

Submission  
No 189

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

**Organisation:** Humane Society International Australia

**Date Received:** 1 October 2019

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1 October 2019

Dear Sir or Madam,

### RE: RIGHT TO FARM BILL 2019

Humane Society International (HSI) welcomes the opportunity to provide this submission to Portfolio Committee No. 4 in relation to the Right to Farm Bill 2019 ('the Bill').

We are the world's largest conservation and animal welfare organisation with over 10 million supporters, and are leaders in the movement to save wildlife and reduce cruelty to animals in farming and other industries. We have more than 25 years' experience in Australia working actively to assist government bodies and agencies to further the protection of animal welfare through appropriate regulations and enforcement.

HSI is of the view that the proposed amendments create an unjustifiable exception for agricultural operators in relation to the tort of nuisance, and that amendment to the *Inclosed Lands Protection Act 1901* (NSW) are unnecessary in light of sufficient existing protections for agricultural landowners.

HSI offers the comments below to the Committee on behalf of our 70,000 Australian supporters.

### The Right to Farm Bill

The Right to Farm Bill is two pronged. On the one hand it contains protections for farmers who might otherwise be targeted by nuisance claims for carrying out their business, and on the other hand it makes amendments to the *Inclosed Lands Protection Act 1901* (NSW) that penalises individuals for interfering in various ways with a business or

undertaking. Interestingly, the amendments to the *Inclosed Lands Protection Act* are not limited to farms, but apply to “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.”<sup>1</sup> The implications of these amendments, therefore, are incredibly far reaching.

HSI is of the view that this Bill is at once both unnecessary and threatening to private enjoyment of property and democratic process in NSW.

### **Lawful Agricultural Activity and Nuisance**

HSI is of the view that section 4 of the Right to Farm Bill provides unfair and unjustifiable benefits to owners and operators of agricultural land.

The tort of nuisance applies when an individual experiences harm as a result of nuisance, that is, interference with the enjoyment of land. Commonly interference refers to issues such as pollution, noise, odour, and similar inconveniences. This Bill lends itself to injustice by blocking nuisance actions, and therefore disallowing compensation for harm caused to a person, community, or other business owner by operators of agricultural land.

There is no justification that HSI can conceive for allowing agricultural operators to interfere with private enjoyment of land and not have to compensate for any harm caused in doing so. Such laws would leave the aggrieved without recourse and communities without any deterrent against farmers failing to contain the impact of their activity to their land – an inherently unjust outcome. The second reading speech makes reference to the time, energy, and money required to answer valid claims of nuisance against farmers, while seeming to neglect the similar inconvenience placed on nearby private landholders when impacted by the activities of local agricultural operations. This Bill would deny community members the opportunity to seek legal recourse, and leave them to bear the financial and personal burden of any harm being caused by nearby farms, which under any other circumstances may have been found liable for the tort of nuisance.

Furthermore section 5 compounds this injustice by protecting any illegal or negligent activity that does not attract protection under section 4. Under the proposed Bill, if an agricultural activity is found to constitute nuisance (meaning it is also negligent and/or illegal and therefore not protected by section 4) courts are asked to make orders that would not result in the cessation of the activity. Instead courts are asked to favour mitigation orders that protect the commercial viability of the agricultural operation in question. Again, HSI is of the view that there is no apparent reason why such generous protections should be offered to agricultural endeavours – especially when, under this Bill, any successful action on the grounds of nuisance can only occur against agricultural activity that is also illegal or negligent.

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<sup>1</sup> *Inclosed Lands Protection Act 1901* (NSW) s3 ('ILPA')

Agricultural activity has the potential to be significantly harmful, especially when it comes to matters of pollution. Therefore HSI does not support any legislation with the potential to allow increased environmental impact from farming. There is no valid justification for protecting the interests of agricultural operators over the interests of other private land owners, communities, or indeed other business owners and commercial interests. HSI submits that this portion of the Right to Farm Bill is overreaching and unjustified.

### **Amendments to the *Inclosed Lands Protection Act 1901***

The provisions of the *Inclosed Lands Protection Act* ('ILPA') are not limited to agricultural land. The Act applies to any kind of land within a discernible boundary; therefore any amendments made under this Bill will have implications well beyond the rights of agricultural operators. It is troubling to see the language under the ILPA being broadened by these amendments to capture and outlaw unrelated activity under the guise of farmer protection.

In NSW the following are existing criminal offences, either at state or federal law:

- trespass,<sup>2</sup>
- unlawful surveillance,<sup>3</sup>
- theft and burglary,<sup>4</sup>
- destruction of property,<sup>5</sup>
- conspiracy to commit crime and incitement,<sup>6</sup>
- Use of carriage services to make threats, menace, harass, or cause offence, or to use a telecommunications network to commit or facilitate offences against Commonwealth and State laws.<sup>7</sup>

These existing laws are fully comprehensive and are not lacking in any way that the proposed amendments would compensate for. The supposed need for greater deterrents against animal activists, as elucidated in the second reading speech, appears to be fabricated in light of the fact that such deterrents are already part of the *Crimes Act 1900* (NSW). We also note that the *Biosecurity Act 2015* (NSW) and the *Biosecurity Regulation 2017* (NSW) were amended earlier this year to increase penalties for trespassers that pose a biosecurity risk, and that the *Biosecurity Act* provides appropriate and comprehensive protection of the biosecurity interests of farmers and agricultural operators.

HSI submits that these amendments should not be made on the basis that they provide no further protections for farmers than that which already exists under NSW legislation.

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<sup>2</sup> *Inclosed Lands Protection Act* s4; *Crimes Act 1900* Div 4

<sup>3</sup> *Surveillance Devices Act 2007* (NSW)

<sup>4</sup> *Crimes Act 1900* (NSW), Part 4

<sup>5</sup> *Ibid* s195

<sup>6</sup> *Criminal Code Act 1995* (Cth) s11.2, s11.4, and s11.5

<sup>7</sup> *Ibid* s474.14-s474.17

Instead these amendments appear only to erode the right to protest in NSW and broaden the definition of aggravated unlawful entry to include merely hindering a business or undertaking. If it is intended that this broader definition is to apply only to unlawful entry onto farms and agricultural operations then the amendments in this Bill are severely misworded and the Bill must be altered to make these intentions clear. If not amended, this Bill creates an opportunity for peaceful protest in NSW to be criminalised on the mere grounds that it causes a “hindrance” at a business or undertaking. In fact, it is not difficult to conceive of several forms of activity besides protest that may “hinder” a business or undertaking, and therefore be criminalised under these amendments.

In light of this, HSI is of the view that the proposed amendments to the ILPA are poorly drafted and far too broad and impactful to be dealt by the Bill in question – which in name falsely purports to apply only to the rights of farmers. The potential implications of these amendments are so broad, in fact, it is shocking that the inquiry was given only one week to accept submissions, followed by a hearing two days later, and a report to be finalised by the committee a mere three weeks later. This timeframe is simply too short to effectively deal with amendments that could have such far reaching impacts on democratic process in NSW.

If, however, it is intended that the amendments to ILPA are only to apply to unlawful trespass as it relates to agricultural operations, then HSI is concerned that the only tangible outcome of this Bill will be to directly villainise and hinder animal welfare and environmental protection groups as the Bill itself does nothing of substance to expand the protections of NSW farmers.

This Bill represents a dangerous step by the government toward specifically policing the actions of animal activists as distinct from other groups. By drawing a distinction between trespass, harm, and theft carried out on farms, and the trespass, harm, and theft experienced by other members of society, this amendment creates an opening for future direct restriction of the work of animal welfare activists. This distinction also feeds the notion that animal activism itself is a threat so great it is worthy of singling out - but the reality is nothing of the sort.

While at this stage the ILPA amendments do not propose any changes to NSW law that do not already exist to protect agricultural landowners, HSI is of the view that by legislating so narrowly in relation to a clearly defined group of people, the way will be paved for more severe legislation that will begin to erode the rights of animal welfare groups and their ability to advocate effectively.

HSI is also of the view that this Bill diverts resources and attention away from the serious issue of animal welfare law compliance.

It is notable that in response to increased animal activist protest there has been no move by the government to better existing animal welfare laws in order to hold farmers accountable for mistreatment of animals. It is pertinent to recall that the vast majority of producer breaches of animal cruelty laws and standards would not be public knowledge without the efforts of direct activism - activism which has at common law been found to be squarely within the public interest and therefore legal.<sup>8</sup>

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<sup>8</sup> Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd [2001] HCA 63

It is difficult not to believe that laws such as these are being used to distract from, and prevent, further revelations of animal mistreatment. This Bill is an (albeit impotent) attempt at creating an “ag gag”, and it cannot be said that there is government action so swift against recalcitrant farmers or the lack of food supply chain transparency as that levelled at trespassing animal activists.

HSI submits that the content of this Bill as it relates to amending the ILPA is unnecessary insofar as it does nothing further to protect farmers in NSW. The Bill appears instead to be a threat to the right to peaceful protest and merely an ineffective attempt at villainising animal welfare activists. We do not support these amendments.

## **Summary**

HSI does not support the Right to Farm Bill. The Bill creates more opportunity for farmers to interfere with private enjoyment of non-agricultural property or businesses, but also attempts to further restrict interference with agricultural property. This Bill is extremely imbalanced and completely unjustified in wholly protecting farmers from potentially valid nuisance claims.

Furthermore, in an attempt to protect farmland, the Bill may inadvertently create harsher criminal penalties for many forms of harmless activity, including peaceful protest. This is a scary proposition – and one that would require a far longer inquiry than this one. Criminal laws and Biosecurity laws are already comprehensive in dealing with farm trespass issues, it is entirely unnecessary to broaden the ILPA and endanger the rights of individuals by doing so.

We would like to bring attention to this quote by Minister Adam Marshall from the second reading speech: *“We will not let a different standard be applied to farmers just because they are farmers.”* However the Bill before us aims to do just that – it provides a different standard to which farmers are to be held to account simply because they are farmers: because they are farmers they should not be subject to nuisance laws, and because they are farmers their critics should be singled out and handled more harshly than others by the criminal justice system.

Please forward any correspondence in relation to these submissions by email to  
I can also be contacted anytime on

Yours sincerely,

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Campaigner  
Humane Society International