

# Now we can ‘see the forest and the trees, too’, but there are risks: camera trapping and privacy law in Australia

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## **Abstract**

The use of camera traps in wildlife management is an increasingly common practice. A phenomenon that is also becoming more common is for such camera traps to unintentionally film individuals engaged in a variety of activities, ranging from the innocent to the nefarious and including lewd or potentially embarrassing behaviour. It is therefore possible for the use of camera traps to accidentally encroach upon the privacy rights of people who venture into the area of surveillance. In this paper we describe the legal framework of privacy in Australia and discuss the potential risk of this ‘sleeping tiger’ for users of camera traps. We also present the results of a survey of camera trap users to assess the frequency of such unintended captures and the nature of activity being filmed before discussing the practical implications of these laws for camera traps users in this country and make recommendations.

## **Introduction**

Historically, the forest was a place of solstice and reflection, a place to escape the pressures of society

and behave freely without the constraints of civilisation. In c. 1500 CE Hieronymus Bosch drew ‘The Forest that Hears and the Field that Sees’ and Geoffrey Chaucer wrote in ‘The Knights Tale’:

*But so is it said, and has been many a year,  
‘The fields have eyes, and the woods have ears.’  
A man should practise equanimity,  
For in unexpected places men may meet.*

Little did they realise that one day it might equally be said that the forest has eyes too, for while forests may still be places of solitude, they are now also places of research. Forests and ecosystems of the world are being automatically monitored using camera traps. It is common for camera traps set in remote areas to unintentionally film individuals engaged in a variety of activities, ranging from innocent wanderings through to more nefarious activities such as drug cultivation and poaching, and including lewd or potentially embarrassing behaviour. For example, in 2010 a national park worker in New South Wales in Australia left his vehicle and went over to a tree to