

Submission
No 195

INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM BILL 2019

Organisation: Greenpeace Australia Pacific

Date Received: 1 October 2019

Portfolio Committee No. 4 – Industry

1 October 2019

Dear Committee

Submission on the Right to Farm Bill 2019 (NSW)

Greenpeace Australia Pacific (**GPAP**) welcomes the opportunity to make a submission to the NSW Legislative Council's Portfolio Committee No. 4 - Industry in respect of the *Right to Farm Bill 2019* (NSW) ('the **Bill**').

GPAP has over one million supporters, including over 250,000 in New South Wales, and is part of a global network focused on tackling the world's most pressing environmental problems. We are an entirely independent, people-powered organisation and do not accept donations from governments or corporations.

Throughout history, peaceful protest has played a critical role in shaping modern liberal democracies such as ours - both in New South Wales, Australia, and globally. In a local context, peaceful protest has played a critical role in securing support for laws with regards to (for instance), protection of the environment, LGBTIQ issues, and indigenous issues that are extremely widely supported.

The proposed Bill will undermine the right to peaceful protest by:

1. Increasing penalties for unlawful entry and disruption on 'inclosed lands' with up to three years in jail, and increases the fine from \$5,500 to \$22,000; and
2. Broadly defining 'inclosed lands' so that it would include schools, offices, ports, banks and even on public land; and
3. Introducing a new offence of directing, inciting, procuring or inducing the commission of the aggravated offence, which would criminalise the act of organising a peaceful protest.

GPAP's unreserved view is that the right to peaceful protest is central to the functioning of liberal democracies, and that protest should never be illegal. GPAP's view is thus that the Bill should be dropped.

In addition GPAP joins with a number of other civil society organisations including unions, environment groups and civil liberties advocates in making more specific comments on the Bill in the **attached** submission.

Yours sincerely,

Jamie Hanson
Deputy Program Director and Head of Campaigns
Greenpeace Australia Pacific

Submission on the Right to Farm Bill

We welcome the opportunity to participate in this Committee's Inquiry to review the Right to Farm Bill 2019 (the 'Bill').

The right to protest is fundamental to a healthy democracy. Throughout history, peaceful protest has played a vital role in securing legal rights and workplace protections that are now properly regarded as essential to a decent society. Peaceful protest has also led to the protection of some of Australia's most prized agricultural land from mining and fracking, and the declaration of some of Australia's best-loved national parks. Now, the right to protest is seriously threatened by this Bill.

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

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

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

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

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

Perversely, the legislation could end up sending farmers to jail. Farmers have been at the frontline of the movement to stop inappropriate coal and gas developments which have led to policy and legislative changes. If, for example, farmers decided to stage a sit-in in a supermarket in protest against low milk prices, or in a bank in protest against the way loans are managed, under this legislation they will now face up to 3 years jail.

The Bill also introduces a new offence of directing, inciting, procuring or inducing the commission of the aggravated offence, which would criminalise the act of organising a peaceful protest. This new offence is so broadly worded that it would mean that if someone posted on social media encouraging their friends to attend a peaceful protest they could face up to 12 months in jail.

We are very concerned that these measures constrain or undermine the right to peaceful protest as implied in the Commonwealth Constitution and affirmed in the case of *Brown v Tasmania* [2017] HCA 43.

Recommendation 1: The Committee should seek and consider any legal advice that has been provided to the NSW Government on the impact of the judgement of *Brown v Tasmania* on these amendments.

We are also concerned that these changes are occurring with limited public consultation or debate. When the penalties for aggravated trespass were increased tenfold as part of the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill 2016, a specific amendment was moved by the Shooters, Fishers and Farmers Party and adopted by the parliament to ensure a statutory review of these changes occurred within 3 years. This review must “determine whether the policy objectives of those amendments remain valid and whether the provisions, as amended, remain appropriate for securing those objectives.”

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

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

Recommendation 3: The Bill should be amended to ensure that:

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