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The Secretary

Legislative Council, Economy and Infrastructure Committee

Parliament House, Spring Street

EAST MELBOURNE VIC 3002

By email only to: aglawsinquiry@parliament.vic.gov.au

Re: Inquiry into the Impact of Animal Rights Activism on Victorian Agriculture

Dear Secretary,

The Law Institute of Victoria (LIV) is grateful for the opportunity to provide this submission to the Legislative Council Economy and Infrastructure Committee's (**the Committee**) Inquiry into the Impact of Animal Rights Activism on Victorian Agriculture (the Inquiry).

The LIV acknowledges the widely reported rise of animal activists trespassing on agricultural properties and the premises of primary production businesses such as abattoirs.¹ These activities in turn have given rise to concerns of potential breaches of food safety and biosecurity protocols, as well as having caused ongoing distress to members of the community.

¹ For efficacy, both of these forms of properties will be referred to henceforth as 'agricultural properties'.

The type and prevalence of unauthorised activity on Victorian farms and related industries, and the application of existing legislation

Animal activists trespassing onto agricultural properties is part of an increasingly global approach to animal rights advocacy. Organisations in the United States (US) such as Humane Society of the United States, PETA, Mercy for Animals, and Compassion Over Killing have all been linked to such activities.²

Dominion and Aussie Farms

The rise of these activities in Australia by animal activists since approximately mid-2018 appears to be linked to the release of the documentary 'Dominion' and an affiliated website 'Aussie Farms'.

On 29 March 2018, the crowdfunded documentary Dominion was released.³ The film was produced by Chris Delforce and targeted the Australian farming industry. It was a sequel to the documentary film 'Lucent', released four years earlier which exposed animal welfare concerns in the Australian pig industry. Delforce created the documentary by collating footage from hidden

² Many of their activities have been defended in US courts such as Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193, 1196-98 (D. Utah 2017); W. Watersheds Project v. Michael, No. 15-CV-169-SWS, 2018 WL 5318261, at *10 (D. Wyo. Oct. 29, 2018); Animal Legal Defense Fund v. Otter, 118 F. Supp. 3d 1195, 1200-09 (D. Idaho 2014); Animal Legal Defense Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018); Animal Legal Defense Fund v Reynolds 4:17-cv-00362 (Iowa).

³ 'Watch the Film', Dominion (Web Page) <<https://www.dominionmovement.com/watch>>.

cameras and aerial drones. Dominion marketing refers to itself as 'exposing the dark underbelly of modern animal agriculture.'⁴

For the most part, the two-hour documentary features confronting footage of animals being poorly treated and inhumanely slaughtered in Australian farms, saleyards, and abattoirs. Throughout the documentary, there are few references as to where or when the footage was taken and it is understood to have taken seven years to create. Primary themes are issues with factory farming, such as keeping sows confined to small cages, growing chickens for consumption at a rate faster than their bodies can handle, mulesing of sheep, and castration of cattle practices. Since its release, it is commonplace to see activists promoting this documentary during their protests, urging people to watch Dominion.

In addition to the release of this documentary, Delforce is the executive director of 'Aussie Farms', a website that launched in January 2019.⁵ In addition to promoting Delforce's documentary Dominion, the website serves as a repository of photos, videos and documentation of actual or perceived animal welfare abuses on Australian agricultural properties.

The website has received considerable attention for its additional feature of a live interactive map of Australian agricultural properties. The website lists the company name, address, an interactive satellite map and some include the contact details of the farmers. Farming organisations such as AustralianFarmers have cited the launch of this activist map as the catalyst for the raft of activist trespasses on agricultural properties.⁶

⁴ Dominion Movement (Web Page) <<https://www.dominionmovement.com/>>.

⁵ Aussie Farms Repository (Web Page) <<https://www.aussiefarms.org.au/>>.

⁶ 'Activists trespass response tips for farmers, AustralianFarmers (online, 4 April 2019) <<https://farmers.org.au/news/activist-trespass-response-tips-for-farmers/>>.

Whilst there has long been sporadic trespassing committed on farming properties by animal rights activists in Australia, over the past year, these activities have become more frequent and widely publicised.

In May 2019, Agriculture Minister Jaclyn Symes stated that in the previous 12 months, there were two instances of trespass in western Victoria, three in the east and six in the south.⁷ This is in addition to 14 animal activist protests that did not involve trespass across the state. It is worth noting there were no reported incidence involving violence or damage to property during any of these reported events.

Some of the events include:

Luv-a-Duck

In November 2018, a group of 70 animal activists entered the Luv-a-Duck abattoir in Nhill, Victoria, following claims that hidden camera footage showed the facility used improper stunning techniques during the duck slaughtering process.⁸ The activists trespassed, took footage and

⁷ Andrew Miller, 'Agriculture Minister seeks animal activist inquiry changes', *Stock and Land* (online, May 2019) <<https://www.stockandland.com.au/story/6110510/minister-allays-activism-fears/>>.

⁸ Sophie Tanno, 'Moment a group of 'vegan vigilantes' break into an abattoir and steal adorable ducklings set for the slaughter – before letting them swim for the first time', *Daily Mail Australia* (online, 9 December 2018) <<https://www.dailymail.co.uk/news/article-6449143/Astonishing-moment-vegan-vigilantes-break-abattoir-steal-ducklings-set-slaughter.html>>.

then stole 19 ducks from the abattoir.⁹ Police stated that the protest ended peacefully without incident, and while police spoke to activists about trespass, no arrests were made.

Luv-a-Duck has been on the radar of animal activists for several years. In 2012, complaints of animal cruelty were forwarded by activists to Animal Liberation and the RSPCA.¹⁰ However, following inspection, Animal Liberation advised that Luv-a-Duck were in fact operating within the law, although commented the laws on intensive farming systems such as Luv-a-Duck was 'cruel, albeit lawful'.

The following year, in 2013, Luv-A-Duck were fined \$360,000 for making misleading claims that their ducks spent a substantial amount of time outdoors, which was found not to be the case.¹¹ The Court also ordered Luv-a-Duck pay \$15,000 towards the ACCC's costs. On 1 September 2018 the Australian Competition and Consumer Commission (ACCC) increased fines in the Competition and Consumer Act 2010 for unconscionable conduct, false or misleading representations or supplying consumer goods or certain services that do not comply with safety standards, or which are banned. As such, if Luv-a-Duck received a fine under the exact same circumstances in the financial year 2019-20, the fine could potentially have exceeded \$3 million.

⁹ Ibid

¹⁰ Kath Sullivan, 'Duck farm shocked by calls for animal welfare investigation', ABC Western Victoria (online; 13 July 2017) <<https://www.abc.net.au/local/stories/2012/07/13/3545325.htm>>

¹¹ 'Court orders Luv-a-Duck to pay \$360,000 for misleading claims' *Australian Competition and Consumer Commission* (Web Page, 1 November 2013) <<https://www.accc.gov.au/media-release/court-orders-luv-a-duck-to-pay-360000-for-misleading-claims>>

Gippy Goat Farm Café protests

In December 2018, 70 activists entered the Gippy Goat Farm Café in Gippsland, alleging that goats were being treated poorly on the premises.¹² During the protest, activists stole three goats and a lamb.¹³

Two of the activists were placed on six-month good behaviour bonds for theft. As discussed below at *Livestock Disease Control Act 1994 (Vic)*, one of the activists was fined \$2 for violating biosecurity laws, placed on a six-month good behaviour bond and ordered to pay \$250 compensation.¹⁴

This outcome resulted in an online petition, which received 3841 signatures, with the stated grievance:

‘The Petition of certain citizens of the State of Victoria draws to the attention of the Legislative Council the urgent need for protection of law abiding farmers from animal activists, who are using the Aussie Farms website and breach farm biosecurity,

¹² Chantelle Francis and Lachlan Hastings, ‘Gippy Goat Café closes amid constant vegan activist abuse’ *The Weekly Times* (online, 7 April 2019) <<https://www.weeklytimesnow.com.au/news/victoria/gippy-goat-cafe-closes-amid-contant-vegan-activist-abuse/news-story/6ba17ab6d2fbee44a46bd042a242e54d>>

¹³ Andrew Miller, ‘Concerns raised over the sentence handed out to the Gippy Goat vegan activists’ *Stockland* (online, 15 March 2019) <<https://www.stockandland.com.au/story/5956942/gippy-goat-owner-appalled-by-court-outcome/>>.

¹⁴ Ibid

steal livestock, damage or encourage property damage and trespass or incite trespass on law abiding Victorian farms.¹⁵

8 April 2019 protests

Simultaneous protests took place on the morning of 8 April, 2019.¹⁶ The majority of the Victorian media attention was on the more than 100 activists who blocked a major Melbourne intersection during morning peak hour. This protest resulted in 38 arrests, causing considerable inconvenience to commuters and police resources, who had not been notified of the protest.

As this was occurring, affiliated protesters mobilised at abattoirs in Corio, Pakenham, Laverton and Bacchus Marsh, as part of a national series of activism.¹⁷ Twenty activists protested outside of a Pakenham South abattoir, five were chained to a van blocking the entrance to the abattoir for more than three hours.¹⁸ No arrests were made.

Several activists filmed themselves tied to the kill floor of the Australian Food Group's pig slaughterhouse in Laverton. After brief resistance upon police arrival, the protestors agreed to

¹⁵ 'Shut down Aussie Farms website', Victorian Legislative Council E-Petitions (Web Page, 17 June 2019) <https://www.parliament.vic.gov.au/council/petitions/electronic-petitions/view-e-petitions/details/12/115>

¹⁶ Justin Sungil Park, 'Animal rights 'peaceful protest' causes chaos in Melbourne, 38 arrested,' SBS, (online, 08 April 2019) <https://www.sbs.com.au/yourlanguage/korean/en/article/2019/04/08/animal-rights-peaceful-protest-causes-chaos-melbourne-38-arrested>

¹⁷ Latika Bourke, 'Animal Activists invade abattoirs, stop traffic in nationwide wave of protests' *Sydney Morning Herald* (online, April 2019) <https://www.smh.com.au/environment/conservation/animal-activists-invade-abattoirs-stop-traffic-in-nationwide-wave-of-protests-20190408-p51buz.html>.

¹⁸ Jessica Anstice, 'Animal rights protestors target Pakenham Abattoir' *Pakenham Gazette* (online, 8 April 2019) <<https://pakenham.starcommunity.com.au/news/2019-04-08/animal-rights-protesters-target-pakenham-abattoir/>>.

leave to avoid being charged with trespass.

Existing criminal offences

Under section 9(1)(e) of the *Summary Offences Act 1966* (VIC) the maximum penalty for actual trespass is 25 penalty units or a maximum of 6 months imprisonment.

Section 9(1)(c) of the *Summary Offences Act 1966* (VIC) the maximum penalty for trespass where a person wilfully injures or damages any property (whether private or public) the injury committed being under the value of \$5,000 is 25 penalty units or a maximum of six months imprisonment.

If the injury is greater than the value of \$5,000, it falls under section 74 of the *Crimes Act 1958* (VIC) and is liable to level 5 imprisonment, or 10 years' maximum.

Animal activists' compliance with the Livestock Disease Control Act 1994, Livestock Management Act 2010, and the Prevention of Cruelty to Animals Act 1986

Livestock Disease Control Act 1994

The *Livestock Disease Control Act 1994* (**the LDC**) aims to protect public health by preventing, monitoring and controlling diseases transmissible from livestock to humans. It seeks to do this by regulating farmers, livestock owners and actions related to their business.

The LDC requires cattle and prescribed livestock that will be sold, transported or slaughtered to have permanent identification with a ‘tag, mark, brand or other device.’¹⁹ Once the permanent identification has been tagged, marked, branded or identified, a person must not remove this, nor deface, obliterate or alter the tag, mark, brand or identification device.²⁰

During the ‘Gippy Goat Farm Café Protest’, a tag was removed from the ear of a stolen goat in violation of section 9A(2) of the LDC. Although the monetary penalty for breaching this section is 60 penalty units, capped at the time at \$9,671.40,²¹ the protestor received a \$1 fine. Whilst the information is not publicly stated as a motive of this particular activist, the issue of tagging livestock is portrayed as cruelty by some animal welfare organisations.

Livestock Management Act 2010

This Act seeks to regulate livestock management in Victoria by imposing duties of livestock management, granting powers to appointed inspectors and ensuring compliance with approved compliance arrangements.

Livestock operators are required to conduct regulated livestock management activities, such as a systematic risk assessment. This involves assessing the likely risks to animal welfare and biosecurity.²² The legal requirement for livestock operators to monitor risks of biosecurity likely fuel their sensitivities of the risks to biosecurity by animal activist trespass. Concerns have been expressed of the potential they could be carrying contaminated soil on their clothing or harbouring

¹⁹ *Livestock Disease Control Act 1994* (Vic) s 9A(1)

²⁰ *Ibid* 9A(2)

²¹ 60 penalty units for 2019-20 is \$9,913.20 Sentencing Advisory Council (Web Page)
<<https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-options-for-adults/fine>>

²² *Livestock Management Act 2010* (Vic) s 7 and 8

infectious diseases, putting the biosecurity of these businesses at risk.

Prevention of Cruelty to Animals Act 1986

The *Prevention of Cruelty to Animals Act (POCTAA)* aims to prevent cruelty to animals by creating offences surrounding animal care and conduct, regulating scientific procedures and granting powers to prevention of cruelty to animals' inspectors (**POCTAA inspectors**). The Act does this by regulating livestock management,²³ preventing, monitoring and controlling livestock diseases,²⁴ and preventing cruelty to animals.²⁵ The Act grants emergency powers to POCTAA Inspectors to apply for warrants, enter premises and seize distressed animals. On numerous occasions, these inspectors have invoked their powers as a result of viewing footage provided by animal activists.

The civil or criminal liability of individuals and organisations who promote or organise participation in unauthorised animal activism activities

The LIV notes that in Victoria, under section 321G of the *Crimes Act 1958* (VIC) inciting a person to pursue a course of conduct that will, if acted upon, involve the commission of an offence by the person incited and/ or the inciter is an indictable offence, regardless of whether or not the incited offence is indictable. 'Incite' under this provision, includes commanding, requesting, proposing,

²³ *Livestock Disease Control Act 1994* (Vic) s 1

²⁴ *Livestock Management Act 2010* (Vic) s 1

²⁵ *Prevention of Cruelty to Animals Act 1986* (Vic) s 1

advising, encouraging or authorising.²⁶ Incitement is considered a substantive offence, constituted by the inciting conduct, and therefore is committed regardless of whether the incitement is successful.

The person guilty of incitement shall be liable to a penalty not exceeding the penalty for the relevant offence.²⁷

Analyse the incidences and responses of other jurisdictions in Australia and Internationally

United States of America

As stated, trespass onto agricultural properties by animal activists is a global movement. Since 2011, several states in the US have introduced Bills to curb such activism.²⁸ Their approaches have varied. Instead of directly addressing the act of trespass, most of the proposed legislation has instead tried to restrict animal activists from obtaining and distributing footage obtained without consent and to criminalise the act of seeking employment with an agricultural business under false pretences in order to assist animal rights organisations.

A number of these Bills have been quashed by the courts on the grounds of unconstitutionality, on the basis of violating the First Amendment right to freedom of speech.²⁹

²⁶ *Crimes Act 1958* (Vic) s 2(a)

²⁷ *Ibid*, s 3211

²⁸ For a brief history of the various Bills refer to: *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1196-98 (D. Utah 2017)

²⁹ *Ibid*; *W. Watersheds Project v. Michael*, No. 15-CV-169-SWS, 2018 WL 5318261, at *10 (D. Wyo. Oct. 29, 2018); *Animal Legal Defense Fund v. Otter*, 118 F. Supp. 3d 1195, 1200-09 (D. Idaho 2014);

Commonwealth

In 2015, the Commonwealth Government failed to pass the *Criminal Code Amendment (Animal Protection) Bill 2015*. This legislation introduced to the Australian Senate, was an early attempt at outlawing techniques used to obtain unauthorised footage of farming and slaughtering practices.

In July 2019, the Commonwealth Government introduced the *Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth)*, with the stated purpose of ‘delivering on its election commitment to protect the privacy of Australian farmers and primary producers.’³⁰

The Bill seeks to introduce an offence of transmitting, making available, publishing or otherwise distributing material using a carriage service, with the intention of inciting another person to trespass on agricultural land, or being reckless as to whether the trespass of another person or the conduct of another person while trespassing could cause detriment to a primary production business that is being carried out on the agricultural land.³¹

In addition, the Bill seeks to introduce an offence of transmitting, making available, publishing or otherwise distributing material, using a carriage service, with the intention of inciting another

Animal Legal Defense Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018); *Animal Legal Defense Fund v Reynolds* 4:17-cv-00362 (Iowa)

³⁰ ‘Morrison Government delivers to protect farmers’, Australian Government (Web Page, 4 July 2019) <<https://www.attorneygeneral.gov.au/Media/Pages/morrison-government-delivers-to-protect-farmers.aspx>>.

³¹ *Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth)* s 474.46

person to unlawfully damage or destroy property or commit theft on agricultural land.³²

The maximum penalty for the offence is imprisonment for five years, or the court may, if it is appropriate in all the circumstances of the case, impose a pecuniary penalty of 300 penalty units (\$63,000).³³ The LIV questions the proportionality of this penalty, given that under section 9(1)(c) of the *Summary Offences Act 1966* (VIC) the maximum penalty for trespass where a person wilfully injures or damages any property, whether private or public, the injury done being under the value of \$5,000 is only 25 penalty units or a maximum of six months imprisonment.

The LIV notes that conduct which may be caught by the proposed offence includes transmitting, making available, publishing or otherwise distributing material that may include addresses or information of primary production business, website links, phone calls, posts on a social media platform or maps indicating the location of a primary production business.³⁴ The Explanatory Memorandum states that it is irrelevant whether the material is already publicly available, for example from government websites, Google Maps or a news report.³⁵

The LIV has endorsed the Law Council of Australia's submission to the Senate Standing Committees on Legal and Constitutional Affairs 'Inquiry into the Criminal Code Amendment (Agricultural Protection) Bill 2019'. As stated within the LCA's submission, whilst Australia does not have the right to freedom of speech as exists in the US, it does have the constitutionally protected implied right to political communication.

³² Ibid s 474.47

³³ *Crimes Act 1914* (Cth) s 4B(2).

³⁴ Explanatory Memorandum, Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth) 11 [68].

³⁵ Explanatory Memorandum, Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth) 11 [69].

As noted by Kirby J in *ABC v Lenah Game Meats*:³⁶

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 ... 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.’

Conduct regarding concerns about animal welfare, therefore falls within the definition of the constitutionally protected ‘political communication’. As such, the newly proposed Commonwealth legislation may face legal challenges for violating the implied freedom, similarly to successful legal challenges in the US.

Queensland

On 26 April 2019, amendments to the Queensland *Biosecurity Regulation 2016* under the *Biosecurity Act 2014* (**Biosecurity Act**), and the *State Penalties Enforcements Regulation 2014* came into effect. They require all persons that enter an agricultural property to comply with the proprietor’s biosecurity management plan. The proprietor is entitled to create their own biosecurity management plan, providing it complies with the *Biosecurity Act*. Management plan

³⁶ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, 287 [217].

recommendations provided by the government include:³⁷

‘Consider whether it is a reasonable requirement to require visitors entering the management area to record in a register some or all of the following:

- personal details
- vehicle details
- purpose of their visit
- a declaration that they have read the plan and they understand the measures they must comply with when entering, being present at, or leaving the place.’

Violation of the *Biosecurity Act 2014* can result in fines of \$652.75, either issued on the spot or later after further evidence is gathered.

Presently the *Criminal Code (Trespass Offences) Amendment Bill 2019 QLD* is before the Queensland Legal Affairs and Community Safety Committee. The Bill seeks to introduce three new criminal trespass offences: ‘aggravated trespass’, ‘serious criminal trespass’ and ‘organised trespass’. These offences attract potential imprisonment and fines significantly greater than the current penalties for trespass under Queensland law.

³⁷ Queensland Government, ‘Biosecurity management plan: upgrade checklist’ (Web Page, 6 August 2019) <<https://www.daf.qld.gov.au/business-priorities/biosecurity/policy-legislation-regulation/biosecurity-planning/checklist>>.

Aggravated trespass was explained in the explanatory memorandum as:³⁸

‘...where there is a deliberate intention to cause economic and financial losses, just like we saw with those animal activists who entered an abattoir with the intention to block, slow down or affect business activities by chaining themselves to production machinery...’

This offence will attract a maximum of three years imprisonment or a maximum fine of 100 penalty units, or \$13,055.³⁹

The new offence of serious criminal trespass occurs if a person who enters or is in a premises, private land or transport infrastructure used for business purposes and therein commits an offence punishable by three years imprisonment. It is proposed that this offence carry a maximum penalty of 10 years imprisonment or a maximum fine of 3,000 penalty units, or \$391,650.⁴⁰

The third proposed offence of organised trespass relates to if a director, member or volunteer of an organisation has been found to have organised a deliberate and premeditated campaign against a project or business that involves individuals from that organisation being found guilty of committing offences of aggravated trespass or serious criminal trespass, that organisation can be liable for a maximum penalty of 10 years imprisonment or a \$391,650 fine.⁴¹

³⁸ Explanatory Memorandum, Criminal Code (Trespass Offences) Amendment Bill 2019 (Qld)

³⁹ *Criminal Code (Trespass Offences) Amendment Bill 2019* (Qld) s 422

⁴⁰ Explanatory Memorandum, Criminal Code (Trespass Offences) Amendment Bill 2019 (Qld)

⁴¹ *Criminal Code (Trespass Offences) Amendment Bill 2019* (Qld) s 424

It is the view of the LIV that these are disproportionately excessive penalties, given they are considerably harsher than penalties considered appropriate for trespass on any other property designation.

New South Wales (NSW)

On 1 August 2019, amendments to the *Biosecurity Regulation 2017 (NSW)* under the *Biosecurity Act 2015 (NSW)* came into effect. These amendments are of a similar nature to the Queensland *Biosecurity Act* management plan, with the stated intention to 'prevent, eliminate, and minimise the biosecurity risks posed by people entering a place at which commercial agricultural or horticultural activity, including processing and education, occurs.'⁴²

Failure to comply with these arrangements when dealing with biosecurity matter, such as animals or produce, may be an offence under the Act. Penalties can include an on the spot fine of \$1000 or a court ordered fine of \$220,000 for individuals and \$440,000 for corporations.

⁴² Biosecurity Management Plan, Department of Primary Industries, NSW Government, (Web Page, 6 August 2019) <<https://www.dpi.nsw.gov.au/biosecurity/your-role-in-biosecurity/primary-producers/biosecurity-management-plan>>.

Provide recommendations on how the Victorian Government and industry could improve protections for farmers' privacy, businesses, and the integrity of our biosecurity system and animal welfare outcomes, whether through law reform or other measures.

The LIV recommends uniform national farm animal welfare standards founded on ever-evolving, evidence based best practices, and overseen and implemented by a statutory agency. However, it is understood this is outside the scope of a Victorian Government inquiry.

Transparency

Improving transparency on agricultural properties would be the single most effective means of reducing the motivation for animal activists to trespass.

There are innumerable examples of animal welfare abuses being uncovered through the release of footage secretly obtained and distributed by animal activists. This is after all, what Dominion is; a two-hour collection of mostly secretly filmed footage of malpractice, that would otherwise not have been seen by the general public. When footage such as that showed in Dominion is made public, farming bodies are some of the first to speak out against the malpractice.⁴³ However, much of the anger from the industry, besides the physical trespass preventing production, is the damage such footage makes to the industries reputation. Despite the majority of primary production businesses endeavouring to uphold the most humane experience possible for animals, footage once obtained by animal activists is often portrayed as being the industry

⁴³ Joely Mitchell, 'Dominion 'animal cruelty' documentary angers farmers' (online, 5 April 2018) <<https://www.farmonline.com.au/story/5324513/industry-braces-for-documentary-backlash-video/>>.

standard. It has been a powerful technique in raising awareness of animal rights abuses.

For example, in 2011, an undercover animal activist obtained footage of pigs being beaten to death with sledgehammers and being left to bleed out whilst fully conscious.⁴⁴ The footage resulted in a complaint being filed with PrimeSafe by Animals Australia, who ordered the abattoir be closed and charges of animal cruelty in violation of POCTAA were brought against five people. The abattoir had been running for 60 years, raising questions of how long this conduct had been ongoing, undetected.

In the same year, the ABC's Four Corners broadcast of footage depicting animal cruelty in Indonesian abattoirs resulted in a temporary ban on live exports.⁴⁵ This has since evolved into the creation of the Export Supply Chain Assurance System (ESCAS). All importing countries of Australian livestock are now subject to an ESCAS application, where they are required to detail 'supply chain up to and including the point of slaughter, including the port of arrival, transport, handling and slaughter of the livestock, feedlots, independent auditing and reporting and access to premises.'

In June 2018, the RSPCA took action against a chicken farmer in NSW following a tip-off from animal activists.⁴⁶ Over 4000 chickens had to be destroyed after testing positive to a highly

⁴⁴ Stephanie March, Abattoir closed over animal cruelty concerns, ABC News (online, 30 November 2011) <https://www.abc.net.au/news/2011-11-30/abattoir-closed-over-animal-cruelty-concerns/3703144>

⁴⁵ Live export: a chronology, Parliament of Australia (Web Page) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Chronology/LiveExport>.

⁴⁶ Jenny Noyes, 'Lakesland egg farmer convicted of serious animal cruelty', *The Sydney Morning Herald* (online, 30 April 2019) <https://www.smh.com.au/national/nsw/lakesland-egg-farmer-convicted-of-serious-animal-cruelty-20190430-p51ipt.html?_ga=2.169032865.1859407198.1563946376-1474402703.1563946376>.

contagious, respiratory disease caused by a herpes virus. They were significantly underweight. In April 2019, the farmer received a \$6500 fine and a ban from owning animals for five years. Had the trespass not occurred to obtain the footage, this severe biosecurity risk would have continued to go undetected.

At the time of this Inquiry, Agriculture Victoria are investigating an illegal abattoir following the release of animal activist obtained footage.⁴⁷ The footage shows various types of animals walking around the kill floor such as a peacock and a cat, as a fully conscious sheep has its throat cut and slowly bleeds to death. Once again, had this footage not been released the biosecurity risk would have gone undetected and this practice continued.

Based on Australian consumer patterns, it is reasonable to conclude that most Australians accept the rearing of animals for commercial purposes such as for meat, eggs and dairy. However, with shifting community values there is an ever-increasing demand for animals to be treated and slaughtered humanely. The private sector has reflected these growing community values, such as with the near total removal of caged eggs from supermarkets and an approach to marketing that conflates the notion of humane treatment of animals produces a pedigree product, such as 'free-range' and 'RSPCA approved' labelling.

One of the primary reasons animal activists cite for rationalising their trespassing is the perceived clandestine nature of livestock production practices, particularly in relation to intensive systems of production. In addition, a lack of confidence in government compliance monitoring and inspection

⁴⁷ Ben Knight, 'Video footage allegedly reveals animal cruelty at illegal abattoir near Melbourne', ABC News (online, 2 August 2019) <<https://www.abc.net.au/news/2019-08-02/video-footage-reveals-alleged-cruelty-at-illegal-slaughterhouse/11375854>>.

functions.⁴⁸

LIV members have reported that the current oversights of animal welfare are insufficient and are concerned that the responses to animal activism such as the aforementioned Queensland, Commonwealth and New South Wales legislation is designed to further reduce accountability. It is also worth noting that whilst these pieces of legislation aim at harsher treatment of trespassers, animal activists can often be seen wearing shirts and holding placards displaying the Martin Luther King Jnr quote 'one has a moral responsibility to disobey unjust laws'. It is therefore the LIV's view that it is more worthwhile removing their motives for trespassing, being a perceived lack of transparency, than simply increasing the penalties for existing trespass laws.

A proposed solution to improving transparency is to introduce legislation that mirrors *The Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018 (the Regulations)*. As the title indicates, English Parliament introduced regulations requiring operators of abattoirs to install and operate CCTV systems that require all areas where slaughter takes place to be monitored at all times of operation.

The benefits of introducing the requirement to have CCTV in these facilities is somewhat analogous to the introduction of body-worn cameras by Victoria Police;⁴⁹

'It has been demonstrated both in Australia and internationally that there are many benefits attributable to the use of body-worn cameras by police, including an increase in police transparency and accountability; improving officer and citizen behaviour; reducing instances of violence; and assisting

⁴⁸ 'The battle over animal welfare and ag-gag laws' ABC Radio National, (online, 21 July 2014) <http://www.abc.net.au/radionational/programs/bushtelegraph/the-battle-over-animal-welfare-and-ag-gaglaws/5612314>

⁴⁹ *Justice Legislation Amendment (Body-worn Cameras and Other Matters) Bill 2017 (Vic)*

police officers in fulfilling their important role of preventing crime and keeping the community safe. Accordingly, the bill will promote rights under the charter where the increase in oversight and transparency in police conduct will provide greater protection in relation to rights such as...section 10 (protection from cruel, inhuman and degrading treatment).⁵⁰

Through increasing transparency with the production of animal products, this reduces the motivations of animal activists to engage in vigilantism by trespassing on properties to capture their own footage.

The Regulations create a duty that primary production businesses must install a CCTV system and ensure that it captures a complete and clear image of all slaughtering processes and related operations, in all areas of the slaughterhouse where live animals are present.⁵¹

These businesses have a duty to retain the CCTV footage for at least 90 days from when the images are taken.⁵²

The legislation also empowers inspectors, with the purposes of executing and enforcing the regulations of the *Welfare of Animals at the Time of Killing (England) Regulations 2015* (the

⁵⁰ Statement of Compatibility, Justice Legislation Amendment (Body-worn Cameras and Other Matters) Bill 2017 (Vic).

⁵¹ *The Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018* 556 s 3(1).

⁵² Ibid 556 s 4(1).

WATKR), to inspect all CCTV systems,⁵³ seize any CCTV equipment,⁵⁴ and to require a person to provide information without delay.⁵⁵ Inspectors also have powers under section 6 to write enforcement notices, requiring persons to take steps to remedy a contravention of these provisions.⁵⁶ Inspectors generally enter premises to enforce or execute sections under the *Welfare of Animals at the Time of Killing (England) Regulations 2015*, and may use acquired footage or information in justifying whether a breach has occurred.

The *WATKR* largely reflects the Victorian *POCTA*, as does the inspector reflect an RSPCA inspector. Therefore, the necessary framework is already established for Victoria to introduce the CCTV system requirement and provide authority for organisations such as PrimeSafe, Agriculture Victoria or the RSPCA to inspect the footage upon request.

It is imperative that regular monitoring takes place, without the need for an initial reports of malpractice. This may require the formation of a new body, independent from the industry, to be formed to conduct ongoing, unannounced routine inspections of agricultural farms, to ensure conditions and practices are compliant with the standards and the installation of CCTV.

⁵³ Ibid 556 s 5(1)(a).

⁵⁴ Ibid 556 s 5(1)(c).

⁵⁵ Ibid 556 s 5(1)(h).

⁵⁶ Ibid 556 s 6.

The LIV understands that a delicate balance must be made to uphold the need for business owners to be free from ongoing threats of trespass and disruption, whilst also upholding animal welfare to the standards most Victorians would agree are acceptable.

Through improving transparency in the industry by emulating the Regulations introduced in England, this will uphold the reputation of the agricultural industry and remove the motivation for animal activists to trespass.

Should you wish to discuss this further, please contact LIV Policy Officer Maurice Stuckey on (03) 9607 9382 or email mstuckey@liv.asn.au.

Yours sincerely



Stuart Webb
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