

Submission
No 217

INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM BILL 2019

Organisation: Australian Chicken Meat Federation (on behalf of the NSW
Chicken Meat Council)

Date Received: 1 October 2019



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The Director
Portfolio Committee No. 4 – Industry, Parliament House, Macquarie Street
Parliament House
Macquarie Street
SYDNEY NSW 2000
AUSTRALIA

To Whom It May Concern,

SUBJECT: ACMF Submission on the NSW Right to Farm Bill 2019

The ACMF welcomes the opportunity to lodge a submission in support of this important bill, on behalf of its member organisation, the NSW Chicken Meat Council (NSW CMC).

The Australian Chicken Meat Federation Inc. (ACMF) is the peak coordinating body for participants in the chicken meat industry in Australia, representing all elements of the industry, including chicken growers and processors, at the national level.

The NSW CMC is the industry association that represents the interests of the broader chicken meat industry in NSW. Its members include the farmers that grow meat chickens as well as the companies that process the chickens and make chicken meat products available to both the local and broader Australian consumer.

The NSW CMC is a member of the Australian Chicken Meat Federation Inc (ACMF).

Proposed Amendments to Inclosed Lands Protection Act 1901

We welcome the measures proposed in the Right to Farm Bill 2019 which will strengthen the NSW laws in respect to trespass.

Australian chicken farms, including in NSW, have been subject to break-ins (on occasion through the use of bolt-cutters to break locks and chains on gates or shed doors) and trespass by activists for the purpose of gaining access to conduct protest action or for the purpose of unauthorised, covert surveillance with the intention of disseminating material obtained through such means as publication on the internet, the images and other material often being used in such a way that they misrepresent what would be considered acceptable, if not good, practice.

Several chicken processing plants in Australia have also been subject to unauthorised entry for the same purpose.

Consequences of trespass

Trespass on chicken farms and chicken processing plants can result in a range of serious consequences, which are described here.

Breach of biosecurity

Australia has a unique biosecurity status.

It is free of a number of the world's most severe pests and diseases of poultry because of the commitment by government, industry and the community to a range of protocols which are enforced offshore, at our national borders, at state level and on individual farms.

The protection of our unique status comes at a significant cost; for example, industry and governments collectively spend millions of dollars each year on traceability systems.

The activities of animal rights groups who illegally enter a farm with no regard for the biosecurity rules in place on that property pose a serious threat to these protocols and potentially the integrity of the whole biosecurity regime.

The threat to the integrity of our biosecurity regime is the chicken industry's greatest concern with respect to unauthorised entry by activists, or any other party for that matter.

The biosecurity risks posed by unauthorised entry on to chicken farms are very real. Chicken meat producers implement strict biosecurity protocols across their facilities aimed at protecting the health and welfare of millions of birds.

Biosecurity measures in place across the mainstream chicken industry include:

- requirements on staff to have no poultry at home,
- stand-down periods for staff or visitors who have visited other poultry facilities or are returning from overseas or have experienced recent gastrointestinal or flu-like disease,
- requirements for protective and/or clean clothing and footwear for visitors entering chicken facilities,
- use of disinfectant footbaths and hand sanitising prior to entry into chicken sheds, and
- a raft of other measures aimed at minimising the risk of poultry diseases or food safety pathogens being introduced to farms and spreading between farms.

Activist groups sometimes claim that they take appropriate biosecurity mitigation measures prior to making an unauthorised entry onto a farm, but we challenge this claim; indeed, we challenge their understanding of what measures are appropriate to take for each type of enterprise they may be putting at risk through their trespass. For example:

- Do they have no birds at home?
- Do they have no contact with birds or other farms for days prior to the trespass? In this context we note the statement in the report of the NSW Select Committee *Inquiry on Landowner Protection from Unauthorised Filming or Surveillance* (25 October) that “*Australian Pork Limited noted that 48 piggeries were allegedly 'raided' across New South Wales, Queensland, Victoria and Western Australia between August 2012 and March 2015, with intrusions in certain areas often occurring on consecutive nights*” – hardly suggestive of required stand-down periods being observed.

- Do they ‘stay away’ from the trespass event if they have experienced recent gastrointestinal or flu-like disease?
- Do they use the facilities provided on farms for disinfecting footwear and hands prior to breaking into them?

These are amongst the raft of measures required under the chicken industry’s biosecurity protocols aimed at minimising the risk of poultry diseases or food safety pathogens being introduced to farms and spreading between farms.

Food safety compromised

By illegally trespassing and not following the strict protocols required to enter meat chicken farms or facilities such as chicken processing plants, activists (and other unauthorised trespassers) also threaten the security and safety of our food supply, by risking the introduction and spread of zoonotic diseases and food safety pathogens.

This is a particular concern for managers of chicken processing plants, who need to consider the risk of deliberate or inadvertent contamination of chicken products by persons occupying the site following an illegal entry, and determine whether any action – including potentially the disposal of a significant amount of potentially contaminated product – may be required.

Injury, death and other detriment to the welfare of the livestock

Clearly, if a biosecurity breach results in the introduction of a serious poultry disease, the welfare of the affected flock(s) is likely to be adversely impacted. Quite apart from this, however, the welfare of chickens themselves can also be *immediately* impacted by the actions of trespassers, particularly in instances where unauthorised entries occur at night and torches or other unfamiliar light sources are used in an attempt to illuminate the barn and the birds themselves.

The use of high-powered torches by activists, often for the purpose of capturing images, causes fright and panic in the birds who are unfamiliar with having a torch shone directly into their eyes, particularly during what they have become accustomed to being their night time.

The ACMF is aware of an example in another state where such an intrusion was the cause of 1,400 birds smothering overnight on a chicken layer rearing farm in Queensland earlier this year, following the barn being broken into overnight (only discovered the following morning when the grower arrived to check the flock to find the lock to the barn cut and lying on the ground near the barn door, and the birds smothered in a number of corners inside). The incident was notified to Police.

The committee should note this particular event took place on 5 April 2019, within months of the Aussie Farms publishing its interactive online map of Australian livestock facilities, on which the location of the farm in question was identified.

Property damage

Unauthorised entry onto agricultural properties also brings with it the risk of property damage; for example, damage deliberately done to security measures, fences and other facilities in gaining illegal access to the facilities, or damage to water lines, drinkers, feeders, ventilation or other equipment in chicken barns, often unintentional, during the occupation of housing. Unintentional damage occurring during facility occupation following trespass can arise in a range of ways,

including people bumping into equipment, or birds damaging equipment (particularly drinker lines) during a panic response to an unexpected shed entry, particularly if at night. Damage such as this can have flow-on consequence for the efficient operation of the business, as well as for animal welfare, for example, where damage to drinker lines results in the bedding in the shed becoming wet and irreparably fouled as a consequence.

Unauthorised entry resulting in the covert installation of surveillance devices on farms can also create a safety and fire risk due to use of the electrical circuitry in the barn.

Theft

It has sometimes been the case that activists who have illegally entered chicken farms and gained access to housing thereon have left with a number of birds. While this is often promoted as 'liberating' the birds, most reasonable people would consider this theft.

Disruption to lawfully operating businesses

There have been instances of trespass onto processing plant property, requiring processing lines to be stopped until the trespassers have been removed from the premises. This not only causes significant and extremely costly disruptions to the operation of a lawfully operating business, but also has consequences in terms of bird welfare (because of the delays incurred) and food safety.

Physical harm to trespassers themselves, to staff and to those responding to the trespass

The Federation and its members are also very aware of and concerned about the risk of physical harm to those who conduct the trespass, as they very often put themselves in positions which are inherently risky, such as amongst automated, moving machinery in processing plants, or climbing up onto elevated equipment or facilities to install surveillance equipment or onto trucks carrying modules of birds. In doing so, they often put others, including staff, at risk too.

Psychological impacts on farmers and business operators, their families and staff

Quite apart from the above very direct consequences for an agricultural business, there are significant impacts for the people who are directly affected by a trespass, particularly where it involves intimidation, harassment or abuse of the farmer and his family or staff of the business, or where there are elevated risks of physical harm to trespassers as a consequence of their own actions (for example, where they endanger themselves by climbing on equipment).

Proposed Amendments to Inclosed Lands Protection Act 1901

We welcome the measures proposed in the Right to Farm Bill 2019 which will strengthen the NSW laws in respect to trespass.

Group trespass

The risk of many of the consequences associated with trespass which have been identified above increases, often exponentially, the greater the number of persons involved in the trespass. This is particularly the case for:

- Risk of biosecurity breaches
- Opportunity for introduction of food safety pathogens

- Risk of damage, particularly inadvertent damage to birds and property
- Risk of physical injury of trespassers, staff and persons responding to the trespass
- Likelihood of the welfare of birds being impacted, as a result of fear and panic responses
- Level of intimidation felt by farmers, their families and staff and processing plant staff, and therefore the psychological impacts of trespass upon them.

The ACMF therefore strongly supports the amendments proposed in the Right to Farm Bill 2019 which will introduce a new penalty for aggravated unlawful entry on inclosed lands where the offender is accompanied by two or more persons, with appropriately higher penalties to apply to group trespass.

Hindering the conduct of the business and causing damage to property

The Bill extends the circumstances which can constitute an offence under the Inclosed Lands Act 1901 to include hindering the conduct of the business. This is highly appropriate, as often the very presence of trespassers on the property will cause the operation to be significantly disrupted, and even to cease operation until the trespassers are removed. For example, due to the personal safety risks that trespassers into chicken processing plants place themselves at, plant management inevitably has a duty of care to stop processing altogether. The cost of this disruption can be huge, particularly where there is a large workforce which stands idle until the trespassers leave.

The Bill also extends the circumstances which can constitute an offence under the Act to include those where property is damaged or livestock are wilfully or negligently released. The ACMF also supports these amendments. As mentioned previously, there have been instances where trespass results in damage to property during a trespass onto a farm. Irrespective of whether that damage is deliberate or inadvertent, it can have serious implications for the financial viability of the farmer / processor and also for the longer term welfare of the animals, and must be dissuaded. While more serious property damage may be prosecuted under the Crimes Act 1900, the proposed amendment provides an additional mechanism for ensuring there are consequences for persons who cause property damage during a trespass which might otherwise not be prosecuted under existing laws.

The ACMF therefore welcomes the additional protections provided to farmers and other agricultural businesses by the amendments proposed in the Right to Farm Bill 2019 which extend the circumstances which can constitute an offence under the Inclosed Lands Act 1901 to include those where the conduct of the business is hindered or property is damaged or livestock are wilfully or negligently released.

The ACMF also supports the proposed increases in penalties that apply to offences under the Act, which are better aligned with the scale of the damage that can be done as a result of trespass.

Incitement of trespass

The Right to Farm Bill 2019 further extends the protections given to farmers and others involved in agricultural pursuits by creating a new offence for inciting, directing, counselling, inducing or procuring others to trespass. This closes an obvious gap in the current legislation, whereby persons

who organise farm trespasses and promote or incite others to commit a trespass, but who do not actually participate in the trespass themselves, are currently effectively guiltless under law, whereas in reality, they are active facilitators of the trespass offence.

The internet, including Facebook, has been used extensively in the past to publicise, and thereby incite, protest actions at and trespass onto chicken facilities. The publication by Aussie Farms of an interactive online map to Australian livestock facilities, thereby broadcasting the names and addresses of Australian farms and other animal facilities, has facilitated and encouraged unlawful entry of activists on to such facilities.

Biosecurity breaches and inadvertent property damage, in particular, are more likely to occur the more people involved in the trespass. Therefore, incitement of gatherings of large numbers of persons for the purpose of a mass trespass on a chicken farm or other facility is of particular concern from these perspectives.

The existing NSW trespass laws fail to address the culpability of persons who promote or incite others to commit trespass.

The ACMF supports the proposed amendment to the Inclosed Lands Act 2019 which closes this gap.

Proposed amendments to the Bill

We note the proposed amendment (c2019-171A) to the Bill which seeks to exempt from the provisions of the NSW trespass laws “persons engaged in a genuine peaceful demonstration or protest”. **We are strongly opposed to this amendment.** A trespass is a trespass, regardless of the intent. The intent of parties involved in a trespass may not be to introduce a bird disease or food safety pathogen, or to cause harm to birds or damage to property. However, the biosecurity and food safety risks, in particular, are the same, irrespective of whether a ‘peaceful demonstration or protest’ or not. As mentioned above, many such consequences are caused inadvertently, and parties involved in the trespass may not be aware of the specific hazards that they are creating.

We further note the proposed amendment (c2019-177) seeking to provide a defence against an offence of trespass where the person commits the trespass for the purposes of “identifying, investigating or presenting (a) an offence involving animal cruelty, or (b) an environmental offence within the meaning of the *Crimes (Appeal and Review) Act 2001*”. **The ACMF is strongly opposed to this amendment, which could be very easily misused.** It would allow persons to simply wander onto any property they liked, irrespective of whether there was any evidence or suspicion of unlawful activity occurring on the property whatsoever, on the grounds that they are looking for some offence. This is completely inappropriate. Any suspicion or evidence of breaches of animal welfare or environmental laws should be reported immediately to the appropriate authority/ies, so they can be properly investigated.

New Right to Farm Act 2019

The Right to Farm Bill 2019 also introduces new legislation aimed at providing protections for farmers, who are operating lawfully, from unreasonable interference in conducting their businesses from neighbours and other land users.

These protections are long overdue.

Chicken farmers are often the subject of nuisance claims levelled at them by neighbours or other members of their community which relate to activities or outputs that are intrinsic elements of livestock farming. The reality is that animals smell; farming operations at times create dust and noise; chicken sheds may not appeal aesthetically to everyone. However, all of these things are normal realities of producing a food that is incredibly popular and an important part of the diet of Australians – to the extent that Australians today consume in excess of 45 kg pa each.

Often, conflicts between farmers and their neighbours arise from urban encroachment into areas which were traditionally farming areas, with residential properties coming into closer proximity to farms which usually have been operating for some time in the same location. Land use conflicts between farmers and their neighbours can arise when the expectations of the new residential landowner fail to recognise the realities of lawful farming practices. These conflicts are usually extremely disruptive and time consuming for farmers to manage and resolve, are often protracted and sometimes fuelled by ongoing vexatious claims and complaints. They can on occasion result in legal action being taken against farmers for creating a 'nuisance', despite the fact that they may be complying with all relevant regulations and conditions placed on their operation and are meeting appropriate industry operational guidelines and standards. Such legal action can result in farms being required to cease operations, or to operate in such a manner that their viability is so put at risk that they are forced to close anyway.

The Right to Farm Bill 2019 seeks to reduce the opportunity for nuisance claims levelled at agricultural operations from escalating to litigation, by introducing legislation which will minimise the opportunity for a nuisance action being brought against a commercial agricultural business where it is operating in compliance with all laws and regulatory conditions. The new legislation will also require, where courts find that a nuisance is indeed created by an agricultural activity, that orders be issued which allow the operator the opportunity to find ways to manage and reduce the nuisance, rather than closing the operation down.

The Federation sees the new legislation as a first step towards protecting farmers' rights to continue to operate without significant or unrealistic interference from other landusers, so long as they are operating lawfully and on land on which the activity is legal.

A gap - activist activities that do not involve trespass

Trespass does not have to occur for an event to have severe impacts on farmers and those operating or employed at other animal facilities, such as abattoirs and processing plants.

The broader chicken industry accepts that some people are opposed to chicken meat production and they have the right to express those views, including by way of protest action, so long as they conduct such action in a safe and legal manner, that is respectful of differing views, does not significantly disrupt the safe and efficient operation of an agricultural production business, and do not harass, intimidate or bully farmers or other parties engaged in the lawful operation of a chicken production business.

The Federation is however concerned that current laws, nor the proposed changes that would be introduced by the Right to Farm Bill 2019, do not adequately protect farmers and others involved in the lawful operation of chicken meat production businesses from activities that are not currently

covered by current trespass, property damage and theft laws. For example, protest action at processing plants can significantly disrupt the delivery of birds to the plant, resulting in delays in processing with consequent impacts on bird welfare, food safety and the efficient operation of the business. It sometimes results in protesters putting themselves in inherently risky situations (in front of moving vehicles or climbing up onto loads of birds on trucks) which in turn has a profound impact on the psychological wellbeing of drivers, other staff and managers of processing plants, who need to manage all these risks.

Current laws also fail to address the psychological impacts of such activities as protest action where it includes intimidation or harassment, or risks of human injury (as a result of activists putting their own safety at risk as a result of their actions) on farmers, their families and staff involved at all chicken production facilities.

This is an additional piece of work that needs urgent consideration by the NSW Government.

Conclusion

The Federation strongly supports the Bill, which we believe will help to protect NSW farmers and agricultural producers from the unlawful actions of trespassers, by sending a clear message that such offences are serious, can have far-reaching consequences, and will not be tolerated. The ACMF considers the penalties associated with the offences under the proposed new laws to be appropriate, given the scale of the potential detriment to those who are the victims of the unlawful acts that are the consequence of these offences.

However, the Federation believes activists will only be deterred from invading farms or facilities if governments bring to bear the force all laws breached by them.

The Federation also supports the NSW Government's steps to protect the rights of lawfully operating agricultural businesses through the creation of new 'right to farm' legislation.

The Federation commends the NSW Government for its response to these issues.

Yours sincerely,

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Executive Director
Australian Chicken Meat Federation Inc

