

Submission
No 192

INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM BILL 2019

Organisation: Animal Justice Party

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Legislative Council
Portfolio Committee No 4 - Industry

**Submission on the *Right to Farm Bill 2019*
*Lodged by Catherine Ward, Secretary for the NSW Animal Justice Party***

October 2019

1. INTRODUCTION

The Animal Justice Party NSW (AJP) was established in 2009 in response to growing public concern over the abuse, harm and mistreatment of non-human animals across Australia. We aim to give a political voice to animals, to pursue the vital issues of animal protection through Australia's political system and to encourage political parties to adopt animal-friendly policies.

2. EXECUTIVE SUMMARY

- a. The AJP supports the valuable contribution made by NSW horticulturalists to society and to the economy. We also recognise that animal production facilities also wish to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users. However we disagree that the issue lies with animal activists but rather with the industry practices that are no longer deemed acceptable by the general public. In the long term, the AJP supports a transition for those in the animal production industries to kinder and more sustainable plant-based horticulture and other industries.
- b) The AJP is of the view that all proposed legislative measures should *complement* and not *add* to already established legal and policy frameworks and that this Bill fails to fulfil that criteria. The *Right to Farm Bill* introduces a host of new provisions with questionable effectiveness that contribute little to existing measures available to agricultural producers. The AJP regards the Bill as excessive and unnecessary, and one replete with equivocal and otiose provisions.
- c) The AJP is of the view that the Bill is a result of political posturing and a shallow attempt by the Government to deliver on an election promise to agricultural producers. Of particular concern is the Bill's attempt to conflate concerns relating to land use conflict in regional and rural

areas (nuisance claims) with criminal trespass legislation aimed at preventing 'vile attacks' from so-called 'domestic terrorists'. Specifically, the Bill has been sold to National Party constituents as a way of preventing 'virtue-signalling vegan vigilantes' and their 'political enablers' from 'crushing farmers into oblivion'.

- d) With the issue of animal suffering and cruelty now in the national spotlight, these state-sponsored scare tactics are more about protecting a multibillion-dollar industry than they are about agricultural producers' safety and security. The AJP considers the polarising and obfuscating effect of the torches and pitchforks rhetoric which has accompanied the introduction of this Bill to be nothing short of reprehensible.
- e) The AJP opposes the introduction of the proposed Right to Farm 'nuisance shield' provisions. It is of the view that existing common law and statutory remedies and policies available to agricultural producers relating to nuisance claims, neighbourhood complaints and competing land use issues are adequate to address their concerns. Our reasons and supporting evidence are set out in detail later in this submission.
- f) The AJP opposes the proposed amendments to the *Inclosed Lands Protection Act 1901* contained in the Bill. Echoing the sentiments of the Law Council of Australia in its submission to the Senate Legal and Constitutional Affairs Legislation Committee on the *Criminal Code Amendment (Agricultural Protection) Bill 2019*, the AJP believes that it is necessary to balance the protection of agricultural producers from unlawful activity with the protection of legitimate rights and freedoms.¹ We submit that these draconian amendments have the potential to further penalise and restrict lawful and peaceful protest activity and the exercise of democratic freedoms. Specifically, the amendments trespass on personal rights and liberties and do not properly define the administrative powers that may affect personal rights.
- g) The AJP's primary concerns with the proposed measures in their current form are:
 - h) the potentially broad scope of the proposed measures to capture behaviour other than incitement to trespass, that may inhibit legitimate public dialogue;
 - i) the extent to which the proposed measures overlap with existing offences covering similar conduct;
 - j) the absence of proposed defences for whistle-blowers
 - k) the severity of the penalties attached to the proposed offences.

¹ Submission by Law Council of Australia, *Criminal Code Amendment (Agricultural Protection) Bill 2019* Senate Legal and Constitutional Affairs Legislation Committee 31 July 2019

- l) the capacity of the measures to capture and penalise benign conduct
- m) The AJP is of the view that existing legal remedies and criminal laws available to agricultural producers relating to unlawful interference, trespass, theft and damage to property are adequate to address their concerns. The Minister's suggestion that the bill addresses 'a real need and gap in the law' is not borne out by the evidence. Our reasons and supporting evidence are set out in detail later in this submission.
- n) The AJP agrees with the Minister for Agriculture that we are fortunate to live in a country that allows freedom of expression, the right to debate and the ability to hold peaceful demonstrations. We agree that groups may hold different views on an issue and supports the right of everyone to engage in healthy and respectful debate. The AJP is concerned, however, with the misleading and polarising rhetoric which has preceded and accompanied the introduction of this Bill. Using language such as 'vegan vigilantes', 'ideologically motivated groups', 'green collared criminals', 'shameful', 'un-Australian', 'virtue-signalling thugs' and 'domestic terrorists' to describe members of activist groups concerned to bring public attention to what they consider to be cruel, and in many cases, unlawful, treatment of animals will do little to engender respectful dialogue.

3. RECOMMENDATIONS

- a) That the 'nuisance shield' provisions of the *Right to Farm Bill 2019* not be adopted.
- b) That the proposed amendments to the *Inclosed Lands Protection Act 1901* not be adopted.
- c) That the *Right to Farm Bill 2019* be rejected in its entirety.

4. THE RIGHT TO FARM 'NUISANCE SHIELD'

- a) As stated in the NSW Department of Primary Industries 2015 *Right to Farm Policy*, the concept of 'right to farm' and the one used in the policy, relates to 'a desire by farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users'.² The right to farm is directed towards land use planning and the management of land use conflicts, primarily those between competing activities or between agricultural production activities and residential uses. The comments of the Minister in his Second Reading Speech suggest that the central concern of a 'right to farm' is to protect agricultural producers from illegal trespass from 'vegan vigilantes' rather than to protect agricultural producers from neighbourhood nuisance claims. Such comments are misleading and polarizing and do nothing to 'improve education and awareness', a central pillar of the NSW Right to Farm Policy.

² NSW Department of Primary Industries *Right to Farm Policy*, 2015 p. 4

- b) The ‘nuisance shield’ provisions of Bill seek to provide protection for agricultural producers against nuisance lawsuits while limiting legal remedies available to individual property owners. The spectre of common law nuisance litigation against agricultural producers, however, is overblown. There is no evidence or statistics to suggest that nuisance lawsuits against agricultural producers are prevalent in NSW, or that these kinds of lawsuits are increasing.
- c) Evidence from Australia and overseas does not support the Minister’s claim in his Reading Speech that the proposed nuisance shield laws will ‘protect agricultural producers from vexatious and often simply ridiculous nuisance claims’.
- d) We have been unable to locate a single reported NSW case relating to nuisance claims against agricultural producers. This renders the proposed protections in the proposed s 5 largely ineffective.
- e) A Review of the *Primary Industry Activities Protection Act 1995* (Tas) upon which the NSW Bill is modelled, noted that remedies available under the common law of nuisance are rarely pursued because:
- people tend to use the cheapest and easiest way to resolve their issues;
 - the costs and risks of litigation deters potential litigants;
 - concepts of private nuisance have been overtaken by planning, environmental and laws relating to local government matters; and/or
 - local councils tend to be first point of call for land use disputes, which are subsequently resolved through mediation. ³
- f) In a 2014 review (released in 2016) of the Act the Tasmanian Farmers and Graziers Association argued that the PIAP Act ‘has not been effective, being used only as a ‘tool of last resort’. It argued that, as the only legal mechanism available to Primary Industry Activities Protection Act *Primary Industry Activities Protection Act* , the Act ‘has resulted in much frustration, as drawn-out and expensive actions almost inevitably fail’.⁴
- g) In addition, the Tasmanian review cited little evidence to suggest that the law has reduced conflict between agricultural producers and their neighbours. It concluded that the most effective way to reduce conflict

³ Review of the Primary Industry Activities Protection Act 1995 (Tas) FINAL REPORT AgriGrowth Tasmania Department of Primary Industries, Parks, Water and Environment

⁴ Tasmanian Farmers and Graziers Association, *Submission to Review of the Primary Industry Protection Act 1995*, August 2014, pp 29-30_{SEP}

between agricultural producers and their neighbours is ^[1]not through any legislation or policy, but through a commitment to ongoing and open communication and negotiation by the parties themselves. ^[2]

- h) A 2015 NSW Parliamentary Research Service e-brief on right to farm laws reviewed the effectiveness of such laws in the United States, citing sources which suggest that they have been largely ineffective for the following reasons:
- Case law indicates the laws do not work as planned
 - The idea has been legislatively abused and made too widely available
The idea may lead to the increased regulation of agricultural practices
 - The laws contribute to a growing sense of unfairness in the countryside
 - The laws generally favour larger operations
 - The laws may represent a taking of the neighbour's private property rights
 - The laws may create political pressure for restricting agriculture
 - The laws force litigation into other arenas
 - The laws increase pressure for enactment and enforcement of environmental regulations
 - The laws are not implemented as part of a comprehensive effort to protect farmland⁵
- i) It is also of concern that the limits on injunctive relief proposed by 5(2) of the Bill⁶, is an attempt by Parliament to unreasonably usurp the powers and functions of the judiciary.

5. EXISTING LAND USE MANAGEMENT STRATEGIES

- The AJP is of the view that existing land management strategies available at the local government level are effective to protect agricultural producers from unreasonable interference in their commercial operations. It argues that the effectiveness of such regimes may be further improved by providing additional guidance and support to councils to strategically manage land use complaints and issues.

Local Government Act 1993: Land Planning Instruments and Rural Land Strategies

⁵ NSW Parliamentary Research Service, June 2015 e-brief 5/2015 *Right to farm laws*, Gareth Griffith, p 6

⁶ 'The Court must not order the complete cessation of the commercial agricultural activity if the court is satisfied that it could make an order that would permit the continuation of the activity in a manner (a) that is managed, modified or reduced; (b) consistent with an efficient and commercially viable agricultural operation, and (c) unlikely to significantly disturb the other party to the proceedings.

- a) The Minister's Second Reading Speech refers to concerns about the incidence of 'complaints about agricultural practices' to local councils. Such concerns are not addressed by the proposed Bill, which is directed to common law nuisance claims.
- b) A 2018 Right to Farm Agricultural Land Use Survey prepared for the NSW Department of Primary Industries collected data from 15 Local Councils. The Councils most commonly reported 1-2 complaints about agricultural activities per month, equivalent to 12-24 per year, a modest number of complaints.⁷
- c) The key findings of the Survey found that at least half of agricultural land use complaints between 2016 and 2018 were about compliant agricultural activities and that^[SEP] noise, odour, dust, spray drift and escaping livestock were the most common triggers for complaints.⁸^[SEP] Complaints about non-compliant agricultural activities made up the minority of the total agriculture-related complaints received by local councils.
- d) Significantly, the survey found that local councils are reluctant to issue infringement notices in the event of a compliance breach.
- e) The survey revealed that most local councils continue to manage conflict at the development approval and strategic planning levels. The Survey found that the most common approach local councils use to manage land use conflict is the planning system, primarily via the conditions in their local environmental plans (LEPs) and development control plans (DCPs) around permissible land uses and buffer zones.
- f) Local councils most commonly rated LEPs with clearer zones and provisions for agricultural land uses as likely to be the most effective and rated managing land use conflict at the development approval level as the most effective way to manage land use conflict between agricultural producers and neighbouring properties.
- g) The review noted that a relative minority of local councils have a clear strategy or policy for agriculture in their Local Government Area, including the adoption of their own Right to Farm Policy and recommended that additional guidance and support be provided to councils to strategically manage land use complaints and issues.⁹ The

⁷ Goodall, A. (2018). Right to Farm- Agricultural Land Use Survey: Final Report. Institute for Public Policy and Governance, University of Technology Sydney, Sydney; prepared for the NSW Department of Primary Industries, p 5

⁸ *ibid.*

⁹ *ibid.* p 39

AJP would endorse this recommendation.

Environmental Protection Legislation

Section 4(1) (a) of the proposed Right to Farm Bill would not provide agricultural producers with a shield against the conduct of commercial agricultural activities carried out ‘negligently or unlawfully’ and would not affect the powers of the Environmental Protection Authority to issue notices and/or fines for breaches of the *Protection of the Environment Operations Act 1997*, as in two recent cases involving fines for chemical pesticide drift in high wind conditions.¹⁰

RECOMMENDATION:

That the ‘nuisance shield’ provisions of the *Right to Farm Bill* not be adopted.

6. PROPOSED AMENDMENTS TO THE *INCLOSED LANDS PROTECTION ACT (ILPA)*

The Bill proposes increased penalties for aggravated trespass offences, introduces an offence of damage to property and the wilful or negligent release of livestock, and creates a new offence, that ‘a person must not direct, incite, counsel, procure or induce the commission of’ aggravated unlawful entry on inclosed lands. These provisions will attract the toughest penalties in the country.

The Real ‘Farm Invaders’

- a) The AJP notes the Minister for Agriculture’s comments that the amendments to the ILPA are ‘designed to send a clear message to animal activists’; and those of the Deputy Premier that agricultural producers have ‘had a gutful’ of ‘vigilantes entering our farmers’ property illegally’. In his Reading Speech, the Minister noted figures from the Bureau of Crime Statistics and Research showing a 27% increase in the number of recorded incidents of trespass on agricultural and rural properties since 2014.¹¹ His ensuing comments suggest that

¹⁰ <https://www.theland.com.au/story/6249880/epa-fines-highlight-importance-of-on-farm-data/>
[https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190916-epa-fines-farmer-\\$1500-for-misuse-of-pesticides](https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190916-epa-fines-farmer-$1500-for-misuse-of-pesticides)

¹¹ A fact check of the Bureau of Crime Statistics and Research has revealed the Minister’s figure to be excessive. Trespass trends for rural and regional districts appear in the table below. Source: https://www.bocsar.nsw.gov.au/Pages/bocsar_datasets/Datasets-.aspx

this increase is the result of ‘invasions’ by animal activists. The NSW police, however, report that the majority of trespass on rural properties is the result of illegal hunting and organised stock theft, not animal activism.¹²

- b) NSW Rural Crime Squads report that the most prevalent trespass and break and enter violations that occur in agricultural districts relate to illegal hunting, poaching and theft (of stock, farm equipment, firearms, vehicles and fuel) both by individuals and by organised crime groups. In 2018 over 20,000 individual head of stock were stolen with a value of \$3.2 million.¹³ The ‘farm invaders’ so regularly demonised by the government turn out, not to be animal rights campaigners, but illegal hunters, property thieves and stock duffers.

Animal Activism

- a) The incidence of unauthorised entry onto agricultural facilities by activists is not so great as to result in the draconian provisions set out in the proposed amendments which, in our view, fail the test of good governance.
- b) The AJP is of the view that the best way to deter trespass onto agricultural facilities by those concerned with animal cruelty is to vastly improve agricultural animal protection standards with effective monitoring, compliance and penalties for breaches. A lack of

Statistical area	5 year trend and average % change Jul 2014-June 2019
Central West	Down 4.3%
Coffs Harbour-Grafton	Up 8.7%
Far West & Orana	Down 2.4%
Hunter Valley excl Newcastle	Stable
Illawarra	Up 5.4%
Mid North Coast	Stable
Murray	Stable
New England and North West	Down 5.5%
Newcastle and Lake Macquarie	Up 8.4%
Richmond-Tweed	stable
Riverina	Up 7.4%
Southern Highlands and Shoalhaven	stable

¹² See *NSW Stock Theft and Trespass Review*, Final Report 2016
<https://www.justice.nsw.gov.au/Documents/Media%20Releases/2017/final-report-NSW-stock-theft-and-trespass-review.pdf>

¹³ See ‘NSW Police rural crime: Police are taking stock of rural crime incidents and investigations’, 30 Aug 2019

<https://www.westernmagazine.com.au/story/6357785/police-are-taking-stock-of-rural-crime-incident-and-investigations/?cs=112&fbclid=IwAR2W38nCtrS9yPwmQ2WOJ-0FPXY0p6vFUd6kjLUjrA-WeynZ5QVaNmVB0Nk>

transparency in animal production operations has resulted in a lack of trust in the community. Activists would have fewer motives to trespass on agricultural facilities if animal protection regulations were strengthened, observed and enforced.

c) As noted by the NSW Parliamentary Research Service:

'In the current debate about farm trespass and surveillance, concerns of agricultural producers about the inadequacy of existing legal remedies for invasion of property and privacy rights and breaches of biosecurity safeguards are competing against concerns expressed by animal welfare organisations about failings of the current system for enforcing animal protection laws. ... While proponents of these laws see them as farm protection laws, critics refer to them as 'Ag-gag' laws on the basis that they are aimed at silencing animal welfare activists.¹⁴

Community Concerns

a) A detailed 2018 Report by Futureeye investigated changing societal expectations in Australia relating to animal protection and the adequacy of regulation. The Report found:

- There is a strong public alignment to activists' views on how animals should be treated
- An overwhelming majority of the public is concerned about animal protection
- Current regulation on specific agricultural practices insufficiently addresses the public's concerns
- The public that is very informed and concerned about animal protection is more likely to believe the industry is not transparent or trustworthy
- The 'very informed and concerned' segment of the public is most likely to disagree with positive statement on agricultural animal protection
- Concern is likely to be higher if the public is more informed about agricultural animal protection
- The very informed and concerned' segment of the public expresses significantly higher concern about specific agricultural practices¹⁵

b) The AJP is concerned that the proposed amendments to the IPLA have the potential to criminalise conduct that would be otherwise regarded as benign, and that it has the potential to shut down legitimate dialogue and debate around animal protection and food production.

¹⁴ Farm trespass, surveillance and the Biosecurity Bill 2015 by Tom Gotsis and Lenny Roth, August 2015 e-brief 8/2015 NSW Parliamentary Research Service

¹⁵ Futureeye, *Australia's Shifting Mindset on Farm Animal Welfare* 2018 pp 40 -74

- c) The AJP is concerned that the proposed amendments may impinge on the implied freedom of political communication in that the breadth of conduct captured by the proposed offences overreach what is necessary for the effective operation of representative and responsible government. As Justice Kirby noted in *ABC v Lenah Game Meats*:

'The concerns of a government and political character must not be narrowly confined. To do so would be to restrict, or inhibit, the operation of the representative democracy that is envisaged by the Constitution. Within that democracy, concerns about animal welfare are clearly legitimate matters of public debate across the nation... Many advances in animal welfare have occurred only because of public debate and political pressure from special interest groups.¹⁶

Existing Legislation

The AJP notes the following existing NSW legislation:

Inclosed Land Protection Act 1901

Crimes Act 1900

Biosecurity Act 2015

Biosecurity Regulation 2017

Between them, these laws contain provisions that criminalise trespass, unlawful entry, criminal damage and aiding and abetting the commission of an offence.¹⁷ In the light of extant legal measures, we submit that a case has not been made that the proposed amendments are necessary and argue that further justification is needed. This is especially so since the recent *Biosecurity Act* amendments were touted by the Minister as a solution to stopping illegal farm trespass.

Proportionality

- a) The AJP submits that the increased penalties sought by the amendments are excessive and disproportionate to the offences created. If this bill becomes law in its current form, it would almost quadruple the penalty for aggravated unlawful entry on enclosed lands from \$5500 to \$22,000 and add a three-year prison term for people who merely 'hinder' a business while trespassing. Specifically:

¹⁶ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199

¹⁷ See: *Inclosed Lands Protection Act 1901* (NSW), s 4B (Aggravated unlawful entry on inclosed lands, Maximum penalty: 50 penalty units); s 5 wilfully or negligently leaving open gates; *Crimes Act 1900* (NSW), s 195 (Destroying or damaging property) - imprisonment for 5 to 12 years (depending on the means and circumstances of the damage conduct).

(NSW), s 351A (Recruiting persons to engage in criminal activity), s 351B (Aiders and abettors punishable as principals); s 249F (incitement); s 546 abetting and procuring.

Biosecurity Act 2015 s 23(1) failure to discharge a biosecurity duty. The *Biosecurity Regulation 2017* makes it mandatory for site visitors to comply with a Biosecurity Management Plan. Anyone who enters a designated biosecurity area without permission and without complying with the plan's requirements may be guilty of an offence under the *Biosecurity Act 2015*, and subject to \$1000 on-the-spot fines. Additional penalties of \$220,000 for individuals may be imposed by the Court.

- The Bill seeks to make aggravated trespass punishable by up to 120 penalty units (\$13,200) and 12 months imprisonment. At the moment, the maximum punishment is only 50 penalty units (\$5,500) and no jail time, so this is more than doubling the existing penalty.
 - Even more concerning, a person will face up to 200 penalty units (\$22,000) and up to 3 years imprisonment if they commit aggravated trespass in the company of two or more persons.
 - It is unclear why entering a property with two or more people is being treated more seriously than other aggravated trespass events under the Bill. It creates disproportionate outcomes.
 - For example, it means that if someone trespasses on a property alone and commits an aggravated offence – such as creating a biosecurity risk, entering with the intention to hunt without permission or steal an animal, or entering in possession of a fire arm – they are exposed to a *significantly lesser maximum penalty* than someone who releases livestock or interferes with the conduct of a business in the company of two or more people.
- b) The AJP endorses the comments of the Law Council of Australia in its submission relating to the *Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth)*:

‘As stated in *Clubb v Edwards*,¹⁸ to assess the proportionality of the provisions in the Bill there needs to be a consideration of whether the law is necessary because there is ‘no obvious and compelling alternative, reasonably practical, means of achieving the same purpose which has a less burdensome effect on the implied freedom [of communication about governmental or political matters]’... There is no evidence that the existing laws are incapable of addressing the concerns that motivate the passage of the Bill.’¹⁹

RECOMMENDATION: That the proposed amendments to the *Inclosed Lands Protection Act 1901* be rejected.

¹⁸ *Clubb v Edwards* (2019) 93 ALJR 448. 16

¹⁹ Submission by Law Council of Australia, *Criminal Code Amendment (Agricultural Protection) Bill 2019* Senate Legal and Constitutional Affairs Legislation Committee 31 July 2019

7. OTHER ISSUES

Direct, incite, counsel, procure, induce the commission of an offence

- a) The AJP has serious concerns about the provisions of the proposed section 4C of the *Inclosed Land Protection Act*: 'a person must not direct, incite, counsel, procure or induce the commission of an offence under s 4B' (aggravated unlawful entry on inclosed lands). This provision, known as an 'inchoate offence', or 'incomplete crime', criminalises conduct which is seen as working towards the commission of a particular offence. Inchoate offences are typically contrasted with substantive offences that result in an actual harm. It does not require that an offence has been committed, only that the person charged has encouraged the commission of an offence with the intention that it be carried out. The wording of the proposed s 4C makes it clear that no condition subsequent, in particular the requirement for the commission of a substantive offence, need to have occurred.
- b) While aiding and abetting provisions may be appropriate in cases of homicide and other offences against the person, the AJP is of the view that they are entirely excessive and inappropriate in the context of inclosed lands protection legislation.
- c) At common law the offence of incitement is constituted solely by what the inciter says or does and intends and does not require proof of any action or response on the part of the person incited. In *The Queen v Holliday*²⁰ the High Court stated that it does not matter that no steps have been taken towards the commission of the attempt or of the substantive offence or whether the incitement had any effect at all but that 'it is merely the incitement or the attempting to incite which constitutes the offence.'
- d) The accepted position in Australia, the Court stated, is that the conduct urged would, if it had been acted upon as the inciter intended, amount to the commission of an offence. In other words, the substantive offence incited need not actually be committed and liability for incitement arises prior to any criminal harm being caused.

²⁰ *The Queen v Holliday* [2017] HCA 35

- e) The AJP is concerned that this provision could be invoked against numerous classes of people including activists, campaign directors, officers of charitable bodies and union officials engaged in the organisation of protest campaigns which may involve any of the 'aggravated circumstances' listed in s4B of the Act, (whether an offence is committed or not) including:
- Interfere or attempt to interfere with a business or undertaking
 - Anything giving rise to a risk to safety (of protestor or any other person)
 - Anything which introduces or increases a risk of a biosecurity impact
 - Involves damage to property
 - Wilful or negligent release of livestock
- f) While the Minister has stated that the Bill is not intended to interfere with lawful protest activities, the proposed s 4C *ILPAct* can be construed as another attempt by the NSW Government to intimidate activists and protestors from exercising their democratic rights and freedoms. Indeed, Independent MLC Justin Field has suggested that the incitement provisions of the legislation could see a member of Parliament 'fall foul of these laws by encouraging peaceful protests'.²¹

Right to lawful protest and assembly

- a) Freedom of speech and freedom of association are cornerstones of democracy. Any attack on them is an attack both on democracy and civil society. The AJP is not alone in regarding the trespass provisions of the Bill as a covert attack on the right to peacefully protest. The effect of this Bill goes far beyond agricultural operations, extending to activity on public lands. The Minister's comments that: 'the bill doesn't impinge on anyone's right to peacefully protest. It punishes those who break onto people's farms to cause upset and chaos on that farm to make a point' is inaccurate and misleading. And for the Minister to suggest that the Bill has been 'mischaracterised by minority groups' is ill informed.
- b) The disproportionate penalties introduced by the Bill, including jail time, may be applied to protest activities that have nothing to do with animal agricultural activities or actions considered a risk to safety in such facilities. There is no defence in the proposed legislation to protect people engaged in peaceful demonstrations or protests.

²¹ Cited in 'Vegan vigilantes': Green groups attack proposed trespassing laws, Lisa Visentin, 24 September 2019
<https://www.smh.com.au/politics/nsw/green-groups-attack-proposed-vegan-trespassing-laws-20190924-p52ufe.html>

- c) Inclosed lands as defined by the Act include 'any land, *either public or private*, inclosed or surrounded by any fence, wall or other erection, or by some natural feature ...including the whole or part of any building'. The effect of this is that the aggravated trespass provisions contained in the Bill are not restricted to activities affecting private animal agricultural operations which the Minister and Deputy Premier insist that the Bill is designed to protect. The proposed law can criminalise peaceful protest by environmental campaigners in state forests, coal seam gas blockades, union assemblies taking place at worksites and protests involving agricultural producers themselves. As noted by the chief executive of the Nature Conservation Council:

'The irony is that farmers may suffer more than most from this bill. After all, farmers have been prominent in the hottest environmental battles of the past decade. They have been on the front line to save the Pilliga forest and the Northern Rivers region from coal seam gas and they have led campaigns to protect farmland and water supplies in the Hunter Valley, Bylong Valley, Gloucester Valley and the Liverpool Plains from coal mining... For every farmer on those picket lines, there are thousands more who agree with those taking a stand on their behalf, risking fines and a criminal record... It applies to any 'inclosed lands' and would, for example, impinge on a farmers' ability to picket supermarkets when they use their market power to under-pay primary producers for their milk and vegetables.'²²

- d) The proposed amendments to the Bill extend to activities that 'hinder' as well as 'interfere with' business on inclosed land. As pointed out by the Nature Conservation Council, which represents 150 environmental groups, the effect of this is to:

'[C]apture anyone hindering any business anywhere where they are also trespassing....This includes farmers and knitting nannas protesting CSG, unions on worksites, communities protesting against logging in state forests, people staging a sit-in in corporate headquarters of a company, and more'²³

- e) Unions NSW has expressed concern that it could inhibit the ability for unions to do their work and may be an attempt to legislate against people's right to protest. Unions NSW assistant secretary Thomas

²² 'Right to Farm Bill is a threat to democracy that threatens us all. Chris Gambian, 29 September 2019 <https://www.smh.com.au/national/nsw/right-to-farm-bill-is-a-threat-to-democracy-that-affects-us-all-20190929-p52vwu.html>

²³ Cited in 'Vegan vigilantes': Green groups attack proposed trespassing laws, Lisa Visentin, 24 September 2019 <https://www.smh.com.au/politics/nsw/green-groups-attack-proposed-vegan-trespassing-laws-20190924-p52ufe.html>

Costa has suggested that the proposed law is 'designed to intimidate activists against action'.²⁴

- f) Senator Kim Carr had similar concerns about the *Criminal Code Amendment (Agricultural Protection) Bill 2019* introduced earlier this year in federal Parliament, citing its potential for unintended consequences, including 'limiting trade union activity or for whistle-blowers raising animal protection and food safety concerns'.²⁵
- g) The NSW Civil Liberties Council has similarly argued that the proposed Bill is unnecessary and the wording too broad:

'These laws, although they are expressed to be talking about people coming onto farmlands and disturbing farmers going about their business, in fact they apply to any lands that are by definition enclosed ... It is a crackdown on people's rights to protest.... I can't see the purpose of these new laws. The existing laws already criminalise the behaviour that is targeted by this. It seems to just be grandstanding on the part of the politicians.'²⁶

8. CONCLUDING COMMENTS

- a) The 'nuisance shield' proposed by the Right to Farm Bill and the criminal offence amendments to the *Enclosed Lands Protection Act* are unnecessary, excessive and the product of political grandstanding. It neither 'addresses a real need' or 'fills gaps in the law' as claimed by the Minister.
- b) With reference to the scarcity of common law nuisance claims, the availability of land management instruments and alternative dispute resolution mechanisms at local government level, the 'nuisance shield' legislation is unwarranted and, with reference to experience in Tasmania and overseas, largely ineffective.
- c) There is no evidence that the proposed amendments to the ILPA are needed to protect agricultural producers from unlawful trespass. Existing laws dealing with acts of trespass, property damage and theft are adequate to protect agricultural producers from these and other crimes. Additional criminal protections for a select group of

²⁴ *ibid.*

²⁵ Paul Karp, Labor senator says 'unnecessary' vegan activist bill unlikely to be used, 12 August 2019.
<https://www.theguardian.com/australia-news/2019/aug/12/labor-senator-says-unnecessary-vegan-activist-bill-unlikely-to-actually-be-used>

²⁶ Pauline Wright, 'NSW farm trespass bill a crackdown on the right to protest', September 25, 2019
http://www.nswccl.org.au/nsw_farm_trespass_bill_a_crackdown_on_the_right_to_protest

businesses is discriminatory and disproportionate. The amendments fail to 'address a real need' or 'fill gaps in the law'.

- d) Repeated comments in the media and in Parliament to the effect that 'vegan vigilantes' and 'domestic terrorists' are out to terrorise agricultural producers and their families is politically motivated fear-mongering, unsupported by evidence and is unconscionable.²⁷ It has resulted in a divisive and polarising climate and has resulted in increased tension between animal advocates and agricultural producers.
- e) The Minister states in his Reading Speech that there has been 'online denigration, bullying, harassment and intimidation of farmers through social media'. If this is true, it is also the case that agricultural producers engage in such behaviour. The AJP notes on the Rural Crime Task Force Facebook site a post by the Task Force suggesting landowners prepare an 'Activist Plan'. Among very few voices of reason, the majority of the 171 comments from followers referred to plans involving 'shooting, killing, torturing, drowning, burying, electrocuting, stock whips and/or setting the dogs on' activists. Activists were frequently likened to 'vermin', 'pests' and/or 'feral animals'. Such comments are reprehensible and we think that everyone would agree this to be a deplorable state of affairs.
- f) The proposed trespass amendments and disproportionate penalties do not only affect 'those who break onto a farm and impede farming business'. The proposed offences are ambiguous, far-reaching and will arbitrarily criminalise lawful exercises of the rights to freedom of expression, political communication and access to information.
- g) Further criminalising the actions of those trying to expose animal cruelty and/or suffering does nothing to address the genuine animal protection concerns of both animal advocates and members of the public. If there were transparency in the industry, there would be no motivation for trespass. But rather than responding to legitimate animal protection concerns and addressing the issue of systemic animal cruelty, federal and state coalition governments are 'doing whatever they can to halt activists at the gates and bury the animal rights movement in fines, criminal charges, and misleading monikers.'²⁸
- h) 'If politicians are serious about preventing agricultural operations trespass, they need to focus on addressing the underlying concerns put forward by animal activists for engaging in this conduct. This

²⁷ Angela Risso, 'NSW Deputy repeats 'farm terrorists' label' 13 September 2019
<https://au.news.yahoo.com/nsw-deputy-repeats-farm-terrorists-label-012647670--spt.html?guccounter=1>

²⁸ Angel Chen 'Animal Rights Activists Labeled "Domestic Terrorists" in Australia' 5 August 2019
<https://sentientmedia.org/animal-rights-activists-labeled-domestic-terrorists-in-australia/>

includes concerns around the inadequate animal protection standards set by government, ineffective efforts to monitor and enforce compliance with those standards, and a lack of transparency in the way in which animals are treated within animal use industries'.²⁹

- i) What would lead to a reduction in the need for nonviolent actions is a review of animal protection laws, a properly equipped agency to enforce them, and publicly accessible CCTV cameras installed in all animal agribusiness operations. We need consumer protection and transparency that will allow people to make up their own minds if they want to support these industries and we need state and federal governments serious about making real change in the animal agribusiness industry.
- j) Evidence from the United States demonstrates that the public controversy relating to ag-gag laws has only served to increase consumer awareness of cruel practices, exactly the opposite of what US industries were seeking through enacting these laws. The public reaction to the ag-gag laws here indicates strongly that well informed Australians will see through the spin and will not accept animal cruelty being deliberately hidden for the sake of profit.³⁰
- k) If the Government were concerned about the effect of animal activism on agricultural revenue and the economy, it would be well advised to address changing consumer attitudes and demands relating to animal protection. That was the message of the Meat and Livestock Australia's community engagement manager, Jacqueline Baptista, earlier this year when she stated that the Australian livestock sector could lose up to \$3.2 billion by 2030 if it does not meet changing consumer attitudes to animal protection. Ms Baptista argued for greater transparency in animal production and called on producers to 'talk honestly, proudly and transparently' about their business.³¹

²⁹ Voiceless, 'Animal Law in the Spotlight: Update of the NSW Biosecurity Act' <https://www.voiceless.org.au/content/animal-law-spotlight-update-nsw-biosecurity-act-0>

³⁰ Dan Murphy, 'Meat of the Matter: Why ag-gag laws are bad', 20 August 2015 <https://www.drovers.com/article/meat-matter-why-ag-gag-laws-are-bad>
Adam Ozimek, 'Ag Gag Laws Are Bad For Markets' <https://www.forbes.com/sites/modeledbehavior/2014/03/26/ag-gag-laws-are-bad-for-markets/#7cf9b4a069f4>

Siobhan O'Sullivan 'Gagging debate won't right this wrong' 25 August 2015 <https://www.smh.com.au/opinion/gagging-debate-wont-right-this-wrong-20150824-gj69ns.html>

³¹ Simone Smith and Amelia Bernasconi, 'Animal welfare concerns predicted to have \$3.2b impact on livestock sector says meat industry expert', 29 May 2019

9. FINAL RECOMMENDATIONS

- a) That the 'nuisance shield' provisions of the *Right to Farm Bill 2019* not be adopted
- b) That the proposed amendments to the *Inclosed Lands Protection Act 1901* not be adopted
- c) That the *Right to Farm Bill 2019* be rejected.