

Submission
No 196

INQUIRY INTO PROVISIONS OF THE RIGHT TO FARM BILL 2019

Organisation: Australian Conservation Foundation

Date Received: 1 October 2019

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Portfolio Committee No.4 – Industry
Legislative Council
NSW Parliament
Macquarie Street
Sydney NSW 2000

Dear Committee,

Inquiry into the provisions of the Right to Farm Bill 2019

The Australian Conservation Foundation (ACF) welcomes the opportunity to provide a submission to the committee on the 'Right to Farm' Bill (the Bill) 2019.

The Australian Conservation Foundation opposes the 'Right to Farm' Bill in its current form. There are a number of issues with the proposed legislation, including changes to the penalties and the lowering of thresholds that need to be passed before an offence is committed.

The cumulative effect of many of the proposed changes is to criminalise the act of peaceful protest on both private and public land. Peaceful protest is an important part of democratic participation in Australia, and this legislation dramatically increases the penalties and lowers the threshold for what is considered a criminal offence.

The Bill is a disproportionate response to peaceful protest and has ramifications far beyond what the title of the Bill seeks to imply. The Bill goes well beyond farms to a wide-ranging definition of inclosed land both public and private, that may even apply if temporary barriers or fencing is established.

Given the centrality of a protest to a healthy democracy, laws designed to limit the freedom to protest must be carefully justified with reference to other public concerns such as health and safety and the proper functioning of a democratic society. This bill criminalises minor inconvenience to a business, increases the potential fines and adds jail time as a potential punishment, and introduces a new offence around directing or inducing someone to commit



Level 1, 60 Leicester Street
Carlton VIC 3053
ABN 22 007 498 482

Telephone. +61 3 9345 1232
www.acf.org.au

Email. acf@acf.org.au
[@AusConservation](https://twitter.com/AusConservation)



an offence. Such an expansion of the law is unjustified and significantly undermines important democratic freedoms.

At a time when trust in government is declining, limiting the ability of people to participate is not a way to restore trust. If this bill was to be made law it would be a backward step for democratic participation in New South Wales and would set a concerning precedent for lawmakers in other Australian jurisdictions.

Also attached is a submission from a coalition of civil society organisations.

Kind regards

Matt Rose
Economy and Democracy Program Manager



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

