

Submission
No 135

INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM BILL 2019

Organisation: NSW Farmers
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Committee Secretary
Legislative Council Portfolio Committee No. 4- Industry
Parliament House
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To whom it may concern,

RE: Right to Farm Bill 2019

The New South Wales Farmers' Association (the Association) welcomes the opportunity to comment on the Right to Farm Bill 2019 ('the Bill').

The Association represents the interests of over 8,000 farmers and farming enterprises in New South Wales (NSW). A key concern facing NSW Farmers and farmers more broadly is the inappropriate and illegal behaviour of some people in entering agricultural properties, and in some cases, causing property damage. We have provided a recent submission that details the multifaceted nature of this issue (attached).

The Association supports the Bill as a means of protecting farmers and farm businesses. Meaningful reform is necessary to create a robust and fit-for-purpose legislative framework to strengthen protection for these legitimate businesses against trespass a result of increasingly belligerent activities. Without immediate action, farmers' confidence in the legal system will deteriorate, and may potentially emboldened persons to further unlawfully enter farms.

The Bill is an important development for the safety of New South Wales farms and farmers. It expands and increases the penalties for aggravated trespass. Importantly, the Bill introduces the potential for a custodial sentence, recognising the detrimental impact of farm trespass on businesses by appropriately characterising this activity as an aggravating factor. It also creates a new offence to cover third parties that incite trespass onto farmers. While trespass is already a criminal action under NSW legislation, the reforms proposed by this Bill more accurately encompass the particularity of farm trespass, and enhance the penalties in line with community expectations.

It is critical to highlight that this Bill is focused on protecting farmers from illegal farm incursions, and that it will not stifle the agriculture industry communicating with the public about on-farm practices. The farming sector recognises that there is a growing and appropriate desire from the community to understand food and fibre production. Farmers recognise the importance of, and understand the need, for transparency in the way that their businesses operate and to ensure that on-farm practices meet and potentially exceed community expectations, particularly around important issues such as animal welfare. NSW Farmers is committed to an on-going dialogue with the community to enhance transparency and aid increased awareness of food and fibre production processes and practices to aid consumer decisions.

NSW Farmers' Association

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The Association supports this bill which will help to protect farmers and family farming enterprises, which form the majority of producers in NSW, to undertake their lawful businesses. We provide the following specific comments on the individual elements of the Bill:

- Trespass

The Association has consistently argued for many years that the existing legislative framework in NSW is not effective in addressing farm trespass, and has called for a comprehensive review of existing laws, penalties and enforcement procedure. We are pleased that the Government has responded promptly to the recommendations from the Parliamentary Inquiry into Landowner Protection from Unlawful Filming and Surveillance, by in part establishing a cross-departmental working group to undertake this necessary review.

We strongly support the inclusion of the new offence for persons that incite or encourage others to undertake unlawful entry onto farms. The legislative regime must recognise the increasing sophistication of persons undertaking farm incursions using technology based tools that amplify both the range and the depth of communication and activation strategies. In the past, these actions had generally been conducted by individuals or small and loosely organised groups, but increasingly groups are using organisational structures and social media enabling tools to coordinate trespass and illegal surveillance activities against farmers. As the tools are becoming increasingly sophisticated and widely available through mobile applications the nature of trespass is rapidly changing, however privacy protections are not keeping pace. Aussie Farms clearly illustrates this increasing level of coordination and infiltration, as the organisation encourages their volunteers to undertake unauthorised surveillance and has a role in digitally releasing this material to the public. It is essential that the NSW legal system recognises this development and provides the environment for reforms to ensure that there is legal recourse against such organisations and those individuals that encourage others to digitally trespass and therefore break the law.

We also support the inclusion of further aggravating factors recognising the seriousness of the crime of illegal farm incursions. The new aggravating factors for the offence of: aggravated unlawful entry on inclosed lands for damaging property and wilfully or negligently releasing stock in the process of the unlawful entry are appropriate. The provision concerning releasing stock is particularly important to the farming sector. This action creates safety issues for farmowners and employees, including family members, and importantly the animals involved. Owing to this we also support the reforms to the offences for wilfully or negligently leaving a gate open.

- Penalties

The proposed maximum penalties are an appropriate and reasonable response, with the fines increased substantially and the introduction of a potential custodial sentence. These penalties send a clear message that the broader New South Wales community will not tolerate actions which deliberately hinder farmers undertaking their lawful business and threaten the safety of those involved in our farming enterprises.

It is vital to highlight that the proposed penalty regime will still provide sufficient flexibility so that the range of offending within the crime of aggravated trespass can be recognised. This flexibility is critical for ensuring that the penalties for specific actions are proportionate to the illegal action, and ensures that unintended consequences are sufficiently managed.

- Nuisance Shield

Many prospective purchasers of properties in peri-urban areas and other places where rural lifestyles are popular are unaware of the ordinary, lawful farming practices of existing farms in their new community. Lack of information and poor land use planning, particularly in peri-urban areas, is increasing legal and social conflicts between farmers, food producers and new residents. NSW Farmers has long advocated for a legislated 'right to farm' as part of a suite of measures designed to reduce these land use conflicts and develop mutual understanding and respect between farmers and their communities. Key further steps should include a new Regional Planning Act that supports better strategic land use and infrastructure planning for the food and fibre industry.

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The proposed protections in the Bill for farmers undertaking lawful agricultural practices against nuisance claims by new residents is an important first step towards better management and mitigation of these conflicts. However, this protection should be extended to all farmers undertaking lawful farming activities. The qualification that farmers should have been undertaking lawful farming activities for a year or more is unnecessary and establishes an unfair standard, compared to the rights of new residents moving into farming areas.

We are also concerned that a farmer defending a nuisance claim will be required to establish that they were not undertaking their lawful farming practice 'negligently'. This requirement is unnecessarily complex and liable to significantly increase the cost of defence, since it will require the farmer to put on extensive expert evidence about 'reasonable farming'. While NSW Farmers strongly supports best practice in farming, we do not think that farmers should need to defend lawful farming practices through expert evidence in the Supreme Court of New South Wales. If lawful farming practices are to be scrutinised, an expert mediation forum chaired by the Agricultural Commissioner promised by the NSW Government is more likely to be able to make an informed decision about whether the relevant practice is reasonable or 'negligent'.

We thank you once again for the opportunity to comment on the Right to Farm Bill 2019. The Bill represents a positive step forward for the agricultural sector, as it creates a legislative framework that accurately recognises rural crimes, and brings penalties for persons who seek to deliberately harm the safety of NSW farmers and farms into line with community expectations. We hope that it will pass into law to enhance the legal protections of farmers from illegal incursions.

Yours sincerely

James Jackson
PRESIDENT