

**Submission  
No 188**

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

**Organisation:** Unions NSW  
**Date Received:** 1 October 2019

---



## **Provisions of the Right to Farm Bill 2019**

**NSW Parliament Committee no. 4 - Industry**

**1 October 2019**

Submission by:  
Unions NSW  
Trades Hall Building  
Level 3, 4 Goulburn Street  
Sydney  
T: 02 9881 5999  
F: 02 9261 3505

## Introduction

1. Unions NSW is the peak body for trade unions and union members in NSW and has over 65 affiliated unions and Trades and Labour Councils representing approximately 600,000 workers across the State. Affiliated unions cover the spectrum of the workforce in both the public and private sector.
2. Unions NSW thanks the committee for the opportunity to make a submission to the Inquiry and raise the union movement's concerns with the Right to Farm Bill (the Bill). The Bill goes beyond its stated intention of regulating protest actions on private farms. This Bill restricts and criminalises the right to protest on all inclosed lands. Further, the Bill may restrict union access to workplaces to conduct meetings with and represent the interests of union members. As such, this Bill is an overreach, designed to criminalise dissent and frustrate a legitimate right to protest.
3. Unions NSW and its affiliated unions have a long and proud history of organising and taking part in protest actions, including those held on inclosed lands. Many of our most significant and valued workplace rights were won as a result of protest. Protest has also been a tool used to reverse government and/or employer decisions that have a negative impact on union members. Under this legislation, unions and members could face criminal charges for standing up and protesting for their workplace rights and entitlements.
4. The legislation criminalises actions which take place on inclosed lands that could interfere with or hinder the operations of businesses or organisations. This includes protest actions as well as union workplace visits and meetings.
5. Under this Bill, criminal sanctions could apply to:
  - a. A union picket that occurs on inclosed lands. Two prominent examples are the Patrick's Waterfront dispute in 1998 and the Hutchison dispute in 2015;
  - b. A protest on the grounds of a university;
  - c. A sit-in at a shopping centre;
  - d. Union meetings that take place in the car park or grounds of the business; and/or
  - e. A union official visiting a workplace to talk to members.

6. Unions NSW key concerns with the Bill are outlined in our submission below and include the:
  - a. Broad scope of the Bill;
  - b. Low threshold for offences;
  - c. Coverage of property damage by other legislation;
  - d. Unjustified need for further amendments; and
  - e. Unjustified increase to penalties.
  
7. Unions NSW opposes Schedule 2 of the Bill. It is unnecessary and should be rejected in full. If Schedule 2 is not rejected, Unions NSW recommends further amendments that protect the right to peaceful protest and union activities.

## Overview of the Bill and its potential application

8. Schedule 2 of the Bill amends the *Inclosed Lands Protection Act 1901* (IPA Act). The changes apply to all inclosed lands, not just farms, and could have severe implications for protest actions and union work.
  
9. The Bill extends the *aggravated unlawful entry* offence to include hindering or attempting to hinder the operations of a business or undertaking occurring within inclosed lands<sup>1</sup>. Offences could now include a union official talking to members on a worksite or a peaceful protest on the grounds of a workplace. Under these proposed laws, if nurses or paramedics staged a protest against emergency department understaffing in a hospital car park they could face steep fines or even prison.
  
10. The maximum penalty has increased to \$13,200 (more than double the previous maximum fine) and offences are also now punishable by prison sentences of up to 12 months. If two or more people were involved in the activity the maximum penalty is \$22,000 and/or 3 years jail<sup>2</sup>.

---

<sup>1</sup> Right to Farm Bill, Schedule 2, items 1-2.

<sup>2</sup> *ibid*, Schedule 2, item 4.

11. The Bill includes a new offence that a person must not ‘direct, incite, counsel, procure or induce aggravated unlawful entry’. The charge could be laid against individuals, particularly union officials who assist in the organising of protests. The maximum penalty is \$11,000 and/or 12 months jail time<sup>3</sup>.
12. The new penalties criminalise protest actions and union work taking place on the grounds of businesses or organisations. These are not restricted to actions on farms and would criminalise union meetings in workplaces or protests on the grounds of universities or in a shopping mall if they had a negative impact on the operation of the business of organisation.

## Broad scope

### Definition of inclosed lands

13. The stated purpose of the Bill is to address matters relating to farm trespass and the defense of agricultural enterprises<sup>4</sup>. However, by amending the ILP Act, the Bill’s impact is far wider than farms and agriculture.
14. The definition of inclosed lands is broad and includes prescribed premises which are schools, child care services, hospitals, nursing homes. It also includes any public or private land inclosed (in full or in part) by a fence, wall or some natural feature, including any buildings which are in connection with this space<sup>5</sup>. This extends the definition to include private businesses, government buildings, commercial and retail premises, shopping centres, universities, fenced parks, private roads leading up to workplaces, public transport hubs and car parks connected to business premises. Inclosed lands are not confined to private property. They include public spaces as well as private property the public is invited to enter (such as shopping centres).
15. The definition of inclosed lands is too broad and does not effectively target actions on farms and agricultural lands, as claimed by the Bill’s proponents.

---

<sup>3</sup> *ibid*, Schedule 2, item 5.

<sup>4</sup> NSW Legislative Assembly, 2019, Adam Marshall, Second Reading Speech, Right to Farm Bill.

<sup>5</sup> *Inclosed Lands Protection Act 1901*, s 3

Low and broad threshold for aggravated unlawful entry

16. The existing legislation has a low threshold for *unlawful entry* onto inclosed land, which includes entering the land without appropriate permission and/or refusing to leave the land when asked<sup>6</sup>.
17. *Aggravated unlawful entry* also has a low threshold. The current ILP Act stipulates a person is guilty of aggravated unlawful entry if they:
  - a. interfere with or attempt to interfere with a business or undertaking; or
  - b. does anything that gives rise to a serious risk to the safety of the person or any other person on those lands<sup>7</sup>.
18. 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 by a union official on site. This change substantially broadens the activities captured by the *aggravated offence*.
19. The Bill also includes an offence to ‘attempt to hinder’. This is a concerning addition, which creates a precedent for presumptive guilt<sup>8</sup>.
20. Unions are concerned a wide range of protest and union actions may now be captured. It is possible that under the Bill, the following actions could be criminalised:
  - a. Union members peacefully assembling in the car park attached to their workplace to discuss industrial relations issues. If access to car park is restricted or other staff not attending the meeting are distracted, this could be considered to be *hindering* the business.
  - b. Union members protesting a change in working conditions on the grounds of a university. Access to the classrooms or campus may be restricted as a result of the crowds which could be seen as *hindering* the undertakings of the university.
  - c. A union official visiting a workplace to talk with members about workplace issues and possible resolutions. If these proposed resolutions have a negative impact impact on the operation of the business would this be considered *hindering* or

---

<sup>6</sup> *ibid*, s 4

<sup>7</sup> *ibid*, s 4B

<sup>8</sup> Right to Farm Bill, Schedule 2, items 1-2.

*attempting to hinder the business?*

21. The Bill's second reading speech in the Legislative Assembly does not acknowledge the broader impact the Bill will have on the right to protest and the work of unions in workplaces. The Minister for Agriculture and Western New South Wales made specific assurances that Government supports the right to protest as a fundamental tenant of democracy<sup>9</sup>. Unions NSW believes the broad application of the Bill is an oversight in the current drafting and an unintended consequence of the legislation.

Broad meaning of direct, incite, counsel, procure or induce aggravated unlawful entry

22. The Bill includes a new offence of directing, inciting, procuring or inducing the commission of the aggravated offence (interference with or hindering of business or undertaking) with a maximum penalty of \$11,000 and/or 12 months jail time<sup>10</sup>. The offence effectively criminalises the act of organising a peaceful protest.

23. The wording is broad and has a potentially low threshold. Under the current wording it is possible that an individual on social media inviting their friends to a protest event could be liable of a criminal offence. A union official or union communications officer encouraging attendance to a rally or union meeting, may similarly find themselves committing a criminal offence.

## **Damage to property is already covered by legislation**

24. Is it not clear what gap in the legislation the Bill is trying to fill. If destruction of property occurs, business owners are able to pursue damages through civil proceedings.

25. Additionally, the *Crimes Act 1900* prescribes the reckless destruction or damage of public property or property of another person as an offence and protesters are liable to imprisonment for 5 years.

---

<sup>9</sup> NSW Legislative Assembly, 2019, Adam Marshall, Second Reading Speech, Right to Farm Bill.

<sup>10</sup> Right to Farm Bill, Schedule 2, item 5.

## Unjustified need for further amendments

### 2016 amendments and need for review

26. The ILP Act was last amended in 2016 with the passing of the *Inclosed Lands, Crimes and Law Enforcement Amendment (Interference) Act 2016* (Amending Act). The Amending Act created two new offences for *aggravated unlawful entry* onto enclosed lands. These were:
- a. Interference or attempted interference with the conduct of the business or undertaking
  - b. Doing anything to give rise to serious risk to the safety of any people on the land<sup>11</sup>.
27. In 2016 the Amending Act was opposed by unions and civil society as an unnecessary change that encroached on the right to protest. Unions were concerned the new offence of *interference* could be used to penalise peaceful protests and union activities.
28. The 2016 Amending Act included a requirement for the Amending Act to be reviewed as soon as possible after the period of 3 years from its commencement. A report on the outcome of the Review was required to be tabled in each House of Parliament within 6 months after the end of the period of 3 years. The Bill passed in March 2016. The 3 year period has now passed, and a review of the Amending Act has not taken place. While the mandated review is outstanding, it is not appropriate for further amendments to be made to the ILP Act.
29. In addition to the delayed review, the Government has not provided evidence that the provisions introduced in 2016 are not operating effectively, or what additional behaviour they are seeking to capture.

### Increase in penalties

30. The Bill significantly increases penalties for interfering or hindering a business operation within inclosed lands. These increases are not justified.
31. There is no evidence the current penalties for *aggravated unlawful entry* are insufficient. In fact, a review of the penalty notice data available on the Revenue NSW website, found that

---

<sup>11</sup> *Inclosed Lands Protection Act 1901*, s 4B



since 2016 when the new offences for *aggravated unlawful entry* were introduced, there have been no penalty notices issues for the new offences<sup>12</sup>. There is also no evidence any individuals have been charged or faced court proceedings on these offences.

32. Such a significant increase in penalties, including the attachment of jail sentences, would imply that the current penalty framework is not acting as an effective deterrent. The fact that no penalty notices have been issued, challenges this rationale.

33. The increase in penalties includes the attachment of jail sentences. This an extreme increase in penalties for relative minor offences. Under the IPA Act, entering inclosed lands without permission or remaining on the land after being asked to leave has a maximum penalty of \$550<sup>13</sup>. If however, under the Bill, a person remains on the enclosed land and in some way hinders the operation of a business, the maximum penalty is increased to \$13,200 and/or a 12 month jail sentence. The two penalties are not proportionate.

## Conclusion and recommendations

34. The Right to Farm Bill is an overreach that will restrict the right to protest and the ability for unions to speak with workers in worksites.

35. Unions NSW recommends:

- a. The rejection of Schedule 2 of the Bill.
- b. If Schedule 2 is not rejected in full, Unions NSW recommends further amendments that:
  - i. Explicitly exclude industrial activities contemplated by the *NSW Industrial Relations Act* and the *Fair Work Act*;
  - ii. Provide specific protection for the right to peaceful protest;
  - iii. Limit the scope, to only apply to farm lands, as per the second reading speech. However, this amendment must also acknowledge the rights of workers in these industries to peaceful protest and union activity.

---

<sup>12</sup> Revenue NSW, Penalty Notice data set, 2019, available from: <https://www.revenue.nsw.gov.au/help-centre/resources-library/statistics> accessed: 1 October 2019.

<sup>13</sup> *Inclosed Lands Protection Act 1901*, s 4