



NSW YOUNG LAWYERS FACT SHEET

# ANIMAL RIGHTS ACTIVISM AND THE LAW

Animal activism is important in raising awareness about animal protection issues and creating positive change for animals. If you engage in activism, there are various laws and penalties of which you should be aware.

## Organising a Protest in New South Wales

### Who do you need to notify?

- If you would like to organise a protest in New South Wales (NSW), you must send a written notice of your intention to hold a protest to the Commissioner of Police<sup>1</sup> at the following address:<sup>2</sup>

Police Headquarters  
1 Charles Street  
Parramatta NSW 2150

- The notice must be signed by a person who indicates that they take responsibility for organising and conducting the proposed protest. The notice must also specify that person's address.<sup>3</sup>
- If possible, you should serve the notice on the Commissioner at least 7 days before the date of the proposed protest. The proposed protest becomes an 'authorised public assembly' if the Commissioner notifies you that the Commissioner does not oppose the holding of the protest.<sup>4</sup>
- If you serve the notice less than 7 days before the date of the proposed protest and the Commissioner has not notified you that the Commissioner does not oppose the protest, you may need to apply to a Court for an order authorising the holding of the proposed protest.<sup>5</sup>

### What details do you need to include?

- The notice must be in the prescribed form as set out in Schedule 1 of the *Summary Offences Regulation 2015* (NSW).<sup>6</sup> There is a sample form available for download on the NSW Police website: [https://www.police.nsw.gov.au/data/assets/pdf\\_file/0007/275560/Notice\\_of\\_Intention\\_to\\_Hold\\_a\\_Public\\_Assembly.pdf](https://www.police.nsw.gov.au/data/assets/pdf_file/0007/275560/Notice_of_Intention_to_Hold_a_Public_Assembly.pdf)
- Some of the information that must be included in the notice includes:
  - the date on which you propose to hold the protest;
  - if the proposed protest is a procession, the time at which the procession will commence, the proposed route and any places along that route for the purposes of enabling participants to be addressed or for any other purpose,
  - if the proposed protest is not a procession, the time and place at which it is intended that participants will gather to participate in the protest;
  - the purpose for which the proposed protest is to be held; and
  - the number of persons who are expected to be participants in the proposed protest.

### Entering into Commercial Premises

Unauthorised entry into commercial premises may constitute trespass, punishable at common law and under statute. If land is fenced or otherwise 'inclosed', it is an offence to enter that land without the permission of the owner, occupier or person in charge, or to remain on that land after being asked to leave.<sup>7</sup> Offenders can be fined \$550 for this offence and \$1100 where

offensive conduct is involved.<sup>8</sup> If trespassing on commercial premises, offenders may be liable for a higher fine of \$5500 if, for example, an offender interferes with the conduct of the business, creates a serious risk to the safety of anyone on those lands, or increases a biosecurity risk on the premises.<sup>9</sup>

The owner or occupier of private land, fenced or not, may also pursue a civil action for trespass and seek damages from those who unlawfully intrude on their property.<sup>10</sup>

## Surveillance Devices and Use of Drones

The *Surveillance Devices Act 2007* (NSW) regulates the installation, use, maintenance and retrieval of surveillance devices in NSW. It prohibits the use of an optical surveillance device that is capable of recording visually or observing an activity in circumstances where entry on to the property being filmed (or interference with the vehicle being filmed) is not consented to by the occupier of that property.<sup>11</sup> It also prohibits publishing or communicating the visual record obtained from the illegal use of an optical surveillance device.<sup>12</sup> Both offences attract up to 5 years in jail and/or fines of up to \$11,000.

Where a drone is used, the drone user must comply with the rules stipulated in the *Civil Aviation Safety Regulations 1998* (Cth) ('the Regulations'), which include only flying the drone during the day, keeping the drone within visual line of sight and keeping the drone at least 30 metres away from other people.<sup>13</sup> The Regulations also stipulate that a drone must not be flown over a populated area. Breaching the rules may result in conviction and a fine of up to \$10,500.<sup>14</sup> Drones can be flown over private properties, however personal privacy must be respected. Drone users could also be committing trespass on private properties if they are interfering with the property owner's right to private enjoyment of land.<sup>15</sup>

## Ag-gag Laws

'Ag-gag' describes laws that aim to hinder animal protection advocates from recording the operations of individuals and businesses in the animal agriculture industry and other animal use industries. Ag-gag laws purport to protect the interests of agricultural operators, but hinder transparency in the industry and prevent the public from being fully informed of poor animal welfare outcomes and practices.

The animal agricultural industry argues that surveillance by animal protection advocates threatens animal safety and biosecurity. However, footage obtained from activists has regularly stimulated community debate and helped achieve positive animal welfare outcomes, through improving transparency and accountability.

## New South Wales

Amendments to NSW biosecurity laws<sup>16</sup> came into effect on 1 August 2019, expressly targeting the actions of 'farm invaders and vegan vigilantes'.<sup>17</sup> Trespassers dealing with biosecurity matter, such as animals, in breach of a farm's Biosecurity

Management Plan may be guilty of an offence and liable for on-the-spot fines of \$1000, and further fines of up to \$220,000 per person<sup>18</sup> and \$440,000 for groups and corporations.<sup>19</sup>

Activists who attempt to stop workers from undertaking their lawful duties by hindering their ability to use any tools, clothes or other property used for their work, could be liable for an offence under the *Crimes Act 1900* (NSW) that carries a maximum penalty of imprisonment for 2 years and/or a fine of \$5500.<sup>20</sup> This could include activists who hide, attach themselves to, block access to, stand on, or in the way of, equipment.

The Right to Farm Bill 2019 (NSW) is currently before the NSW Legislative Assembly. Under the Bill, those who 'incite or direct trespass' on inclosed lands such as farms, could be liable for a fine of up to \$11,000 or 12 months imprisonment.<sup>21</sup> Introduced by the NSW Minister for Agriculture, the Bill also seeks to introduce property damage and the 'wilful or negligent' release of livestock, as aggravating factors for unlawful entry.<sup>22</sup>

The Bill proposes to significantly increase the maximum penalty for the offence of aggravated unlawful entry on inclosed lands from \$5500 to \$13,200, and/or imprisonment for 12 months. The potential penalties rise to \$22,000 or three years imprisonment if the offender is accompanied by two or more persons, or if the offender does anything to put the safety of any person at serious risk.<sup>23</sup> The penalty of imprisonment has been criticised by lawyers as harsh and disproportionate to the offence.<sup>24</sup>

## Australia Wide

In response to high-profile animal activism, the Australian Government introduced the *Criminal Code Amendment (Agricultural Protection) Act 2019* (Cth) ('the Act') in September 2019. Under the legislation, those who use a carriage service such as social media or a website to 'transmit, make available, publish or otherwise distribute material' with the intention of inciting others to trespass on agricultural land, could face up to 12 months imprisonment.<sup>25</sup> Further, those who use a carriage service to incite others to damage, destroy or commit theft of property on agricultural land could face up to 5 years imprisonment.<sup>26</sup> The new law has been described as severe by lawyers and animal protection organisations, particularly because offenders can be prosecuted even if the trespass or damage did not occur.

Under the Act, an individual can face up to 12 months imprisonment for organising and advertising a trespass event and up to 5 years imprisonment for organising or publishing an event to cause damage or impede on property primarily used for business.

## Interactions with Police and Your Rights

Police officers are authorised to arrest you without a warrant if they have reasonable grounds to suspect that you are committing, or have committed, an offence and the arrest is deemed 'reasonably necessary'.<sup>27</sup> The arresting officer must state that you are under arrest, give reason(s) for the arrest, and state his/her name and place of duty.<sup>28</sup> Police can use as much force as reasonably necessary to arrest a person and this may include the use of handcuffs.<sup>29</sup> If arrested, police can detain you for the purposes of further investigation for up to six hours.<sup>30</sup>

Police may direct you to 'move on' from a public place if the officer reasonably believes that you are obstructing other people or traffic, harassing or intimidating another person, causing or likely to cause fear to another person, or dealing in prohibited drugs.<sup>31</sup> It is an offence not to comply with the direction.<sup>32</sup>

If your identity is unknown to police, you may be required to disclose your name and address if an officer reasonably suspects that you may be able to assist in the investigation of an alleged indictable offence, or for the purposes of issuing you with a 'move on' direction or penalty notice.<sup>33</sup> Failing to disclose your identity in these circumstances is an offence punishable by a maximum fine of \$220.<sup>34</sup>

Police can search you upon arrest and again later at the police station, and may seize and detain anything found during such searches.<sup>35</sup> The police can stop, search and detain anyone reasonably suspected of having anything in their possession that is stolen, unlawfully obtained, or intended for use in committing a serious offence.<sup>36</sup>

It is wise to comply with police instructions even if you believe that you are innocent. You will have the opportunity to explain your case at court and, if necessary, to file a complaint against

the police. It is an offence to resist arrest.<sup>37</sup> However, you should also be aware of your rights and speak to a lawyer before speaking to police, as anything said to a police officer can be used as evidence in court.

## Peaceful Actions

There is no obligation to obtain authorisation for a peaceful assembly (e.g. Cube of Truth, protest), however there are some benefits in obtaining authorisation from both the local government and the police in advance. For example, it will protect you from an offence that prohibits the obstruction of the free passage of a person, vehicle or vessel in a public place without reasonable excuse, which attracts a fine of up to \$440.<sup>38</sup> You may also need to receive approval from the local council if you are planning to use a loudspeaker.<sup>39</sup>

Graffitiing and stickering may lead to liability for civil trespass or crimes of malicious damage to property. The *Graffiti Control Act 2008* (NSW) prohibits intentionally marking any premises or other property without consent and attracts a fine of up to \$440.<sup>40</sup> It leads to higher penalties if the mark is not easily removable, which attracts a fine of up to \$2,200 or imprisonment for 12 months. Chalking on public footpaths or pavements is not illegal as it could be washed off easily,<sup>41</sup> however you need to be more cautious with chalking on walls or private property.

*This fact sheet has been prepared by the NSW Young Lawyers Animal Law Committee for information only and is not a substitute for legal advice. This information is up to date as at October 2019.*

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## Endnotes

- 1 *Summary Offences Act 1988* (NSW) s 23(1)(a).
- 2 *Summary Offences Act 1988* (NSW) s 23(2); *Summary Offences Regulation 2015* (NSW) r 13(2).
- 3 *Summary Offences Act 1988* (NSW) s 23(1)(e).
- 4 *Ibid* s 23(1)(f)(i).
- 5 *Ibid* ss 23(1)(f)(ii), 26.
- 6 *Summary Offences Act 1988* (NSW) s 23(1)(b); *Summary Offences Regulation 2015* (NSW) r 13.
- 7 *Inclosed Lands Protection Act 1901* (NSW) s 4.
- 8 *Ibid* ss 4, 4A.
- 9 *Ibid* s 4B.
- 10 Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, Discussion Paper No 80 (2014) 43, 44.
- 11 *Surveillance Devices Act 2007* (NSW) s 8.
- 12 *Ibid* s 11.
- 13 *Civil Aviation Safety Regulations 1998* (Cth) pt 101.
- 14 *Ibid*.
- 15 *Bernstein v Skyviews and General Ltd* [1978] QB 479.
- 16 *Biosecurity Act 2015* (NSW).
- 17 John Barilaro and Adam Marshall, 'Farm Invaders and Vegan Vigilantes to Face Toughest Penalties in the Nation' (Media Release, 22 July 2019) <[www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0015/1148010/Farm-invaders-and-vegan-vigilantes-to-face-toughest-penalties-in-the-nation.pdf](http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0015/1148010/Farm-invaders-and-vegan-vigilantes-to-face-toughest-penalties-in-the-nation.pdf)>.
- 18 Department of Primary Industries, NSW Government, *Biosecurity Management Plan* <[www.dpi.nsw.gov.au/biosecurity/your-role-in-biosecurity/primary-producers/biosecurity-management-plan](http://www.dpi.nsw.gov.au/biosecurity/your-role-in-biosecurity/primary-producers/biosecurity-management-plan)>.
- 19 *Ibid*.
- 20 *Crimes Act 1900* (NSW) s 545B(1)(a)(iii).
- 21 Right to Farm Bill 2019 (NSW) sch 2 item 5.
- 22 *Ibid* item 3.
- 23 *Ibid* item 4.
- 24 New South Wales Bar Association, Submission No 146 to Portfolio Committee No 4, *Inquiry into the Provisions of the Right to Farm Bill 2019*, 1 October 2019, 13; the status of the Bill can be viewed at: <https://tinyurl.com/y32d3tpq>.
- 25 *Criminal Code Amendment (Agricultural Protection) Act 2019* (Cth).
- 26 *Ibid*.
- 27 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 99 ('LEPRA').
- 28 *Ibid* s 202.
- 29 *Ibid* s 231.
- 30 *Ibid* ss 114 – 115.
- 31 *Ibid* ss 197 – 200.
- 32 *Ibid* s 199. Refusal to comply with a police direction is punishable by a fine of \$220.
- 33 *LEPRA* s 11; *Criminal Procedure Act 1986* (NSW) s 341.
- 34 *LEPRA* s 12.
- 35 *Ibid* ss 27 – 28A.
- 36 *Ibid* s 21.
- 37 *Crimes Act 1900* (NSW) s 546C. Resisting or hindering an arrest is punishable by 12 months imprisonment and/or a fine of \$1100.
- 38 *Summary Offences Act 1988* (NSW) s 6. Offences for obstruction may also apply under *Road Rules 2014* (NSW) and *Crimes Act 1900* (NSW).
- 39 See *Local Government Act 1993* (NSW) s 68.
- 40 *Graffiti Control Act 2008* (NSW) s 4.