

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

Organisation: Australian Pork Limited

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The Director
Portfolio Committee No. 4 – Industry
Parliament House
Macquarie Street
Sydney NSW 2000

By email: portfoliocommittee4@parliament.nsw.gov.au

Dear Director

Provisions of the *Right to Farm Bill 2019*

Australian Pork Limited (“APL”) welcomes the opportunity to provide a submission to the *Right to Farm Bill 2019* (“the Bill”) Inquiry.

APL is the peak national representative body for Australian pig producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry. The Australian pork industry employs more than 36,000 people in Australia and contributes \$5.2 billion in gross domestic product to the Australian economy.

APL supports the Bill as a proactive measure to support farmers, including statements that provide a public acknowledgement that farmers provide benefits to the community. Australia’s pork producers that are operating their businesses in accordance with Australia’s federal, state and territory laws, are regularly attacked and criticised by activists for simply operating their pork production businesses. Unfortunately, Australian farmers increasingly have those legal rights challenged. For these reasons, laws enshrining this particular right in legislation is a welcome decision should the Bill be passed by the NSW Parliament.

Activists are welcome to demonstrate their opposition to the use of animals; however, this must be in accordance with the law. Trespass, wilful damage to property, and actions that intrude on the rights of farmers does not accord with their right to demonstrate legally and peacefully. Opponents to farming, claim that the existence of an agricultural business creates a nuisance to society simply because it produces livestock. APL supports the statutory protections in the Bill to ensure that lawful, responsible livestock producers are not forced to defend possible future vexatious claims of nuisance in a civil jurisdiction which could amount to costly, time consuming litigation.

APL is also supportive of the inclusion in the Bill of a restriction to the capacity of a court to order a complete cessation of agricultural activity if alternative actions could be taken which would be less onerous to the agricultural business and achieve the same outcome for the community. These proposed sections show a sensible approach to managing the occasionally competing priorities of community amenity and primary production, and APL looks forward to a measured approach to such disputes by the judiciary.

Amendment of *Inclosed Lands Protection Act 1901*

APL supports the amendments to the *Inclosed Lands Protection Act 1901* as they extend to damaging property, releasing of livestock and leaving gates open. These acts, designed to cause economic loss and disruption to businesses, have an ongoing effect on business continuity and in some circumstances have caused the closure of farm businesses due to the stress and uncertainty of continuing farm trespass.

APL has also provided support to jurisdictions which have sought to criminalise the inciting of trespass and property damage. The emergence of the 'Aussie Farms' attack map was a strong identifier in the need for such laws, as the website hosts over 15,000 photos and 200 videos from more than 4,500 facilities. Photos and videos are obtained anonymously by hundreds of individual activists and therefore very difficult to trace and police. Criminalising the individuals seeking the footage and hosting their promotion is an effective way of reducing the practice and allowing farmers to be protected from criminal activity.

Adequacy of Penalties

The adequacy of financial penalties for offenders must be carefully considered so that they achieve the aim of deterring trespass. Crowdfunding and media campaigns have limited the effect of financial penalties as individuals have the capacity to raise thousands of dollars relatively quickly, rendering the penalty redundant. APL commends the penalties legislated earlier this year by the NSW Parliament by setting penalties for farm trespass with \$1,000 on the spot fines, and up to \$220,000 for biosecurity breaches. A \$200,000 fine for an individual that creates a biosecurity risk is reflective of the billions of dollars' worth of damage a biosecurity incursion such as African Swine Fever could have on the Australian pork industry.

Action requires both adequate legislation and enforcement

It is essential that any changes to the law are supported by effective enforcement measures. APL has compiled an information brief at [Attachment I](#) that summarises the current legislative and prosecution deficiencies across Australia, and provides APL's policy position on how best to prevent unlawful animal activism.

APL is willing to provide further evidence, either written or verbal, if it may assist with improving the situation for pig farmers across Australia. If you require further information or have any questions, please do not hesitate to contact me on

Yours faithfully

Deb Kerr
General Manager, Policy

Attachment I

Brief

Raising the status of farm trespass with the criminal justice system

Purpose

The increasing number of animal rights activist groups disrupting, threatening and damaging the property of livestock producers has led APL to seek the direct involvement of the criminal justice system. The purpose of this brief is to present clear information on the impacts and risks associated with unauthorised entry to livestock facilities and provide recommendations to the police, public prosecutors and judicial officers on how they may address these issues within their jurisdictions.

Background

There has been a disturbing change in the behaviour of animal rights groups in recent times. Animal activists have altered their activities from peacefully protesting or attending marches on public property, to running highly organised and threatening invasions of livestock facilities and farms. These types of activities usually accompany damage to property and a campaign of online abuse targeted at producers. It is this type of behaviour that requires the attention of law makers and enforcement bodies.

APL is seeking to engage the decision makers in criminal proceedings, being the police, public prosecutors and judicial officers, so that they fully understand the effects that violent and intrusive activism has on members on the community and consider these factors in laying charges and sentencing.

Effects on producers

Animal Biosecurity and Welfare

Biosecurity is arguably the greatest asset Australian agriculture possesses. As a result of our clean image, safe food and freedom from disease, Australia is able to provide high quality agricultural exports all over the world. Livestock producers, along with government and the general public, contribute significant financial resources to the maintenance of Australia's biosecurity system. Capital infrastructure, accredited feed, veterinary advice and quarantine periods are just some of the costs borne by producers to ensure that their livestock, and those of their colleagues and neighbours, remain free from disease. This investment is at risk of being wasted however, if groups with malicious intent towards the livestock industry continue to hold mass protests and invasions inside livestock facilities.

Workplace Health and Safety

Livestock businesses are secure, professional places. They face the same obligations as any other business in that they are required to provide a safe environment for staff, visitors and contractors. Owners, managers and employees of livestock businesses receive significant training to ensure they remain safe and aware of the risks that may arise in the course of their work. Some of these risks include the keeping of veterinary chemicals, machinery and goods on their properties to manage their business which, if accidentally or deliberately mishandled, can cause serious injury or death. Additionally, the behaviours of unpredictable, large animals on rural properties can cause serious harm to uninvited trespassers who do not have an understanding of this behaviour. It is imperative that livestock producers maintain the right to determine who accesses their home and place of

business, and that access is provided only by consent or legal compulsion. In addition to the physical safety of employees, the arrival of groups of aggressive intruders to a piggery has the capacity to cause emotional and psychological trauma. Employers and managers have an extended duty to provide a place safe from harassment and bullying and animal activist incursions create an additional business risk if employers cannot contain this threat.

Public Liability

The duty of care owed to the public by land owners is well established both in statute and the common law. However, farmers can only actively provide this duty of care if they are aware of who is on their farm and can monitor their activities. The invasion of farms by activists increases this risk to livestock producers who, particularly if they are a small producer, may not have public liability insurance, nor the capacity to monitor the actions of a group of malicious trespassers, untrained in the risks surrounding rural properties.

Disruption to Business

Australians overwhelmingly have the freedom to enjoy the quiet enjoyment of their property as well as to operate a legitimate business within the law. Businesses often take out insurance to manage risks of natural disasters or accidents and to ensure business continuity in the event of disruption. The interruption of a livestock business from animal activists is no different in its ability to close down a facility both at the time of the event and following a potential disease outbreak. However, insurance policies usually exclude disease outbreaks, and producers are therefore entirely exposed to any ongoing menace caused by animal activists.

Food Safety and Bioterrorism.

Australian livestock producers are concerned that animal activists are becoming bolder and more audacious as a direct result of the light penalties being imposed upon those charged. As an example, animal activist activity in 2003 claimed to have introduced pig meat into the feed of sheep designed for export so that their halal certification was withdrawn.¹ This sort of radical behaviour has impacts throughout the food system and affects food safety. Parallels can easily be drawn to the strawberry tampering crisis in 2018.

Technology based threats

The owners of livestock are regularly targeted through media channels such as Facebook, Twitter and in online blogs. The comments are often vindictive, vitriolic and defamatory to such an extent that Facebook has in some cases removed posts for breaching their community standards. Additionally, activist groups are making use of increasingly sophisticated technology, moving from fixed cameras to mobile videos and infrared video equipment. Often these images are hosted in overseas jurisdictions, making it impossible to have them removed under Australian law. The release of the 'Aussie Farms' map in January 2019 has publicised the contact details of producers, directly exposing them to further abuse and despite community, political pressure, and new Commonwealth privacy laws, remains online and a threat to livestock producers.

Increasing prevalence of trespass likely

It is clear that there is an increase in the propensity of crimes fuelled by animal activism, and Australian livestock producers are extremely concerned. The animal activist organisation, 'Aussie Farms' has been actively encouraging trespass onto farming properties and processors for eight years, and through this activity has obtained over 14,000 photographs from almost 5,000 properties.² Given the number of producers on the 'Aussie Farms' database, there is a high likelihood of producers being watched and potentially invaded at any point in time.

Threat of legal action is not a deterrent

Industry is concerned that the current law is not being exercised sufficiently to deter the commission of offences against farm businesses. Activists have appeared at several farm invasions adorned with slogans such as "*One has a moral duty to disobey unjust laws*". This type of behaviour makes a mockery of the laws that are legislated and enforced to protect members of the public.

Whilst there certainly is scope for new legislation to protect livestock producers, there is also an opportunity for judicial officers to impose heavier discretionary penalties to adequately dissuade activists from deliberately turning their back on the law. The livestock industry would welcome such increases as an important step to protect livestock producers and attempt to reduce the incidence of trespass and related offences.

Criminal

Sentencing legislation exists in each Australian jurisdiction to allow judicial officers guidance in how to apply sentences and penalties to offenders who are found guilty. For specific offences, there are limitations to the maximum penalty that can be applied. For others, sentencing is at the discretion of the judicial officer. General deterrence, denunciation and community protection are pillars of Australian sentencing law and must be considered when imposing a sentence.³ Industry is concerned that recent sentences imposed for trespass have not adequately considered these sentencing principles.

Civil

Livestock producers have a restricted ability under civil jurisdiction to seek a remedy to the damage they have suffered. Aside from the often-prohibitive cost of civil litigation, actions of tort brought against individual activists do not adequately protect the livestock community against the tide of activism that is threatening Australian farmers. The activism community has an extensive network of well-funded supporters that have been relied on to compensate individuals for any damages a civil judgement may impose. Very often, the legal advice they receive in defending such actions is also provided *pro bono* through groups such as the Barristers for Animal Welfare Panel (BAWP).

Recommendations

In considering all of the above matters, industry implores all decision makers in the criminal justice system to apply more appropriate weighting to the damaging effects that farm invasions and threatening behaviour has on livestock producers. Specifically, decision makers ought to review their policies on:

- whether to apprehend, arrest or move-on an individual or group suspected of carrying out a trespass or related offence
- whether to lay charges against an individual suspected of carrying out a trespass or related offence
- allowing or rejecting bail applications
- applying harsher penalties where discretionary sentencing is available

Serious consideration also ought to be given to the fact that farm invasions are fast becoming a public menace. It is unreasonable to require individual property owners to protect themselves from regular attacks from groups of malicious individuals. It is industry's view that relying on civil jurisdiction is no longer feasible to protect livestock producers against random, coordinated attacks and it is now the responsibility of the state to protect its citizens.