

6 July 2018

Select Committee on Landowner Protection from Unauthorised Filming or Surveillance
Parliament House
Macquarie Street
SYDNEY NSW 2000

Via *Select Committee website*

Dear Committee members

Inquiry into landowner protection from unauthorised filming or surveillance

RSPCA Australia thanks the Committee for the opportunity to comment on the Inquiry into Landowner Protection from Unauthorised Filming or Surveillance.

It is important that surveillance devices legislation strikes an appropriate balance between protecting the privacy of individuals while not unduly inhibiting the exposure of illegal and unethical conduct in the public interest.

There have been many significant cases of animal cruelty in recent years that would never have been brought to public attention were it not for individuals taking it upon themselves to record the incident and bring it to public attention. Filming by activists, investigative journalists, by-standers, and whistleblowers has stimulated intense public and political debate which has led to widespread industry and legislative reforms that have resulted in profoundly improved outcomes for animal welfare and indeed the sustainability of certain industries.

Examples include:

- The exposure of horrific conditions on-board five live sheep export voyages in 2017 leading to widespread industry reforms and criminal investigations;¹
- Systemic live baiting offences in the greyhound racing industry across multiple states resulting in multiple successful criminal prosecutions and major industry reforms;²
- The operation of illegal puppy farms leading to the seizure of neglected animals and criminal prosecutions;³

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¹ Bartlett, Liam. 2018. Why the live export industry must change, *60 Minutes*, <https://www.9now.com.au/60-minutes/2018/extras/latest/april/liam-bartlett-sheep-ships-and-videotape>

² Meldrum-Hanna, Caro. 2015. Making a Killing, *ABC Four Corners*, <http://www.abc.net.au/4corners/stories/2015/02/16/4178920.htm>

³ Hegarty, Adam. 2013. Dozens of dogs seized by RSPCA from Adelaide Hills find new homes. *Adelaide Advertiser*. 11 June. <http://www.adelaidenow.com.au/news/south-australia/dozens-of-dogs-seized-by-rspca-from-adelaide-hills-puppy-farm-find-new-homes/story-e6fre83-1226661845377?nk=d0c110d65c40cd3bbd6c4cd5e0eaa182>. RSPCA



- Gross animal cruelty in multiple abattoirs leading to criminal prosecutions,⁴ and state-wide regulatory reform;⁵
- Further widespread animal abuse within the live animal export trade leading to comprehensive regulatory reforms (including the Exporter Supply Chain Assurance System) to improve animal welfare standards and the sustainability of the trade;⁶
- Misleading and deceptive trade conduct on behalf of livestock producers leading to enforcement action by the Australian Competition and Consumer Commission.⁷

It is important that surveillance devices legislation is not drafted in such a way as to prevent the disclosure of such information. The legislation must contain appropriate exemptions for the disclosure and communication of material that is in the public interest. Without such exemptions the legislation may prevent the public from knowing about matters in which it has a legitimate interest, and in some cases, a right, to know about.

Appropriately balanced surveillance devices legislation is also in the interests of livestock and other animal use industries. In an era of unprecedented concern for animal welfare, the best way forward for animal industries is through increasing the transparency of their operations and continued investment in improving animal welfare outcomes. This is the most effective way of building public trust and confidence. Laws that stifle public and political communication and information about animal husbandry practices are counterproductive to this objective. They only serve to generate community distrust thereby incentivising the very behaviour they are designed to curb.

The RSPCA is strongly opposed to laws that are designed precisely to prevent the public from knowing about animal husbandry and other practices. Legislation, dubbed 'ag-gag laws' in the United States has led to vigorous opposition, not only from the animal welfare organisations but also from a large cross-section of civil society groups. Notably, a coalition of over 70 organisations has been formed in the US to combat the proposals consisting of groups representing civil liberties, the media and free speech, environmental protection, workers' rights, prosecutors, consumers and public health.⁸

Australia. 2013. Victorian puppy farm uncovered. <http://rspca.org.au/campaigns/puppy-farms/victorian-puppy-farm-uncovered>

⁴ Levy, Megan. 2013. Torture for fun: police given shocking abattoir footage. *Sydney Morning Herald*. 21 March. <http://www.smh.com.au/national/torture-for-fun-police-given-shocking-abattoir-footage-20130321-2qgm2.html>;

Cannane, Steve. 2012. Abattoir shut down over cruelty concerns. *ABC News*. 10 February. <http://www.abc.net.au/news/2012-02-09/abattoir-shut-down-over-cruelty-concerns/3821302>; Mickelburgh, Peter. 2011. Abattoir shut amid animal cruelty claims. *Herald Sun*. 25 November. <http://www.heraldsun.com.au/news/victoria/abattoir-shut-amid-animal-cruelty-claims/story-fn7x8me2-1226206386636>.

⁵ NSW Food Authority. 2012. NSW Government leads the way with mandatory animal welfare training for domestic abattoirs. 17 May. <http://www.foodauthority.nsw.gov.au/news/media-releases/mr-17-May-12-animal-welfare-training-abattoirs/#.U6ovSJSSz4Q>.

⁶ Australian Government. 2011. Australian Government action on live animal exports. http://www.daff.gov.au/liveexports/government_action.

⁷ Herbert, Bronwyn. 2012. Disturbing footage prompts calls for duck farming changes. *7.30 Report*. 19 June. <http://www.abc.net.au/news/2012-06-19/disturbing-footage-prompts-calls-for-duck-farming/4080436>

⁸ ASPCA, 'Statement of opposition to proposed "Ag-gag" laws from broad spectrum of interest groups' <<http://www.aspca.org/fight-cruelty/advocacy-center/ag-gag-whistleblower-suppression-legislation/statement-opposition>>.

The wide-spread publicity surrounding the introduction of ag-gag laws in the US served to generate further scepticism and concern on behalf of the public as encapsulated in the following *New York Times* editorial:

The Ag-gag laws guarantee one thing for certain: increased distrust of American farmers and our food supply in general. They are exactly the wrong solution to a problem entirely of big agriculture's own making.⁹

Enacting oppressive, draconian surveillance devices legislation is not in the public interest, nor is it in the interests of livestock and other animal use industries. Such legislation may also raise questions of compatibility with the implied freedom of political communication under the Australian Constitution. The benefits of public interest communications about animal welfare and its political character have been confirmed by the High Court of Australia:

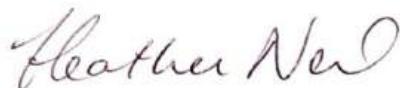
The concerns of a governmental and political character must not be narrowly confined. To do so would be to restrict, or inhibit, the operation of the representative democracy that is envisaged by the Constitution. Within that democracy, concerns about animal welfare are clearly legitimate matters of public debate across the nation. So are concerns about the export of animals and animal products. Many advances in animal welfare have occurred only because of public debate and political pressure from special interest groups. The activities of such groups have sometimes pricked the conscience of human beings.

Parliamentary democracies, such as Australia, operate effectively when they are stimulated by debate promoted by community groups. To be successful, such debate often requires media attention. Improvements in the condition of circus animals, in the transport of live sheep for export and in the condition of battery hens followed such community debate. Furthermore, antivivisection and vegetarian groups are entitled, in our representative democracy, to promote their causes, enlisting media coverage, including by the appellant. The form of government created by the Constitution is not confined to debates about popular or congenial topics, reflecting majority or party wisdom. Experience teaches that such topics change over time. In part, they do so because of general discussion in the mass media.¹⁰

We ask that the Committee give due regard to the public and political communications implications of any proposed changes to surveillance devices legislation and ensure that appropriate public interest exemptions are enshrined in any proposed changes to legislation.

We trust our submission has been of assistance in conveying our position on the Inquiry. Please do not hesitate to contact our office should you require further clarification or information.

Yours sincerely,

A handwritten signature in black ink that reads 'Heather Neil'.

Heather Neil
Chief Executive Officer

⁹ Editorial Board, 'Eating with our eyes closed' *New York Times*, 9 April 2013
<http://www.nytimes.com/2013/04/10/opinion/eating-with-our-eyes-closed.html?_r=0>.

¹⁰ ABC v Lenah Game Meats Pty Ltd (2001) 208 CLR 199 per Kirby at [217-218].