

FARM TRESPASS

ACTION PLAN FOR NATIONAL IMPLEMENTATION OF THE *NSW FARM INCURSION POLICY 2014*

(OUTCOMES OF THE NATIONAL FARM TRESPASS ROUNDTABLE 3 AUGUST 2015 AND FARM TRESPASS WORKSHOP 10 FEBRUARY 2016)

EXECUTIVE SUMMARY

Farm Trespass is an issue of national concern which threatens some of our most significant animal industries, and therefore warrants a coordinated harmonised approach to prevent and reduce the impact of such incidents.

Farm Trespass in this context is a straightforward crime.

This report considers Farm Trespass incidents perpetrated by animal activists, usually targeting intensive production enterprises, seeking to gain publicity and public support for what is essentially an animal rights rather than an animal welfare cause. Allied livestock industries, including saleyards and abattoirs, have also been targeted. The report does not consider trespass events for other purposes such as protests against mining or illegal hunting.

Farm Trespass in this context involves the disruption of lawful animal husbandry practices by animal activists in incidents characterised by unlawful entry to the premises, with associated security, biosecurity (animal and plant disease and pest) and animal welfare risks, along with significant personal impacts on the well-being and health of affected individual producers, families and staff of the businesses targeted.

Some industries and individuals have experienced repeated incidents of trespass, threatening their individual and community well-being and creating apprehension about 'who and where will be next' to experience a Farm Trespass incident at their business and home.

NSW has a comprehensive cross-agency policy response to the issue of Farm Trespass, entitled the '*NSW Farm Incursion Policy*', to address the issues of disruption of lawful animal husbandry practices and the biosecurity risks caused by Farm Trespass.

The Policy has been accepted by the Agriculture Ministers Forum (AgMin) as a suitable basis for a harmonised national approach to this issue, and the framework for the Policy is reflected in the attached Action Plan for AgMin's consideration as a way forward.

The Policy states that farmers have reported that farm incursions have been increasing in recent years, and they are concerned about the impacts of such incidents on biosecurity, animal health and welfare, family privacy and security, property damage, as well as the risk to the safety of individuals involved if a 'raid' is interrupted by a property owner or staff member.

The Policy accepts that where criminal trespass, and possibly covert surveillance, are a feature of the incident, existing trespass, break and enter and surveillance laws are adequate and should be used. However, the Policy also recognises a number of areas to target improvements which will help prevent and respond appropriately to Farm Trespass incidents.

Examples of such areas where reform may be targeted were identified as the adequacy of applicable penalties, the short duration of the statute of limitations for the offence of entering inclosed lands (this may make prosecution difficult in cases where covert surveillance is undertaken and publication of the video footage is delayed by the perpetrator), and the collection of evidence and ensuring its admissibility to improve prosecution success rates.

The detail of these opportunities for improvement was discussed at a Ministerial Roundtable hosted jointly by the NSW Minister for Primary Industries and Minister for Lands and Water, The Hon Niall Blair MLC, and the Australian Minister for Agriculture and Water Resources, The Hon Barnaby Joyce MP, at NSW Department of Primary Industries' (DPI) Elizabeth Macarthur Agricultural Institute (EMAI) on Monday 3 August 2015.

Discussions at the Roundtable have been consolidated into a draft Action Plan, aligned to the framework of the *NSW Farm Incursion Policy*. This Action Plan is tabled at Appendix 1 and is recommended to be provided with this report to the Agriculture Senior Officials Committee (AgSOC) and Agriculture Ministers Forum (AgMin) meetings in the second half of 2016 to seek endorsement of this national and harmonised approach to Farm Trespass.

Key recommendations from the Roundtable and subsequent Working Group note include:

1. Establishment of an industry-led and multi-sectoral working group, with whole of government support, to coordinate the further development and implementation of the Action Plan; and
2. Consideration of the adequacy and appropriateness of NSW offences and penalties relevant to Farm Trespass by animal activists to be included, if appropriate, in the broader review already underway by NSW Police, NSW Rural Crime Advisory Group and the Department of Justice on rural crime and rural theft offences. (Note that laws around breach of privacy, charities legislation, the Surveillance Act and use of drones relevant to Farm Trespass may be outside the scope of this review and have to be considered separately.)

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1. INTRODUCTION

1.1 Farm Trespass - definition

For the purposes of this report Farm Trespass or farm incursions refer to incidents involving the disruption of lawful animal husbandry practices by animal activists in incidents characterised by unlawful entry to the premises, with associated security, biosecurity (animal and plant diseases and pests), property damage and animal welfare risks. Negative impacts on the health and welfare of the people targeted, their standing in their community and industry, and on their financial position and business operations, are also typical of the toll incurred.

Farm trespass in this context is a crime, and intention is a necessary element of the criminal act under Section 4 of the *Inclosed Lands Protection Act 1901 NSW (ILPA)*, which sets out statutory offences in relation to trespass on land. Related offences under the *Crimes Act 1900 NSW* include Sections 59, 105A, 109 and 111 relating to malicious damage and assault, and unlawful entry to a dwelling house.

'Trespass' in itself is not mentioned specifically in legislation as a statutory offence. The main offence relied upon for prosecution in such cases is the offence of 'entering inclosed lands' in the ILPA, which relates to unlawful entry in a variety of circumstances, not just limited to entry by animal activists. Other relevant sections in the *Crimes Act 1900 NSW* include break and entry, larceny (theft) and malicious property damage offences.

'Accidental' entry without consent or permission is not trespass – it does not meet the requirements of the crime of trespass in the *Inclosed Lands Protection Act* and other relevant legislation, and is therefore outside the scope of this paper. 'Accidental' entry can occur where there is a genuine mistaken belief by the person that they were permitted to enter, for example, where there is poor signage demarcating an area of public land from an adjacent area of private property.

Where covert surveillance and/or break and enter are an element of a Farm Trespass incident, these elements may be dealt with under existing laws, including the *Surveillance Devices Act 2007 NSW*. The legality of the use of drones remains substantially untested, while civil actions for the torts of trespass, nuisance and invasion of privacy can be expensive and time consuming for the individual farmer to pursue, often suffering from the same difficulty in identifying a person responsible as the available criminal actions.

True Farm Trespass incidents are usually asserted by the perpetrators and their supporters to be based on good intent and motivation, that is, the pursuit of the public exposure and 'shaming' of alleged poor animal care and welfare standards in animal production facilities, action which is claimed to be justified "in the public interest". There are serious questions around the merits of this approach as an effective method of promoting good animal welfare and achieving improvements in those facilities which are truly substandard. This would help to infer that the underlying reason for the activism may well be to promote an animal rights cause to gain community sympathy for the phasing out of currently lawful intensive animal production activities in some industries which comply with current animal welfare standards and laws.

Further, there has been little attention paid or acknowledgement given to the real impact of Farm Trespass incidents on the targeted business, family and individual welfare (including physical and mental health) and reputation, and whether the 'exposure' is in fact a reasonable representation of the actual conduct and animal welfare standards in that facility.

NSW has a comprehensive cross agency policy response to the issue of Farm Trespass, entitled the '*NSW Farm Incursion Policy*'. The Policy has been accepted by the Agriculture Ministers Forum (AgMin) as a suitable basis for a harmonised national approach to this issue, and the framework for the Policy forms the basis for the attached Action Plan recommended to AgMin as a way forward.

1.2 Summary of the *NSW Farm Incursion Policy*

The Policy is described as a 'comprehensive cross agency policy response' to the issue of disruption of lawful animal husbandry practices and to ameliorate biosecurity risks caused by farm incursions.

The Policy accepts that Farm Trespass is a straightforward crime and that, where criminal trespass and covert surveillance are features of the incident, existing trespass, break and enter and surveillance laws are adequate and should be used. (Note: Concerns were raised at the Workshop that the six month statute of limitations (SOL) applying to the offence of entering enclosed lands frustrates attempts at prosecution, even where the perpetrator can be identified, in circumstances where the farmer's first knowledge of the incident occurs when the video surveillance footage is published on the internet after the SOL has expired.)

The Policy states (p 2) that farmers have reported that Farm Trespass incidents have been increasing in recent years, and they are concerned about the impacts of such incidents on biosecurity, animal health and welfare, individual and family privacy, security, health and well-being, property damage, including the risk to the safety of individuals involved if a 'raid' is interrupted by a property owner or staff member, and the right to conduct a lawful business uninterrupted.

The Policy also records farmers' concerns that, whilst covert video footage may be sensational and its publication may draw attention to the trespasser's cause, the footage often misrepresents lawful animal production operations as having a generalised and widespread problem of poor animal welfare standards. However, this needs to be balanced with information about the true financial and personal impact of the publicity attracted by such 'raids' on individuals, enterprises and on industries more broadly. These impacts, and the impact of such publicity on our animal industries for which high welfare standards are a key market advantage, being hard won but easily eroded, yet are rarely documented or well-understood by the community or courts.

The Policy also recognises that good biosecurity is a critical aspect of any farming enterprise and that each and every enterprise, along with entire industries, makes their contribution to Australia's 'clean, green' reputation in the export of livestock and animal products. Any entry onto farms which breaches good biosecurity practice has the potential to risk, if not actually threaten, this hard won track record and reputation for Australia's animal production industries. Farm Trespass is clearly within this category of high risk practices, against the interests of Australia's highly valued plant and animal industries and related domestic and international trade, by creating a serious risk of transfer of animal and plant pests and diseases from infected to susceptible non infected farms.

The new *Biosecurity Act NSW 2015* will assist in ensuring all those who enter inclosed lands without permission are accountable for the biosecurity consequences of that entry but the primary piece of legislation for dealing with the act of trespass will remain the *Inclosed Lands Protection Act*. For this reason it would be useful to review the adequacy of penalties for the offence of entering inclosed lands as part of a broader penalty review already underway by the Ministry for Police and

Emergency Services for a range of rural crimes, including illegal hunting and theft from farms. Potential inconsistencies between the SOL applying to different offences which impede effective prosecution also need to be explored by this, or another, qualified group.

The Policy also reaffirms (at pp. 4-5) that farm animal welfare is a key concern for NSW producers and NSW has a strong and well established legislative framework, supported by enforcement agencies and rigorous procedures, to respond appropriately to cases of animal cruelty. This situation is similar to that found in other States and Territories. National model codes for livestock, along with NSW standards and guidelines, articulate acceptable industry standards in line with community expectations. The Department of Primary Industries also provides up to date and accessible web-based resources on best practice and sustainable management in animal industries, reflecting the importance placed on animal welfare in these industries by both producers and the broader community.

1.3 The four components of the *NSW Farm Incursion Policy*:

The Policy operates as a framework for a coordinated cross-agency approach which integrates the role of governments, industry and producers in the prevention and response to Farm Trespass. The Policy is also intended to be relevant across all State, Territory and the national jurisdictions. This approach reflects the national nature of many animal production industries and the shared nature of the experiences of producers affected by Farm Trespass, irrespective of their industry or the region in which they live and conduct their business.

The Policy therefore accommodates a range of approaches in a four pronged strategy to prevent and respond to Farm Trespass in a harmonised and coordinated manner with a national focus. The four arms of this approach are set out below, along with the explanatory detail drawn from the Policy, a structure which corresponds to the Action Plan for implementation of the Policy later in this report.

A) Strengthen legislative and regulatory requirements and controls for prosecution

- Work with Police and Department of Justice (DoJ) to improve understanding of and response to farm incursions – how often are existing laws used to protect the privacy, reputation, biosecurity status, autonomy and safety of farmers and farm businesses in cases of incursions and what is the fate of these prosecutions? Is civil action by affected farms a realistic alternative?
- Work with Police to respond to identified high risk industries and scenarios, and to coordinate intelligence.
- Develop prosecution guidelines for action against trespass, nuisance and surveillance offences.
- Develop preventative security measures to protect for trespass and biosecurity risks.
- Monitor and evaluate farm incursions incidents and trends – provide an evidence base to identify areas needing operational intervention or escalation of regulatory responses.
- Establish a cross agency working group (DPI/DoJ) to better understand the significant biosecurity, economic, social and environmental risks posed by farm incursions, and the evidence requirements for proof of *Surveillance Act* offences.
- Provide information packs to farmers on launching civil action for trespass and nuisance.

B) Resolve impediments to successful prosecutions of trespassers under existing trespass and surveillance laws

- Ensure obligations on all those who create biosecurity risks are stated clearly, and penalties are sufficient to drive mitigation steps to be taken (General Biosecurity Duty will help to establish the standard expected, making proof of breach more straightforward).
- Develop an engagement strategy with peak industry stakeholders and individual farmers to highlight the biosecurity risks arising from farm incursions.
- Work with DoJ and Police to identify and address evidentiary constraints to prosecutions for farm incursions, for example, owner-initiated surveillance cameras in high risk facilities.

C) Facilitate development by industry of proactive strategies to deal with biosecurity risks arising from farm incursions

- Stakeholder and community engagement/action plan to be developed to promote industry/government roundtables; facilitate engagement between farmers, Police and other enforcement agencies; develop information packs and fact sheets about ways to minimise risks of farm incursions; and develop communication strategies about the importance of biosecurity to NSW and Australia and the risks and costs arising from farm incursions.
- DPI to work with industry and Police to facilitate training on best practice on-farm surveillance methods.
- Cross industry engagement between peak industry bodies, and relevant Commonwealth agencies.

D) Identify intervention points for Government to increase consumer confidence in lawful animal husbandry practices and educate the community on NSW farmers' commitment to high animal welfare standards

- The intensive farming industry sector is to find ways to increase visibility and transparency of industry animal welfare and biosecurity standards and regulatory requirements to educate consumers about the high standards which are employed within this sector, and the impacts of Farm Trespass incidents on animal welfare, biosecurity, individual farmers and rural/regional communities. For example, industry bodies to take the lead with marketing, branding, communication collaboration (social media and conventional media) with government assisting as a facilitator.
- Support NSW Farmers, National Farmers Federation and other industry and jurisdictional peak bodies to develop an industry action plan and communications plan for progressing these issues.
- NSW DPI to develop a communications strategy that highlights its role as regulator of intensive farming and biosecurity in NSW and the high standards that are achieved through this State's rigorous regulatory and compliance framework, supported by appropriate enforcement agencies. This communications strategy will provide a template for similar action in other jurisdictions.

1.4 Background to the joint NSW-Commonwealth Farm Trespass Roundtable

The NSW Government is committed to ensuring that farmers who treat their animals in a lawful and responsible manner are permitted to carry out their business undisturbed by the unlawful actions of animal activists.

Farm Trespass is a national issue. These unlawful intrusions upon farmers, their families and their employees are not unique to any one State or Territory. The NSW and Australian governments are providing joint sponsorship and leadership of this issue in the Agriculture Ministers' Forum (AgMin), reflecting the shared concerns by farmers across State and Territory boundaries and underpinning a coordinated and harmonised approach to the issue.

At its 22 May 2015 AgMin meeting, Ministers agreed that the *NSW Farm Incursion Policy* be used as a useful reference to address Farm Trespass issues, and that a consistent approach to farm trespass is important in maintaining the integrity of the biosecurity system and ensuring farmers are offered the same entitlements to privacy as the broader community.

The *NSW Farm Incursion Policy* acknowledges that all Australian jurisdictions have robust legislative frameworks and penalty provision to protect animal welfare, prosecute trespassers and manage biosecurity. The Policy reflects that adequate laws are already in place for the effective management of and response to these issues, although it notes that there are likely to be opportunities for improvement and/or refinement of existing regulatory schemes by governments to improve responses to Farm Trespass incidents.

However, the Policy also acknowledges that a substantial component of a harmonised and coordinated national approach to the issue comprises appropriate prevention and protection strategies, along with community awareness and engagement activities by individual producers and significant industry and animal welfare bodies highlighting the real impacts of such incidents.

The NSW and Australian Governments demonstrated their shared support on the issue of Farm Trespass by convening a national Ministerial Roundtable on Farm Trespass.

The Roundtable was hosted jointly by the Australian Minister for Agriculture and Water Resources, the Hon Barnaby Joyce MP, and the NSW Minister for Primary Industries and Minister for Lands and Water, the Hon Niall Blair MLC, at NSW Department of Primary Industries' Elizabeth Macarthur Agricultural Institute (EMAI) Menangle on 3 August 2015.

2. FARM TRESPASS ROUNDTABLE

Farm Trespass is a complex issue, requiring a partnership between producers, industry and different levels of government for effective prevention and response to specific incidents. Community expectations around the maintenance of appropriate animal welfare standards within animal production industries must be balanced with the reasonable expectation that lawful animal production practices be allowed to continue safely and uninterrupted.

Key speakers at the Roundtable discussed various aspects of, and issues associated with, Farm Trespass, leading into broader discussion by the group.

2.1 Summaries of presentations

2.1.1 Scott Hansen, Director General NSW Department of Primary Industries

- Farm Trespass in the context referred to here is an intentional act of unlawful or illegal entry onto someone else's property, without their consent or knowledge. By definition, it is not accidental, and is associated with both breaches of privacy and biosecurity related risks.
- Active surveillance of premises by owners or managers using people or technology to detect intrusions is inherently more difficult in rural environments than urban areas, making identification and prosecution of offenders harder. Signage and security, wherever feasible, will help achieve these goals.
- The promotion of high farming standards, with greater openness and transparency surrounding the conditions in which animals are bred and raised, along with a concerted and community directed education and information effort, contribute to the social licence between the community and producers. Such transparency will lessen the incentive to 'reveal' alleged mistreatment by lawful businesses. Social licence is not a regulatory tool for states, but rather an implied 'contract' between industry and their community which has national application.
- The last Avian Influenza outbreak in NSW was an event of limited reach, yet it cost more than \$5 million to address. At a time when more and more attention is being paid to food safety and quality, our enviable national biosecurity status is a precious asset to be protected. The Agriculture Ministers' Forum (AgMin) understands this very well, directing their attention towards a national approach to combating Farm Trespass.

2.1.2 Assistant Commissioner Geoff McKechnie and Detective Inspector Paul Huxtable, NSW Police

- A successful prosecution for Farm Trespass requires the event to be shown to be an intentional act. 'Accidental trespass' is not a crime, and is usually addressed effectively by good signage and improved awareness of property boundaries and obligations of entry, although rural areas are often challenging in this regard with poor exclusion signage, easy property access, limited entry supervision, visibility a matter of luck and distances between houses and animal facilities.
- Penalties for trespass tend to be financial in nature, which may not be an effective deterrent for the motivation to enter without permission, and are relatively light.
- Thirty eight (38) piggeries in the Young area, along with poultry farms in other states) are known to have been invaded for the purpose of installing unauthorised surveillance devices, ostensibly to 'reveal' animal husbandry practice believed to be poor. These incursions fall in to the 'trespass with intent' category.

- NSW Police have been investigating these incidents actively, but evidence gathering around such incidents presents significant challenges. For example, sometimes the first notice the owner has of the incursion is the internet publication of video footage taken on the premises, and this publication may occur weeks or months after the trespass occurred. Difficulty in identifying the person responsible for taking the footage, and its publication, as well as the two year statute of limitations applying to trespass offences, can all hamper prosecution.
- Where prosecution is pursued, it is often prized by the perpetrators for its benefits in promoting their cause, with a cost that is tolerable given the relatively light penalties.
- The ideology of Farm Trespass by animal activists is complex – in invading lawfully operating animal production enterprises, it appears that the underlying motivation may be more based on animal liberation principles (that is, elimination of all animal production for human consumption) than good animal welfare standards. Further, real animal welfare and health risks posed to the animals when biosecurity protocols are breached to gain entry appear to be often ignored by the perpetrator.
- Surveillance and subsequent publication of footage obtained is often alleged by the farmer to have been selected and edited to misrepresent owners and their families in the worst possible light, with little explanatory context provided, to ensure that the farm and its owners reputations are tarnished in the local community and the industry and maximise the impact on their business.
- Increasing access by private individuals to drones raises concerns about these devices as potential instruments of unauthorised observation and surveillance when fitted with a camera or recording device. The *Surveillance Act 2007 NSW* aims to protect the privacy of persons against such intrusions, but the provisions of the Act have yet to be tested. If farmers capture these devices on their property, they are encouraged to hand them over to Police, not to destroy them or they may open themselves to charges of malicious damage to property.
- Unlawful acts of Farm Trespass are hard to stop altogether, but it is important to make it as difficult as possible by denying or delaying access (eg locked gates and buildings). Such action makes clear that an offence is being committed, entry in breach of warning signage and biosecurity conditions of entry. Introduction of other measures to improve evidence collection, for example, security cameras may also be considered.
- Improved communication and working relationships between producers and their local Police are critical to improving security, prevention and evidence collection. NSW has 33 Rural Crime Investigators across the State, and similar specialist forces in other jurisdictions should be similarly engaged in their local response.

2.1.3 Producers' perspectives - Bede Burke, Chairman NSW Farmers Egg Committee, and Edwina Beveridge, Owner and Producer Blantyre Farms NSW

- Ms Beveridge and Mr Burke provided testimony, the former as a pig producer who had experienced personally break-ins and publication of covertly-taken surveillance footage, and the latter from a position in industry where they are familiar with the personal experiences of those targeted previously by break-ins.
- The speakers described common elements of these events – forced entry (probably repeated) into sheds and barns, usually late at night, distress caused to the animals in those sheds, cages broken into and birds taken and crammed into cages to simulate overcrowding for a photographic record taken by hidden cameras, groups of animals under treatment recorded and misrepresented on the internet as animals which were suffering and not properly cared for, and sometimes extensive vandalism during the invasion.
- The personal impact on producers when they discover the trespass is significant, as with any breach of privacy – they fear for their and their families' safety, the welfare of their animals, concern if they or their staff confront the intruder, anxiety about their business and their local reputation, including how their children will be treated by their peers at school after publication of the footage which seeks to impugn their parents' or family's reputation.
- Subsequent publication of covert footage is generally intended to portray the producer's business, and them personally, in the worst possible light. Images are chosen, and perhaps constructed or manipulated, for their 'shock value' to the public to incite outrage at producer activities. Release of personal information about the producer and their families on the internet is intended to make them the target of public opprobrium, with the producer having little opportunity or means to defend themselves in this open forum.
- Business impacts are equally significant - reputational damage, loss of production time during the investigation and overcoming the distress of animals due to change in routine, security enhancements and changes to operating procedures, repair of vandalised equipment and infrastructure, associated financial costs and productivity losses, mitigation of biosecurity risks incurred due to the invasion (perhaps requiring destocking of sheds).

Discussion: There was general agreement at the Roundtable that law abiding animal production industries should have access to at least the same level of privacy and protection of their premises as other private citizens and business owners, and that the true business and personal impacts of Farm Trespass incidents on the producer and their stock are rarely documented or quantified.

Documentation of these impacts, in quantified (money) terms where possible, is an opportunity for local Police and producers to work together, irrespective of jurisdiction, to ensure that a judge or magistrate presented with a prosecution case in a Farm Trespass incident can take these impacts into account, balancing the apparent 'moral righteousness' of an intruder claiming

that the video taken of animals in the facility justified their engaging in an otherwise unlawful act of trespass.

The true question is, is it reasonable to ignore these other impacts when the animal activists in pursuit of their cause, or should activists seek to have recourse to legal and less aggressive means to bring their concerns to the attention of the community and the authorities? Is it reasonable that an activist remains unaccountable for these broader impacts?

2.1.4 The Hon Niall Blair MLC, Parliament of NSW, Minister for Primary Industries

- Farm Trespass incidents are serious events with significant personal and commercial consequences. They affect persons and livelihoods and deserve the same attention as is given to the invasion of premises, either a private home or a business, in urban environments.
- The majority of farmers and producers seek to 'do the right thing' and maintain high standards of operation. Producers and industry have a duty to demonstrate that they take animal welfare seriously and the Government supports this approach.
- Subversive campaigns intended to harm or discredit livestock businesses can jeopardise genuine producer and industry effort to create and develop trade markets where our food safety and security, and our animal welfare standards, contribute a significant trade advantage.
- Having experienced personally the 2001 UK Foot and Mouth Disease outbreak in Northern Ireland, the Minister stated that he was extremely concerned about the potentially catastrophic consequences of emergency animal disease outbreaks, and the need to ensure critical biosecurity practices are not undermined by Farm Trespass incidents.

2.1.5 The Hon Barnaby Joyce, MP, Parliament of Australia, Minister for Agriculture

- Combatting Farm Trespass is a national concern, with NSW and the Commonwealth commencing a collaborative effort some eighteen months ago to develop a common national approach to this serious issue.
- A legal and regulatory perspective requires that those groups who wilfully break the law should be prosecuted – this is the expectation of the community in a safe and orderly society.
- There are established mechanisms to deal with animal welfare concerns, by reporting to competent authorities in respective States and Territories, including the RSPCA and Police. If laws are inadequate, there are open processes through the Parliament to seek change to such laws. Vigilantism is not part of these legitimate processes.

- Farm Trespass incidents cause significant distress and disruption to farming families and businesses engaged in lawful activity, requiring them to now act as security guards to protect their families, premises and livestock.
- Industries that make a material contribution to the nation's GDP and our quality of life are also threatened by this activity through the impacts on productivity, profitability, reputation and ultimately the viability of industries, risking our biosecurity status.
- As Minister, I am concerned to ensure that the voices of producers and industry are heard in the court of public opinion, to balance the 'moral high ground' so often captured unfairly by the activists in some sections of the community if industry remains silent.

2.2 Findings from the Roundtable

2.2.1 Statements of Principle derived from the Roundtable:

- No law or regulatory intervention alone is likely to eliminate Farm Trespass completely. It is the combination of prosecutions and meaningful penalties, plus suitable trespass prevention and response measures by producers and industry, and the improvements in these over time which will make a difference.
- Measures and responses to Farm Trespass, including penalties, should be aligned to the level of criminality involved and the consequences of the risks for categories of incident. These measures and penalties must be consistent with the risks biosecurity breaches pose for individual properties, regions and whole industries.
- A regulatory or prosecutorial response alone to incidents is not enough – industry and producers need to fight also in the 'court of public opinion' to protect their reputation and their entitlement to continue to engage in lawful animal production activities, and to defend the high standards of animal welfare employed in these industries.

2.2.2 Role of Commonwealth and States/Territories in a harmonised national response to Farm Trespass

- Roundtable participants recognised the importance of a consistent, national approach to this issue. Whilst regulatory and prosecutorial responses to these incidents are primarily a function of State and Territory governments, the importance of cooperation between jurisdictions, and the crucial leadership role to be played by industry bodies working with producers and government to combat this threat, were emphasised.
- Discussion at the Roundtable identified a series of approaches, listed in 2.2.3 below which, when employed together, are likely to make a significant difference over

time. Specific measures are listed in more detail in the draft Action Plan, for consideration by AgMin as the basis for implementation of a harmonised national response on this issue.

2.2.3 Where do the opportunities lie to improve the situation?

Five target areas were identified to reduce the likelihood and incidence of Farm Trespass:

- Warn off potential trespassers through signage and warnings of private nature or premises and biosecurity protocols applying to the premises, security measures employed and penalties for breaches.
- Make the physical act of trespass more difficult and risky for the perpetrator so a more serious offence is being committed if trespass proceeds, with likely more success in evidence gathering to follow. Examples include the use of gates, locks and security devices.
- Seek collaboration between producers, between producers and industry, producers and their communities, and between producers and the media to respond to acts of wilful trespass and invasion. Examples include:
 - develop and disseminate 'how to' 'trespass prevention' and 'trespass response' kits supported by appropriate producer education;
 - develop and use informal area and regional producer networks to exchange information, pass on warnings, share experiences, discuss successful tactics and provide mutual support after a trespass incident;
 - implement publicity campaigns (posters and signs in public places and on sheds with contact numbers) to encourage reporting of suspicious activity; and
 - develop invasion response strategies for immediate activation by producers and industry using the same information dissemination channels used by the activists (social media, web sites and traditional media).
- Improve success rates in prosecutions:
 - producers to remain alert to the risk of trespass and invasion;
 - producers willing to prosecute;
 - producers capable of prosecuting by assisting Police with evidence collection and documenting the full impacts of the invasion on them and their businesses;
 - jurisdictions to consider the benefit of greater uniformity and complementarity between jurisdictions on relevant laws and procedures; and
 - ongoing education of farm employees and service personnel, local Police, judicial officers and the local community about the serious consequences of Farm Trespass.

- Ensure that a balanced story is presented to the community and communicated through the media to disenfranchise the activists from their ‘shock value’ tactics when it misrepresents the true situation:
 - ensure that animal welfare and general farm practices meet high standards;
 - ‘humanise’ Farm Trespass and its consequences - create a supportive united front to discredit tainted or biased information, and raise general public awareness of the right of law abiding animal producers to conduct their businesses in peace and safety, the same as other citizens and businesses; and
 - encourage those who have concerns about animal welfare practices to take them to the proper authorities rather than supporting vigilante action.

2.3 Actions identified for immediate progression - Farm Trespass Workshop 10 February 2016

1. NSW Farmers Association proposed that an industry-led working group, supported by a whole of government approach, be established to progress implementation of the Action Plan. This working group would be initially focussed on NSW, allowing industry sectors to work together on common problems and solutions but still allow the specific challenges for each sector to be addressed. For example, DPI compliance, legal and communications units could assist in development of appropriate wording for signage for biosecure enterprises, and multi-sectoral communication strategies. This Working Group may then be able to recommend an approach, through the Agriculture Minister’s Forum, that other jurisdictions could adapt to suit their circumstances. This Working Group should be led by industry and seek membership or an appropriate level of engagement from all relevant industry bodies, and representatives of affected producers, supported by government agencies represented at the Workshop.
2. NSW Police advised that there is a review underway of the adequacy of penalties in NSW for a range of rural crimes, and that it may be possible for penalties relevant to Farm Trespass, for example, for the offence of entering inclosed lands to be included within that review. If a national approach was pursued in relation to this issue, other jurisdictions would have to consider the appropriateness of such a review of their laws. However, whilst the legislation can be refined, the workshop noted that the problem of Farm Trespass will largely be solved by the policy and industry response, not the legislation on its own, and that this forum was critical in working towards a solution¹.
3. Engagement of local communities to encourage reporting of suspicious activity or presence in their local area with signs and contact numbers so that concerns may be raised with the local Police. It is also possible to explore whether a third party service provider such as Crimestoppers could be the contact point for reporting suspicious activity. Crimestoppers could then also assist with collating statistics on the prevalence of and types of rural crime being reported to assist

¹ On 7 March 2016 the Minister for Industry, Resources and Energy, the Hon Anthony Roberts MP announced in a media release that “legislation will be introduced to the NSW Parliament to increase enforcement powers with respect to illegal protests. The *Inclosed Lands, Crimes and Law Enforcement Amendment (Interference) Bill 2016* will deliver on the Government’s commitment to ensure that the right to peaceful protest is balanced with the need to ensure public safety, the safety of workers, the protection of communities and lawful business activity. (The Minister) said the reforms enable Police to take a more proactive approach to managing and prosecuting illegal activity”.

planning and resourcing decisions encourage communities to watch and report, and to guide where resources are best targeted.

4. Where there are organisations supporting animal activists in their activities, these organisations often derive significant taxation benefits from their recognition as charities, yet often appear to have other dominant purposes for existing. For example, it may be possible to establish that the main purpose of the organisation is political rather than charitable and seek a determination as to whether this may be grounds to terminate its charitable status.
5. Industry messaging and publication of 'tool kits' and response protocols on industry websites must be undertaken carefully. There is concern in some industries that animal activists are targeting high profile industry members, not to 'reveal' poor animal welfare standards in these enterprises (they are often recognised as leaders in their sector), but to maximise the publicity they can get for their broader cause. This approach also implies criticism of bodies such as the RSPCA, that they are not being hard enough on poor operators. However, it demonstrates limited understanding of the objective approach adopted under RSPCA and Police procedure to ensure people are not targeted unfairly. It is likely that each industry sector would benefit from a customised approach to this issue, and some industries have commenced work on a Farm Trespass Response Kit, but the concept could well be progressed further and extended to other industries under the auspices of the working group suggested in 4.
6. Specialised rural crime officers are now more available than they have been previously in NSW, but many officers in Local Area Commands do not have specialist knowledge in this area. The role of Local Land Services officers should be clarified as they are well placed to assist local Police on issues around how animal enterprises operate, potential biosecurity and animal welfare risks and impacts from unauthorised incursions, the applicable welfare codes of practice and industry standards, and reasonable protection of animals and premises from incursion, as well as being part of a regulatory response such as expert witnesses.
7. More certainty should be sought about the operation of other areas of law, in NSW initially. Advice should be sought from the Department of Justice about the adequacy of laws relating to surveillance and drones, the consequences of publication of material on the internet (breach of privacy and defamation laws) including the rights of apparently misrepresented parties to correct the record, the effect of different statutes of limitation for prosecuting different offences and whether this is an impediment to prosecution, and the relevance, if any, of victims' compensation laws and laws regulating charities. New offences should also be explored, for example, impounding/confiscation of vehicles if a trespasser is prosecuted successfully may be an additional deterrent against further offending. Further, corporate offences may be explored for prosecuting an organisation that has directed one of its members to commit the trespass.
8. Further work is required, perhaps through the working group suggested in 4, on how to best manage the impact of Farm Trespass events on the individuals targeted, For example, is it possible for police to refer victims to counselling and support services for assistance.

9. The scope of the work should be broadened beyond privately owned farms to include more public affiliated premises which could be the target of animal activists such as livestock depots and saleyards, abattoirs/processors, possibly showgrounds and feed suppliers. In NSW the definition of Inclosed Lands should be reviewed to ensure that animal activists' unlawful entry on these premises are also considered an offence under the *Inclosed Lands Protection Act*.
10. Encourage victims to 'prosecute where possible'. NSW Police to write an article for publication explaining to farmers why it is important to pursue prosecution and how they can best prepare for such action and follow through.

3 ACTION PLAN (based on the Policy and findings of the Roundtable)

See attachment B.

4 CONCLUSION

Farm Trespass is an issue of national concern which threatens some of our most significant animal industries, and which warrants a coordinated harmonised approach to prevent and reduce the impact of such incidents.

Farm Trespass in this context, involving the disruption of lawful animal husbandry practices in incidents characterised by unlawful entry to the premises, with associated security, biosecurity (animal disease and pest) and animal welfare risks, is a straightforward crime. However, the common features of such incidents can make them difficult to prevent or prosecute, including the act of entry occurring under the cover of darkness and the installation of covert video surveillance equipment, with footage being published on the internet some time after the trespass actually occurred and without critical contextual information.

These circumstances also usually involve apparently intentional or reckless breach by the trespasser/s of biosecurity protocols. These breaches expose the animals, the facility and the industry to significant biosecurity risks, along with potentially serious harm (personal, financial and reputational), to the individual producer in their local community, their industry, and the broader community, and the potential for negative impacts for Australia's international agricultural trade partnerships.

Following the Agricultural Ministers Forum's acceptance of the *NSW Farm Incursion Policy* as a basis for a harmonised approach to this issue, the Farm Trespass Roundtable hosted jointly by the NSW and Australian Governments on 3 August 2015 provided an opportunity to discuss specific concerns raised by producers and key organisations and develop a realistic action plan to recommend to AgMin for national implementation. The draft action plan is attached at Appendix 1.

The action plan will form the basis of a report to go to AgMin in the second half of 2016, seeking endorsement for this as a national approach that is consistent and harmonised as far as possible across jurisdictions.