There is the discussion of "citizen journalism", which at one end is very similar to proper ethical journalism but at the other end it is misinformation, it is fake news, and it is terrible stuff. That would be balancing, trying to determine whether someone who on the face of it was invading privacy by catching pictures of people in a place that was unreasonable, whether they could call on that public interest test.

The Hon. RICK COLLESS: If those images were, for example, of a domestic violence incident occurring, that would be okay?

Ms LANE: Can I point one thing out: You could create a surveillance society and run Big Brother and you would find every crime, but that is not the society we want to live in. All the people of Australia, including landowners and people in the city, do not want drones running over their houses and land all day every day. The fundamental issue is we do not want that or encourage that. Therefore, the ends do not justify the means. If you are going to catch illegal activity that end does not justify the means of having drones all over the countryside. Hopefully, we do not want drones hovering over house and land in Australia. The answer is that you need to find another way to ensure that animals and people are protected and illegal activity is spotted another way. That would be with transparency in terms of making sure that places are inspected for health and safety and those sorts of things. It is not by encouraging more drones. I think if we put it to poll in the whole of Australia we do not want drones sitting over our houses.

The CHAIR: Hear, hear.

Mr VAILE: Can I make one other observation in terms of the legal foundation here? In 2001 the High Court got to the point of saying there is no tort of privacy in Australia. This was the *Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd* and in a sense it is similar. It was about people making a claim of public interest in wanting to look at activities on private land. In the end the High Court said in Australian common law, unlike in many other countries, there is no legal cause of action you can use. There is no tort here. We could, as the High Court, make it up now and come to a similar answer: A narrow-focused, technology-specific, sector-specific answer for this particular instance and they said that is not going to work.

This is a generic problem of what the boundaries are of proper information collection and privacy and the rights of landowners. That is too hard for us to do in one court case on the facts of one case, which we are limited to as a court. The parliamentarians need to do this. It is a systemic problem and we need a proper statutory resolution of this where you take into account the different competing factors, all of the complications, all of the different claims and working out where those boundary lines should be: "We're not a law reform body, we're not a deliberative body; we're a court, so we can do it." In a sense, they pushed it over to the lawmakers of Australia.

In that period there were numerous Law Reform Commission reports building on work that had already been done. They had all come to the same conclusion that yes, there should be a law that could be used as a foundation by exercising their expectations. So far, for whatever reasons, it has not progressed past that stage. The High Court, on an example similar to this discussion, said it does not want to be forced into making some narrow, specific, random position based on limited facts: "We're not saying you cannot do this, because we could do this, but the court making it on one-instance basis is not the way to go. It should be resolved." Since then, decades of work has been done trying to deal with the complications and to build on surveillance and drone questions that ought to come into this legislation. I am looking at this as yet another opportunity to say the time has come.

It would be tempting to look for some specific solution to deal with just a few things, but a lot of weighing up of competing interests, technical questions and legal questions has been spent at the Federal level and the State level. To me it is an opportunity to say let us take the next step. In one sense, it is useful that landowners are involved, because they have a very clear understanding of their rights and they have strong rights to pursue. They also have a lot of political clout, if you like. It needs a strong push by people with a bit of clout to get this to the next step.

The Hon. COURTNEY HOUSSOS: Mr Vaile, you talked about drones becoming almost like satellites. Is there regulation for satellites that would be relevant for drones?

Mr VAILE: That would be space law. For these purposes, I am not sure. The question becomes one of enforcement. Even if New South Wales said satellites should not do something—

Ms LANE: You could never stop it.

Mr VAILE: It is extraterritorial, out of the jurisdiction.

Ms LANE: Although we now have a space agency, so there could be hope.

The Hon. COURTNEY HOUSSOS: I am asking about privacy provisions for the footage taken by satellites. Are there privacy provisions that would be applicable for a drone?

Mr VAILE: I suspect not, because of the question of resolution and that the capacity to identify individuals in the past was so low that you could not do so. Even with closed-circuit television cameras in Nowra's main street you could not identify individuals according to one of the famous cases about this in New South Wales, and so it has not been considered. What strikes me is the continued increase in the resolution of the optical devices and the continued expansion of the analytics capability of the data processing behind that. I am sure that National Security Agency [NSA] or some body like that has the capacity to recognise individual cases from space, but I think that is not widespread at the moment. We see the capacity, the resolution and the capability of these things going up continually and that leaks out into the public, which means that some kid can do something that previously needed to be done by a nation-state with that capacity. The same could be said for a journalist or a terrorist or whatever.

The regulation has not kept up with the technology. Regulation is not forward-looking and thinking of the day when satellites or drones are so high they are undetectable and can do these things. Regulation comes later on, and that is one of the reasons why we say it should not be limited to a particular technology or sector. If you have broad-based principles, like those in place in many other countries with a focus on the rights of the individual and the protection of legitimate expectations, to the degree that you can do anything about it, that focus can be taken into account without passing a special pseudo-satellites law, which would miss the point.

The Hon. COURTNEY HOUSSOS: The point I was making is that many of the issues we are facing now are going to need tracking at two levels, so maybe there is room for a universal approach irrespective of whether it is a drone or a satellite. The data being taken is the question that needs to be addressed, as you say, by parliaments and not left to the courts. Ms Gavel, have you provided advice to the State Government on the issue of the need for a privacy tort?

Ms GAVEL: No, I have not myself. There was an upper House inquiry a couple of years ago and the report came out recommending the introduction of a tort in New South Wales. The Government's response at that time was that it would like to see that done by the Commonwealth Government, because of the problems with different jurisdictions being at different points in the cycle. For example, if New South Wales brought in a tort but Victoria and Queensland did not have one, that would cause problems for people. To date the New South Wales Government's response has been it would like the Commonwealth Government to take responsibility, certainly initially. You would then hope to have a national approach; you do not want different laws in different States, but laws to complementary across the country.

The Hon. COURTNEY HOUSSOS: I would agree with that approach but, in the absence of any movement at a Commonwealth level, have you been asked to provide advice about how we could do this in New South Wales?

Ms GAVEL: No, I have not.

The Hon. COURTNEY HOUSSOS: Ms Lane, it occurs to me that a landowner owns the airspace above the property, to an extent, and so may be able to technically build in space, but if they have not done so any drone within what is considered the space the landowner owns would be within their private space. Is that correct?

Ms LANE: Possibly, yes. The problem is that the laws are not very good on this and we do not have a tort of privacy, so it has not gone to court. This is why it is so important to have the tort and why access to justice is critical for making laws. It is also why the Parliament is critical in creating legislation and the court in interpreting that legislation. Unless you have a tort of privacy, you do not get interpretation. I could look it up, and we could talk and argue in a nice way about this—have a space argument about land and space war and things like that—but I do not think it is settled. The tort of privacy would settle a lot of this and a whole heap of things, but we do not have it, which means people are not getting access to justice. That is because the court does not get to hear it and so we do not get to the business of where the drone can go. To me, the fundamental start is to put rights in place and then find out the limits of them.

The Hon. COURTNEY HOUSSOS: Are you aware of any court decision looking into this as a question of land ownership as opposed to a question of privacy?

Ms LANE: I could not find the answer. I am not saying I am the best legal researcher in the world, but I looked because I am interested in this matter, which is being argued about overseas as well. All of the things we are talking about—landowner rights, their legitimate feelings about having a lack of access to justice, issues of public interest with animal rights—would be assisted by putting in a tort of privacy, because it would be resolved in the courts. That would get it in the minds of everybody and people would feel they had rights. It is always good for citizens of Australia to feel that they have human rights.

The Hon. MICK VEITCH: Is there a discussion on this at the Commonwealth level?

Ms LANE: None.

The Hon. MICK VEITCH: Is the Commonwealth advancing the discussion?

Break

Mr VAILE: The observation I was going to make is that essentially nothing is happening and I think that if nothing is happening—

The Hon. COURTNEY HOUSSOS: Through COAG?

Ms LANE: Nothing.

Mr VAILE: There is hostility to a tort. I sat on the Federal Law Reform Commission's advisory panel and they engage with a lot of media, but there were some media bodies that were not engaged with that and are entrenched in their hostility to that. I think that that has had a political impact. There is not a strong push for this at either State or Federal level. That is why I mentioned that it is useful to have examples to bring home to people that the lack of this matters: It causes constant problems and leaves a lot of people with effectively nowhere to go.

My view is that because of this 30-year history—I think there have been five generations of inquiries through this and they have all come to a relatively similar end point that involved a statutory tort of, at the Federal level they call it a serious intrusion of privacy; they all have dealt with similar sorts of questions at the periphery about not intruding on proper public interest journalism and dealing with other public interest questions. So there may be some variation around the edges if New South Wales was to go first, but it is not the case let us make something up and someone else may come to a different answer; a lot of the answers are converging and a lot of them are reflecting the international development of expectations and regulation here.

My view is that it is a matter of great concern that the answer is to let the Commonwealth do it, we do not want inconsistency. I would suggest that that way has left us nowhere, has left us in limbo and it is an excuse for inaction. I am a strong advocate for this and I am articulating the frustration of anybody wanting to see protection created here. The argument that the risk of inconsistency is so great that we should abandon it might be the case in some other area where everything was undeveloped; here where you have had literally generations of inquiry, review and refinement of the proposed models, and they are not precisely the same but they are largely aligned in the different inquiries, I think that means that rather than having to use that as an excuse to do nothing because somebody else will not do it, that an open option for you would be to say, "Look, we've done enough. This has gone round and round at the Federal level, at the State level. We can do something that will be pretty close to what would satisfy the concerns and the issues—the legal policy solutions that have been proposed." It might need a final tweak if there is a national one, but someone has got to go first.

At the moment it is not the case that most of the problems raised here would be cross-border. Most of these things, if you had these landowner surveillance on rural properties problems that we have got here, a New South Wales law would deal with that quite adequately. Some of the jurisdictional problems that you have would also exist for the Federal area. So I think you need to recognise that it will not solve everything, and things like space or in the cloud will be a problem at whichever level this is solved.

Ms LANE: Having said that, can I say that New South Wales has a proud tradition of going first. I would encourage you to continue that tradition because we are a very active State and it would be good to do something, either championing it at COAG or going it alone, because there is just simply nothing happening. There are problems with Federal Parliament at the moment, we all know that, and there has not been a lot of legislation going through and things like that for the last term and, as a consequence, maybe there was no time for this to happen, but there is at least one person in the National Party who is championing it—

The CHAIR: That would be unusual.

Ms LANE: —who, strangely enough, had their privacy invaded. This is an opportunity for New South Wales to go for a comprehensive solution.

Mr VAILE: New South Wales had one of the first privacy committees in the world, so it is already a world leader in this area, and this is an opportunity to try and break the deadlock or to take a practical step that might build on that past.

The CHAIR: Thank you very much for coming today.

(The witnesses withdrew)

(Short adjournment)

MALCOLM CAULFIELD, Principal Solicitor, Animal Law Institute, affirmed and examined

TARA WARD, Executive Director, Lawyer, Animal Defenders Office, affirmed and examined

The CHAIR: Would you like to make a short opening statement?

Mr CAULFIELD: Yes, thank you. I am firmly of the view that the sorts of activities that this Committee is considering should be not permitted. However, as you will see from our submissions, we believe that that is the case under the existing law and that there is no need to go any further. However, we do believe that the matter that the Committee is looking at underlies a major cause of these incursions onto people's private property and that cause is twofold—it is the existence of unacceptable practices mainly in intensive farming operations, abattoirs and the like, combined with the indubitable vast increase in public interest in preventing animal cruelty across the board that has arisen in recent years. I would suggest strongly to this Committee that in fact now is an opportunity: Rather than look at the symptoms, one should be looking at ways to look at the cause and to reduce the incidence which is there of unacceptable cruelty in those situations.

Ms WARD: Thank you. I would like to make only a few brief points based on our submission and informed by other submissions to the inquiry made by other parties. The Animal Defenders Office, like many of the submissions, pointed out there is already a robust regulatory framework in place protecting landowners from unauthorised filming or surveillance. In particular, we noted that the New South Wales surveillance devices legislative scheme is one of the toughest in the country. For example, there is no public interest defence in the New South Wales Surveillance Devices Act, unlike in equivalent Acts in Victoria, Queensland, Western Australia, South Australia and the Northern Territory. The New South Wales Surveillance Devices Act also has the toughest imprisonment penalty compared to equivalent legislation in all other Australian jurisdictions.

For example, in other jurisdictions the imprisonment penalty for the standard offence of installing, using or maintaining optical surveillance devices without consent ranges from six months in the Australian Capital Territory to three years in South Australia, with the other jurisdictions falling in between. In New South Wales it is five years, which makes it a serious indictable offence. If it would be of any assistance to the Committee, we have a one-page graphic comparing the maximum jail and financial penalties in surveillance devices legislation across the jurisdictions.

By contrast—and since the subtext for this inquiry seems to be surveillance of farmers—in New South Wales financial penalties for animal cruelty are the lowest in Australia, the maximum penalty being \$22,000 compared to \$261,000 in Queensland. Again, if it would assist the Committee, we have another graphic comparing the maximum jail and financial penalties for animal cruelty offences across the jurisdictions. We reiterate that it is animal cruelty penalties that require urgent attention rather than the penalties for unauthorised filming or surveillance of landowners and businesses and that animal cruelty penalties in New South Wales should be increased to the level of other large jurisdictions such as Queensland or Victoria.

We also submit that the current framework is working as intended despite claims to the contrary in various submissions to the inquiry. For example, the aggregated trespass offence introduced in 2016 into the Inclosed Lands Protection Act has been used very recently against a person alleged to have been on a farm and alleged to have come into contact with farm animals. The person was also charged with offences under the Crimes Act. I also remind the Committee that just last year two persons were charged under the New South Wales Surveillance Devices Act for allegedly installing optical surveillance devices in factory farms. The matter did go to court but was dismissed by the magistrate. I quote from the transcript: "Here we are wasting public money, the time in the courthouse, over what quite frankly appear to be matters of little import to the community. At the end of the day, the time and effort devoted to these prosecutions is ridiculous, disproportionate."

Finally, we wish to reiterate that the best protection for landowners against unauthorised filming or surveillance related to farmed animals is complete transparency and visibility and we were not alone in making this recommendation. Transparency and visibility by landowners using animals for commercial gain was almost universally recognised in the submissions as what is required in today's society rather than increased protections for landowners, in particular farmers, against unauthorised surveillance.

Mr SCOT MacDONALD: Mr Caulfield, I will start with your recommendation No. 1. Yesterday we were at a chicken processing plant at Western Sydney. I came away from there thinking there was, if not a productive, a collaborative working relationship with the RSPCA. I think his words were that it was continually evolving. In other words, RSPCA expectations and requests or whatever there might be in their value chain were being met all the time. There was an ongoing dialogue, there was ongoing work and there was ongoing what sounded to me like pretty reasonable coordination. That does not seem to fit with your first recommendation. Are you of the view that the RSPCA is inhibited in some way as you seem to be saying in that recommendation?

Mr CAULFIELD: I think the RSPCA has a fundamental problem primarily because it is not a government agency. This is not addressed in the submission but I hope the Committee will forgive me if I go beyond what is in the submission because I really think that the RSPCA as a generality is an inappropriate organisation to be dealing with these matters. We are kind of stuck with what we have got, of course, and 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.

I would strongly recommend to this Committee that, if it feels it falls within its terms of reference, that it looks instead to what I have been told is happening successfully, or has happened successfully, in New South Wales in particular, which is the involvement of the rural division of the NSW Police Force in animal cruelty matters. Of course, in New South Wales you do have provisions in your Prevention of Cruelty to Animals Act which allow you to make random inspections, which are crucial in the sorts of situations that are of major concern. I would strongly recommend that the answer to the proper policing of these issues of great public concern is in actuality to have a dedicated branch of the police force which is properly funded, sourced and trained to deal with these matters.

Mr SCOT MacDONALD: I hear what you say about the police force and enforcing the strict law of the land, if you like. The Committee was told yesterday that the chicken processors, the red meat abattoirs, and other sections of the industry have a productive and evolving relationship with the RSPCA. In other words, the RSPCA was making suggestions to the industry about how they could improve animal welfare outcomes. Police have powers of enforcement, but is there not a role for the RSPCA to work with industry to continually evolve?

Mr CAULFIELD: No, because in my view the RSPCAs across the country—and RSPCA New South Wales, like all of them—are hopelessly conflicted by the fact that there is a necessity for the RSPCA in this State to raise money. Most of that money, other than whatever it might get from the Government, comes from private donations. The ability to investigate and prosecute animal cruelty offences is an enormous drawcard in terms of obtaining donations. In the mind of the general public, of course there is huge awareness of the RSPCA, high awareness of its role in enforcing this part of the criminal law—and I use that phrase quite deliberately, criminal law. But if you took that away from the RSPCA, they simply, in my submission, would have difficulty maintaining their income from private donations. Therefore, my experience of RSPCAs is that they feverishly and desperately defend this piece of turf for that reason. Whereas, of course, the police force is in a considerably different position. That is the first point. The second point is the RSPCA, because it is not a public organisation answerable to Parliament—which of course the police force is—is not really, in my view, adequately monitored by Parliament and therefore on behalf of the public.

Mr SCOT MacDONALD: In the interests of time, the Committee might put those matters to the RSPCA at another time. I have talked to various industry people, such as the abattoirs, who recognise there is an evolving and increasing role for surveillance, perhaps within the abattoir and at the kill. At the moment it is internal. We saw yesterday the processor had people looking at what is happening, it is recorded and there are people on the ground looking out for animal welfare. I have talked to people, particularly in the red meat abattoirs, who say maybe they see the day when some of that footage is available to the public. I think you have commented on it in your submission. Can you give me your observations about what is happening overseas and how your organisation is approaching that?

The Hon. MICK VEITCH: Are you talking about footage being available in real time?

Mr SCOT MacDONALD: Available in real time. In other words, a beast is killed and the public will be able to see the stunning and then the kill.

Mr CAULFIELD: I have no knowledge of what goes on overseas, I am afraid. All I would say quickly is, I think that New South Wales is leading the charge on how to do these things in the way that the food authority reacted to the revelations at the Hawkesbury abattoir. I found that to be a very positive development. Whilst I am not aware of any current outcomes, I know that the last time the food authority did an audit that they were greatly encouraged by the outcomes that they were observing once, I think they have got closed-circuit television [CCTV] in all but one of the abattoirs.

Mr SCOT MacDONALD: On a voluntary basis?

Mr CAULFIELD: Yes, on an agreement between the—it is not legislated, as far as I understand, but that is great, that is a tremendous outcome. If one can achieve an outcome without legislation, so much the better. But I cannot help you with observations in other jurisdictions.

Mr SCOT MacDONALD: Ms Ward, do you have anything you would like to say?

Ms WARD: I am not familiar with what is happening overseas in this space.

Mr SCOT MacDONALD: Even in Australia, or the approach of industry voluntarily adopting more transparency?

Ms WARD: I think that is the key to the underlying issues of this Committee, and that is the concerns in the general public about how our farmed animals are treated and therefore at any point in the production process increased transparency has to help that issue. Increase that transparency and visibility and accountability of industry, rather than what could be perceived as going in the opposite direction, which is indeed the problem with the so-called ag gag laws. Rather than moving in that direction where you try to close the doors even further, that instead openness and visibility would deal with a lot of the issues that are underlying this Committee inquiry.

The Hon. RICK COLLESS: In relation to the transparency issue that you were talking about, some people who belong to the animal liberation fraternity would find the slaughter of any animal offensive, even though it may be done legally and humanely, would they not?

Ms WARD: I believe the Animal Liberation organisation will be appearing this afternoon, so you might want to put that to them.

The Hon. RICK COLLESS: I am suggesting that it does not matter how an abattoir is operated, abattoirs by their very nature kill animals for human consumption. Those people who are opposed to the eating of meat and the killing of animals, it would not matter how professionally and cleanly that operation was done, they are going to object to it. I think that it is preferable not to have that process shown every day by way of real-time live feed, because it is quite offensive to a lot of people. Most farmers have grown up having to euthanise animals or kill them for rations, and so on, and it becomes a part of their way of life. For people who live in the city, even though they are not necessarily vegetarian or vegan by nature, they can still be meat eaters—if I can use that expression—but when they see the process of animals being killed, it can still be quite offensive to them.

Ms WARD: But if that is a core part of the process then, to put it crudely, the problem is if you try to shield society from that, the question becomes: What are you trying to hide? If that is a core part of the process and that goes into making the food that is on their plate, and if it is done in a way according to standards, then the flip side of that is: Why not have footage of the process and have it available to whoever wants to see it? I think you would find that a lot of people probably would not choose to view it, for those very reasons, but it would be there for those who do.

Mr CAULFIELD: I agree with everything you say. I am not necessarily going to disagree with my friend, Ms Ward, but I do understand your point, and I think general broadcast of this sort of thing is probably moving into the realms of, frankly, obscenity. I agree. Just in case you think perhaps this is a theoretical viewpoint, I was a biological scientist for 25 years and I have had extensive experience in the pharmaceutical industry. Given that, I know what you are talking about.

There are things that you would not want broadcast publicly. Members will understand more than most that the other side of that coin is that it is the role of government to monitor and to legislate these activities, even if they are unseemly. We send soldiers out to kill people, but we do not necessarily want that broadcast on prime-time television. These are horrible realities. I come back to something important Ms Ward said. Obviously it is your role, first, to ensure that the sort of activities you are referring to are done as humanely as possible.

The Hon. RICK COLLESS: Absolutely.

Mr CAULFIELD: There is also the realm of developing science, and a lot has happened in recent years that has been phenomenally good. To illustrate, I heard from a friend of mine who is a professor of law at Harvard and who recently visited a major abattoir in the State. This is a woman who has seen stuff all around the world that would make us feel quite revolted. Without going into detail, she described Fletcher International Export Limited's facilities as the best she had ever seen in the world. That is what we want. I suggest it is the responsibility of you and your colleagues to ensure the legislation moves with the times and that we do the best we can. As long as things are legal, that is fine. But on top of that it comes back to the CCTV issue. We have to ensure that there is proper monitoring and training so things do not get out of hand. Does that help?

The Hon. RICK COLLESS: Yes, I understand.

The Hon. WES FANG: We heard testimony this morning that, whether it be walking onto a field of canola to take a photograph and someone crossing a fence line or, at the other extreme, someone using night-vision goggles and surveillance equipment to covertly install optical recording devices, it is trespass. Do you agree with that?

Mr CAULFIELD: Completely. I have a professional responsibility as a lawyer not to advise people to break the law. I can understand why farmers, abattoir owners and anyone else would be very upset having people

gaining illegal entry to their facilities. I would be upset if it were my backyard. Coming back to the prime point and without going into huge repetition, there are existing laws that deal with that adequately across the board.

Just in passing, I remind the Committee of something raised in the excellent submission—in my view—of the joint media group. It refers to section 315 of the Crimes Act in relation to the necessity to inform the police or the relevant enforcement authority of a serious indictable offence if you are aware of it. However, coming to your point as a generality, no matter what, I am not prepared to endorse trespass, breaking in, or installing surveillance devices. I never have, and that makes me unpopular with my animal welfare friends. I bring the Committee back to the point that Ms Ward also alluded to: It is the underlying problem that needs to be addressed.

The Hon. WES FANG: I asked that question because of your recommendation No. 2. In your last answer you highlighted the fact that there is already a number provisions and laws in place.

Mr CAULFIELD: Yes.

The Hon. WES FANG: Throughout your submission, and in your evidence today, you have referred to "ag gag". Recommendation No. 2 states that you would like to repeal provisions under the Biosecurity Act 2015 that inappropriately hinder the collection of surveillance. Whether it is the ag gag, as you would describe it, and biosecurity, or if someone is trespassing on property and installing those devices, they are trespassing on property.

Mr CAULFIELD: Yes.

The Hon. WES FANG: Do you believe that the biosecurity provisions that make those activities an offence are there to gag people or to prevent biosecurity issues on productive farming land that is producing disease-free produce that is sold around the world?

Mr CAULFIELD: We have a problem with the Biosecurity Act because we think it goes too far. It was a step too far and there was existing legislation that rendered unnecessary what we would regard as extreme steps. That is the first point. The second point, which you have addressed quite neatly, is that I think there is a grave danger of those who are pushed by farming interests going into the realms of seeking to protect activities that should not be protected.

That is nothing to do with encouraging trespass; it is to do with leaning in the direction of creating an environment that allows those using animals in essence to get away with it by disproportionately penalising people who cross the line. I am not endorsing crossing the line; I am just saying that when you go too far, first, you protect when no protection is needed because the law already does it and, secondly and more importantly—this has been alluded to in this brief discussion—you create the public impression that there is something to hide.

The Hon. WES FANG: Your use of the words "inappropriately hinder" in recommendation No. 2 leave me with the impression that it is in some way condoned.

Mr CAULFIELD: No. I think that is a poor choice of words, for which I apologise. I will not say that I did not write this; I had an input into it and I read it. However, now that you have pointed that out, I think it is an inappropriate choice of words. It would be much more accurate to say "goes too far beyond existing legislation, which goes far enough".

The Hon. WES FANG: Forgive me for being confused, but I think it is gravely concerning that we have a submission in front of us that, in my mind, appears to condone trespass and the installation of optical devices or equipment to gather evidence from farmers. Your testimony is different from that. We need clarity.

Mr CAULFIELD: I think you said yourself that here is someone giving evidence and having sworn an affirmation and I think you believe what I am telling you.

The Hon. WES FANG: Yes.

Mr CAULFIELD: It is also my professional duty as a lawyer to tell you what I actually think. I think that is inappropriate wording. I will not reiterate what I have said.

The Hon. WES FANG: So how much weight can we give to the rest of the submission?

Mr CAULFIELD: I think you can question me about the rest of the submission if you have other concerns, and I will respond.

The Hon. MICK VEITCH: Page 2 of the Animal Law Institute's submission states:

... 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 ...

You also alluded to that in your opening statement. Are you suggesting that the answer to this is to better fund our animal welfare agencies?

Mr CAULFIELD: Yes.

The Hon. MICK VEITCH: Or should we take resources from the not-for-profits and move them all to the government-funded police?

Mr CAULFIELD: I repeat, my preference is that non-government organisations not be involved. I really underscore that. That makes me deeply unpopular with my animal welfare friends, but it is a position I have always adopted and published widely for many years.

Mr SCOT MacDONALD: You always have to worry about your friends.

Mr CAULFIELD: I am just saying that I do not care about being unpopular in this regard. It is actually a hot issue in the animal welfare community. I hope I have made myself clear.

The Hon. MICK VEITCH: Yesterday we had an opportunity to visit a facility for a site inspection. One of the issues that was raised with us is that there was a collection of photos taken from a range of different facilities. The allegation is that they were then posted to a Facebook page so that any reasonable individual looking at that Facebook page would draw the conclusion that all the photos came from that one facility, which was in fact not the case. What are the mechanisms around that almost fraudulent approach to presenting information to create a case for animal welfare rights?

Mr CAULFIELD: If I understand you, Mr Veitch, you are saying there have been examples of animal protection organisations that have perhaps inappropriately edited footage in order to create an impression?

The Hon. MICK VEITCH: That was the statement that was made to us yesterday.

Mr CAULFIELD: I have no doubt that that has happened and I do not find that acceptable, as you would expect. You can see that my position is that NGOs of any stripe should not be involved. The counter to that, of course, is when serious matters have occurred. My understanding, for example, in the greyhound thing, which I am sure this Committee is more familiar with than most, that when the "proper" agencies became involved, which, as I understand it, did include the police force, then the insistence is that all footage be handed over. You make a strong point. I think it underscores the fact that this area is one for the proper authorities, not for NGOs.

The Hon. MICK VEITCH: Some of the submissions, in particular the submission of the Joint Media Organisations Panel, talks about the Evidence Act 1995 and the issue around self-incrimination and the privilege that comes from that. What are your views on that statement concerning the potential for self-incrimination?

Mr CAULFIELD: To be frank, it is not an issue I have researched in any great detail so I do not feel qualified to comment, other than I read that submission and was impressed by what they had to say.

The Hon. MICK VEITCH: That leads me to the issue of whistleblower protections. The Government, in its submission, raised an issue about what would happen if an employee, as part of their engagement with a facility, is allowed on to a site—essentially invited on site—and then makes a recording or takes footage without advising their employer? What is their status under existing laws in New South Wales?

Mr CAULFIELD: Again, I am no expert and I do not want to comment, suffice to say that, as a general principle, it is important to offer protection to whistleblowers in that circumstance when they are legally entitled to be there, but of course I am legally entitled to be taking the footage. The Committee may not be aware, but the Commonwealth law in relation to live export facilities within Australia has been changed recently, no doubt at the direction of Minister Littleproud. It seeks to not only protect whistleblowers involved in those activities in ports and feedlots, and so on, which are outside the public gaze in the generality of things, but also has mandated an education program at those locations. That is an admirable model. Rather than something that is dirty and ends up in a fight between the enforcement agencies and the employers—of course the potential is there—instead, it is a generalised engagement which says, "We are going to educate your employees and we are going to tell them that they can tell the truth."

As I have already said, if you are talking about serious animal cruelty, for example, under section 530 of the Crimes Act, they are under an obligation to inform, anyway. It is entirely logical to extend that to a whistleblower protection program. To finish, I know that when I was involved with a particular piggery case in South Australia some time ago, there was a whistleblower issue with employees at this piggery. The upshot of that was that the relevant Act was changed, which might serve as a model. It is an animal welfare Act. In fact, I think they changed the name of it after that.

Ms WARD: They did.

Mr CAULFIELD: There is that sort of provision in that jurisdiction.

The Hon. MICK VEITCH: In the previous testimony there was quite an interesting conversation about the need for a privacy tort in New South Wales, in particular, but Australia generally. Can I get your views on whether there is a need for a privacy tort in this country?

Mr CAULFIELD: Something that is statutory. A tort, with the greatest respect to what I was hearing before, is a common law thing. I do not have any problem with that, actually. Of course, I came in on the end of the discussion about drones, and you end up with that ludicrous legal consideration as to how high does a landowner's property rights extend? The answer is infinity. Of course, the courts have scratched their heads about that for decades, as was alluded to. I see no harm in a privacy tort. As we started out discussing, I would not like the idea of my privacy being intruded on and I can understand how everybody else would feel the same way.

I will throw one more thing in. I heard the last bit of the discussion about drones. Several months ago I looked at the Civil Aviation Safety Authority [CASA] regulations—the Federal authority regulations—on drones, and they have changed. It may interest the Committee to note that you can no longer operate a drone when it is out of your line of sight. Obviously the drones of concern were the unlicensed drones, which are the smaller ones, which would have an impact on the sorts of circumstances that the Committee is considering.

The Hon. MICK VEITCH: Ms Ward, do you have a view about the privacy tort?

Ms WARD: I would concur with my colleague's views, provided, of course, that the usual checks and balances are built in such as public interest, et cetera. Also, the question of whether it would be something that just individuals have access to or corporations as well. Those issues would need to be dealt with.

The Hon. MARK PEARSON: You applauded the New South Wales Food Authority leading the way to proactively encourage abattoirs to install cameras at the critical points of animal welfare. That was as a consequence of an expose occurring at Hawkesbury Valley Meats and what was happening with animals in its abattoir. Do you know how that evidence was obtained at Hawkesbury Valley Meats?

Mr CAULFIELD: I understand the evidence was obtained illegally using surveillance devices.

The Hon. MARK PEARSON: It appears it was obtained by a trespass, installing cameras, and then that led to the Food Authority acting—

Mr CAULFIELD: That is my understanding.

The Hon. MARK PEARSON: —and now there are certain principles and encouragement by the Food Authority to monitor those situations. It has been pointed out that it should be the case that whenever evidence is obtained, whether it is by a trespasser, a worker or whoever, it should immediately be—or within 24 hours or 48 hours—given to the relevant authorities. What is your view about that particular requirement when we are looking at evidence that has been gathered, say, by the police or sometimes activists when they are trying to document ongoing systemic cruel practices, such as, for example, live baiting in the greyhound industry? What is your view on that particular issue in terms of needing to gather evidence over a given period of time?

Mr CAULFIELD: My view is that we live in an imperfect world and I will not reiterate my views on the RSPCA—I have made that clear. Were we in a better world where a branch of the police had responsibility for looking after these matters, I would have no difficulty about that. Indeed, as we say, if we were talking about serious animal cruelty under section 530 of the Crimes Act, there is an obligation, anyway; it is a crime not to give the evidence to the relevant authority. But if the police force, or a branch of it, was the relevant authority I would not have a problem, for the simple reason—you alluded, Mr Pearson to the difficulty of monitoring ongoing cruelty—that the police force is in a position to get a warrant and put in its own cameras, microphones and whatever, as I understand it.

The Hon. RICK COLLESS: But that would alert the perpetrator to what is going on.

Mr CAULFIELD: No, apparently, they can do this secretly. And, of course, it has to be accountable. A magistrate or an appropriate judicial officer has to sign off on it. You will see that I am, in essence, reiterating that I do not approve of illegal evidence gathering, but in the event that there is such evidence I would have no problem with it having to be given to the relevant authority.

The Hon. RICK COLLESS: If there is a court order involved that is fine.

Mr CAULFIELD: Yes, but that would be the step. If you have evidence you give it, in my ideal world, to the police animal cruelty branch, and then they do what is necessary. They either say, "No, this isn't sufficient to do anything, and by the way we are going to prosecute you for trespass"—

Mr SCOT MacDONALD: We have to wrap up now. Thank you for your time and your evidence, Mr Caulfield and Ms Ward.

(The witnesses withdrew)

KATHY RANKIN, policy Director, Rural Affairs and Economics, NSW Farmers Association, sworn and examined

ANNABEL JOHNSON, Police Director, Livestock, NSW Farmers Association, affirmed and examined

EAN POLLARD, Chair, Pork Committee, NSW Farmers Association, sworn and examined

The CHAIR: Would you like to make an opening statement?

Ms JOHNSON: Yes. NSW Farmers Association welcomes the opportunity to provide the farmer perspective on the impact of unauthorised filming and surveillance, by appearing at the hearing today. NSW Farmers is the largest State farming organisation in Australia, and we represent all primary producers, from extensive to intensive livestock operations.

In 2017, the cost to the farming community of rural crime, including stock theft and trespass, was estimated to be over \$2.5 million. We know that the true cost is much higher. It does not include the impact of illegal surveillance activities by those who trespass for the specific task of recording activity, by individuals and groups with an animal activism agenda. Technology and the "internet of things" is both a positive and a negative for the agriculture sector. The developments in autonomous technologies mean that there is a far greater opportunity than ever before for remote monitoring and surveillance. On one hand, it provides our members with incredibly effective tools to improve animal management; on the other, it provides the tools that enable external parties to promote biased and inaccurate recording of farming practices.

Individuals become farmers because they have an affinity with animals and a commitment to quality agriculture and food production. Australian agricultural practice demonstrates some of the highest standards in the world. The value of primary production is directly related to the care and attention that is provided by farmers and their staff to ensure optimal growing conditions. That is demonstrated by the premiums that we can receive in international markets. Increasingly, the provenance of agricultural products is scrutinised as closely as the end product that is served in restaurants and homes around globe. NSW Farmers recognises that in this world of instant information, all activity is open to scrutiny, instant sharing, and comment. Once data is electronically published it is difficult, if not impossible, to reverse. The technology is available in anyone's hands to record, edit, and report a perspective to a global audience. This perspective may be an accurate representation of fact, or a snap shot that appears to support an individual view point. Once it is published it becomes "fact" and the opportunity for those misrepresented, or incompletely represented—in this case, farmers—to remove or refute the so called evidence, is minimal.

The NSW Farmers Association is concerned that the pace of expansion of technology has outpaced legal frameworks to protect the rights of individuals; that the right to privacy has been lost forever due to the global nature of information sharing that transcends national law making; that the pervasive nature of targeted and narrow campaigns undermines the public trust in agriculture and biases public discourse; and that the actions of a few who have the tools—which may not be used respectfully—have the capacity to undermine an industry that has been built on a base of practice that prioritises high standards of animal welfare.

NSW Farmers' Association considers that the following principles must be addressed by this inquiry. Firstly, it should ensure that the legal frameworks are fit for purpose and can account for future technological developments. Secondly, the rights and responsibilities of both those under surveillance and those initiating the surveillance have equal rights to protection and prosecution; and, finally, that primary producers are well informed of their rights and responsibilities, and adequately supported with regard to responding to trespass and associated illegal surveillance. Australian consumers have become distanced from the act of food production. Many do not know where their food comes from, or understand the essential practices required to ensure the product is safe for consumption. Thank you.

Mr SCOT MacDONALD: Were you going to say something, Mr Pollard?

Mr POLLARD: Just that the main reason I am here is because I have been exposed to illegal surveillance and I would like to share the impact that that has had on me, my workforce and my family. I can give a first-hand account of how that impacts agriculture in the way I view it.

Mr SCOT MacDONALD: I was going to ask a question but would you like to expand on that, first?

The Hon. MICK VEITCH: How big is your enterprise, Mr Pollard?

Mr POLLARD: We run 1,000 sows in what we call "farrow to finish" sections. That means all the breeding is done on the place. Then we finish the pigs and from there they go to market. My dad established pig production a bit over 50 years ago. So I am the second generation, and we now have a third generation on the

farm. I have two daughters that are back home and quite enjoy what agriculture offers them. That is where we are at at the moment.

The Hon. COURTNEY HOUSSOS: Where is your farm based?

Mr POLLARD: We are north-west of Young.

Mr SCOT MacDONALD: You were alluding to the mental impact of what occurred.

Mr POLLARD: In 2013 we had activists enter our piggery in the middle of the night. We were aware later on that it ended up being two people there. They took footage throughout the night of the piggery. They went through certain sections of the piggery at night when it is dim and dark and it never looks quite as good as in daylight. They ended up going into my dry sow section, which is the area where I house my pregnant sows. Because it was early in the morning those animals thought they were going to be fed and they started to squeal—which pigs do, they get excited—and they were obviously in there for some time and the evidence for that is the amount of footage they showed. And the sows did not get fed and they were thinking they were going to be fed and they got agitated.

The Hon. RICK COLLESS: Then they showed the footage of the agitated sows?

Mr POLLARD: Yes. And it was in the dark and it looks like it does in the middle of the night when someone is woken up. That went on for a while and the sows got agitated and they started frothing at the mouth because they were not being fed. From there there is a sequence of events that went on. The way that I knew they had been in my farm is—they did not do any physical damage, they did not break any locks or anything like that—through a television program. *Today Tonight* rang me and they were inquiring about how the pig industry works and questions about what the industry does and it seemed civil, and then all of a sudden this reporter said, "Well, I have some footage of your place. I will send it to you." That was the first thing I knew of it. What they were trying to do was tee up an interview and it looked like it was a set-up. Mr Pearson is aware of this because he was going to be involved in the TV interview. It sounds familiar?

The Hon. MICK VEITCH: How long after the footage was taken did the media outlet get in touch with you?

Mr POLLARD: Off the top of my head maybe two or three months.

The Hon. MICK VEITCH: It was not straight away?

Mr POLLARD: No.

Mr SCOT MacDONALD: Can you describe how your workers, your family and you felt about that?

Mr POLLARD: It was a huge impact because at this point in time we had no idea who it was or how many people were involved. When it got uploaded to the internet and more and more people saw it we still had no idea who had been in there and what they were trying to achieve. But we got phone calls, emails and even letters from people with hatred for us. Some of the things that were written in the letters and some of the things, especially on the phone—and if you hang up on them they repeatedly ring. And because we are operating a business, you are not sure: Is this somebody that wants to talk to us for business reasons or somebody that wants to harass us? That went on for quite some time.

Mr SCOT MacDONALD: When you finish answering that part can you explain if any animal welfare issues were subsequently proven?

Mr POLLARD: From there, as far as the impact on the staff, they were mortified because they did not know whether they were under surveillance still. It was almost questioning their skills and abilities and what they do, so they felt very uncomfortable about that. I shielded them pretty much from any negative aspects that come through phone or letters and tried not to tell them about that. It just aggravated them. It got them frightened too. There are certain times of the week where we start early. I have five women on my staff, starting at five o'clock in the morning, and they used to say to me, "What if I walk in the sheds and there are people there: What do I do?"

The Hon. COURTNEY HOUSSOS: How many staff do you have?

Mr POLLARD: Thirteen.

The Hon. MICK VEITCH: Mr MacDonald's question: Arising from this footage were any charges laid against you or your enterprise for animal welfare breaches?

Mr POLLARD: No, none at all. To support the way that we operate we called the Local Land Services vet to come and inspect. He was an independent vet outside of our own consulting vet. We have a consulting vet that visits every six to seven weeks.

Mr SCOT MacDONALD: You talked about the workers and yourself a little bit, but your family is intimately involved in the enterprise, how did they stand up to that?

Mr POLLARD: It is interesting you ask that question because—

Mr SCOT MacDONALD: Take your time, if you want a glass of water.

Mr POLLARD: What I am about to tell you is probably the ultimate success for an activist. My eldest daughter had just finished ag business at Charles Sturt University and is passionate about agriculture. Both daughters have been through uni and are both back home and they are serious about agriculture and especially with animal production as well. My eldest daughter, Keira, had just finished uni and was working for a veterinary company in Queensland and she said to me she could see the impact it was having—

Mr SCOT MacDONALD: Take your time.

Mr POLLARD: She could see the impact it was having on ourselves and the staff. She even asked herself the question whether agriculture was what she wanted to do and be in. That was probably the one single thing that impacted the most. As you can imagine I did not have a lot of compassion for these people that had raided my farm and caused this impact. She got past that and one of the interesting comments was, "Dad, at university we learn about economics and about managing stock and animal welfare and all the things that go through agriculture but we did not learn anything about how you handle this situation".

The Hon. RICK COLLESS: Did you report this to the police?

Mr POLLARD: Yes.

The Hon. RICK COLLESS: Did the police ever identify the perpetrators?

Mr POLLARD: Yes.

The Hon. RICK COLLESS: Have they been named and identified?

Mr POLLARD: Yes. There was a whole long court proceeding and there was a court case last year, mentioned by an earlier witness, that ended up being dismissed. There were a number of reasons why that happened. It was Easter 2013 and in 2017 we eventually got somebody to court.

The Hon. RICK COLLESS: How many of them invaded your farm?

Mr POLLARD: Two.

The Hon. MICK VEITCH: Were they locals from Young?

Mr POLLARD: No, one was originally from Canberra and eventually he moved to South Australia. The female component was from Sydney, I think.

The Hon. RICK COLLESS: Are you prepared to name them?

Mr POLLARD: Yes.

The CHAIR: You can name them under privilege now, if you want.

Mr POLLARD: Chris Delforce was one and Dorottya Kiss was another. It is interesting that amongst all this Mr Pearson and I had some dealings, because at this stage we had no idea who had actually raided our property. Mr Pearson's position with Animal Liberation ACT was making some quite bold statements and having them published. I actually thought he was responsible for visiting my farm, and with some of the statements we went to the court. I applied for an apprehended violence order and we got it. Mr Pearson and I ended up going to mediation.

Mr SCOT MacDONALD: This question is pretty similar to one I asked the previous witness, and I will give Mr Pollard a break and ask association staff. Do you see a role for publicly available, transparent, real-time CCTV footage of intensive farming or abattoirs?

Ms JOHNSON: The association's policy is that there needs to be transparency throughout supply chains. We push that through the use of market mechanisms and programs making clear production systems and practices that animals have gone through, so that the consumer can make an informed choice. It is important to recognise that there are certain aspects of the supply chain, particularly at the end of the supply chain, which are confronting. It comes back to my point in my opening statement about the disconnect between the urban community and the rural community. 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. Mr Pollard raised a good point about

animals screaming because they are hungry, whereas people do not understand that; they think the animal is in pain. That is a natural reaction to someone coming in to feed them.

Mr SCOT MacDONALD: Anticipating being fed every morning.

Ms JOHNSON: Exactly. That connection has been lost, and there needs to be a balance between the need for transparency and the need to make sure that there is education about why production systems and practices are implemented, and to understand that there are positive animal welfare outcomes because of those systems and practices. Production systems are generally implemented to improve animal welfare outcomes. We have been going through the debate around the egg industry, and as an organisation we find it frustrating that animal welfare is seen as a good and bad narrative, whereas it is far more complex. We need to have a discussion with the community about the trade-offs with various production systems.

The Hon. COURTNEY HOUSSOS: I have a follow-up question about the role of education, and I note your recommendation around the need to introduce it at school level around food and fibre. Do you believe that the new food and fibre curriculum actually addresses that?

Ms RANKIN: I think it goes some way to addressing that in that, as long as you have resources, trained teachers and access to real-time farming practices, that will happen. It will take time, but I think it will get there eventually.

The Hon. MICK VEITCH: Mr Pollard, your evidence was compelling. What steps have you taken in your enterprise? Have you put in CCTV? Are you being proactive in your response to quite a harrowing experience for you and your workers?

Mr POLLARD: Yes, we have put in stuff to deter unwanted visitors. There is CCTV on the entrances and motion lights—I do not want to reveal everything, obviously.

The Hon. MICK VEITCH: The reason I ask is that part of the association's submission is:

As the law appears to be clear on the employer responsibilities as it applies to 'overt' and 'covert' surveillance—observable as opposed to concealed; the lack of information on the legal operation of surveillance equipment is concerning.

This is about the self-incrimination aspect of the terms of reference, and the association goes on to detail what you would like to see at the point of sale. You say that employers putting in place CCTV may have other obligations of which they are not aware. Would you like to talk about that?

Ms JOHNSON: It is just making sure that there is clarity when farmers choose to invest in this technology. It is important to recognise that farmers are more and more investing in this technology, because they are not finding any protection within the legal system. 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 be a requirement that they inform their visitors. All these sorts of things are not front of mind, because farmers are concerned about protection. It is making sure that they are aware that by investing in this technology, there will be all these other obligations that flow from that. It is also making sure that they understand that, so that the farmers trying to undertake lawful surveillance to protect themselves do not get caught up in any regulation or legislative changes.

The Hon. MICK VEITCH: Testimony of earlier witnesses who are property law experts suggested that we should not look at implementing legislation that is too finite or focused on one group of people, so that footage of a feedlot taken by drone surveillance and put on an internet forum should not be treated differently from drone surveillance taken of someone's bedroom on the third floor of an apartment block in Sydney and put up on an internet forum. They should both be treated as breaches of privacy law and there is a need for a privacy tort in Australia. What is your view?

Ms JOHNSON: The farming community is almost at the brunt of this technological development. We have had unauthorised surveillance and we know the impacts that have flowed from that, whereas the urban community have not had to deal with that to such an extent. We think that there is a need to recognise that it would not be acceptable if it happened in the urban community, so it should not be acceptable for it to happen in the farming community. Yes, we would be supportive of making sure that there is fair protection across both, and consistency.

The Hon. MICK VEITCH: Mr Pollard, do you have a view?

Mr POLLARD: Pretty much what Ms Johnson explained, yes. On the personal side of things, what it did to our family farming business was it slowed us down. It puts stops on where we were going and we started to question what we were doing. Is it actually right? Eventually we said, of course it is, but it created antagonism

in what I consider the uneducated or those that have totally different views. It created incitement with those people and they wanted to vent on us. 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.

We are quite proud of what we do and we are quite proud of the way we produce food for society. After all this we created a response video, with help from Australian Pork Limited, and it showed the same areas during the daylight and once those animals have been fed. But even that was not enough. There were some people that even took that apart and modified it. I had reasonable support, and then for a smaller producer—it might be a husband and wife situation—for them to go through that whole situation and be attacked in that situation I often think, geez, how do they get through that?

The Hon. RICK COLLESS: Was there a financial cost to all this as well for you and are you able to identify what that cost was?

Mr POLLARD: There was because I was not concentrating on the business as I should be, I was concentrating on what do you do—this is all a new area for us—and how do we handle that? So there were things that I was missing. To name them individually I could not tell you what they were, but we were trying to say this is what we do, this is who we are, and then handling these objections from society that had their own view. The mystery part of it was, I guess, if you knew who it was, because we did not find for years later who it actually was, and then people that ring you or email you or send you letters, none of them identified themselves.

The Hon. MICK VEITCH: Was that the only time that you have had an intrusion?

Mr POLLARD: The only time I am aware of.

The Hon. COURTNEY HOUSSOS: Did you have significant security that they had to breach?

Mr POLLARD: No.

The Hon. COURTNEY HOUSSOS: This was a new experience for you that as a result you had to?

Mr POLLARD: Yes.

Mr SCOT MacDONALD: You mentioned a gentleman's name and said there was a woman as well.

Mr POLLARD: Yes, Dorottya Kiss.

The Hon. MICK VEITCH: Egg Farmers of Australia recently had an open day where a number of their producers opened up their facilities to in some way address what Ms Johnson was talking about, which is where there is a growing disconnect between urban Australia and regional Australia around the production of food. I do not think it was as successful as they had wanted, but it certainly was, in my view, a proactive approach of the egg farmers to try and open up their enterprises rather than close up shop. Do you think there should be more of those types of endeavours where we can open up the production so that people know how their food is produced?

Ms JOHNSON: Yes, and it is something that industry invests heavily in with the Rural Research and Development Corporations [RDCs]. Australian Pork Limited runs Pigs in Schools—I believe that is the name of the program—which is about getting pigs into schools to get people familiar with the animal. One of the difficulties for the pork industry is around biosecurity. With any idea of opening up a farm they need to make sure that that is done at a high standard. But there are certainly producers and also industries that are doing that—opening up facilities so that people can come in and have a look and be able to be walked through the production system and also practices and explain why they are set up in such a way. As industry we recognise that it is a gap and it is not just incumbent upon the community to be educated, it is incumbent upon agriculture to explain our practices.

The Hon. MARK PEARSON: Can a member of the community go online and see live hens in battery cages or sows in farrowing crates in some piggeries?

Ms JOHNSON: I really cannot comment. I have personally never looked. I know that there are some where you can go on with companies; it is more something that companies put out to differentiate themselves so that consumers look for their brand.

The Hon. MARK PEARSON: But do they have access to see the common practices such as farrowing crates, battery cages, meat chickens that are two days off slaughter and what is happening in the shed?

Ms RANKIN: Are you talking about a live feed?

The Hon. MARK PEARSON: Yes.

Ms RANKIN: No.

The Hon. MARK PEARSON: Why I am raising it is because in your opening statement you talk about there is this disconnect between the consumer and the product and my understanding is that when activists take this vision, almost all of it is an accurate depiction of simply what is going on and then if there is public interest the media will run with it; if there is no public interest they will not. But if you are talking about this disconnect, surely we can go onto the computer now, go into Australian Pork Limited or the egg industry and the consumer really should be able to look at what is happening in a typical farm—hens in cages and even hens almost at the end of lay. Otherwise, would not a consumer feel as if they are being deceived?

Ms RANKIN: I will respond to that initially. My perspective on that scenario is that if you take a snapshot of a production process as—

The Hon. MARK PEARSON: A live feed is not a snapshot.

Ms RANKIN: If somebody goes in, they are not compelled to start at the beginning and watch it to the end; they are watching a snapshot. They can choose to go in and out and see what is happening. Without having a broader context of the process of production, without having a good educational grounding about how animal production works, whether it be in a classroom situation, whether it be through a general knowledge and general awareness, you run the risk of potentially sensationalising or inappropriately communicating that particular act in terms of—

The Hon. MARK PEARSON: Surely, just a camera looking at three battery cages and recording the behaviour of the birds in the cage for a given period of time and the consumer being able to have a look at that and make up their own mind, because the public will give animals the benefit of the doubt, and then they can read all the material as to why a hen might be in a cage or might not be in a cage.

Ms RANKIN: Potentially, in talking about a live feed and then people making a decision and then people being able to choose to read, you are creating a disconnect between a balanced argument and presentation of facts around how things are happening.

The Hon. MARK PEARSON: How would you then rectify that by making the connect?

Ms RANKIN: I think that initially it starts by building familiarity within a school environment. We were talking earlier about the fact that families used to go on holidays and visit farms. They do not now; they tend to go to theme parks or they go somewhere else. So they have not built up that basic awareness and familiarity with the process of production, whether it be animal or grain production. If you can start in a school environment where young children are learning about engaging with animals, the differences, the way that animals act and engage and interact—

The Hon. MARK PEARSON: You are saying by bringing the animals to the school?

Ms RANKIN: Not necessarily. You can take the children out to a small farm. You have got to build an awareness, a familiarity, an understanding of what goes into that process. Not every consumer is going to want to know the full process from beginning to end in production.

The Hon. MARK PEARSON: Do you think now because of the public concern about animal welfare it is becoming a major issue, as we are all sitting around this table, to a certain extent? Is it time for school children to be taken to intensive farms or even open-range farms and be shown exactly what is the story behind their two meals a day?

Ms RANKIN: My perspective on that is that there is an awareness around animal welfare; therefore, familiarisation around the fact that animals are grown for food, that there are processes and there are different ways of doing things, the familiarity is more important so that it allows young people as they go through, if they are making choices, if they are making decisions about what they might want to do in terms of their choice of food and fibre is they have got a good basic grounding so that that can inform a balanced debate and engagement, and we believe that if there is going to be an animal activism-type position put forward then there should be a right to have an animal farming position put forward so that people are well informed across the broad spectrum rather than are responsive to potential inflammatory activities.

The Hon. MARK PEARSON: What do you think the average year 10 student would think if they were to go to a piggery and be shown a sow in a farrowing crate and become aware that she can only take one step forwards and backwards, she cannot turn around and that is it for probably about six weeks?

The Hon. RICK COLLESS: You have to show them the full story, not just the sow in the farrowing crate.

The Hon. MARK PEARSON: I am just giving an example. Show them the whole farm and everything that is happening, but what do you think the average young person going to school who has a concern for animal welfare would think of that situation?

Ms RANKIN: I would suggest that a highly qualified teacher would create a context for that visit. You would not just drop a student into a farm, into an unfamiliar environment, without having done some of the preparatory work. You would anticipate that within the curriculum and within the resources that are prepared for that particular activity you would have had discussions about the different ways that animals are maintained and looked after as they are prepared in a farm. Then you would have an opportunity to debrief, to have a discussion afterwards as well.

The Hon. MARK PEARSON: You could talk till the cows come home about all the reasons why, for example, a sow is in a farrowing crate, but at the end of the day that young person is going to look at an animal that cannot turn around or exercise and give the animal the benefit of the doubt after listening to all the science and the reasons why. At the end of the day the ultimate tribunal as to how these animals are treated is the community and what they consider to be reasonable as opposed to a production argument.

Ms RANKIN: I would respond by saying it is up to individuals and communities to make their own choices.

The Hon. MARK PEARSON: They need to be honestly informed though as to exactly what is going on at these properties in order to be able to make that decision or judgement.

Ms RANKIN: If I may, that information, that provision of information and that range of activities must be equally available so that people can make a fully informed choice and discussion.

The CHAIR: Is it part of your evidence that the community is not being properly, fairly and equally informed? Isn't that what you have been saying for the last 20 minutes?

Ms RANKIN: That is right. That is exactly what we have been saying.

The Hon. RICK COLLESS: In relation to what Mr Pearson is saying, how many weeks a year does a sow spend in a farrowing crate, Mr Pollard?

Mr POLLARD: About four weeks. Four to five weeks.

The Hon. RICK COLLESS: A year?

Mr POLLARD: No, in a birthing cycle.

The Hon. RICK COLLESS: How many times a year would that occur?

Mr POLLARD: Twice.

The Hon. RICK COLLESS: She is spending eight or maybe nine weeks in a farrowing crate in any one year?

Mr POLLARD: Yes.

The Hon. RICK COLLESS: Where is she the rest of the time?

Mr POLLARD: She is pregnant and then she would be with her fellow sows that are also pregnant.

The Hon. RICK COLLESS: Outside or in the shed?

Mr POLLARD: In the shed. In our situation we have group housing, so she is with fellow sows that are of the same pregnancy state. Just to answer Mr Pearson's question—

The Hon. MARK PEARSON: Can I ask a question?

The CHAIR: Mr Pearson, we are here to hear from Mr Pollard, not from you.

The Hon. MARK PEARSON: I can ask questions.

The CHAIR: Yes, but I can allow them or not allow them. Let Mr Pollard answer the question, please.

Mr POLLARD: We do have schools come and visit our pig farm and one of the first places that we take them to is the farrowing shed. As Mr Pearson has mentioned, we have farrowing crates. I enjoy the debate that comes from that because they say, "Well, why are the sows in here?" I say that we are looking for the maximum welfare of all the animals and all the people that are involved here. So, yes, they are confined but yesterday morning I left home and it was minus two and they were inside a building which was a comfortable 22 degrees with feed and water and they had their offspring with them.

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.

The Hon. MARK PEARSON: Sow stalls were depicted and filmed and published by *Today Tonight*. Do you have sow stalls now?

Mr POLLARD: No.

The Hon. MARK PEARSON: Is that because of pressure from retailers saying they want to phase out sourcing pig meat from where sow stalls are used?

Mr POLLARD: Industry and Australian Pork Limited as a group had got together and then it was a voluntary decision that we remove sow stalls from the major part of production. That was voted on and sort of 90-odd per cent of industry agreed with it and that is what has actually happened.

The Hon. MICK VEITCH: Is the removal of the stalls a phased process?

Mr POLLARD: Yes.

The Hon. MICK VEITCH: Over what period?

Mr POLLARD: We have passed that point now. It was 1 July 2017.

The CHAIR: Thank you very much for coming today and thanks for your evidence.

(The witnesses withdrew)

(Luncheon adjournment)

ANDREW SPENCER, Chief Executive Officer, Australian Pork Limited, affirmed and examined

ALISTER OULTON, Policy Analyst, Australian Pork Limited, affirmed and examined

JOHN DUNN, Chief Executive Officer, Egg Farmers of Australia, affirmed and examined

ANGELA GRIFFIN, Policy Adviser, Egg Farmers of Australia, affirmed and examined

The CHAIR: Mr Dunn or Mr Spencer, would either or each of you like to make a short opening statement?

Mr SPENCER: We are here today to speak on behalf of the Australian pork industry. It is an industry which employs more than 36,000 people in Australia, contributing approximately \$5.3 billion in gross domestic product to the Australian economy. The pork industry contributes approximately 2.13 per cent of total Australian farm production and we have around 1,100 commercial pig producers who produce 5 million pigs each year. The animal liberation movement has taken a huge toll on the Australian pig industry. Piggeries in New South Wales and nationally are routinely broken into, they are damaged and videoed unlawfully. These attacks cause animal welfare concerns, including the injury and death of piglets and sows, and compromise biosecurity. For example, an incursion several years ago caused the re-emergence of an endemic disease not seen for 30 years to take hold. 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

Illegally obtained footage has meant that there are more than 90 New South Wales piggeries named on activist websites, with addresses, photos and descriptions. One website, supported by Animal Liberation ACT, supplies identifiable information about piggeries and subsequently calls for volunteers who would be willing to break the law. These piggeries are the livelihoods of our producers and they support the communities that they live in. To allow for this vigilante activity to be perpetuated undermines the system of legislation and law enforcement. We note that Animal Liberation has made a submission to this inquiry to support their actions. We hope that the inquiry considers their evidence in the context of an organisation that encourages their members to break the law that members of this Legislative Council have made.

Australian Pork Limited supports the tenor of the bill introduced by Mr Borsak and hopes that this bill will provide for a tangible solution to farm invasions. However, we are sceptical of the practical application that more legislation alone will provide unless there is a change in enforcement mechanisms towards illegal trespass and filming. Many of the submissions made to this inquiry make reference to the landmark judgement in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* in an attempt to show that privacy rights can be overridden in favour of public interest considerations. The inquiry would be aware of the recent case of the *Australian Broadcasting Corporation v SAAW Pty Ltd* in the West Australian Court of Appeal which found that the footage would damage the privacy of the accused and contravene the Surveillance Devices Act. We use this example to debunk the claim that the right of political expression extends indefinitely to any breach of privacy or criminal activity, or other activities that affect the rights of other citizens to go about their lawful and legitimate business in a peaceful manner.

There are already four pieces of legislation that an uninvited intruder can be charged with in New South Wales but these charges are rarely laid and are even less likely to succeed. The result is that minority groups with political views believe that they have the right to trespass on to people's property risking disease, risking animal welfare and damage, without any real punishment for these actions. It is not uncommon to find distressed sows, dead piglets and endemic diseases in a piggery following a raid by animal activists. Were this behaviour to occur in urban environments, we believe the Government would be much more proactive in seeking to stop it. Thank you for considering our evidence today and we look forward to answering any questions.

Mr DUNN: I start by thanking the Shooters, Fishers and Farmers Party for introducing this bill. I also thank the other members of the Committee who are here today to get a sense of the perspective of egg farmers on this critical issue. As Mr Spencer has noted, farmers of all varieties provide a significant contribution to the economy—\$680 million in New South Wales for the egg farmers who operate here.

Those egg farmers are members of the community, neighbours and representatives of a variety of organisations. For the record, they are people who value and who care for the welfare of their animals. That is not only ignored but also cast aside. Further, it is relentlessly reframed by an activist sector that seems not to have an agenda for the truth but solely for revolution. This is a difficult issue for farmers because it is emotional. I am not sure how Committee members would feel if they woke up and found someone in their kitchen taking footage of

how effectively they use their Spray n' Wipe, but it is frightening. It causes emotional distress not only for the farmer but also for their family.

Setting that aside—although it is a significant if not primary issue—there are other very important issues, including the biosecurity of our operations; that is, the spread of disease. All members would be familiar with the relentless bipartisan work of both sides of politics to ensure we can continue to enjoy food security. That is threatened by the activity of people who break into farms, and it is threatened in a way that is disingenuous and radical. Egg farmers across the country have made an effort to respond in an open and transparent way to genuine community concerns. So much so that as part of the recent public consultation period we opened the doors and the windows and we said, "Let there be light."

I have received hate mail. That is not unusual; I receive a fair bit. However, I have made an effort to engage with people who have taken the time to write to me. After a conversation with one of those people, I took them on a tour of a caged egg farm. Obviously that is what we will be in the gun sights for here today. I did not change that person's mind, but they understood the perspective of the farmer and that the farmer cared about their birds. In circumstances where this industry continues to grapple with what is emotionally distressing and irresponsible financially and socially, we wonder why people are poking around the back door with a torch when the front door is open. Thank you.

The Hon. WES FANG: Thank you for coming in today. Before lunch we heard what I would describe as very powerful testimony from Mr Ean Pollard, a pork producer. It certainly left an impression on me and, I think, other members of the Committee that the actions of some groups that seek to invade and to surveil farms have a seriously detrimental effect on farmers' lives, their mental state and the way they approach their business after they have been invaded. What are your thoughts on your members' welfare? What does it do to your members and the ongoing sustainability of their business? Does it impact on them encouraging their family into producing goods that we can feed our population and others in the world? What do you think we can do better to handle the situation?

Mr SPENCER: I think in some ways it is ironic that the activists we are talking about claim to be working for the avoidance of cruelty. Their actions against the people I know and the people working in my industry are nothing less than cruel and totally unjustified. As Mr Dunn said, in many cases they are disingenuous. They claim to have a problem with intensive animal agriculture. The fact is that it does not matter what sort of animal is farmed, they would never consume it. Their philosophical objection is not to intensive animal agriculture; it is to any animal agriculture. That is why it is disingenuous. Because of their surveillance devices and videos on websites, we are seeing the results of an any-means-to-an-end approach.

The impact on our farmers is similar to the impact on members if they were to get home and find their house had been robbed. It is a total violation. It is not just about the things you lose; it is about people being in your home and invading your privacy and those parts of your life that are most precious. It is similar for an animal farmer and his farm. It is very serious and very concerning for our producers. It is a major source of considerable stress for them.

The Hon. WES FANG: Are your members experiencing mental health issues? How does it affect them and their families?

Mr SPENCER: I have not come across examples of mental health issues arising out of this. To be a successful farmer you have to be persistent, resilient and stubborn in some ways, and a lot of them are. They are strong. Ean is one example, and I have even better examples in my head. The harassment they experience on social media every day and having people defaming them without a right of reply because of their anonymity is an awful feeling. We experience that harassment as a representative body, but we are paid and we know we are going to be the butt of it. These people do not deserve it.

The Hon. COURTNEY HOUSSOS: Thank you for your time this afternoon. Mr Spencer, you said there are organisations that encourage people on their websites to undertake illegal activity. Is that not unlawful under current law?

Mr SPENCER: I will ask my in-house counsel.

Mr OULTON: It is unlawful as far as I am concerned. Encouraging people to break the law in that fashion is. As stated in our submission, it is a fundamental problem. There are existing laws in New South Wales that are not really finding any convictions or providing deterrents to people choosing to do this. Despite the fact that they might be calling for these sorts of activities, it is not really having any practical effect on our farmers.

The Hon. COURTNEY HOUSSOS: Mr Dunn, you talked about engaging with people on this issue in a very powerful way and educating them, although perhaps not changing their perspective but allowing them to

see that farmers are not necessarily the baddies and that they also care about animal welfare. Are there any other ways in which we can co-opt people with those intentions? The Committee received a submission from a farmer we were fortunate to visit yesterday. He said we need to be able to differentiate between the intent of people wanting to see better animal welfare outcomes and those seeking merely to disrupt the industry as a whole.

Mr DUNN: That is a great question and I wish I had a complete answer. I will try to give at least half.

The Hon. MICK VEITCH: You can take it on notice.

Mr DUNN: The differentiation between those with a serious intent and a better understanding welfare is critical for our industries. It was mentioned by the Hon. Wes Fang that these issues threaten not only the health of farmers but also the sustainability of their industries. As I said in my opening statement, the activity of those without the right intent unfairly reframes the actual activity of industries. It creates an unstable and uncertain environment and an environment in which it is more likely considering the political stability in our country for regulatory authorities to shut down whole production systems. Perhaps that would be fine in circumstances where it was truthful, but it is not.

In conveying the impact that this has on the welfare of our farmers, I want to acknowledge that we understand that animal welfare is not just about farmers. We produce and Australians eat. We are all in this together. The welfare of people who are genuinely concerned about animal welfare, who have seen a shocking report and who are morally confounded that it can occur, their feelings must be acknowledged as real. As an industry, we see it as our responsibility to give those people an accurate account of what is going on. That is why we have taken a very purposeful effort to ensure that no matter what your criticism, no matter what stripe or creed, if you want to see a farm and you want to know how it operates, then see it in context; come and look for yourself. Perhaps broaden your perspective so that you can understand an entire production system, not one false image reposted relentlessly on Facebook.

The Hon. MICK VEITCH: Yesterday this particular producer showed us a collage of photographs that, purportedly, were of his establishment and they had been posted on a web site. In fact, the photographs posted were from a range of establishments. Any reasonable individual looking at that web page would think that they came from the one place. It was essentially a misrepresentation of that particular producer. Is that a regular thing for your constituencies and how do you see that being corrected?

Mr DUNN: That is almost the rule. There is barely an exception. You can test this quite easily. In Australia, there are very few white birds. There are probably 14,000 in production. You see a large shed of white birds and if you Google "caged eggs in Australia", you will see one. That is not us. That is an important criteria because you will have older infrastructure, smaller cages and, potentially, a lower animal welfare dividend. When I say the activity of the activist seeks to recast the industry, it is precisely this that I am talking about.

Mr Veitch, it extends not only beyond those images that are not reflective of our production systems but also the selective use of those images. An animal has a bad day in every agricultural livestock supply chain, but that does not change our commitment. It is very different in the egg industry. We are responsible for the welfare of our hens for a significant period of time and every day a farmer will check a cage to ensure that the hens are in good nick. The point you raise is not only pertinent but it is also relevant. It is one of the key reasons, I think, that is causing—generating—community outrage, which does not need to exist.

Mr SCOT MacDONALD: We cannot legislate for fake news; it is impossible. You cannot legislate for it and you cannot prosecute it.

Mr SPENCER: But at least you can understand that it is happening. I would back up what Mr Dunn says. Again, it is an expression of this "any means to an end" type mentality. They will video what needs to be there to make it look as bad as possible. 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 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.

The Hon. WES FANG: That behaviour is detrimental to the livelihoods and welfare of those animals.

Mr SPENCER: And in those cases that is secondary.

Mr DUNN: As I understand the Surveillance Devices Act in New South Wales, penalties are available. You cannot control the internet if it is hosted in international domains, but if you stick a camera up and you have not got permission, there are substantial penalties that apply. We recognise that as an industry we have a role to

be open. But we would also encourage the Government that if it sees a material problem to act purposely to disincentivise that activity from occurring again.

The Hon. MICK VEITCH: We took testimony earlier from some privacy law experts, I suppose you could call them. They were advocating for a privacy tort. They were saying that essentially we should not be legislating for a small section under the Surveillance Devices Act. They say that people who use a drone to take surveillance of a feedlot to post on an internet forum should not be treated any differently to someone who uses a drone to take video of people through a bedroom window of a three-storey unit block in Sydney to then post on an internet forum. They say they should be treated the same because it is a breach of someone's privacy. What are your views on the need for a privacy tort or a strengthened privacy law in this country? You can take it on notice if you want to.

Mr DUNN: I would have to take that one on notice.

Mr SPENCER: Alister has a bit of legal—

Mr OULTON: I do not have an expressed view on a privacy tort. Some of our views come from the fact that in a lot of cases—and recognising Mr Dunn's evidence about overseas jurisdictions masquerading as Australian footage—the cameras in the piggeries are not imagined there by themselves. They are brought in by people, which creates biosecurity risks and welfare issues. Leaving aside the idea of privacy and the fact that the footage is then published, the fact is that cameras have to come in at some point and when they are found, that is the point that creates an immediate distress for producers, or some time down the track, as Mr Spencer mentioned, they realise they have effectively been violated a few times over the course of a few months. The cameras do not exist without people bringing them in. You cannot talk just about the privacy issues. We need to consider the trespass issue as well.

The Hon. MICK VEITCH: The New South Wales Government in its submission to this inquiry has said that there is an unknown area when it comes to employees. Animal activists are uninvited, so trespass laws would or could apply. Whereas an employee, as part of their engagement with an employer, is invited to a piggery or a hatchery. If they take footage, what are the whistleblower provisions for that employee in that instance? Do you have views on whether that should be dealt with via whistleblower provisions or do you have other suggestions? It is different to the animal activist coming on to the property uninvited.

Mr SPENCER: Yes, it is a little bit different. The first thing is, if there is cruelty happening on a farm the authorities need to know about it as soon as possible. If that is your whistleblower or anyone else who knows about it, your absolute first objective is to get that farm reported and investigated. When you have employees who turn out to be some sort of whistleblower—I do not know the legal implications of what I am saying—but it comes back to some sort of intent. Did they get the job to "expose" the farm or were they good-faith employees who saw stuff they did not like and thought it was cruel and then became whistleblowers? The two are very different circumstances. One is where they are being disingenuous and dishonest. The other is quite legitimate and could be completely reasonable.

The other issue to keep in mind that they may be disingenuous. We have had suspicions, on occasions, that the employee has been the problem that they have reported. Again, it is any means to an end. They make the cruelty problem, they report the cruelty problem—job done. I am very sceptical. It is a possibility that this could be happening. That is a real problem.

Mr DUNN: You point to a really difficult issue, Mr Veitch. I do not think there is anyone who could, hand on heart, say that the Australian country was not benefited from knowing what was happening on the *Awassi Express*. That was an employee. They took footage and it was released. Let us leave the subsequent political action for a different debate.

If there is cruelty happening on a farm, as Andrew said, it needs to be stamped out. Minister Littleproud, at a Federal level, I understand, has looked at whistle-blower protections. It would be nice to live in a world where that was not required. It is certainly the world that egg farmers aspire to. How do we do that? Firstly, the days of model codes of practice are over. I think every farmer in my industry accepts that.

If standards are going to be accepted, at a State level, to be implemented as regulated guidelines in Prevention of Cruelty to Animals Act [POCTA] they need to be enforceable. Anyone who does not comply with those standards should not get a ticket of entry. That is one step.

The Hon. MICK VEITCH: It should be mandated.

Mr DUNN: Mandatory standards. An additional part of that is accountability from industries to the constituencies that—to use Ms Houssos' point—have a genuine intent to understand things. We recognise that we are accountable to people who want to know more. We will respond to that. If we as farmers can open up, and if

enforcement authorities can stamp down, then perhaps there would not be such a wide gap for this to continue to occur and to continue to affect the lives of farmers in an unnecessary way.

The CHAIR: In your submission—under terms of reference No. 3: implications with regard to self-incrimination—you talk about ways around the problem with self-incrimination. Do you want to elucidate a little bit more on that, Mr Spencer?

Mr SPENCER: I cannot remember the exact point.

The Hon. MICK VEITCH: It is on page 3, down the bottom.

The CHAIR: The issue of self-incrimination has been brought up a number of times by the Government and by the Opposition to me in relation to this—that somehow or other this is an estoppel for getting people to do the right thing by the farmers as far as cruelty is concerned. What are your recommendations in relation to that?

Mr SPENCER: I do not understand that question.

Mr DUNN: I think that the issue of self-incrimination goes to the way in which this bill will be treated by the activist sector more broadly. It will be labelled, Ag-gag, I'll come down from the trees, and we will end up in this kind of intractable conflict that we cannot seem to get out of. I know this issue has been tested in other jurisdictions around the world, including in the United States where, under the Constitution the law was repressed. My facts on that are blurry.

The Hon. MICK VEITCH: Is that the Ohio case?

Mr DUNN: Yes. Thanks.

The Hon. MICK VEITCH: I am here to help!

Mr DUNN: Whilst not understanding the legal underpinning of that decision, I think that principle opens up something quite revealing. I do not think that there is any bill powerful enough to stop the zealots from breaking in. If that is the case I certainly do not think there is a law under the sun that is going to make them report what they see. That is not a reason not to make a law, but it is a relevant consideration. In that context, this bill will create anger, agitation and ongoing conflict and, potentially, not provide any significant uplift in the reporting of these things. Primarily I point to it as a complexity. In an ancillary way I point to it as unfortunate, because I really wish we could get along better. I think that little package is all referable to the burden of self-incrimination, both in terms of its limited utility and the consequences of a bill being enshrined in law.

The CHAIR: But doesn't this go to heart of what we are trying to get done?

Mr DUNN: Yes. I can only commend your party for having the bravery to take up the cudgel on what is—

The CHAIR: There is no bravery involved. It is something we have to do.

Mr DUNN: Perhaps "bravery", Chair, is the wrong choice of words. I would say that you are bending your back to what is a really tough issue. The dynamics of point 2, I would suggest, are very real. It is very unusual to have an instrument that is right, justified, needed, and which has the potential to either inflame the problem or not discourage the activity whatsoever. I do not have an answer for that but I think it is a relevant perspective for the Committee to note and consider.

The CHAIR: It is pretty clear from the evidence in the submission from Australian Pork Limited [APL], and I think also yourselves, that whatever the law is now, it is ineffective. From my reading of it, it is because it does not go to the heart of the problem.

Mr SPENCER: We agree that if the objective here is that animals are well looked after and that we avoid cruelty situations, the notion that someone knows about a cruel situation and does not have an obligation to report it is nonsensical to me.

The CHAIR: That is the objective, exactly.

Mr SPENCER: That is exactly so. So we support that sort of view. The reason that this is not happening is because the objectives of that any-means-to-an-end publicity stunt, or whatever an activist is trying to achieve, is higher in their mind than ceasing the cruelty that they have witnessed. To me that is an abhorrent thought.

Mr SCOT MacDONALD: We were told yesterday by a chicken processor that if we went down the path of what the animal activists and animal liberation people wanted his industry would probably have a 30 per cent to 40 per cent cost increase to the consumer. I did ask him about other industries and he deferred. He said, "Ask them," so I am asking you two questions. What is the extra trespass management costing your industry? What is

the probable cost to the consumer with respect to eggs and pork if we landed where the animal activists and animals liberation people want us to be?

Mr OULTON: In terms of the second question about the cost to the consumer of where animal activists want us to be, is that in terms of—

Mr SCOT MacDONALD: I think the extreme is full free range. In other words, no farrowing or even shedding. It is hard to answer your question, because—

Mr SPENCER: If I can butt in, the animal activists typically do not want us to go free range. They may say that, but as soon as we do, they want us to do something else.

Mr SCOT MacDONALD: Yes, it is an endless piece of string.

Mr SPENCER: There is no end to it. There is no doubt that this adds costs. A lot of our producers are already spending a lot of money on their own surveillance systems to keep people out of their sheds. That is expensive, and it adds to the cost of pork.

Mr SCOT MacDONALD: Can you quantify that?

Mr SPENCER: It would be in the millions of dollars.

Mr SCOT MacDONALD: I am happy if you take that on notice.

Mr SPENCER: We cannot accurately give you an answer, so I am estimating. For me the greater cost is the cost to the health of our producers in terms of the pride in what they do and being allowed to go on and conduct a law-abiding business. The affront to that that activism has built is a much greater cost, for me, than the actual monetary one.

Mr SCOT MacDONALD: Could I ask your industry to take that on notice and quantify that?

The CHAIR: Perhaps you could survey your members.

Mr SPENCER: We can make a few phone calls and find out.

Mr OULTON: About the cost of moving systems?

Mr SCOT MacDONALD: The two parts of the question were the extra security and potentially what the cost would be to move from an intensive to a non-intensive industry?

Mr SPENCER: I can give you an estimate around non-intensive production. We have our own standards around a free range system compared to an intensive system and you would expect the cost of production per kilogram of pork to be around 50 per cent higher in the outdoor systems.

Mr SCOT MacDONALD: Can I have the view point of Egg Farmers of Australia?

Ms GRIFFIN: Like APL we do not have specific numbers around this. It is a tricky one to quantify, particularly when the egg industry is an industry that has some really big players and some small players and some of the small players are not always giving accurate information or any information at all. In terms of rough estimates there are a number of things that mean our members are paying a huge amount of money to insure against this. Those costs are to do with biosecurity impacts and, as APL has mentioned, their own personal security systems as well. We would also say that it would be upwards of millions of dollars.

Mr SCOT MacDONALD: If either of your organisations want to come back to us with more information I would appreciate it. It is important, we have animal welfare issues but we also have consumer issues.

Mr DUNN: If I can add to what Ms Griffin has said. The answer to your question is fundamentally it depends, but 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. In addition, if we were to move from the current 56 per cent production in cages to free range then you are looking at a doubling of the input costs of the industry to produce eggs. In circumstances where consumers do not get to choose what they pay but supermarkets do I am sure they would love to see eggs not traded as a segmented category but as a single commodity because we could hope that a 3 per cent margin was enough to keep farmers alive. Of course it is not enough and that is why there is segmentation. The risks are profound and unquantifiable.

Mr SPENCER: As Mr Dunn says, the biosecurity cost of a 1,000 sow piggery, if you have to depopulate it, if it gets a disease that means you have to take every pig out, clean it out and put every pig back in, it is \$1,500 per sow space. That is \$1.5 million for a 1,000 sow piggery. If an activist comes on to a property after being on

another property, even within the last couple of days, that can absolutely easily happen with an endemic disease. We have seen through metadata on videos of activists they have been on different properties on consequential nights, which is just an absolute nightmare. From a pig producers point of view that never, ever happens.

The Hon. COURTNEY HOUSSOS: Obviously that is a worst case scenario. Has that happened?

Mr SPENCER: That has happened.

The Hon. COURTNEY HOUSSOS: How many times has that happened where an actual disease has been transferred on and they have been forced to do that clearance?

Mr SPENCER: I misunderstood the question. If we have suspicions that the disease has come on and it is then a question for the farmer does he want to do the depopulation or not. If he does the full depopulation he pays the money up front. If he does not he lives with the productivity impacts of the disease. It is always a weighing up of the economic effect.

The Hon. MARK PEARSON: Has it been proven that an activist has brought a disease to a piggery or an egg production facility?

Mr SPENCER: I do not know how you would prove it.

The Hon. MARK PEARSON: So, it has not been proven.

The Hon. RICK COLLESS: That is not the point of the biosecurity legislation.

The Hon. WES FANG: Has it been proven that an animal liberationist has never brought a disease on to a property?

Mr SPENCER: I do not know how you would prove that either.

The Hon. MARK PEARSON: Ridiculous.

The Hon. WES FANG: It is the same question.

Mr SPENCER: If they are going on to different properties on consecutive nights that is totally against the rules for biosecurity. It will happen if they are doing that.

The Hon. MARK PEARSON: Taking a different direction in terms of consumer awareness and public interest. Would the public know what a sow stall or a farrowing crate or a battery cage was if we relied on the RSPCA or the industry to inform the public about these facilities or these ways of keeping animals?

Mr DUNN: We are both going to want to jump in on that one Mr Pearson. It depends, if the Federal RSPCA is involved they absolutely will not know what a battery cage looks like because battery cages do not exist, but they are what is shown. We are talking about if members of the public are not aware of what egg production looks like in cages, then I can only suggest to you that if they are not I hope they can be.

The Hon. MARK PEARSON: What I am saying is the way they have found out and the reason retail has moved towards having certain categories of eggs in home brands of Coles or Woolworths, or going sow stall free, such as at Coles, is as a direct consequence of activists taking pictures and video being published by media modalities, then consumers expressing their concern via retailers. The change has started to happen in the industry because of that, not driven by an industry directive out of thin air.

Mr DUNN: I will give you the only concession I am likely to give the Animal Justice Party: You are right, it is difficult to understand how an industry can grapple and take responsibility to improve in a continuous manner without there being that necessity created in the public sphere. I am not at all condoning illegal activity and surely we should be able to find a way to do that without breaking the law. I think the egg industry's eternal recurrence for as long as cages exist will be 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. Because if that does not happen then I think the errors which go to the foundation of your question will only serve to permeate society and create anger and distrust between people who need to make more of an effort to collaborate. It strikes me as the prisoner's dilemma. I might leave it there.

The Hon. MARK PEARSON: Good answer. Mr Spencer, if I go on to Australian Pork Limited's website and I want to see how pigs are killed I think it takes about 20 minutes to find an image that might look like an area where pigs are about to be stunned. And that is it.

Mr SPENCER: You need to practise a little more on our website.

The Hon. MARK PEARSON: If a consumer or retailer is concerned or interested to know how pigs are killed, it is because they are eating pork and they want to know the story.

Mr SPENCER: I challenge you to go to any other website to see it. You will see it on our website.

The Hon. MARK PEARSON: You are Australian Pork Limited?

Mr SPENCER: Yes.

The Hon. MARK PEARSON: I am talking about the Australian Pork Limited website. You have been talking about transparency and legitimacy. Why is it so difficult for a member of the public to see how an animal is being killed?

Mr SPENCER: It is not. You go straight to Australian Pig Farmers and we have I do not know how many videos of every aspect.

The Hon. MARK PEARSON: Why not Australian Pork Limited?

Mr SPENCER: Because Australian Pork Limited is about our industry and the corporate organisation. 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 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, but not at the expense of animal welfare. If I go back to your previous question: first principles, we are here and our industry relies on looking after pigs and doing that well. The sow stall question is interesting, because the only reason the industry could move away from sow stalls, which we voluntarily decided to do back in 2010 and have been substantially successful at, was because we spent millions and millions of dollars in research and development making sure that that move did not threaten the welfare of the sows. The community wanted that move, but there was a significant threat that if done badly the animals were the ones that were going to suffer without the community knowing anything about that.

The Hon. MARK PEARSON: Or suffer differently.

The CHAIR: I have to call this session to a close, because we are running well over time. You took some questions on notice, and you have 21 days to respond to those questions. The secretariat will be in contact in relation to those questions. Thank you for appearing before the Committee today.

(The witnesses withdrew)

SARAH WALADAN, Head of Legal and Regulatory Affairs, FreeTV Australia, affirmed and examined

THEO DORIZAC, Senior Legal Counsel, SBS, affirmed and examined

MARK MALEY, Editorial Policies Manager (News), ABC, affirmed and examined

The CHAIR: I welcome the Joint Media Organisations panel. Would you care to make a short opening statement?

Ms WALADAN: Yes, thank you. The Joint Media Organisations thanks the Committee for the opportunity to appear today. We represent a broad range of media organisations across print, television and radio. The Committee's terms of reference sought to inquire into four key issues, and we will briefly address our position on each in turn. In relation to the first two, whether the legal framework adequately protects landholders from unauthorised filming and surveillance and the appropriateness of the penalties that apply, our view is that the existing laws are more than adequate. The current legal framework is comprehensive and carries severe penalties for intrusion on landholders' rights, providing it is properly implemented. The Surveillance Devices Act is the key piece of legislation that prohibits unauthorised filming or surveillance of landowners. There are significant financial penalties, as well as penalties of imprisonment up to five years, which apply.

Part 4D of the New South Wales Crimes Act has a range of offences relating to damaging property, as well as threatening to damage property, which also carry substantial terms of imprisonment. Section 316 of the Crimes Act makes it an offence to conceal a serious indictable offence, which includes failing to provide information to police that might assist in apprehending offenders. The Summary Offences Act includes penalties for a number of less serious offences in obtaining unauthorised recordings. In addition to this, the New South Wales Government has recently created new offences relating to trespass in the Inclosed Lands Protection Act and the Biosecurity Act. Of course, the common law of trespass also applies to people who enter properties for the unauthorised purpose of obtaining surreptitious surveillance or recordings.

The media complies with these laws regarding the recording and broadcasting of footage, as well as codes of practice that emphasise the importance of individual privacy. Serious penalties can also apply to breaches of these codes—for example, the Australian Communications and Media Authority has the power to cancel or suspend broadcasters' licences. Journalists are also bound by ethical obligations to ensure stories are newsworthy and sources are credible, internal editorial policies and procedures to ensure fair and accurate reporting as well as legal obligations.

Enacting any further legislation is unnecessary and would simply create duplication, which would only increase the time and expense required to engage with the State's legal system. It is critical that the legal framework strikes an appropriate balance between protecting the privacy and property of landowners on the one hand, while not unduly inhibiting the exposure of illegal and unethical conduct, which the public has a right to know about, on the other. While the current framework generally gets the balance right, the New South Wales Surveillance Devices Act is more protective of landowner rights than similar legislation in any other Australian jurisdiction. It does not have an exception for public interest reporting. The law would be strengthened by such an exemption to promote the disclosure and communication of material that is in the public interest and that the public has a right to know about.

In relation to the third term of reference, the implications for self-incrimination if disclosure of unauthorised filming or surveillance is required, our view is that 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. If journalists and their sources were to disclose that they have made or obtained recordings, there is a real risk that their identities will be exposed. If they are forced to disclose that they have done so in breach of the law, such as the Surveillance Devices Act, they will effectively be incriminating themselves, contrary to the right against self-incrimination. In 2011, the New South Wales Parliament enacted the journalist privilege in the Evidence Act. That privilege recognises the importance of supporting journalist to investigate and report on matters of public interest and a freedom of speech in the operation of a healthy and functioning democracy. Laws requiring disclosure of animal cruelty within certain time frames completely undermine this fundamental protection. They would disincentivise whistleblowers from coming forward in relation to instances of animal cruelty and would undermine public interest journalism.

In relation to the last term of reference, the implications of a rapidly changing media environment on the adequacy of landowner protections, the increase in availability of new digital platforms does not change the issues relevant to this inquiry—that is, whether a person ought or ought not to be able to record certain activities. Their only relevance is that they provide new platforms for the distribution of public interest journalism. As

discussed above, the legal framework still needs to strike an appropriate balance between landowner interests and freedom of speech. Existing laws already provide the tools to do this. These rules are technology neutral and focus on the conduct of the individual rather than the nature of the device. For example, the surveillance devices legislation captures recordings regardless of the device on which they were made. Similarly, criminal laws apply to offences relating to destroying or damaging property for the purpose of obtaining unauthorised surveillance; the nature of the surveillance device is irrelevant. We are happy to take questions, thank you.

The Hon. COURTNEY HOUSSOS: Mr Maley, this might be a question for you, but I am happy to hear from the others as well. We have tried to differentiate, or some of us have tried to differentiate between the intention perhaps of some people to disrupt the farms as opposed to those who want better animal welfare outcomes. Does that form any part of your consideration when you consider whether to use footage that has been obtained or not? Do you consider whether the activists are thinking to disrupt the farm's activities or whether they are seeking better welfare outcomes, or is that irrelevant to your consideration?

Mr MALEY: It is not entirely relevant. It is in our guidance note, the guidance notes of the ABC to take consideration of the motives of whistleblowers and confidential sources. So that is weighed up in part of our assessment of their credibility and of the newsworthiness potentially of the information they are giving us. It is certainly in relation to their credibility. I suppose it is worthwhile trying to break down what we do at the ABC—and I have worked in commercial TV and other commercial media and it is essentially the same everywhere; we all operate roughly the same way in the mainstream, respectable media, if you like. The first thing that we will do if we are approached with that sort of material is corroborate it first, check its accuracy—that is the first and most important thing we would do under any circumstances, and the motives of the people who are providing it is a crucial factor in the assessment of that. But there is a whole range of things that good journalists do to assess the factual accuracy of the material and the origin of the material. Then we will assess the newsworthiness of it and we will assess the public interest.

So there are three fundamental barriers, if you like, that any story will have to overcome before we would publish it. The motivation of the people providing it is, I guess, in a sense, self-evident often. To pick up on something which I heard just earlier in relation to whistleblowers, for instance, versus activists, there are whistleblowers and the most recent example that has come across my desk, which is only a number of weeks ago, was, indeed, a genuine whistleblower, a person who worked on a cattle station, saw what he believed was animal cruelty, recorded it on his mobile phone, brought it to us to say, "Can you do a story?" and we could not do the story because to do the story in any meaningful way would be a breach of the Surveillance Devices Act.

I guess there are two things to point out there in that most recent anecdote that has come across my desk. The Surveillance Devices Act is already an extraordinary impediment to us broadcasting stories which potentially are in the public interest, and there are whistleblowers. 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. That was generated by genuine, well-motivated whistleblowers. To go back to your original question, yes we would take that motivation into account, but there would be a lot of other things we would take into account as well.

The Hon. COURTNEY HOUSSOS: Just a follow-up question: Should there be added protection for whistleblowers?

Mr MALEY: I think it is a genuine impediment to free speech as it is understood in this country that there is no public interest defence in the Surveillance Devices Act, and there is very, very little protection for whistleblowers as well; it varies depending on whether they are in a private organisation or a government organisation. In fact, if you work for government the impediment to whistleblowers is much greater than if you work for a private company—that is my understanding. It is much more difficult to be a whistleblower if you work for the government than if you work for a private company, and most of the situations you are talking about are in private companies. Yes, we believe there should be more protection for whistleblowers, definitely, but 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 that I am aware of in the English-speaking democracies.

The Hon. RICK COLLESS: Onerous for the media?

Mr MALEY: Yes. In our view, it might surprise you, we believe we play an important part, an important role in assessing and judging responsibly when these stories are in the public interest, and when they are in the public interest the fact that we do not have a defence against particularly the Surveillance Devices Act is a real impediment to us reporting this area. In practice, I think one of the effects of this, in New South Wales in particular,

is that when there are instances of genuine animal cruelty, where people have done something which should be exposed and they are exposed, the only exposure that they get is through activist websites, where there is no effective control of corroboration, there is no opportunity for us to corroborate these stories, there is no opportunity for us to assess the public interest, there is no opportunity for us, in a sense, to make those sorts of judgements, which is our professional expertise.

The Hon. RICK COLLESS: Can I just expand on that? How do you check the veracity of the material you are given and how do you determine whether it is a whistleblower or an activist?

Mr MALEY: As I said before, it is not the most important element deciding whether they are a whistleblower or an activist; the important thing is to assess the truth of what has been presented to us, to corroborate it. There are a number of things we can do. If it has been taken on a mobile phone there will be metadata which we can use to assess it. We have got technology for doing a reverse search to see whether it has come out elsewhere. One of the classic ways that this sort of information is put into the public domain falsely and in a deceptive way is just to simply, as I think one of the earlier witnesses from the pork industry said, pick up information from other forms of media and other media and then present it as their own or present it falsely.

We have access to technology which can capture most of that and we use it to do that. That is one of the first things that we would do; we would check its metadata—often there will be GPS data, there will be time data, there will be all sorts of data that we can use to check, sometimes, not always, whether it is from where it is said to be. But we would also never run a story of that nature without checking with the producer himself. We would go to the organisation—that is the ultimate form of corroboration. Probably the most important policy in any code of practice in any media organisation—every major media organisation has it—is the responsibility and requirement to seek a response from anybody against whom you are making allegations.

To broadcast images of animal cruelty relating to a specific facility or farm or property is a very, very serious allegation. We are aware that it is a very, very serious allegation and we would never run an allegation at the ABC—and I think I can speak on behalf of every other media organisation that we represent through the organisation that we are here to represent—would never broadcast that without going to that organisation, and that will give the organisation an opportunity to say, "It is simply not true", and we will have to assess that. That is a normal journalistic process that we go through.

Again, this issue of the background of the person, if it is a genuine whistleblower we will check their employment record; we will check that they were actually working at the time and the place they said they were working and that they were in the role that they said they were working in; we will check their background. To go back to the original question, the nature of the person making the allegation is a factor because one can determine whether you have got a genuine whistleblower on your hands or an activist; it is not that hard for us to figure out. If it is a genuine whistleblower and we can determine that that person has worked at the particular property at the particular times, has got a record as an agricultural worker or whatever, that obviously lends that person greater credibility than a person who is a full-time activist. That is something which we will weigh up. That does not mean that we will not believe a full-time activist, it is certainly not the case. It is one of the many factors that we would weigh up in making an assessment of the credibility of an allegation.

The Hon. MICK VEITCH: Do any of the other panel members have anything to add to that?

Mr DORIZAC: No, I think Mr Maley's position is pretty similar to SBS. We have not done as many stories around this area as the ABC has done but our processes are very similar. The SBS's code of practice, again is very robust and has obligations around accuracy and impartiality for our news and current affairs programs. In terms of the question you asked, again, it is a factor regarding motive. It is useful from a journalistic point of view to know if there is a motive or what that might be, credibility, and also interrogating the footage, as Mr Maley set out, is also what are we actually seeing in the footage versus the motive of the person. That is really the key: Is it showing wrongdoing or illegal activity? But otherwise I think Mr Maley covered most of it.

Ms WALADAN: I underscore what my colleagues have said, that motive is a factor in determining credibility. Credibility is the key issue. A nefarious motive will not necessarily undermine the public interest in the information. If the information itself is credible, that is the key problem: Is there a public interest in disclosing the information or is there not? That is our job to determine that and make sure that we are confident that that is the case and that is what we do.

The Hon. MICK VEITCH: You cite the McManus case in the submission to this inquiry. My understanding was—and please correct me if I am wrong—that the McManus decision concerned a whistleblower from the Commonwealth public service, is that correct?

Ms WALADAN: When it comes down to the details of the case, I may need to have a look at them and take that on notice.

The Hon. MICK VEITCH: On protections for whistleblowers, you cite the New South Wales legislation for journalists, which in essence arises because of consideration of the McManus case. Is that correct?

Mr MALEY: I do not know how that legislation came about.

Ms WALADAN: I would have to check.

The Hon. MICK VEITCH: It is interesting to see that precedent led to some legislative arrangements or changes, both at a Commonwealth and State level.

Mr MALEY: I am not sure whether the Surveillance Devices Act, the way it is written, was a response to these specific issues or not, to be honest. I do not know the history of it, I just know the practice of it.

Ms WALADAN: We can take that on notice.

The Hon. MICK VEITCH: Your submission raises the concept of privilege that arises around self-incrimination or potential self-incrimination. Can I get the panel's view on how you see the proposed legislation impinging on that, if it does, and what are the ways around that?

Ms WALADAN: As we said in our opening statement, any legislation that requires citizens to disclose or report to authorities within specific time frames in relation to recordings that they have made impinges on that right. Sources and whistleblowers are anonymous and that would require them to disclose their identities and that is really the concern. There would then be a massive chilling effect on people who would be concerned about coming to the media with these issues, or even taking the recordings, particularly in the circumstances where there are penalties and offence provisions attached to not actually complying with those obligations.

Mr MALEY: The problem we see potentially in this particular legislation is 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. The history of that particular story was that it was recorded, essentially by activists over a long period of time, without any involvement of the ABC while they were doing it. They bring that to us and then there is a long period of corroboration, as there was. 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. That was an investigation which took them a long period of time. One incident of animal cruelty at a greyhound track is obviously regrettable, but it is infinitely more significant to uncover a systemic problem. To uncover a systemic problem and corroborate a systemic problem requires time, effort and a degree of confidentiality in the process of pursuing that investigation. In effect, with the greyhounds there were two sequential investigations, both of which took a considerable period of time. I do not know how long the organisations that recorded the video took to do it, but I know it was many, many weeks of work by the ABC team that looked at it to corroborate the accuracy of the footage.

Our fear in this legislation is I think principally that what it is attempting to do to short circuit that process is to prevent that process. There is an unintended consequence of that, which is that instead of a responsible media assessing, weighing and corroborating these issues, you leave it solely in the hands of activists, who may indeed just be interested in obstruction. That is not the ABC and I do not think there is a major media organisation in the country that wants to close down the pork industry or wants to close down the chicken industry. That is not the sort of thing that motivates a media organisation. It might be motivating an activist but that is not our motivation. All we want to see is a legal industry that abides by the rules. Our interest, if you like, what generates an investigation from our point of view, what we think is in the public interest to disclose, what we think is newsworthy, is when people are breaking existing laws, existing legislation.

The Hon. RICK COLLESS: Which applies to any industry—it does not matter what industry—across the board, doesn't it?

Mr MALEY: That is right. Our interest is not to close down the industry. Our interest is to make these industries law-abiding, better regulated industries. We believe that we have a significant and legitimate role to play in that. Our fear is that because we, frankly are not prepared as an organisation to send our reporters and our cameramen into that situation—we forbid our staff to break the law to gather this information—but when somebody else has done that, I think we play an important role in assessing and filtering and curating that. We also play a very, very important role for genuine whistleblowers, which is a different situation again. Our fear is that our capacity to run a genuinely good quality investigation over a period of time will be hampered by this legislation.

The Hon. WES FANG: While I accept that, and I understand that there is a need to investigate the evidence you have been presented, certainly there is a view out there as well that once you are in possession of that evidence, without acting upon it and alerting authorities to whatever has occurred, and allowing that activity to occur and to continue, you are in fact aiding and abetting and become a party to that.

Mr MALEY: We are very conscious of that issue.

The Hon. WES FANG: How do you address that?

Mr MALEY: I can speak only for the ABC in this regard; I cannot speak for any other organisation. I genuinely do not know what the processes are in other organisations, but I suspect they are similar. The process in the ABC is that at the latest point when we have corroborated the accuracy of the footage, we will tell those people to report it to the appropriate authorities. I am not aware in recent years of when we have run a serious animal welfare story where the issues and evidence have not already been given to the authorities. It is the first question we ask when we are rung by one of these organisations or by an individual—a whistle-blower, activist or whatever. We ask, "Have you given this information to the authorities and what have they done with it?" Part of the public interest is whether or not the authorities are addressing it or whether they have closed it down.

The Hon. MICK VEITCH: The authorities cannot address it if they are not told about it.

The Hon. WES FANG: Once you are in possession of the evidence and you do not act on it or take time to investigate it, are you not complicit?

Mr MALEY: We are not complicit until we have corroborated it.

Mr DORIZAC: A lot of this is about trust in your sources and the media's role in all of this. Our role is not to provide authorities with evidence for them to conduct investigations.

The Hon. WES FANG: No.

Mr DORIZAC: If we were to act essentially as a middleman in this process of being given information and passing it on without testing it ourselves—

The Hon. WES FANG: If there are animal welfare issues and you are aware of them but you do not provide that information to the authorities, are they not sacrificial lambs if any animal welfare issues arise after you have been given the information? Are you not allowing that behaviour to continue until you have a story ready? Does that not make you complicit in that treatment?

Ms WALADAN: We would disagree with that. You cannot put a timeframe on the extent to which you are allowed to investigate a particular instance of animal abuse before you can properly bring the issue to light. Our role in a functioning democracy is to air these issues and to bring them to light once we have done what my colleagues have outlined and once we are confident there is a problem and sufficient public interest in reporting it.

The Hon. WES FANG: But once you have the evidence—

The Hon. MARK PEARSON: Can I ask a question?

The Hon. WES FANG: What is your responsibility with regard to the animal welfare concerns that occur after you get the information and until you submit it to the authorities? Does that not make you complicit?

Mr MALEY: No, I do not think it makes us complicit. However, there is an ethical issue, and we run across it in investigative journalism all the time, and not only in relation to animal welfare issues. We become aware of what we believe is unethical, improper or illegal activity in all sorts of walks of life. People come to us with allegations. We largely broke the Commonwealth Bank story; there were allegations of illegal behaviour by the bank. We do not consider ourselves complicit if we go through a process of corroboration and investigation before we make something public. We assess each story on a case-by-case basis. If we believed that there was serious harm happening to an animal or a person—it is more likely in areas other than animal welfare—we would report it.

The Hon. WES FANG: I do not want to draw parallels. That is exactly what is at the back of my mind. I do not want to dwell on issues raised in the media of late; I want to keep them separate. If a person were being harmed versus an animal and you did not act on it while you were investigating, I suspect that you would be complicit in the same way that I think you are possibly complicit when you are aware of animal welfare issues. In order to investigate or to keep a story—

Ms WALADAN: This issue comes back to the fact that the law needs an appropriate balance between making sure these issues and individual circumstances come to light and the broader public interest in being able to investigate the story properly and to bring it to the public's knowledge.

The Hon. WES FANG: Normally it will be an animal liberationist group that will bring you the information.

Ms WALADAN: But our view is that if this bill were in place during the investigations involving the greyhound industry or the live export industry, those things would not have come to light.

The Hon. WES FANG: I suspect they would have come to light—

The Hon. MARK PEARSON: I would like to ask a question.

The Hon. WES FANG: It could have given you another opportunity or another avenue to investigate.

The Hon. MARK PEARSON: My question is—

The CHAIR: Order! The Hon. Mark Pearson will have a chance to ask questions when the Hon. Wes Fang has completed his line of questioning.

The Hon. MARK PEARSON: This is going on too long. Mr Chair, I think you need to call the member to order.

The CHAIR: I do not take my instructions from you, Mr Pearson.

The Hon. MARK PEARSON: Point of order—

The CHAIR: I will not call the Hon. Wes Fang to order. I do not do what you tell me to do. He will finish his line of questioning and then I will allow you ask a question if you are lucky, but not if you speak to me in that tone. Did the member hear what I said?

The Hon. MARK PEARSON: I am all ears.

The CHAIR: Do not talk to me in that tone. The member will come to order. Has the Hon. Wes Fang finished his line of questioning?

The Hon. WES FANG: Yes.

The CHAIR: The Hon. Mark Pearson can now ask a question.

The Hon. MARK PEARSON: Is it true that sometimes the media will cooperate with the police, perhaps as in the case of the greyhound exposé? I understand that the police were very heavily involved and were doing their own investigation over a long period to corroborate all the evidence required. Is that the case sometimes?

Mr MALEY: I would not want to talk specifically about the greyhounds because there is still a lot of confidentiality around the specifics of that investigation. It is actually more common than you would realise that we work with authorities in these sorts of cases, including cases involving very serious criminal behaviour. If you think back on some of the more high-profile investigations we have done of criminal behaviour at the ABC over the past few years, without going into too much specific detail, they are cases where we in effect worked with the police because there are things that we can do that they cannot and vice versa. The same is true in the animal welfare area. The short answer is yes, it does happen.

In answer to both questions, we are very cognisant of our ethical responsibilities to prevent harm. It does create ethical issues where we are aware of the potential for ongoing criminal behaviour or ongoing abuse of some sort. We are aware of that and of our responsibility to report and to stop it as soon as possible. It is in the nature of what we do that for us to be effective we have to hold back for a period of time.

We were not generally speaking about significant periods of time. However, our fear about the legislation is the impact on what we think are reasonable periods to hold back while we investigate, corroborate and go through all the proper processes. That may indeed involve talking to the police, the RSPCA, the Department of Agriculture or whatever it might be—which we do. We are afraid that the important role we have, which is to look for new evidence and other lines of inquiry, to corroborate and to bring it to public attention in a systematic, well thought through way may be jeopardised. That is our fear. We are very cognisant of our ethical obligation not to sit back while harm is happening to either an animal or a human. We come across this situation surprisingly regularly.

The Hon. MARK PEARSON: In your submission you say that while the bill purports to be aimed at reducing animal cruelty, it is plain to you that the opposite is likely to be the impact. Can you elaborate on that?

Ms WALADAN: That goes back to the timeframes that are imposed and putting them around the amount of time we have to investigate, to properly corroborate material and to decide at what point in time something is sufficiently credible and in the public interest to report.

The Hon. MARK PEARSON: That clarifies it, thank you.

Mr DORIZAC: It goes back to the earlier point that, to a degree, the motive of these matters being raised, if there was that time restriction or obligation to report things, people would not bother potentially investigating these because of having to disclose it within a day, or whatever the time frame is.

Ms WALADAN: Yes, agreed. Also, if you have to report and disclose and the confidentiality of a whistleblower or informant is brought to light, that also then has the chilling effect that people will not be bringing this material to journalists in the first place. It will have a chilling effect in that regard.

The Hon. MARK PEARSON: Would a good example be the greyhound expose that what the police and yourselves saw was probably the case and then the police confirmed that systemic cruelty was happening and it was quite rife across the industry? That would never have been exposed if it had to be reported within 48 hours in the first instance and any argument would be that that was a bad day rather than the whole cart was full of rotten apples.

Mr MALEY: Yes. It is the difference between is this one rotten apple or is this a systemic problem, and distinguishing between the two is very difficult and takes time.

Ms WALADAN: And time frames encourage it to go underground.

The CHAIR: Thank you very much for coming to give your evidence today. We will have a short adjournment.

(The witnesses withdrew)

(Short adjournment)

LYNDA STONER, Chief Executive Officer, Animal Liberation, affirmed and examined

ALEX VINCE, Farmed Animal Campaign Co-ordinator, Animal Liberation, affirmed and examined

The CHAIR: Would you like to make a short opening statement?

Mr VINCE: We both would. I will begin. From the outset, it must be acknowledged that the spirit of this inquiry has not been about improving or even noting any of the serious animal welfare issues currently occurring in Australia. Rather than being about preventing animal cruelty—itself a serious crime—the intent of this inquiry is to prevent the documentation of animal cruelty. And rather than relying on existing legislation, the inquiry seeks to test the waters to see if further penalties can be added on to pre-existing offences.

If preventing animal cruelty were the true motivator here, people who continue to expose the ways animals are treated in this country would not be under fire. Without exposure, many of the most egregious practices would continue out of sight and out of mind. Rather than being about preventing animal cruelty, this is a blatant attempt to control what we know. Rather than being about preventing or even noting the existence of serious breaches to our already poor animal welfare laws, this is about ensuring that the public is not permitted to see such things—such films and photographs—because to do so could invite criticism.

If preventing animal cruelty were the honest incentive behind this inquiry, under fire would be those who commit the acts, those allowing them to continue, or those deciding to turn a blind eye to their existence. Instead, Australian consumers must be permitted access to information so they can make informed decisions based upon all of the facts, not merely a selection chosen by some. It is deeply concerning that at no stage has the inadequate resourcing and collapsed capacity of the authorities tasked with overseeing and acting on animal cruelty been raised. It is ever more concerning that existing laws have been disparaged as not enough for some, but too much for others, to the point that an inquiry into differential protection and the gatekeeping of public interest issues has called us all here today.

And yet, Australians genuinely care about animal welfare. They care because they know. They have seen for themselves, in pictures and in film. They know, because they have seen, that refusing to label something cruel does not make it okay. Rather than abuse being a one-off aberration, or a case of a single apple poisoning the otherwise well-behaved orchard, it is itself a non-negotiable element of using animals—because the only way consumers can know this, is if we are permitted, rather than prevented, from seeing, hearing and knowing what we are paying for. The only way to see, hear and know what animals endure in these settings is to either engage in activities like trespass, or rely on images generated by those who do.

Our argument has been the same since the seventies: No animal willingly offers its life to us, and no human needs an animal's body, blood, liquids, or fibres more than they do. No act that causes harm can truthfully be termed unnecessary, as all harm done on our behalf is entirely optional. At the very least, Australians ought to be permitted by our Government to see and decide for ourselves. To do otherwise is to advertise complicity in committing or covering over animal cruelty.

Ms STONER: Further to my colleague's comments, over the years it has been activists and only activists who have brought terrible instances of cruelty to the public. When we enter a property we never go near a person's dwelling. Our only intent is to get evidence of cruelty in the facilities housing animals. At no time in this country has an animal rights activist sought to obtain entry into a human dwelling, nor has an activist ever sought to harm property or person. When we enter property we ensure we have not been to another facility housing similar animals for weeks prior. We take all biosecurity precautions such as wearing hazmat suits, gloves and hair coverings and we disinfect our footwear. We carry signs like this on our person, reading:

Our sole purpose is to give aid to animals we believe are suffering yet who are ignored by all the authorities. We are non-violent and vow no harm to any living thing or property.

There is not sufficient time here today but I will share a few instances when activists brought never-before-seen information to the public. After investigations and 33 people doing a sit-in at Parkville piggery—part owned by former Prime Minister Paul Keating—the then New South Wales Minister for Agriculture, Richard Amery announced an immediate ban on the tethering of sows. Again, after investigations and a sit-in at Bunge piggery—now known as Rivalea—the media coverage led that place to change from intensive to having eco-shelters and far greater welfare improvements.

The CHAIR: Excuse me, could you slow down a little bit?

Ms STONER: I will. I was just trying to get my five minutes in.

The CHAIR: You can have as much time as you like.

Ms STONER: Thank you. I appreciate that. Evidence obtained by undercover workers at Burrangong abattoir in Young and shared with Animal Liberation, showed footage of pigs being scalded alive, drowning in boiling water, beaten with iron bars and shot in the face up to eight times by inadequate shot guns. I was at the end of the phone to one of the workers every night as he tried to debrief, such was his trauma at what he was witnessing. This expose led to a major police investigation and prosecution.

Animal Liberation took Channel 9's *A Current Affair* to Boen Boe Stud Piggery near Mittagong. The story was the fifth highest rating for that year, which is indicative of the ever-increasing interest the public have in the welfare of farm animals. The RSPCA eventually successfully prosecuted the management for causing distress and suffering—an important precedent. In 2012, the Australian Competition and Consumer Commission [ACCC], through the Federal Court, made Pepe's Ducks pay \$400,000 arising from false, misleading and deceptive conduct, based on footage gathered by activists. The following year the ACCC, again based on footage obtained by activists, took Luv-a-Duck to court for false, misleading and deceptive conduct and fined them \$360,000.

In 2012, following a tip off from a worker, over a two week period evidence was gathered at Ingham's processing plant in Tahmoor. Footage showed turkeys with their legs sometimes torn off when they were shackled upside down and workers picking birds up and slamming them down, stomping on their heads. The place was temporarily closed and five workers sacked. That same year the shocking evidence gathered through whistle blowers at Hawkesbury abattoir, led to the New South Wales Food Authority calling for its immediate shut down. The authority called it a rogue operation, even though twice in one month they had to shut down abattoirs because of systemic cruelty. The evidence gathered was over six days. The Chief Veterinary Officer with the Department of Primary Industries said he was shocked and horrified by what he saw, including pigs being beaten with iron bars. One pig was struck 13 times because he was not stunned properly. Sheep were hung up and skinned alive.

In the infamous Wally's Piggery footage showed pigs being bludgeoned with a sledge hammer, sows with open sores, sick and dying animals, and workers throwing and kicking piglets and beating sows. At the time, Australian Pork Limited CEO Andrew Spencer said he was appalled and Katrina Hodgkinson said that she was appalled. All said that this was a rogue operation. Clearly it was not, given the amount of cruelties continued to be exposed at piggeries. Wally's was depopulated and no longer operates. The footage was secretly filmed over time by Animal Liberation NSW and Animal Liberation ACT, and resulted in a combined raid by Yass police, animal welfare inspectors and the New South Wales Food Authority.

Recent media at a duck killing facility showed footage obtained by activists of day-old ducklings being dropped into an industrial shredder, adult ducks being kicked and thrown around a barn by workers, and ducks who should have been stunned before slaughter hanging by their feet on a conveyor belt while they bleed to death after having their throats slit. This weekend just past, we saw footage from South Australian Strath Meats abattoir showing animals flailing, drowning and being boiled alive. Poor electrical stunning of pigs screaming with pain, still visibly conscious when their throats were cut. In one section a worker attempted to stun a cow at least 14 times before it was effective. Live cows hanging by one leg from the ceiling.

In 1995 four activists, including the Hon. Mark Pearson and myself, were arrested at a battery hen facility in the ACT. The defence case rested on one thing only—that we had a reasonable excuse for doing so. Magistrate Michael Ward found in favour of the defendants saying "producing eggs by means of battery cages is inherently cruel"—based on footage obtained by activists and after expert opinion was heard. In his findings Magistrate Ward said, "In short their trespass did no harm to anyone, caused no stop in production, no interference with work, no damage and they did some positive good by helping obviously sick hens."

He went on, "It is ironic that the prosecution can argue that cruelty can be excused on the grounds of profit but that the defendant's actions to draw attention to that cruelty cannot excuse their harmless trespass." Magistrate Ward found that each of the defendants had a reasonable excuse for trespass by bringing to the public the acts of cruelty that were being perpetrated by this facility. Without the work of peaceful activists and groups like Animal Liberation none of these things would ever see the light of day.

The Hon. MICK VEITCH: In your submission on page 5, paragraphs 3.1 and 3.2. You state in paragraph 3.1:

Legislation that requires the rapid reporting of incidents of animal cruelty captured via surveillance, for instance, fails to acknowledge the significant public interest considerations associated with the collection of evidence of systemic animal cruelty.

Previous to your testimony there were discussions around the balancing act between one incident of animal cruelty and the need to allow that to continue to prove systemic animal cruelty. How does your organisation balance the first instance as opposed to systemic and considerable public interest considerations?

Mr VINCE: I think any call for rapid reporting requirements reveal one of two things: The first would be naiveté as to what actually happens in the facilities and that could be due to lack of information or misleading information. The second is, there is an acute understanding of what is happening on these places in these facilities but there is perceived to be a need to preserve and protect the profitability of these places.

The Hon. MICK VEITCH: That is not my question. My question is how do you weigh up the significant public interest considerations between reporting the first instance you find and waiting for systemic occurrences to take place? How do you balance reporting the first instance and deciding the significant public interest consideration, what is the measure you use?

Mr VINCE: 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.

Ms STONER: I would agree with my colleague. Often times when there has been an installation of cameras, getting back to retrieve those cameras could take some time.

The Hon. WES FANG: How many sacrificial animals are you prepared to wait for to build a case: one, two, three, 10?

Mr VINCE: I do not believe that is a reasonable question.

The Hon. WES FANG: Why not?

Mr VINCE: I do not believe we are sacrificing any animal.

The Hon. WES FANG: If you are aware there are animal welfare issues and you have a recorded instance of it and you are seeking further evidence, is the second occasion when you report it, the third, the fourth, the tenth, where do you draw the line?

Ms STONER: Often times, as I said to Mr Veitch, we are not able to obtain the cameras for four or five days.

The Hon. WES FANG: You have broken in and trespassed to install them and you need to break in and trespass again to recover them?

Ms STONER: Yes, that is correct.

The Hon. WES FANG: Mr Vince, putting aside your somewhat inflammatory opening statement where you questioned the motives of the Committee, the bit I found most concerning was your talk of trespass. Mr Malcolm Caulfield, Principal Solicitor for the Animal Law Institute, testified that there is no instance where trespass and breaking into private property should be condoned, would you disagree with him? Do you think that is permissible and do you encourage your members to do so?

Mr VINCE: No, we do not. I think there are cases—

The Hon. WES FANG: When you become aware of it, do you report your members for that or do you condone their actions?

Mr VINCE: We do not receive footage that way, it is anonymously received footage. We do not know who has taken the footage. We do not suggest our members go out and recklessly break the law. If there is evidence of animal cruelty we report that to the authorities with the expectation that something will be done.

The CHAIR: Can I caution the witnesses that you can say what you like under privilege but be careful about self-incrimination under oath.

Mr VINCE: Sure.

Ms STONER: Thank you.

Mr SCOT MacDONALD: I am trying to understand Animal Liberation. The RSPCA has its role and you take a different tack. Do you try to engage with the industry, whether pork or eggs, to say, "We have some specific or industry-wide concerns about that farm or a more widespread practice"? Obviously we are hearing about "gotcha" stuff and there is a debate about that. What is your level of engagement with the industry—or with a specific farm, if it has come to your attention? Would you pick up the phone and say, "We've had this intelligence come through to us and we'd like to talk to you about it"? Does it work that way?

Ms STONER: No, we have not done that. We have had meetings over the years with the farmers' federation and other people involved in animal agribusiness, but the scenario you painted, no, we have not done that.

Mr SCOT MacDONALD: Going down that track, was it the National Farmers' Federation or NSW Farmers?

Ms STONER: State federation.

Mr SCOT MacDONALD: Did you find that productive, was there commonality anywhere?

Ms STONER: No. I have to be honest: There was no commonality. We are at different ends of the spectrum. You asked to differentiate between the RSPCA and Animal Liberation: The RSPCA is an animal welfare body and Animal Liberation is an animal rights body, and we unequivocally do not believe that animals should be killed for human purposes. Therein lies the difference.

The Hon. MICK VEITCH: In paragraph 3.2 of your submission you state:

As the primary regulatory authorities tasked with investigating and/or prosecuting animal cruelty cases do not currently have the power or authority to utilise surveillance technologies...

You go on to talk about the probability of such investigations taking place is unacceptably high. There are two parts to the question: First, do you think we should provide the authorities prosecuting animal cruelty cases with the capacity for surveillance? Second, what are your views of the adequacy of the resourcing of those bodies?

Ms STONER: Yes, I do believe that these bodies should have much more powers, that the RSPCA should be able to obtain warrants and should go in and make unannounced inspections of farms. We often have the feeling that there may be phone calls made prior to inspections, and we believe that the RSPCA should be much greater funded by the Government and that there should be at least double the amount of inspectors. It is ridiculous to expect that one inspector can cover from Coffs Harbour down. New South Wales is so huge, and the burden of investigations is massive. At the very least, they should have at least double the capacity of inspectors and they should have much greater powers of entry. We are aware that the Police Force has the power to secrete cameras into facilities, and we would encourage more of that—in fact, we will be working more and more with the police in that capacity.

The Hon. MICK VEITCH: I have asked all witnesses today this question to try to get both sides. We heard testimony earlier from privacy law experts and that centred around the need for a proper privacy tort in Australia, because we currently do not have such a tort. The scenario is that the same rules should apply to a drone flying over a feedlot to take surveillance footage as apply to a drone taking footage of a third-storey bedroom window of a unit in Sydney if both images are posted to an internet forum. There are similar legal issues around privacy, one in Sydney and the other on the farm. What is your view of the need for a privacy tort or privacy laws in Australia?

Mr VINCE: I do not have any expertise on that, so I would like to take it on notice.

The Hon. MICK VEITCH: You can take it on notice. Ms Stoner, do you have any views?

Ms STONER: I can just offer my thoughts, and those are that a drone flying around a bedroom, a kitchen or whatever is far removed from a drone flying over a factory, shed or facility in order to gauge whether a farmer is correct in claiming that his facility is free range or to prove that that is not the case. It is quite acceptable to have a drone flying over there, because it is not intrusive as far as filming anyone's children or people; it is a business.

The CHAIR: You said that you are an animal rights body and the RSPCA is an animal welfare organisation. In your evidence you have outlined the differences, and you have said that you want no animal killed, farmed or even used for human purposes. What is the purpose of your covert entry activity if not to prevent cruelty?

Ms STONER: It is to prevent cruelty and to bring cruelty to the public domain and to the authorities. When we come into receipt of the sort of footage, we alert is the NSW Food Authority or the Victorian Food Authority, the police and the RSPCA. It is extremely difficult for animal rights activists to watch the kind of footage that we were watching on the weekend, for example. Our goal is to bring this to the public domain and to the authorities so that they can step in and remove workers like we saw from their role of abusing animals. Our aim is to stop cruelty in every way that we can.

The CHAIR: I think your answer is a little disingenuous. In your statement and in Mr Vince's statement you said that yours is an animal liberation organisation and you want total and complete removal of animals—the use of animals, animals as food, animals as anything—from humans and yet you talk about cruelty only. Where is that leading you? What is the purpose of that process if it is not to end up where you want to be? What I am saying is that you have not actually answered my question.

Ms STONER: I beg your pardon; I will endeavour to do so. Ultimately, the aim of every animal rights activist is the abolition of the use of animals for anything. Along that path, when we see immediate cruelty happening to animals in whatever facility, we want it stopped as quickly as possible.

The Hon. RICK COLLESS: Even for non-lethal production, such as wool production?

Ms STONER: As a vegan, I do not wear wool and anyone in our organisation does not wear any animal products.

The Hon. RICK COLLESS: In that case, you must support the cotton industry.

Ms STONER: Yes.

The CHAIR: If that is the case, you do not support what the RSPCA are doing because they do not go far enough. Is that what you are saying?

Ms STONER: It is not that I do not support them—in fact, I had a wonderful two-hour meeting with them about three weeks ago. It was very productive and very constructive, and I look forward to working with them more and more into the future. I do believe that they need much greater powers and much more capital invested into what they are doing, because they are constrained by lack of people power and lack of facilities.

The CHAIR: Are your cruelty prevention activities just a ruse?

Ms STONER: I do not understand your question. A ruse meaning what?

The CHAIR: A ruse being something fake, something you are working on because ultimately, by exposing cruelty in a matter in an industry in which people use animals in any way and no matter what those people try to do, it is never going to be good enough because it does not get you to where you want to be.

Ms STONER: I know that we do not live in a utopia and I do not expect in my lifetime to live in a utopia, but every day of my life and every day of this organisation's existence we will do whatever we can to stop the cruelty that we see happening.

The CHAIR: With respect, you have not answered my question. My question was: Is what you are doing a deception because it is not related to cruelty, because the RSPCA do a very good job on cruelty mitigation? You are looking for something completely different.

Mr VINCE: I would disagree. I do not think the RSPCA—

The CHAIR: Please explain. Please elucidate.

Mr VINCE: I think the RSPCA is hampered and the whole animal welfare legislation and regulation area needs to be looked at really hard, because horrible things are happening and mostly people are getting a slap on the wrist.

The Hon. WES FANG: If we were to guarantee a utopian view, where the RSPCA were 100 per cent funded for everything they wanted and had 10 times the number of inspectors, that every farm had CCTV and was inspected every day thanks to complete open gate access, but we still had farms that used animals to produce milk, wool and even meat, that would not be acceptable in your organisation's view?

Mr VINCE: No.

Ms STONER: It would be a giant step forward.

The Hon. WES FANG: But it would not be acceptable and you would continue to campaign for the abolition of farms?

Ms STONER: Yes, we would.

The Hon. WES FANG: There is no way in which your organisation is prepared to work with organisations like the RSPCA and farmers, because your total goal is the abolition of farming and the use of animals?

Ms STONER: As I said—

The Hon. WES FANG: It is a yes or no question.

Ms STONER: — we had a very cordial and very constructive meeting with the RSPCA and we look forward to working with them much more into the future.

The Hon. RICK COLLESS: If your vision for the future of animals becomes reality, what should happen to the millions of farm animals that are held in Australia at the moment? Would you simply open the gates and let them roam free?

Ms STONER: I think that is a fine question, thank you. My vision of what one day will happen—and it will because the earth simply cannot sustain meat and dairy production, which is the bottom line, but it will be a long time before that happens—is that most animals on farms are artificially inseminated, so we would have that ceased as a beginning point. Animals are bred and kept in a factory line according to when the farmer wants them to be pregnant. So the day will not come in three weeks when suddenly all animal production will cease and suddenly millions of animals will not have a home. It will not happen like that.

The Hon. RICK COLLESS: I will have to correct you there. I have worked in rural industries all my life and to suggest that most farm production animals are artificially inseminated is simply not correct. There is an industry around artificial insemination, for sure, principally in the stud industries, but the vast majority of commercial operations run cows and bulls and ewes and rams together to allow the natural process to occur.

Ms STONER: Turkeys are no longer able to procreate naturally because we have bred them to such a state, with their bulk, that they are not able to procreate. So somebody masturbates turkeys; that is their job. Again, with the pig industry they are all artificially inseminated. It is intensive industries particularly where this sort of thing goes on.

The Hon. MARK PEARSON: Would it be correct to say that members of Animal Liberation have an ideology, which is what you describe, a vision, but at the same time can understand that most of the activities with production animals is lawful and that when you go to facilities which are considered to be lawful and one sees what would be breaches of law, that that is documented and it assists the authorities to investigate? Would that be correct?

Ms STONER: Yes.

The Hon. MARK PEARSON: Would it be true that at the same time you would see that it is important to inform the public of what is considered to be lawful practices but may be beginning to come into question as to whether they are legitimate and worthy of a social licence?

Mr VINCE: Yes, I would agree with that. I would go back to what I said before that simply because something is not labelled cruel does not make it okay or acceptable.

Mr SCOT MacDONALD: How do you see this playing out in places like Europe and the United States? Where is it going in those sorts of areas? What are your learnings from there? The Chair has just asked me to raise social licence and how you rate that and enforce that. Tell us how you see it overseas.

Mr VINCE: There has been so-called ag gag legislation put forward in states in America. But in terms of how we use that information, we just use it to inform ourselves of what is going on overseas and that is the extent of it.

Mr SCOT MacDONALD: I was more asking what is happening overseas. You said in some states overseas there are ag gag laws. Is that right?

Mr VINCE: I would have to take that on notice.

Mr SCOT MacDONALD: Or Europe.

Mr VINCE: Again.

Mr SCOT MacDONALD: Any comments on social licence to farm or how you rate that?

Ms STONER: I am sorry, I do not understand what you mean. I do not believe I have heard that expression.

Mr SCOT MacDONALD: We talk about social licence to mine, social licence for coal seam gas and just about any activity. Do you think there is a legitimate debate about a social licence to intensively farm?

Ms STONER: I honestly do not have an opinion, unfortunately, on that.

The CHAIR: That is okay. That is a good answer.

The Hon. COURTNEY HOUSSOS: I wanted to come back to the point you raised, Ms Stoner, about unannounced RSPCA visits. We had the opportunity to do a site visit at a chicken processor in Western Sydney yesterday and they said to us the RSPCA monitors particularly the farms that are associated with that processing facility, and they were quite proud of that, that they had only RSPCA-approved farms that were inspected twice,

perhaps four times a year—this included unannounced visits. I know from a consumer perspective that the idea that the RSPCA inspects and verifies these organisations gives the consumer a level of confidence as well. Do you think that that is realistic? Do you think that that perception is correct?

Ms STONER: I believe that at times there are systemic problems in some places that have RSPCA approval. As far as unannounced inspections, I think there should be much more of that. I would imagine that they were informed of your visit yesterday probably and it would have been a very clean, sparkly place that you walked into.

The Hon. COURTNEY HOUSSOS: My question was not so much around that; it was more around the RSPCA side of it. I appreciate that any organisation that is receiving a parliamentary inquiry will probably give us their best view, and that is appropriate, but my question is more around the RSPCA verification. In your earlier testimony you seem to say that there were not unannounced visits or that they do not occur, or is that just more the feedback that you get?

Ms STONER: That is the feedback that we get, that at times there may be phone calls before inspections are undertaken—not always but sometimes.

The Hon. WES FANG: Have you got evidence of that?

Ms STONER: It was information given to us.

The Hon. WES FANG: Is someone prepared to testify to that effect?

Ms STONER: I am not prepared to prejudice—

The CHAIR: You do not have to give names.

The Hon. WES FANG: That is fine. I am just asking the question.

The CHAIR: You mentioned a couple of times in your previous evidence that you have had some productive discussions with the RSPCA recently. Could you tell the Committee what came out of those productive discussions as far as you are concerned, that was productive from your point of view?

Ms STONER: It was very heartening to have this two-hour discussion with them. My understanding is that nine RSPCA inspectors have now been removed or have left their jobs because what they were doing was not satisfactory, and the people who have replaced them are, I believe, much better suited for the work that they should be doing. That is why I say we look forward to working with these people into the future, and we know that some RSPCA inspectors have specific areas that they really care about, like cruelty in puppy farms—that is one inspector's passion. It was just nice to have an open dialogue and know that we can go to them. Their lawyer was present and she was able to help us understand better why some of the evidence that we have gathered was not able to be used for prosecutions, and that was very instructive. So we will know better how to do things should we do those in the future.

The Hon. MARK PEARSON: Is it the case that the then assistant police commissioner for rural crime Stephen Bradshaw caused a meeting to be had with Animal Liberation as a consequence of a 1800 animal cruelty hotline and also caused the RSPCA to come in and the Animal Welfare League? Can you explain why the assistant police commissioner for rural crime initiated that meeting and ongoing meetings?

Ms STONER: He initiated that meeting in a way to bring all of us together to work better together because we had been taking a lot of evidence to him personally. We met with, at the time it was the police prosecutor as well to also further see how we could address it when we hear about instances of cruelty happening, whether it is through our cruelty free hotline or through other avenues. At that time Assistant Commissioner Bradshaw also made it clear to us that the police were in a position, as we have discussed here today, to put hidden cameras into places, and obviously they can do that quite lawfully.

The Hon. MARK PEARSON: Have there ever been any charges laid against an activist from Animal Liberation or other animal protection groups for any violence or harm to a human being or animal?

Ms STONER: Never. That is the antithesis of what this organisation stands for. We are a peaceful, non-violent organisation. In fact, a couple of times when we have done sit-ins we have even cleaned the place up. We do not use any form of violence—it is just the absolute opposite of what this organisation stands for. So no is the short answer. No-one has ever been accused of or charged with any violent activity.

The Hon. RICK COLLESS: Do you consider illegal trespass in the middle of the night wearing a balaclava as non-violent? Violating people's privacy is not violence at all in your interpretation, is it?

Ms STONER: I do not believe in wearing balaclavas, personally. I just do not believe they should be worn at all. When I have gone into a facility it has been with my face open, and never, ever have gone near a human dwelling, have never encroached on anything that the people inside that house are doing. It has always been remote to human dwelling, just focusing on the sheds, completely away from anything that people may be doing in those places.

The Hon. WES FANG: You have only ever trespassed on production areas, not on homesteads?

Ms STONER: That is correct.

The Hon. RICK COLLESS: As a result of your activities, have you ever caused distress to the animals in those sheds?

Ms STONER: No, I do not believe so.

The CHAIR: I remind you, Ms Stoner: Be careful what you say.

The Hon. WES FANG: Have you ever been charged with trespass?

Ms STONER: Yes.

The CHAIR: You have to be careful about your admissions which, even under oath, are not actionable. People will listen and take notice of what you are saying and there may be some unexpected results coming out of that.

Ms STONER: Thank you.

The Hon. RICK COLLESS: We heard evidence earlier today from a farmer who runs pigs who had been the subject of an incursion by activists. The footage that resulted from that clearly showed that the pigs in the stalls had been disturbed in the middle of the night. They immediately thought it was feeding time, because they normally get fed early in the morning, so they started to squeal. The footage that was shown showed these pigs under stress, squealing and frothing at the mouth because they were not being fed when they thought they were about to be fed. That caused those animals some stress. Are you aware of that particular footage or was your organisation involved with that footage? It was in Young. You would be aware of the case, I am sure.

Ms STONER: I have seen so many piggeries that I cannot say that I know exactly the place to which you are referring. But I have seen pigs foaming at the mouth, bar biting because they are so psychologically damaged from being confined in these places. That is what causes them to foam at the mouth and bar bite. They are demented because of the way that they are kept.

The Hon. RICK COLLESS: That is not the evidence we took earlier today. The farmer told us that those pigs stay quiet all night until such time as they are fed in the morning. The farmer comes in with the buckets ready to feed them, the pigs get excited—of course—they feed, then they relax again.

Ms STONER: I think I also heard that gentleman say that animal activists killed or harmed pigs, and I know that in this House Katrina Hodgkinson also accused activists of killing pigs for our own ends. I just find that absolutely a shameful allegation, to suggest that animal rights activists, who spend their lives fighting to protect animals, could be accused of harming or killing them.

The Hon. WES FANG: I have often heard an acquisition that an animal liberationist witnesses an animal welfare issue somewhere, and they ask for it to reoccur so they can film it this time. How does it make you feel that people may act in that way?

Ms STONER: If I am to understand you correctly—and I am genuinely mystified—are you asking the question that if an animal has done something and the camera angle was not right, that someone makes the animal do it again?

The Hon. WES FANG: I have heard instances of overseas filming, say an Australian live export animal is slaughtered and an animal liberationist witnesses it, they ask for it to reoccur so they can film it. Would you condone such activity?

Ms STONER: No, I would not, absolutely not.

Mr VINCE: We would condemn that.

The Hon. MICK VEITCH: To be clear, I think there is a misunderstanding. The farmer this morning that the Hon. Rick Colless was talking about did not talk about piglets. That was another individual who spoke about that. To be clear, I do not think it was the same individual.

Ms STONER: Thank you for the clarification.

The Hon. MICK VEITCH: Someone else did talk about that.

The CHAIR: I do not think the farmer involved asserted that animal rights people bashed or murdered or did anything with animals at all.

The Hon. WES FANG: It was Australian Pork.

The CHAIR: It was someone from Australian Pork who said that. As there are no more questions, we thank you for your evidence, Ms Stoner and Mr Vince.

(The witnesses withdrew)

(The Committee adjourned at 15:59.)