

Submission  
No 129

## INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM BILL 2019

**Organisation:** Electrical Trades Union of Australia, NSW Branch

**Date Received:** 1 October 2019

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Mr Mark Banasiak MLC  
Chair  
Portfolio Committee No. 4 - Industry  
Legislative Council  
Parliament of NSW

1<sup>st</sup> October 2019

Dear Chair,

### **Inquiry into the Right to Farm Bill 2019**

Thank you for the opportunity to contribute to the inquiry into the Right to Farm Bill 2019.

The Electrical Trades Union of Australia, NSW Branch (ETU) represent members in electrical industries across NSW. Given the breadth of the proposed legislation, we have focused our submission on what we believe to be the key impacts that this legislation will have upon our members, worker's rights, our union and the broader union movement.

These are vitally important issues which could dramatically reshape the industrial relations landscape in NSW. Accordingly, we urge the Committee to consider our views when forming its recommendations to amend this legislation.

The ETU acknowledges some of the important aspects of the proposed legislation and agrees in principle with the desire to protect farmers, landowners and the agricultural sector from unlawful and nuisance disruption.

The ETU also acknowledges the unique status of farmland and agricultural properties, where they are not only workplaces but also act as the family home and residential occupancies. We categorically support the right of these occupants and their families to feel safe and secure.

However, the ETU is of the strong belief that the proposed Right to Farm Bill goes beyond regulating actions on private farms and beyond the scope as outlined in the Minister's second reading speech.

More importantly, we hold the view that the potential exists for several unintended and dire consequences associated with this legislation. Unintended consequences which would have a detrimental impact on worker's rights and the ability for Unions to perform their core democratic and legal functions.

The proposed Amendments to the Inclosed Lands Protection Act 1901 restricts and criminalises the right to protest on all inclosed lands.

Under the Act, "Inclosed lands" is defined as:



Electrical Trades Union of Australia  
New South Wales Branch

Communications, Electrical,  
Electronic, Energy, Information,  
Postal, Plumbing and Allied  
Services Union of Australia

Secretary  
Justin Page

**Sydney**  
Level 5, 370 Pitt St  
Sydney NSW 2000

**Ph** 02 9267 4844  
**Fax** 02 9267 4877

**Newcastle**  
Suite 4B, Ground Floor  
406-408 King St  
Newcastle West NSW 2302

**Ph** 02 4968 3488  
**Fax** 02 4968 3466

**Canberra**  
25-27 Darling St  
Mitchell ACT 2911

**Ph** 02 9267 4844  
**Fax** 02 6163 6667

**ETU NSW & ACT FIGHTING FOR MEMBERS**

**Web** [www.etunsw.com.au](http://www.etunsw.com.au) **Email** [etunsw@etunsw.com.au](mailto:etunsw@etunsw.com.au)



*“any land, either public or private, inclosed or surrounded by any fence, wall or other erection, or partly by a fence, wall or other erection and partly by a canal or by some natural feature such as a river or cliff by which its boundaries may be known or recognised, including the whole or part of any building or structure and any land occupied or used in connection with the whole or part of any building or structure.”*

By this definition “Inclosed Lands” included private businesses, commercial and retail premises, schools, childcare services, hospitals, nursing homes, shopping centres, universities, fenced parks, private roads leading up to workplaces and public transport hubs.

Accordingly, the legislation would criminalise actions which take place in inclosed lands that could interfere with or hinder the operations of businesses or organisations.

For the ETU this would prohibit current lawful protest actions as well as union workplace visits and meetings. Under this Bill, criminal sanctions could apply to:

- A peaceful protest that takes place inside a TAFE;
- Health and Safety Representatives carrying out their duties;
- A union meeting that take place in the carpark or grounds of the business;
- A union organiser talking to workers in their workplace; or
- Protest by farmers against environmental impacts on their own lands, such as CSG exploration.

As it stands, the proposed changes will apply to all inclosed lands, not just farms, and these unintended consequences would have ominous and dramatic implications for protest actions and legitimate union work.

The ETU also objects to the ‘aggravated unlawful entry’ offence and the significant increases to the maximum penalties. These measures could now lead to a union official who is engaging with members on a worksite to incur a maximum penalty of \$13,200 (more than double the previous maximum fine) or to serve a prison sentence of up to 12 months. If two or more people are involved the maximum penalty is \$22,000 and/or 3 years jail. In addition, the new offence for anyone ‘directing or inciting’ the hindering or interference with a business or undertaking could be charged with a maximum penalty of \$11,000 and/or 12 months jail time.

These new penalties will criminalise protest actions and legitimate union work taking place on the grounds of businesses or the surrounding areas. These are not restricted to actions just on farms and could criminalise union meetings in workplaces or protests on the grounds of fenced parks, universities or a shopping mall.

Finally, the ETU objects to the low threshold for ‘unlawful entry’ onto inclosed land. This includes entering the land without appropriate permission and/or refusing to leave the land when asked. Aggravated unlawful entry also has a low threshold. The current legislation stipulates a person is guilty of aggravated unlawful entry if they interfere with or attempt to interfere with a business or undertaking. This has been further lowered by the inclusion of a new offence of ‘hindering’ the work of a business or undertaking. Hindering may include passive actions such as a crowd restricting access to a worksite, or workers being ‘distracted’. The Bill also includes an offence to ‘attempt

to hinder'. This is a concerning addition, which creates a precedent for presumptive guilt.

#### **Conclusion**

The ETU does not believe that the intention for this legislation is a covert attempt to diminish worker's rights and freedom of association. The ETU urges the inquiry to identify such unintended measures and abolish them.

We call upon the Inquiry to reject Schedule 2 of the Bill or at the very least recommend further amendments to protect the rights of workers to peacefully protest, participate fully in their freedom of association with a trade union, and to provide protections for union officials to carry out their lawful duties.

We look forward to a favourable consideration of our submission. Should you wish to discuss any element of this submission further please contact myself on .

Yours sincerely,

**Justin Page**  
Secretary  
ETU NSW & ACT Branch