

Submission  
No 187

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

**Organisation:** Nature Conservation Council of New South Wales

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Portfolio Committee No. 4 – Industry Legislative Council  
NSW Parliament  
Macquarie Street  
Sydney NSW 2000

### **Submission to Inquiry into the Provisions of the Right to Farm Bill 2019**

Dear Committee,

The Nature Conservation Council of NSW (NCC) is the state's peak environment organisation, representing more than 150 member organisations. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to participate in this committee's inquiry to review the provisions of the Right to Farm Bill 2019.

The right to protest is fundamental to a healthy democracy. Throughout history, peaceful protest has played a vital role in securing and maintain legal rights and workplace protections that are essential to a free society.

Peaceful protest has led to the protection of some of Australia's most prized agricultural land from mining and fracking, and the declaration of some of Australia's best-loved national parks.

We oppose the bill in its current form because we believe it would significantly curtail people ability to exercise the right to peaceful protest.

Despite being called the Right to Farm Bill, the Bill's anti-protest measures go far beyond farming. It nominally seeks to stop animal rights protests on farms but actually attacks people's right to engage in peaceful protest in any enclosed space, including schools, offices, worksites, banks, and even on public land. It contains extreme measures designed to shut down dissent.

The Bill increases the fine for anyone who "enters inclosed lands without permission" or stays after being asked to leave and 'hinders' a business when they do so from \$5,500 to \$22,000 and brings in a new three-year jail sentence for the offence. This is occurring only three years after the penalty for this offence was increased tenfold from \$550.

The Bill amends the offence from "interfering" with the conduct of the business while trespassing to simply "hindering" the conduct of a business while trespassing – a very low threshold to trigger such draconian jail penalties

The definition of 'inclosed lands' is so broad that it captures any land with a defined boundary, such as any building, a forestry coupe with a fence, land designated for coal or gas mining, or a work site. It would appear to include even public land closed off with temporary barricades.

The definition of hindering a business is broad and would capture many forms of peaceful protest, such as a sit-in at a company's corporate headquarters, a protest by knitting nannas to protect prime agricultural land from CSG development, refugee supporters' protests at hospitals, and even union officials' and members' activities on a work site.

Perversely, the legislation could result in farmers being jailed. Farmers have been at the front line of the movement to stop inappropriate coal and gas developments that have led to policy and legislative changes. Under this legislation, farmers could face up to three years jail if they staged a sit-in in a supermarket in protest against low milk prices or in a bank in protest against unethical investment.

The Bill also introduces a new offence of directing, inciting, procuring or inducing the commission of the aggravated offence, which would criminalise the act of organising a peaceful protest. This new offence is so broadly worded that a person who encourages friends on social media to attend a peaceful protest could face 12 months in prison.

Our main objections are:

### **1. The Bill undermines the Constitutional right to peaceful protest**

*Brown v Tasmania* decided in the High Court of Australia in 2017 provisions of the *Tasmanian Protesters Act* were invalid because the burden they had on the implied freedom of political communication was not reasonable or proportionate. We are concerned that some provisions of this bill are similarly invalid.

Recommendation 1: The committee should reject any provisions in the bill that contravenes the implied freedom of political communication in the Australian Constitution as identified in the High Court ruling in *Brown v Tasmania* [2017] HCA 43.

### **2. A review of the existing penalties for peaceful protest has not occurred, as required**

We are concerned these changes are occurring with limited public consultation or debate. When the penalties for aggravated trespass were increased tenfold as part of the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016*, a Shooters, Fishers and Farmers Party amendment to ensure a statutory review of these changes occurs within three years was adopted by the parliament. This review was required to “determine whether the policy objectives of those amendments remain valid and whether the provisions, as amended, remain appropriate for securing those objectives.” This review has not yet occurred.

Recommendation 2: Before any amendments are made to expand the offence of aggravated trespass and significantly increase the penalties, the review into the 2016 amendments to the *Inclosed Lands Protection Act 1901* should be completed and released for public consultation.

### **3. The proposed penalties are disproportionate and anti-democratic**

The organisations supporting this submission join with unions, environment groups, human rights and civil liberties organisations who oppose the disproportionate and anti-democratic elements of this legislation.

Recommendation 3: The Bill should be amended to ensure:

- It does not apply to a person who is engaged in a genuine peaceful demonstration or protest;
- It does not increase the already considerable penalties for aggravated unlawful entry onto inclosed lands;
- It does not criminalise people who encourage others to participate in a peaceful protest; and
- It does not apply to a union official or delegate undertaking worksite visits or inspections.

Yours sincerely,

**Chris Gambian**  
**Chief Executive**  
**Nature Conservation Council of NSW**