

PORTFOLIO COMMITTEE NO. 4 - INDUSTRY

Thursday, 3 October 2019

Examination of proposed expenditure for the portfolio area

PROVISIONS OF THE RIGHT TO FARM BILL 2019

The Committee met at 11:00

CORRECTED

PRESENT

The Hon. Mark Banasiak (Chair)

The Hon. Lou Amato

The Hon. Catherine Cusack

Mr Justin Field

The Hon. John Graham

The Hon. Emma Hurst

The Hon. Trevor Khan

The Hon. Penny Sharpe

Mr David Shoebridge

The CHAIR: Welcome to the Portfolio Committee No. 4 hearing for the Inquiry into Provisions of the Right to Farm Bill 2019. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today we will hear from a number of stakeholders who have views in relation to the bill, including representatives from the New South Wales Government, farmers representatives, various legal organisations, and a number of animal welfare, environment and other organisations.

Before we commence I make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. I urge witnesses to be careful about any comments they make to the media or others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation.

The guidelines for the broadcast of the proceedings are available from the secretariat. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid in the audibility of this hearing I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. In addition, several seats have been reserved near loudspeakers for persons in the public gallery who have hearing difficulties. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

SIMON VINCENT, Director, Strategy and Policy, NSW Department of Primary Industries, sworn and examined

SCOTT HANSEN, Director General, NSW Department of Primary Industries, sworn and examined

PAUL McKNIGHT, Executive Director, Policy, Reform and Legislation, Department of Communities and Justice, affirmed and examined

CAMERON WHITESIDE, Detective Inspector and State Crime Rural Coordinator, NSW Police Force, sworn and examined

The CHAIR: I welcome our first witnesses. Would anyone like to make an opening statement, and please keep it to perhaps a couple of minutes?

Mr HANSEN: I will try to keep it brief so we can move quickly to questions. I thought it might be worthwhile to reiterate what the Right to Farm Bill 2019 is designed to deliver, and just importantly, what it is designed not to deliver. It is designed to deliver the following outcomes: To provide a defence against an action for the tort of nuisance for commercial agricultural activity where it is occurring lawfully on agricultural land. To be able to access this defence the activity needs to be carried out lawfully, not carried out negligently, carried out on agricultural land—which for the purposes of this bill means land used lawfully for the purpose of agriculture—and which has been used for the purpose of agriculture for at least 12 months.

What this part of the bill is not designed to do is provide a defence for unlawful or negligent activities in agriculture. This does not remove the right to take action for a tort of nuisance. It does not remove the right for landholders affected by matters such as noise, dust and odour from commercial agricultural activities utilising existing laws such as the Environmental Planning and Assessment Act 1979, which recognises that both civil and criminal enforcement proceedings can be brought in relation to a breach of the Act. It does not inhibit persons taking action in the Land and Environment Court to remedy or restrain a breach or likely breach of that Act. It does not limit the ability of section 125 of the Local Government Act 1993 giving councils the power to deal with public nuisance, nor does it bypass the Protection of the Environment Operations Act.

The second part of the bill is designed to require a court to consider alternative orders to remedy an activity that is found to constitute nuisance rather than to order the activity to cease. This requires the court to consider whether it could make an order that would permit the continuation of the activity. It does not seek to limit or otherwise prejudice the power of the court to make any order it thinks fit in respect of the nuisance. It then moves to make amendments to the Inclosed Lands Protection Act 1901 to increase a series of maximum penalties under that Act to introduce new aggravating factors for the offence of aggravated unlawful entry on inclosed lands, and to clarify that aggravated offence includes circumstances in which the person hinders or attempts to hinder the conduct of business or undertaking. It introduces a new offence for inciting, directing, counselling, inducing or procuring the commission of the offence of aggravated unlawful entry on inclosed lands.

What it does not seek to do is change the definition of inclosed lands, to change the meaning of trespass, to remove the right for legal protest, or to set minimum penalties that must be applied. It does not seek to change the penalty for simple trespass and does not change what unions can do in workplaces from today to what would be proposed should this bill be introduced. The bill is intended to deliver on the Government's commitment out of its response to the 2018 Legislative Council Select Committee on Landowner Protection from Unauthorised Filming or Surveillance. It is intended to deliver on the commitment it made at the June 2019 Council of Attorneys-General meeting to consider options to strengthen trespass laws, and it is intended to deliver upon the election commitment to provide a right to farm for farmers in New South Wales. We hope that an appropriate balance has been struck in the drafting of this bill that is before the House. We look forward to the deliberations of this Committee today, and also to hearing the evidence presented by witnesses to follow us to see if that balance has been struck.

The Hon. CATHERINE CUSACK: Would it be possible, if that is a written statement, for that to be tabled and for us to receive a copy of it?

Mr HANSEN: Sure.

The CHAIR: Are there any other opening statements?

Mr WHITESIDE: Firstly, I am pleased to appear before the Committee on behalf of the police commissioner and also as the State coordinator for the Rural Crime Prevention Team. The NSW Police Force is the primary authority in enforcing laws that are designed to protect our farmers from targeted and specialised crime against their property and livelihood. Before I continue I would like to acknowledge the unprecedented support that currently exists for policing rural crime throughout regional, remote and rural New South Wales. My role involves the coordination of the Rural Crime Prevention Team, focusing on the responding, disrupting and preventing rural crime, whilst increasing the NSW Police Force's capability to do so.

The NSW Police Force defines rural crime as an incident of crime that impacts upon the agricultural, pastoral or aquaculture industries. Historically, and supported by research, in particular the Bradshaw report and other studies, farmers have reported approximately 50 per cent of crimes that impact upon their farms. It is my goal to increase the reporting of those crimes. That is mainly due to the lack of confidence in the police and the judiciary and the poor outcomes. The Rural Crime Prevention Team and the NSW Police Force as a whole is establishing that confidence through a range of measures and strategies. This bill, if passed, will enhance the confidence in police and the courts, whilst increasing our ability to prevent, respond and disrupt those who commit trespass and invade farmland and homes. Every officer in the NSW Police Force has a responsibility to address rural crime. However, as an overview I would like to touch on what the Rural Crime Prevention Team's role is in that space.

The rural crime investigators [RCIs] are specialist investigators in rural crimes. In February 2018 Commissioner Fuller increased our capacity from 34 investigators to a team of 46 investigators, increasing our capability in terms of our intelligence, policy and structure. Our key priorities continue to be educating frontline police, increasing social media and public presence, enhance community engagements, developing stronger stakeholder engagements, and focusing on operations and investigations targeting rural trespass, illegal hunting, animal cruelty, stock theft, farm theft and firearm theft. In the 2018 calendar year the NSW Police Force recorded 513 incidents of farm trespass. This is an increase of 421 incidents of farm trespass since 2014 annually. Illegal hunting was the most cited factor associated with the trespass, followed by theft and other associated farm crimes.

The NSW Police Force appreciates the invitation to work with the Department of Primary Industries [DPI] on addressing criminal behaviour that is impacting on rural and regional communities, particularly our drought-affected farmers. We have been supportive of the amendments, the penalties and the offences that reflect on the impact that such crimes have on the vulnerable farming communities and hold those convicted of that crime to account. The NSW Police Force maintains that historically rural crime, specifically farm-based crime, has been under-reported and underestimated, as stated. We will work with communities to encourage them to report all crimes. The bill, if passed, builds on the good foundation and is expected to provide an additional appreciable deterrent to those who are thinking of trespassing on farmland, and of course, equips prosecuting authorities with additional legislative options in prosecuting offences. Thank you.

The Hon. EMMA HURST: We have just heard from the New South Wales police that the majority of trespass on rural properties comes from illegal hunting. I want to ask anyone from the DPI, given what the New South Wales police have just said, is the main purpose of this bill really to deter illegal hunting and stolen property?

Mr HANSEN: I guess I might go first. The purpose of the bill is actually to further deter or provide increased penalties for illegal trespass, completely ambivalent as to the purpose or the perpetrators. It is intended to deal with all trespass and all trespassers equally, regardless of their purpose.

The Hon. EMMA HURST: The only reason I ask is a lot of the discussion about this bill has been heavily focused on people trespassing to gather evidence of animal cruelty. Do you not think that is a little bit misplaced, given what the New South Wales police has now provided us?

Mr HANSEN: Obviously there has been significant media coverage about very public protests or trespass activities, which has generated a significant amount of media on that front. The unreported components and the reporting of illegal trespass by illegal hunters has been commented on previously. As I said, this bill picks up all illegal trespass, not just those who trespass for the purposes of animal welfare or those who trespass for the purpose of illegal hunting.

The Hon. EMMA HURST: Mr Whiteside, there have been some further media reports, particular from people who are trespassing to gather evidence of animal cruelty, to say they will not be deterred by these laws. We have various submissions from animal groups who quite clearly say that they do not support trespass or any illegal activity, but they are concerned that the motivation for these people to trespass is because our animal

welfare laws are failing and the enforcement of animal welfare laws is failing and there is lack of transparency and that they think that these laws will not deter those people from trespassing. Do New South Wales police have concerns for that particular area of trespass that these laws may fail?

Mr WHITESIDE: In respect to the reasons for the trespass, our position is the same, whether it be for animal cruelty gathering evidence, as you say, or illegal hunting, or the risk of biosecurity issues or letting out stock. We are committed to ensuring that animal cruelty, including within primary production, is not neglected. This bill will address not only those incidents of activists or people gathering evidence but also equally illegal hunting and other means.

The Hon. EMMA HURST: Do you see that maybe some parts of the bill may stop animal cruelty from being exposed? One area being workers as whistleblowers will fall under incitement for trespass if they were to contact an advocacy group or something if the authorities were not acting and asked them to help gather evidence, they would then be potentially prosecuted?

Mr WHITESIDE: There are clear ways to report such incidents of animal cruelty, and I encourage any person, whether it be from an activist group or like body, to contact the enforcement agency in respect to that to act upon that information and not take it into their own hands to do so.

The Hon. EMMA HURST: I understand that. I guess coming from a background working for animal welfare organisations, we got about six or seven calls a year where the RSPCA and DPI and other authorities had failed to act.

The Hon. TREVOR KHAN: Somebody asserted that they had failed to act.

The Hon. EMMA HURST: Yes, somebody had asserted that they had reported to the authorities and had failed to act. Or, on the other side of the fence, because a lot of these calls were coming from people within slaughterhouses, that the authorities had come but obviously the animal abuse stops as soon as an inspector is on site, so it was very difficult to gather the evidence to stop the behaviours from happening. They are only contacting animal welfare groups as a last-ditch effort in desperation. Are we concerned that these whistleblowers will be affected? Maybe that is a question for the DPI.

Mr HANSEN: With regard to the whistleblowers, obviously employees would not be trespassing if they were on their place of employment.

The Hon. EMMA HURST: But they are inciting trespass by calling an animal group and saying, "Could you help gather evidence of this or install cameras?"

Mr HANSEN: And that obviously would be something the court would look at all the evidence that was provided to make a determination as to whether that did trigger that provision around incitement. What I would say is for those six or seven cases that you get a phone call for, we would hope that those animal welfare groups would themselves revert back to the appropriate authorities, either the RSPCA NSW, Animal Welfare League or the police, to try to stimulate legal investigation rather than illegal investigation.

The Hon. EMMA HURST: I guess my question was more about that whistleblower. They would actually fall into this? They could fall under the Act as a whistleblower, the worker themselves if they made that phone call?

Mr HANSEN: No. That would have to be something that would be judged upon the evidence that would be presented on a case by case basis.

The Hon. JOHN GRAHAM: But, Mr Hansen, it is a fair question though. We are trying to determine the scope of the bill. In the view of the agency, the Government has drafted this legislation, in that circumstance is it likely that that worker would fall within the scope of the incitement to trespass?

Mr HANSEN: Incitement exists in a number of pieces of legislation in the State already. I might ask Mr McKnight whether he has a comment on this.

Mr McKNIGHT: What I would say about the incitement offence, just to clarify its scope, is that it is an offence to direct, incite, counsel, procure or induce the commission of an offence against section 4B. That is not the trespass offence simpliciter; it is the aggravated offence. In order to commit that incitement offence the person inciting must also incite one of the aggravating features of the offence; that includes things like interfering with or hindering the conduct of a business, creating serious risks to safety, inducing a risk of biosecurity impact,

without reasonable excuse possessing nets, traps et cetera, taking firearms without permission onto the land. So it is more than just incitement of a trespass; you must also incite that aggravating feature.

The Hon. JOHN GRAHAM: And that includes hindering an undertaking?

Mr McKNIGHT: That would include interfering with or hindering a business or undertaking, but that needs to extend to that additional activity, not just the trespass.

The Hon. TREVOR KHAN: One of the amendments relates to the insertion of the word "hinder" as well as "interfere", which is already in the section. Mr McKnight, do you want to explain what the effect of the insertion of "hinder" is as opposed to the existing component of interference?

Mr McKNIGHT: Yes, I think I can help with that. I think the purpose of introducing this additional concept into the aggravating feature is really to clarify and give colour to the activity that we are talking about. When we are talking about hindering—these are ordinary words; the courts interpret them as ordinary English words—when we look in the dictionary we see that "hinder" imports concepts like interrupting, check, retarding, to prevent from acting or taking place, to stop. When we look at definitions involving interference, interfere, interpose or interfere for a particular purpose come into opposition as one thing with another, especially with the effect of hampering action or procedure. So the concepts are very similar to one another. I do not think the view that hindering significantly expands the scope of the section. The idea, as I say, is to clarify and give colour to that activity.

The Hon. TREVOR KHAN: Indeed, there would be various circumstances where interference and hinder are used together in various pieces of legislation.

Mr McKNIGHT: There would be a significant overlap in those concepts when I look at the definitions and I think about how these words have been used in the case law, yes.

Mr JUSTIN FIELD: Mr McKnight, you would agree though that hindering would lower the bar to some degree, that it is a lesser act, it does not require as much purpose. I think one of the words you used there was simply to check. So it is a lowering of the bar.

The Hon. TREVOR KHAN: Really?

Mr JUSTIN FIELD: Over interfering, based on the words that you have just said yourself, I think, Mr McKnight.

Mr McKNIGHT: I do not think that one word or other is a differing level of the bar, if you like. I guess these words are used in the courts to judge the—it depends on the factual matrix—activity of the person who is charged with the offence. I think there would be a considerable overlap between the concepts.

The Hon. JOHN GRAHAM: Can I put the question the other way? If it does not lower the bar why is it necessary? Is it necessary?

Mr McKNIGHT: As I say, I think what we are doing in this is clarifying and colouring the provision, giving more guidance to the courts about what activity is intended to be covered.

The Hon. PENNY SHARPE: To me, that sounds like a broadening of what is actually being captured, with significantly higher penalties attached to that.

Mr McKNIGHT: I think the intention is not to broaden significantly but to clarify and colour the activity that the court is considering.

The Hon. CATHERINE CUSACK: Just for clarity—I grew up on a farm—blocking somebody's farm gate, would that be hinder or interfere?

Mr McKNIGHT: I think the nature of the activity would have to be judged in the context of the business, the undertaking—

The Hon. CATHERINE CUSACK: I do understand that.

Mr McKNIGHT: —or what is happening. I do not think I am in a position to give you a clear answer.

The Hon. CATHERINE CUSACK: Which way they would form. Just that that act can have an incredibly serious impact, can it not, on a person's business?

Mr McKNIGHT: I am not sure I am well placed—I did not myself grow up on a farm, so my understanding of farming business is probably much less than yours.

The Hon. CATHERINE CUSACK: Just when you have got livestock arriving, to block somebody's farm gate can have a devastating impact, particularly depending on the timing of it.

The Hon. JOHN GRAHAM: In terms of the scope of this bill, do you agree one of the sets of submissions, and there are quite a few pointing in this direction, say in the end the way this bill is being defined is not about the farm at all, it is about inclosed lands, the way those penalties and definitions have been drafted. Can I ask if the agencies agree that it captures these sorts of land—any land with a defined boundary such as a building. I will run through them first and then come back to them.

Mr McKNIGHT: Maybe the easiest way is to just say it does not actually amend anything with regards to the definition of inclosed land.

The Hon. JOHN GRAHAM: I agree with that.

Mr HANSEN: Going forward it is inclosed land.

The Hon. JOHN GRAHAM: So let us clarify that. That would include a building?

Mr HANSEN: Yes.

The Hon. JOHN GRAHAM: It would include a forestry coop with a fence?

Mr HANSEN: With a fence yes.

The Hon. JOHN GRAHAM: Or natural boundaries?

Mr HANSEN: Not necessarily on natural boundaries.

The Hon. JOHN GRAHAM: It is likely to include a worksite?

Mr HANSEN: Yes.

The Hon. TREVOR KHAN: Like an abattoir.

The Hon. JOHN GRAHAM: Or an abattoir specifically, yes. It is likely to include land designated for coal and gas mining—often that would be inclosed in some way.

Mr HANSEN: If it is inclosed.

The Hon. JOHN GRAHAM: And it may include public land where that land is inclosed in some way—that could be by temporary barricade, is one view that has put to us.

Mr HANSEN: That is right.

The Hon. JOHN GRAHAM: And that would fall in the definitions.

Mr HANSEN: That is right. Again, anything that could currently be defined as inclosed lands; that has not changed at all.

The Hon. JOHN GRAHAM: But it is much broader than farms. No change, but much broader than farms.

Mr HANSEN: That is right.

The Hon. JOHN GRAHAM: Just skipping through the examples quickly that have been put in front of us on that question about the scope, talking now about the activities, do you agree that includes these sorts of activities: a union picket that occurs on inclosed lands—two examples were given here, one such as the Patrick waterfront dispute. Do you agree that that would fall within the scope of this bill?

Mr HANSEN: It would fall within the scope of the existing legislation as well as within the scope of this because that would not be amending on that front. Inclosed land would be the same.

The Hon. JOHN GRAHAM: The penalties for the aggravated offences would apply to this.

Mr HANSEN: Interfering or hinder would still apply. There would just be increased penalties for those aggravated offences.

The Hon. JOHN GRAHAM: Penalties but also new offences. It would include the changes to the definitions.

Mr HANSEN: Yes.

Mr McKNIGHT: There is a new offence. The new offence in here, the incitement offence is specified, but there is not a new offence of trespass against. The base trespass offence is unchanged.

The Hon. JOHN GRAHAM: I am just on the scope at the moment. Do you agree that a protest on the grounds of a university would fall within the scope of this, does fall within the scope of inclosed lands, would fall within the scope of these penalties?

The Hon. TREVOR KHAN: It depends. If you are looking at 4B, which is the section, not only if it falls within the definition of inclosed lands but you fall within one of the criteria under A, B, C, D or E. So if you go into a university with a firearm—

The Hon. CATHERINE CUSACK: Without permission.

The Hon. TREVOR KHAN: —you would be effecting an aggravating offence.

The Hon. JOHN GRAHAM: Or if you hinder the teaching.

The Hon. TREVOR KHAN: No. If you interfere or hinder the conduct of the business or undertaking, that depends upon what a business or undertaking is, but you cannot simply do one without the other.

The Hon. PENNY SHARPE: An abattoir is clearly a business.

The Hon. TREVOR KHAN: Absolutely an abattoir is. When you chain yourself to a kill chain you are committing an offence.

The Hon. JOHN GRAHAM: They used to be in the undertaking of teaching back some time, I do not know what they are doing now. Do you agree that falls within the scope?

The Hon. LOU AMATO: If you are unsure of an answer you can take it on notice. Or, if it does not refer to your particular portfolio you can refer it on.

The Hon. JOHN GRAHAM: I am testing the evidence that has been put to us in these other submissions.

Mr HANSEN: I might ask Mr McKnight or Mr Vincent if they have a comment. Your specific question is what would have changed?

The Hon. JOHN GRAHAM: We agree that is inclosed land. I think it is a simple proposition that the penalties, this new incitement offence would apply to that activity.

Mr McKNIGHT: Can I clarify your question because there has been a lot of discussion and I kind of lost what we are up to.

The Hon. JOHN GRAHAM: The question is really, these are examples that have been put to us, I am keen to test is this condition the scope of the bill or not? Does it fall within inclosed lands? Therefore, the change in the penalties, the incitement offence, would it apply to a protest on the grounds of a university?

Mr McKNIGHT: The definition of "inclosed lands" is in the Act. The application of that definition in a given situation is a matter for the court. If the lands are literally enclosed they are likely to be inclosed lands and you need to have a trespass in order to be breaching the trespass provision. So the person has to be there in an unauthorised way. There are facts around that that would need to be tested and then to meet the aggravating features you would need to make out one of those aggravating features including interfering with an undertaking or business. You would need to make all of those facts out. If you are talking about the incitement offence, in order to make out the incitement offence the person doing the inciting would have to, as it says on the page: Directly incite the trespass and the aggravating features.

The Hon. JOHN GRAHAM: I might just ask one more example and then hand to my colleagues. I want to ask about one example that has been put to us: Union meetings that take place in a car park or grounds of a business or a union official visiting a workplace to talk to members could fall within the scope of this bill. I noted your comments, Mr Hansen, in the opening remarks. I think you said you do not believe it changes those

arrangements for union rights. In what way do those examples not fall within inclosed lands and not fall within the scope of this bill?

Mr HANSEN: If we take that one and we take the example that Mr McKnight just provided, the inclosed lands has not changed and does not change under the proposed bill.

The Hon. JOHN GRAHAM: It is within the scope?

Mr HANSEN: That is right. It is at the moment and it is going forward. The trespass does not change in terms of the definition of trespass. The aggravation, and in this case the aggravation between interfering and hindering, the view that you have heard from Mr McKnight is the fact that it is not viewed to be a changing of threshold. That is something that you will hear evidence about throughout the day as to how people interpret that. That is an aggravating offence at the moment. So that has not changed. The only part in that previous scenario that has changed is the provision around inciting and inducing for an aggravated trespass. That is the only additional piece there.

The Hon. JOHN GRAHAM: You agree that in these examples that apply, now would have different penalties, now would have an additional offence of incitement if they triggered those thresholds?

Mr HANSEN: That is only if the evidence was provided. It would open it up to the potential, yes.

The Hon. CATHERINE CUSACK: A student on a campus is not trespassing, a worker in their workplace is not trespassing: How is it that this could possibly apply to those people?

Mr HANSEN: What we are trying to highlight is none of those triggers have changed from what they apply to at the moment.

The Hon. CATHERINE CUSACK: The changes could not apply to people who are not trespassing, surely?

Mr JUSTIN FIELD: Correct me if I am wrong, Mr McKnight, but as soon as they are asked to leave and they do not they are trespassing. That is the trigger, correct? Not whether or not they have an entitlement to be there.

The Hon. PENNY SHARPE: A worker calls in their union as a result of concerns in the workplace— they are then inciting an aggravated trespass. You are in an abattoir, there is something going on, the staff have raised the issues and cannot get a response. They ask their union to come and deal with that. The union official comes on board where the owner of the abattoir is not keen to have them there—are they captured by this? I think they are.

The Hon. CATHERINE CUSACK: First of all, the staff member is entitled to be in their workplace.

The Hon. PENNY SHARPE: But they have incited their union to come on board.

The Hon. CATHERINE CUSACK: That is what I am trying to clarify. You say the staff member is captured or the union member is captured?

The Hon. PENNY SHARPE: That is what I am asking. This is what we are seeking clarification on.

The Hon. CATHERINE CUSACK: I cannot see either of them are captured because if the staff member—

The Hon. PENNY SHARPE: I am not asking you, I am the witnesses.

Mr McKNIGHT: I am afraid I am not an expert in industrial law and the rights or otherwise of union access to work places. I am not particularly well qualified to answer based on what those rights are and what they are not. As Mr Hansen says, nothing in this bill changes the law of trespass. What was illegal before remains illegal now under this legislation.

The Hon. JOHN GRAHAM: Apart from incitement?

Mr McKNIGHT: Incitement is included in this bill as a specific offence. Therefore, common law offences of incitement that cover incitement to commit a crime generally, and there is an ancient crime prevention Act which covers incitement to commit a crime generally. It is true that the statute book has a number of specific offences of incitement that are clarified in the application of those offences to particular situations, but those general laws still apply. I might commend to the Committee the discussion of incitement in the Law Reform

Commission's report on complicity. It is a thorough discussion of how the law of incitement applies in a general sense.

The Hon. TREVOR KHAN: What is the number of that report?

Mr McKNIGHT: This is report No. 129, it is from December 2010.

Mr JUSTIN FIELD: Mr Whiteside, if I could move on to the next thing. How many times has the section for the aggravated provisions been used since they came into effect? They came into effect in 2016 and have been amended a couple of times since then.

Mr WHITESIDE: They did and I will have to take that question on notice.

Mr JUSTIN FIELD: It sounds like it might not be a common thing.

Mr WHITESIDE: It is used regularly along with other legislation in respect to trespassing matters.

Mr JUSTIN FIELD: You mentioned 503 acts of trespass, have you got any sense of what percentage of them might have been aggravated?

Mr WHITESIDE: It is 543, and I cannot. I will have to take that on notice.

The Hon. PENNY SHARPE: Could you provide us a breakdown of each of those offences whether they were illegal hunting or whatever?

The CHAIR: There was a resolution that we do not take any questions on notice.

The Hon. PENNY SHARPE: We can ask, he is not required to comply.

The Hon. JOHN GRAHAM: You cannot take us on notice given the timing of the Committee, but can you tell us anything? That was a useful bit of information—illegal hunting, theft—can you give us any breakdown?

Mr WHITESIDE: I cannot, with respect. It has been used and used regularly, 4B, along with the simpliciter offence, although I can not give you numbers.

The CHAIR: Looking at definitions, clause 4 talks about carrying out lawful agricultural activity but not in a negligent way. There is no definition of what negligence is in the Act and in the Interpretation Act 1987, which this Act refers to in the notes, there is no definition of what negligence is. I want to get some insight from all of you. Potentially your organisations might be responsible for enforcing this bill in some regards. What do you define as negligence under this Act? How would you define a farmer working agriculturally in a negligent way, how would you prove that?

The Hon. TREVOR KHAN: Start with a coke bottle and work up from there.

Mr HANSEN: Each case considers all the factors that are presented to determine whether there is negligence or not in terms of the actions. In some cases to help guide that there may be industry or agreed codes of practice of activities that if you are in compliance with it might help prove an offence against negligence. That will vary from case to case and situation to situation.

Mr McKNIGHT: I guess from a legal perspective at the core of the idea of negligence is the idea of behaving unreasonably, not meeting the standard of the reasonable person. That is a flexible standard that the courts use and it adapts to the particular situation. That is the core of the idea with negligence.

The CHAIR: It will be up to how flexible the rural crime officer is or the local council inspector?

The Hon. TREVOR KHAN: No, this is in regard to the nuisance defence. It will not involve the cops at all. It is civil action in either the Supreme Court or Land and Environment Court, I would think.

Mr HANSEN: That is right.

Mr VINCENT: It would be the Supreme Court where the nuisance actions would take place.

The CHAIR: It does not magically turn up at the Supreme Court. Someone needs to make a complaint, there needs to be some sort of investigation, I imagine.

The Hon. TREVOR KHAN: No. A neighbour gets spray drift across which would be a nuisance action. The neighbour will commence proceedings in the Supreme Court to prevent the growing of peanuts or the growing of cotton on the adjoining property. That is the sort of nuisance action that you will have.

The Hon. CATHERINE CUSACK: You let your fence go and the animals come on to someone else's property and they are trying to get them back.

The Hon. EMMA HURST: The Hon. Trevor Khan mentioned that they are not common and when I asked the Minister for any cases of nuisance there has only been three reported nuisance cases in New South Wales and the last one was in 2013. The right to farm policy was introduced in 2015. There have been no nuisance cases since the policy was introduced. What is the justification for this nuisance shield law, considering it does not seem to be a huge issue?

Mr HANSEN: There is a difference between historically and whether there is risk arising, especially if those risks seem to be increasing with the continued urbanisation or the growth of regional cities and cities into adjoining farming land and agricultural land. On all predictions of future population growth you see there is an increased likelihood down the track of increased levels of conflict around nuisance.

The Hon. EMMA HURST: Have there been increases elsewhere or is it just an idea that it might?

Mr HANSEN: We have certainly seen an increase in the number of cases that have been raised with councils.

The Hon. EMMA HURST: But this will not stop that?

Mr HANSEN: That is right. This is only providing a defence for tort against nuisance. This legislation, with its introduction, is not a piece of legislation that requires an ongoing unit to monitor or an ongoing cost to have in place and it does provide future protections in the event there is an increase in conflict and does provide a defence for lawful and non-negligent activities on agricultural land.

Mr JUSTIN FIELD: One of the provisions of the nuisance shield relies on the land having been used for agricultural activity for at least a year, but it does not seem to prevent someone from having substantial change in agricultural activity, which could be the issue that triggers the complaints from either another farming neighbour or urban neighbours or whatever. Why the decision to make the test one year of agricultural activity, non-specified, and not one year of that particular use? It seems the big risk is changes of use.

Mr HANSEN: And some of those biggest changes of use are picked up under other considerations and other triggers within the legislation, regulations, of the State; under planning legislation. What we are trying to pick up here is the difference between moving from growing zucchini one year and a cereal crop the next year, they are not the same type of agricultural production but they are agricultural production. Moving from growing a crop to intensive animal production would actually trigger the requirement for a development application and for planning consideration. That then takes into account all of the approvals that need to be gained to mitigate against odour, dust, noise, etcetera, and none of those provisions are hampered under this, hence why we have tried to stick with that definition of 12 months of agricultural production rather than of what type of agricultural production.

Mr JUSTIN FIELD: Does that not leave a person who might have been affected having to constantly engage with either the council or planning system to address an issue with a change of use that has had a pretty significant impact? Are not their rights to enjoy their land substantially removed as a result of this particular protection being so broad?

Mr HANSEN: Not in the fact that the only defence that this provides is for lawful and non-negligent. If someone has had their land approved through the planning process and licensing process for a significant change in production to intensive agriculture.

Mr JUSTIN FIELD: Blueberries did not require any development applications on the North Coast and there is a lot of people pissed off about that.

Mr HANSEN: There is. But then you come down to, is that because of negligent activity or unlawful activity? If it is not then this is about providing a defence for a land owner to carry out agricultural activity that is both lawful and non-negligent without the risk or to provide a defence for those people.

Mr JUSTIN FIELD: I do not think anyone is breaking the law by changing land use to a blueberry farm but the impact on neighbours has been pretty significant. They are not going to have the ability to make a

nuisance claim against those farmers now even though the land use change is substantial, it is lawfully being done, the consequences are still there, there is no recourse for the neighbours.

Mr HANSEN: This does not stop them from taking that action. It provides a defence for the farmer if what they are doing is both lawful and not negligent.

The Hon. EMMA HURST: On the DPI's right to farm policy on page 14 it actually states that a major concern regarding the granting of this immunity is the reduction of private property rights of the complainant. Can you explain what that means in regards to the private property rights of individuals?

Mr HANSEN: This does go to private property rights, both the private property rights of the existing farmer and their ability to be able to conduct lawful and non-negligent activities on their land with the potential of a defence which will be provided under this Act.

Mr JUSTIN FIELD: That is such a significant defence as to pretty much guarantee no-one is going to bring a nuisance claim though, right?

Mr HANSEN: We have had three nuisance claims, as the deputy chair raised. The trigger and threshold in those nuisance claims has been around whether negligence can be proven or not proven. If proven that negligence does exist this defence no longer exists. I want to come back to the question about union officials.

The Hon. TREVOR KHAN: I was going to ask Mr McKnight. If you look at 4A, which is the trespass offence, 4A (2) provides a reasonable excuse provision.

Mr HANSEN: That is right, a lawful excuse provision.

The Hon. TREVOR KHAN: If what we are talking about is the union official coming on site invited by the members over a matter they rely now on the reasonable excuse provision, do they not?

Mr HANSEN: Provided they are following the provisions set out in the Fair Work Act then they have a lawful excuse provision for entering the site.

The Hon. TREVOR KHAN: When you go to 4B it is not the simpliciter offence, it is dealing with coming on to the site and undertaking some further aggravating factor. That is what this is all about. Now, before this bill ever goes through, that is where a union official may get into problems if they are involved in some other additional activity, it is that right? Or does the Fair Work Act provide protection in that regard as well?

Mr McKNIGHT: They would need to be committing the trespass offence as well as the aggravating feature.

The Hon. TREVOR KHAN: They are exercising their right of access under the Fair Work Act, they do not tick the first box, let alone the second and third.

Mr HANSEN: That is right.

The Hon. JOHN GRAHAM: Accepting your position, some of these offences already exist, how many of the higher penalties have been issued for the aggravated unlawful entry offence that exists at the moment?

Mr McKNIGHT: I am sorry, I do not have figures for pool B, I have only got figures for the trespass offence overall. I can give you those figures if you are interested.

The Hon. JOHN GRAHAM: That would be useful.

Mr McKNIGHT: Legal proceedings for trespass over the last four years, and these include coming to court and receiving by infringement notice or under the Young Offenders Act, there are 146 in 2014, 128 in 2015, 135 in 2016, 96 in 2017, and in 2018 there are 141. Those figures come from the Bureau of Crime Statistics and Research [BOCSAR].

The Hon. JOHN GRAHAM: For the aggravated unlawful entry offence you cannot give us figures?

Mr McKNIGHT: Those would be included in those figures. They have not been broken down.

The Hon. JOHN GRAHAM: And that is go to court. The position has been put to us, will be put to us today, there have been no penalties issued under the previous regime for that offence. Do you believe that is correct?

Mr McKNIGHT: I do not know one way or the other. I do not have those figures.

The Hon. JOHN GRAHAM: Those figures are publicly available from the Office of State Revenue [OSR].

The Hon. TREVOR KHAN: We can get them from BOCSAR.

The Hon. JOHN GRAHAM: I am asking about the penalties issues, but you are not in a position to say to us whether any have been issued or not?

Mr McKNIGHT: Penalty notices?

The Hon. JOHN GRAHAM: Penalties issued for the aggravated unlawful entry offence, that already exists?

Mr McKNIGHT: If your figures are coming from OSR, they might be penalty notice amounts.

The Hon. JOHN GRAHAM: Yes, I agree with that.

Mr McKNIGHT: A penalty notice is not available for the aggravated offence. A penalty notice can only be given for the simpliciter offence.

The Hon. JOHN GRAHAM: That is very helpful.

Mr McKNIGHT: I am not crystal clear that is right, but that sounds to me like the source of that information.

Mr JUSTIN FIELD: On some of these key statistics, this Act I believe is due to be reviewed as early as next month. There is a statutory review for, it might just be for the aggravating provision, or might be for the whole Act. Why are these changes being brought in ahead of that review being conducted?

Mr McKNIGHT: The first part of your question is to do with the statutory review of the earlier amendments to the Law Enforcement (Powers and Responsibilities) Act, the Inclosed Lands Protection Act and the, it was the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016. I think the attorney has written to you around this. That Act did not commence until—

Mr JUSTIN FIELD: He has. He has indicated a review could start as early as next month. Will that review still be conducted, even though we are potentially amending the Act ahead of that?

Mr McKNIGHT: It is a legislative requirement for our department to conduct that review, yes.

The Hon. PENNY SHARPE: In relation to inclosed lands and the definition of it, I am not sure, this might be for your Mr Whiteside, there is some suggestion that at some protests what has occurred is that the police basically put a fence around the protesters and then say they are on inclosed lands. Are you aware of this, and could you clarify, anyone at the table, whether you think that would be possible in relation to these changes?

The Hon. CATHERINE CUSACK: Where was that?

The Hon. PENNY SHARPE: WestConnex.

Mr WHITESIDE: No, I am not aware of that. WestConnex—

The Hon. PENNY SHARPE: It would be outside—

Mr WHITESIDE: I am a member of the police force; however, I have no knowledge of that one and no knowledge of such practices.

The Hon. PENNY SHARPE: Maybe Mr McKnight, in terms of the definition issue around inclosed lands, whether that is possible?

The Hon. CATHERINE CUSACK: It is not 12 months.

Mr McKNIGHT: I am not sure I can—that would seem to be a very strange factual situation to arise.

The Hon. PENNY SHARPE: I agree, that is why I am asking.

Mr McKNIGHT: I am not sure I can comment on it without knowing a bit more about the situation.

The Hon. PENNY SHARPE: The concern is that protesters are in a place where perhaps it is not clear that it is inclosed, then it becomes a creation of inclosure through fencing or other means. You do not know that can happen?

The Hon. JOHN GRAHAM: Bearing in mind you have already agreed that temporary barricades would not trigger the inclosed lands.

The Hon. CATHERINE CUSACK: Are you saying they had a fence put around them?

The Hon. PENNY SHARPE: That is what I am told.

Mr HANSEN: This Right to Farm Bill does not change that definition. If that is something that could occur now, it would occur post.

The Hon. PENNY SHARPE: That is all I need.

Mr HANSEN: The key part there is that this bill does not change whatever circumstance around inclosed lands exists at the moment.

The Hon. TREVOR KHAN: I think there might be a problem though with that factual scenario. Do you not actually have to enter the inclosed lands?

The Hon. PENNY SHARPE: My other question is around the definition of undertaking, in relation to whether it has to be for profit, or not for profit, or how a government undertaking is defined in relation to hinder and incite?

Mr McKNIGHT: I think Minister Roberts in his second reading speech for the 2016 legislation explained that the intention of using the word undertaking was to clarify that the undertaking involved, the activity involved, did not need to be for profit.

The Hon. PENNY SHARPE: It does mean that government is in.

Mr McKNIGHT: Yes, whereas with business there is an implication of profit making. Undertaking extends that. Health services would be included in that, non-government organisations operations, government operations would be included as well, yes.

The Hon. PENNY SHARPE: Thank you. That is what I wanted to clarify.

The CHAIR: One final question, mainly directed to Mr Hansen. You might be aware within DPI there are some land disputes occurring between farmers and Forestry NSW in State forests where they are disputing their boundaries and where their fences and gates are. These reports have been made to the Game Licensing Unit by licensed hunters who have come across these issues where they have found old fences and then new fences that have further encroached into State forest, then been bailed up by farmers saying, "You are on my land." Because that is a fence even though their maps show that they are actually on State forest land. How does this bill potentially interact with that situation, where you have some clear issues about where the inclosed land is and you have got lots of old gates and old fences in State forests? Has there been any consideration about that with this bill?

Mr HANSEN: I might ask Mr Vincent if there is anything else to add. But the short answer is this bill does not change, it does not fix nor does it make it worse the scenario that you outlined, because it does not make any amendment to either the trespass provision or to the inclosed lands definition.

The CHAIR: It talks about leaving gates open. In many cases these old gates are already open and people are walking through them and still onto State forest.

Mr HANSEN: It is hard to leave it open if it is already open.

Mr VINCENT: Ultimately, whether land is inclosed or not is a question of fact. Inclosed land is either inclosed or it is not. There would be in circumstances, it is obvious that there is one answer, whether that old gate is there or the new one, it is either inclosed or it is not.

Mr HANSEN: The thing is, this bill does not touch on that, so it does not provide a solution to it, nor does it make it any worse a scenario.

Mr JUSTIN FIELD: I pick up your point, Mr Hansen, it does not change that, but it may well change the question as to whether or not there is an unreasonable infringement here on the implied right of political communication under the constitution.

The Hon. TREVOR KHAN: Are we going back to the safe access zones bill, are we?

Mr JUSTIN FIELD: There are tests that are applied, there have been High Court decisions taken, recently *Brown v Tasmania*, I believe, the Minister and you in your initial response—

The Hon. TREVOR KHAN: *Clubb v Edwards* is more recent.

Mr JUSTIN FIELD: —continue to talk about a legal right to protest being protected, but I think what you are talking about there is the form 1, put your form 1 in and get your approval. That is not the test here when it comes to political communication. Is it the opinion of the Government that if a person violates the law, such as unlawful entry or aggravated unlawful entry on inclosed lands, that the constitutional implied right of political communication is extinguished and, if not, how is that right being protected?

Mr HANSEN: There is nothing in the bill that prevents protesters from legally protesting. The *Brown v Tasmania* High Court case, and I might turn to—

Mr JUSTIN FIELD: It is very different to legally protest versus to be able to exercise your right though.

The Hon. TREVOR KHAN: Just let him answer.

Mr JUSTIN FIELD: But he has just gone back to the exact same point.

The Hon. TREVOR KHAN: Just let him answer.

Mr HANSEN: We come back to the fact that simple trespass has no either amendment to penalty and no change in definition here. That is one of the key components here, that simple trespass has no change to either definition or penalty under the proposed Right to Farm Bill that is being put forward.

Mr JUSTIN FIELD: The definition of "hinder" though makes it aggravated. So now I have got a question about whether the penalties are unreasonable in that regard.

The Hon. TREVOR KHAN: *Brown v Edwards* dealt with a protest occurring in a forest. What this does is not simply deal with a protest—

Mr JUSTIN FIELD: I thought we were going to listen to the experts.

The Hon. TREVOR KHAN: This does not deal with a protest; you have got to look at the aggravating factor.

The CHAIR: It is time and we are getting into a three-way conversation or debate.

Mr HANSEN: Interfering with already exists as an aggravating factor. It then comes down to whether you believe that hinder changes that bar on that definition.

Mr JUSTIN FIELD: That is exactly what it comes down to.

The Hon. PENNY SHARPE: A farmer protests the low price of milk in a supermarket. How does that work given that they are obviously hindering the business?

Mr HANSEN: Illegal trespass is illegal trespass. It does not matter who is doing it and for what reason they are doing it.

The Hon. PENNY SHARPE: They could go to jail for that now. That is the key difference.

Mr HANSEN: Illegal trespass is illegal trespass. It does not matter who does it or for what reason.

The Hon. PENNY SHARPE: The penalties are different.

The CHAIR: Everyone is allowed to go to a shopping centre, are they not?

The Hon. PENNY SHARPE: Not if you are protesting.

The Hon. EMMA HURST: Not if you are asked to leave.

Mr WHITESIDE: May I just clarify one of those figures for Mr Field? It is 513. I do not know where I got 400 from. That was 2018.

Mr JUSTIN FIELD: That is one year. Thank you.

The CHAIR: That concludes the questions for this morning. I thank the four respondents for their time and their candour.

(The witnesses withdrew.)

(Short adjournment)

ANNABEL JOHNSON, Policy Director – Livestock, NSW Farmers Association, affirmed and examined

PETE ARKLE, Chief Executive Officer, NSW Farmers Association, sworn and examined

The CHAIR: We welcome our next witnesses. Would either or both of you like to make an opening statement?

Mr ARKLE: Thank you, Mr Chair, and thank you to the Committee for hosting NSW Farmers at this very important inquiry today into the Right to Farm Bill. NSW Farmers supports this bill as a means of protecting farmers and farm businesses. We recognise that this proactive measure designed to support farmers through protecting them from criminal activities and vexatious civil claims is an important evolution of laws in our State. NSW Farmers is the largest State farming organisation in Australia and represents the interests of all primary producers, from extensive livestock producers through to intensive animal farmers, croppers, and as diverse as oyster farmers on our coast.

Trespass has been a serious concern for all farmers over many years. However, the increase in activities this year, particularly with the high-profile online map released in early 2019 and the coordinated trespass activities we saw in April, has really highlighted the problems with the current legislative framework. Farmers need meaningful reform to create a robust and fit-for-purpose legislative framework to strengthen protections for these legitimate businesses against trespass. I would like to highlight that NSW Farmers strongly supports the rights of individual to protest and to express their views in a lawful way. This right should not be compromised. However, nor should farmers be disrupted in conducting their lawful businesses, which aim to feed and clothe the community both in Australia and across the globe through our agricultural exports.

It is disturbing that those opposed to agricultural and certain production systems believe they have a right to unfettered access to farms. That is not a concept we support. The current legal framework is not providing sufficient protection to farmers and, without action, farmers' confidence in the legal system will deteriorate, and we fear will further embolden persons to unlawfully enter more farms. The Right to Farm Bill introduces some important new aggravating factors—damaging property, leaving open gates, releasing stock. These are all real scenarios we have seen in actions over the last number of years. The penalties substantially increased to bring us into line with other States around Australia and we think that is justified to leave that flexibility with the courts.

We have seen a number of groups invading farms, causing damage and releasing stock, and the penalties we have seen for this kind of action have been menial, to say the least. We hope those increased penalties will represent a serious disincentive to those who are considering invading farms in this State. We support this bill as a means of protecting farmers and farm businesses from these types of incursions. These reforms more accurately encompass the particularities of farm trespass, and enhance the penalties, as I have touched on, in line with community expectations. We strongly support the inclusion of the new offence for persons who incite or encourage others to take unlawful entry onto farms. This reform recognises the increasing sophistication of persons and groups undertaking farm incursions using technology-based tools to amplify the range and depth of their activation strategies.

My mind turns to the Day of Action we saw earlier in the year and the discussions I had with many of our members around the State. We had a protest in Hyde Park and video footage of people with their faces covered, talking about how they were going to activate and storm farms across the State. Whilst there was only limited action in reality, I had members across the State in a state of fear that day, not knowing whether it would be their farm that would be targeted. This needs to stop. It is essential that the New South Wales legal system recognises the developments we are seeing and provides appropriate recourse for the courts to take action.

NSW Farmers has long advocated for a legislated right to farm as part of a suite of measures designed to reduce land use conflicts across our State and to develop mutual understanding and respect between farmers, their neighbours and their communities. The proposed protections in the bill for farmers undertaking lawful agricultural practices against nuisance claims by new residents in their regions is an important first step towards better management and mitigation of these conflicts. The University of Technology Sydney has done a piece of work recently that noted that over 40 councils across New South Wales are seeing these kinds of complaints on a regular basis, equating to about 800-plus complaints of this nature to local councils across the State. These types of complaints are real; we are seeing regions of our State changing as peri-urban developments take place and hobby farms evolve. So we do see the rise of these types of complaints being a growing area that needs focus.

In that sense, the nuisance shield is a useful development and sends an important signal to people thinking about complaints and thinking about taking civil action against their neighbours. We see the bill before us as just the first step towards a genuine framework to enshrine the right to farm across our State, and a big part of that is a regional planning Act that supports better strategic land use and infrastructure planning for food and fibre in New South Wales, a \$17 billion industry. These protections for farmers are well overdue and NSW Farmers supports and commends the bill before us. I hand over to my colleague.

NSW Farmers would like to highlight that the intent of this bill is to stop unlawful trespass onto farms. These are criminal activities and there is a desperate need for farmers to be protected on their own property. The situation of farmers is unique as there is generally a connection between the residence and the business: their workplace is also their home. This is not a situation that is common to most of us, but it makes a violation of a farm particularly serious. It is a violation of their personal space and privacy. I would like to read statements from a number of our members, as none of them could attend in person today, to demonstrate the need for these reforms and the impact it has on farmers:

Our experience feels like our home and office were broken into. We feel angry, resentful and violated and we think the judiciary just don't care because we are just farmers.

Being a practicing lawyer myself, who has always said we have one of the best legal systems in the world, I feel terribly let down and disappointed.

Our farm has been broken into at least 10 times that we are aware of, hidden cameras were placed in our sheds watching us, our staff and our pigs for more than a month.

The "damage" to us might be hard to put a value on — I can't count the dollars it has cost. It is a different kind of damage. The photos and footage that they have taken, edited, sensationalised and then posted on their websites will follow us and our children all of our lives.

We feel like our privacy has been taken away, we live on our farm, our kids are affected, our staff are paranoid. We always wonder when they will come back, is someone watching us now, if the dog barks for too long, we wonder is someone is sneaking around in the dark.

Thank you.

The Hon. LOU AMATO: In your opening statement you refer to gates being left open on farms. If an animal got out because someone left a gate open, not the farmer, an activist or whatever, if the animal caused an accident and somebody was injured or killed, the onus of proof lies on the farmer to prove that they did not leave the gate open and cause the accident. They would be liable for prosecution, unless they can prove it was done otherwise.

Mr ARKLE: I would think that would be a plausible scenario you present, and I am certainly aware of cases, a Queensland case that comes to mind where stock moved onto a public road and there were consequences of that. Yes, what you present is a realistic scenario.

The Hon. LOU AMATO: You do not want the outcome of that.

Mr ARKLE: We would not, no.

The Hon. EMMA HURST: Mr Arkle, this morning we heard from the New South Wales Police that the biggest issue of trespass for farms was illegal hunting. I have also read elsewhere that illegal hunting has the biggest biosecurity risks, and obviously this is people holding firearms, so they could be particularly dangerous. Why then are you focused on people gathering evidence of animal welfare, rather than illegal hunting?

Mr ARKLE: Illegal hunting is a major concern of our members, and I did not touch on that in my opening remarks, but as Detective Inspector Whiteside presented this morning, a lot of those trespass cases do come down to illegal hunting. There are cases where illegal hunters leave gates open and lead to the same kind of consequences, so we see that as an important part of this bill. I guess my remarks focused on how unsettled our membership has been by some of the direct actions we have seen on farms impacting property, leaving gates open, upsetting animals in many cases.

The Hon. EMMA HURST: Particularly in regards to that, and I guess I refer back to one of the examples that Ms Johnson gave, and I am not going to ask you who that situation was with the pigs, but I think I know which one it was, and a lot of footage from that particular farm, there was evidence of quite extreme animal mistreatment. Are you concerned also that some of this footage that is coming out is actually exposing animal cruelty, is that creating some of that fear?

Ms JOHNSON: Just to clarify a few points. On all the statements that I read out there were no cases of animal cruelty found on those farms. They were all investigated, both from the relevant authorities and also through quality assurance [QA] programs that industry has in place. Just to clarify that all of the people that I read out were conducting lawful businesses, and that was affirmed through further investigations afterwards. Around the transparency piece, I think we want to be very clear that this is not about limiting transparency around agricultural production. Industry wants to have that conversation with the community, but we do object to people coming onto properties unlawfully. That is not the way that you engage in political communication or have a civilised discussion with people. Industry is taking a number of measures to enhance transparency around and we have got a number of frameworks. Industries are running through and reporting back to the community on how they are meeting, not only animal welfare expectations, but also around environmental and also social outcomes.

Then, to come back to this idea that there is cruelty occurring on properties, there is a clear pathway that if people do have concerns to go to the relevant authorities and report instances under the Prevention of Cruelty to Animals Act [POCTA]. With the majority of these cases that are coming forward, there is not cruelty being found. The footage is not demonstrating cruelty that is occurring. When people are going through the correct channels, the majority of animal cruelty cases do not occur in commercial animal production, they are actually in companion animals. When people see the figures around animal cruelty cases, we would love to see a distinction drawn between commercial and companion, because the majority is in companion animals.

The Hon. EMMA HURST: A lot of the submissions have indicated that the enforcement system is failing and that is what is causing some of that problem.

The Hon. TREVOR KHAN: That is the assertion.

Ms JOHNSON: That is absolutely an assertion. I think that there is a level of willingness from industry. I saw that a number of submissions raise concerns around the penalties around animal cruelty. There was a discussion paper put out by the Government last year and we provided a submission to that indicating our support for the penalties to be enhanced, to have New South Wales in line with other States. We did not make comment about where we thought the penalties should fit. That is a discussion for justice and people with far more information and knowledge to have. There is also, as you would be well aware, the upper House inquiry that is going to look in detail at the enforcement arrangements to understand how the system is working in New South Wales. I think that will flow well into the broader reform, which is the Animal Welfare Action Plan, which is going to look at reforming the legislative framework of POCTA and the regulations and codes that sit underneath that.

We as an association are very committed to all of that work, because we see it as a key piece, as part of that transparency piece in identifying these concerns and ensuring that there is trust and understanding about how to go about enforcement of animal cruelty. If I could come back to why we have focused on trespass, rather than illegal hunting. In 2016 the Bradshaw review was conducted, which looked at rural crime. That is where we very much focused on the need to enhance penalties around illegal hunting. There was a reform put through in 2017 that included the biosecurity one, the use of firearms around the aggravating offence for trespass. That had tightened up putting trespass—

The Hon. EMMA HURST: Sorry to interrupt you, do you know if that tightening up has actually reduced illegal hunting? You may not know.

Ms JOHNSON: No. Our members still report it as an issue. I can say with confidence that with Cameron Whiteside and his rural crime investigators there is a development of trust that is forming between farmers and the police force. They gave got someone who is dedicated to understanding these issues and dealing with rural crime. We saw that on the April Day of Action that we were actually working closely with the police and with our members about how they were to prepare. We had a number of rural crime investigators on that day just calling our members to say, "Have you seen anything? How are you feeling." We are on a continuum here, we are not saying that we have solved the problem, but we are on a continuum and farmers are starting to have that trust in the enforcement agency around rural crime.

The Hon. EMMA HURST: Just to quickly change the topic. I have one other question. The New South Wales Bar Association submission expressed concern about the nuisance shield and how it may operate to the detriment of farmers themselves. They gave an example specifically in the event of a flood that was not caused through unlawful activity or negligence affecting a neighbouring farmer. It would seem that the proposed amendment is most likely to adversely affect other rural or semi-rural landowners more than anyone else, because obviously farmers are most likely to be neighbours with other farmers. We have asked the Minister if this shield

would still affect those farmers. Are you concerned that this bill will actually affect the legal rights in inter-farmer disputes in flooding or chemical spray drifts?

Mr ARKLE: I read the Bar Association's submission this morning and—

The Hon. TREVOR KHAN: It was brief.

Mr ARKLE: I was a little puzzled about the flooding scenario. I think that is dealt with through other provisions of State law.

The Hon. EMMA HURST: Give the example of chemical drift then.

Mr ARKLE: We see the nuisance shield as a useful signal to try and keep these types of disputes out of the legal system—that is the ultimate goal here—and I think, as we heard already this morning, the number of cases going as far as the courts is very small, which is something we support. We like the nuisance shield in the sense that it really just does reinforce that if a farmer is lawfully carrying out practices on their farm they are completely entitled to do, that is a defence available to them should that go as far as court. So we do not see it as a serious erosion of rights of neighbours and, as I stated, our goal here is to try and keep these types of disputes out of the legal system to reduce the cost and stress associated with that.

Mr JUSTIN FIELD: Thank you for being here, it is good to see you. You would acknowledge, I am sure, that this bill is far broader than just farms and farming, that the Inclosed Lands Act provisions extend to all sorts of businesses and buildings. You would acknowledge that, I assume, having heard this morning's discussion?

Mr ARKLE: The definition has not changed, yes.

Mr JUSTIN FIELD: I want to understand where your line is drawn. I have been involved with a lot of farmers in a lot of protests—sometimes in inclosed lands, by the way.

The Hon. TREVOR KHAN: Shame.

Mr JUSTIN FIELD: Shame on me and those terrible farmers too. In March this year a group of dairy farmers held a rally right out the front door of a Coles building in Queensland over the dollar milk—a good campaign, a good issue. This building would almost certainly fall under the inclosed lands definition in New South Wales.

The Hon. TREVOR KHAN: Did you not just say "outside the building"?

Mr JUSTIN FIELD: Yes, but it does matter, it is on the land. There are often fences around these buildings.

The Hon. PENNY SHARPE: Stop interrupting.

The Hon. CATHERINE CUSACK: But they are not trespassing is the point.

Mr JUSTIN FIELD: That is not the test here. It is not inside the building, it is in the inclosed lands. I am not saying they were asked to leave either. I am not drawing any of those things, but almost certainly it would be inclosed lands, and given that they were right outside the front door it could certainly have been considered to be hindering the business. I do not know if they were asked to leave or not, and that would have been the first test.

The Hon. CATHERINE CUSACK: Were they in the inclosed lands or not?

The Hon. PENNY SHARPE: Point of order: We have had a lot of toing and froing here but our witnesses have got limited time, we have got limited time to ask questions. The Government can ask questions of the witnesses, they cannot ask questions to us asking the questions.

The CHAIR: Let us keep the interjections and banter to a minimum, if not zero.

Mr JUSTIN FIELD: Do you think that kind of action should be outlawed in New South Wales and do you think these protesters, if they were hindering or interfering with that business, conceivably could face jail time as a result of the changes being made in this bill?

Mr ARKLE: There are a number of scenarios that have been raised this morning already and in other submissions. We see there is a need for a single standard and, as I have mentioned in my opening remarks, we support the right to free speech, the right to protest, but we do not support unlawful actions. What the penalties presented in this bill offer the courts is a range from a very low penalty to the extreme penalties we have talked about both in terms of increased fines and potentially jail time. I guess we would be in the hands of the court, but

obviously in the scenario presented I think it would be hard to establish major damage in terms of disruption to business. What we do see in the bill is some value in those stronger penalties sending a signal for some of those more egregious cases we have seen that have substantially disrupted farming businesses in this State and that is the positive thing we see.

Mr JUSTIN FIELD: More obvious examples might be some of the protests that have happened around coal and gas. Often those have involved mining businesses and there have been many farmers who have been prepared to engage in illegal activities, and I appreciate that they are illegal activities, no-one is questioning that, but would you support some clear enshrinement of the right to protest and confirming the rights of political communication in our laws? Some sort of clearer indication in this law that that right is not being targeted here?

Mr ARKLE: I think the principle in focus here is that unlawful action. We support that peaceful protest, the right of people to be there potentially, but it is when that unlawful action unreasonably impinges business, whether it is a farm business or a mine site—

The Hon. JOHN GRAHAM: Or a supermarket.

Mr ARKLE: —or a supermarket. We are asking for one standard here across all businesses. This is not about a special treatment for farmers. I think that is the key point here and I go back to the point once again that offers a range of penalties from the types of penalties we are seeing now right through to the more extreme penalties for those very egregious cases that are of greatest concern to our association.

Mr JUSTIN FIELD: One very quick last question. I appreciate egregious cases do not want to impact on businesses. You posted on your Facebook page yesterday about a protest in Holland involving hundreds of tractors creating 700 kilometres worth of traffic jams, protesting over the right to use certain fertilisers in that country. Do you think that is the sort of protest that you would be condoning in New South Wales?

Mr ARKLE: I do not think there was a fence around the road.

Mr JUSTIN FIELD: No, there was, but in terms of impacting on other people and businesses and activities, I am trying to understand where your line is.

Mr ARKLE: There is one standard here—

The Hon. LOU AMATO: Yes, this is New South Wales.

Mr ARKLE: —and that is our focus.

Ms JOHNSON: Just to come back, farmers are asking for people to respect their rights and not enter their properties illegally and, with that, we live in a society of rights and responsibilities, so farmers recognise that if they have got political views they need to protest in the appropriate way, and we will never condone illegal actions.

The Hon. PENNY SHARPE: Thank you for your submission and thank you for raising the issues of farming families in relation to the incursions that they are experiencing and the distress that is there. I am aware of some of the impacts that has on kids and on the families on farms and I thank you for bringing those to our attention. It seems to me that this bill is in some ways trying to deal with a very particular issue, which is the Aussie Farms issue, which has led to an organisation organising in a way that has not occurred before and we are trying to deal with one problem there. You have given us some examples but you talk about how it seems the behaviour is escalating. Can you take us through what you are seeing that has changed that has made you want to back these laws in and feel the need for them? What is different from what has happened in the past?

Ms JOHNSON: For us, this is not a new issue. I would say this behaviour started in 2012 where there were—

The Hon. PENNY SHARPE: That is quite new though really.

Ms JOHNSON: It was not 2019. We want to make it very clear that January that week when Aussie Farms expanded their map was not when this started for us as an issue. In 2012 there were a series of raids, mainly on pork farms and also eggs, poultry, where there was sort of a systematic gathering of footage through the use of surveillance materials being put in. We want to make it clear that this is just dealing with the physical trespass, and the unlawful or unauthorised surveillance is another issue that we know that we are going to have to deal with around essentially digital trespass that is coming up more and more. What happened during those times is that we

knew that there was trespass occurring but people mainly became aware of it when the footage was released a few months after there had been people on their properties.

There were some charges brought against a few of those trespassers and that went through the court system over a period of time. There were offences brought both under the illegal surveillance Act and also the inclosed lands Act. Unfortunately, due to some issues with the way that the charges were enforced, you needed to get approval from the Attorney General and that did not occur in this case, so the people that were charged their charges were essentially dismissed, which has really brought forward the lack of faith in the legal system. It is very difficult with these trespass situations to understand who is conducting them. We found out who had conducted a number of the raids, but then at the enforcement and the prosecution stage farmers were let down there as well. However, since 2019 we have had the Aussie Farms where there has been the increase in access and knowledge about where farms are.

The Hon. PENNY SHARPE: Can I stop you there. We have some figures from Mr Whiteside that suggested that the charges being laid in relation to trespass have not particularly increased. Obviously there is a heightened state of anxiety, which I acknowledge, but the reality of the number of trespass events that is occurring does not seem to match that there is an increase in terms of the number of people illegally going on to farms. What is your response to that?

Ms JOHNSON: Not in New South Wales. We have been quite fortunate. In Queensland there have been two serious incursions. There was the incursion into a piggery where I believe around 70 people went on. The behaviour is changing between going on and actually just putting cameras up and leaving the property and not wanting to be found in that act and now there seems to be an increase with two examples, or a few examples, of people going on in large groups and actually confronting the farmer and disturbing the operation.

The Hon. PENNY SHARPE: That is the changing nature of the behaviour. That is quite different behaviour, obviously.

Ms JOHNSON: It is very much different behaviour. Whereas it was the gathering of evidence but there is a real risk of that physical confrontation which is why we did so much work in April when there was a build-up to that event. There was a lot of social media about "we want to come on to properties" and "we will be forcibly entering properties". There appears to be this confrontation and that is putting farmers on a heightened level that this might not just be the gathering of evidence that it might also lead to physical confrontation with these people in large numbers. I mean 70 people on a property is large. I believe it was seven that were in the Goulburn abattoir, that is quite confrontational as well.

The Hon. PENNY SHARPE: I have seen some of the farmers who have gathered to stop mining companies going on to their land and getting 70 people as well.

Mr ARKLE: The build on that, Ms Sharpe, is around the coordination and the sophistication of those organisations that are driving or inciting this kind of action. Things like foreign domiciled websites. We are hearing anecdotal evidence of foreign funds coming in to pay the fines of those that are impacted. I think the increased penalties here help in the sense that they make those individuals that are taking this action on those farms think twice about their role in this. No longer will it be a cost of doing business for these types of organisations that see it as a good marketing investment to do this kind of stuff and put it on You Tube. These individuals will start to think about their own actions and take a bit more responsibility in that sense. That is a positive development in what is presented here.

The Hon. PENNY SHARPE: Obviously there are significant concerns. There is the farm issue and the impact on protest more broadly and other inclosed lands. Do NSW Farmers have a view about forestry or any other industries that are captured by this bill or is your interest only in the farm component?

Ms JOHNSON: Definitely focused on the farm component. It is for other industries to advocate for why the extension is required around them. I think the escalation that farmers have seen with the level of protests is why we believe these changes are required for farmers. In terms of the extension that is for other industries to argue.

The Hon. PENNY SHARPE: The right to farm discussion is a much broader one than simply ratcheting up penalties for people going on to land uninvited. I am pleased to see you acknowledge that really this is only a very small part of a much broader what is essentially a land use and planning regime. Importantly, you reflect this in your submission which is looking for other ways to resolve conflict between neighbours that is not about the courts. Could you briefly talk about that. It seems to me the worst possible outcome around nuisance is taking

each other to court rather than trying to find a way through. Could you expand on some of your ideas around managing that issue?

Mr ARKLE: It is a point we touch on in our submissions in terms of the current construct of the nuisance shield. We do not want to see a defence against nuisance only to argue a legal case around negligence in that question that has been raised this morning. We present an idea for an alternate dispute resolution mechanism there using the agriculture commissioner that the Government has committed to introducing. Once again back to that principle of let us try and solve these disputes outside of the legal system, for the obvious reasons. We present that to the Committee for consideration. As you know what we have before us is just the first step towards a serious framework to enshrine the right to farm here in New South Wales. We welcome the commitment from the Deputy Premier and the agriculture Minister to look seriously at a regional planning Act over this term of the State Parliament. We see that as critical in terms of providing a framework to deliver investment certainty to allow farmers to continue to invest and grow the productivity of our enterprises and, in turn, the New South Wales economy.

Ms JOHNSON: Building on that, the regional planning Act will essentially make sure that we have the right developments in the right place that will undertake that strategic planning and stop land use conflicts occurring. You are absolutely right, we want to minimise them, we do not want them to occur. With the shield there is already conflict occurring. The regional planning Act will look at minimising the conflicts even arising.

The Hon. PENNY SHARPE: I hope it has strong environmental protections built into it.

The Hon. LOU AMATO: Ms Johnson, in your opening statement you read a couple of statements from your farmers. Do we know the full impact this is having on the women and the children of those farmers?

The Hon. PENNY SHARPE: Some of the farmers are women too.

The Hon. LOU AMATO: The impact it is having on the children of those farmers, what psychological effects? They must be quite scared wondering who is lurking out there.

Ms JOHNSON: It absolutely is. These were statements and actions that occurred quite a few years ago. The children, a number of them, they were young children when it occurred. Now they are growing up and moving into high school where they are finding that their name appears on websites. They can have their name googled and Aussie Farms is coming up and it is linking them back to their families. It is having an impact on them. The problem with the release of this information is once it is digitally published it is there forever. It follows the children for their whole lives. It is with them. We are finding with the younger people in agriculture that the constant barrage of criticism around agricultural production is making a number consider how they undertake a career in agriculture and how they can constructively engage with people that do have concerns. That is one of the key issues that our young farmer council is very passionate about. How agriculture engages with the community and those that do have these direct concerns and develop constructive relationships.

The Hon. EMMA HURST: Just on that note. This bill does not cover any of that, the concerns about the practices in animal agriculture, and it does not cover anything to do with websites.

Ms JOHNSON: No. This is the first tranche. It is just looking at that physical incursion on to farms and it is about increasing the penalties around that through the aggravating factors. We see as a key next step really dealing with the use of drones and that digital publishing of information.

The Hon. EMMA HURST: What is the concern with regard to drones?

Ms JOHNSON: Drones are being used increasing in rural crime. Not just in gathering information about agricultural practices but they are also being used to understand what equipment or items of value might actually be on farm or rural properties.

The Hon. EMMA HURST: For theft?

Ms JOHNSON: Yes, for theft. They are essentially casing the farm so that when they go on they know where the items of value are, where the keys are kept, all these sorts of things.

The Hon. LOU AMATO: Just going back, my concern is with the children of those farmers. Is it having any impact on their education? Are they fearful of going to school? Particularly if they have to catch a bus and it is a long way from their farms to the school, do they have concerns about protestors being out there or coming back home? Are they worried about who is going to be there or if someone is breaking into their homes? Are there impacts on the children or farmers?

Ms JOHNSON: It is not something that we have detailed. It is real. We have not done a systematic study across our membership about how children are feeling about these developments. We have members that have had trespass and it impacts upon people, for children, to understand there have been people on the farm.

The Hon. LOU AMATO: I can imagine if someone breaks into your own home, into your own space you would certainly be feeling fearful of coming back home again.

Mr ARKLE: That is right. Mr Amato, for those that choose to live in the city there is certain comfort that if you pick up the phone the police car is only a few minutes away. But on isolated properties, despite the extra resourcing that the detective inspector talked about this morning, the reality is that that support is a distance away. It is a time away. That certainly plays on people's minds.

The Hon. LOU AMATO: It is quite a distance from neighbour to neighbour?

Mr ARKLE: It is. Whether it is illegal hunting or trespassers it is unsettling to know that there may be people unlawfully on your place and support might be a distance away or a time away and that particularly impacts on children.

The Hon. LOU AMATO: You have a lot of anxiety.

Mr ARKLE: Most certainly.

The Hon. CATHERINE CUSACK: I wanted to explore the farmer's duty of care and the special nature of that duty of care as distinct from any other business. On the property obviously the farmer has responsibility for the occupational health and safety of all their employees, like any other business. But, in addition, they have people living on their properties. The property is not merely a work place it is also people's homes and that duty of care is really a 24-hour duty of care. Yes. And the farmer is responsible for the infrastructure on that property, the roads, often the supply of water not only as a workplace but also for people's homes. In relation to particularly western New South Wales, which is drought affected, farmers are increasingly diversifying by having farm stay, is that correct?

Mr ARKLE: That is. We are seeing that trend.

The Hon. CATHERINE CUSACK: They have people, visitors, guests, staying on their properties and they have a duty of care towards them as well?

Mr ARKLE: They would do.

The Hon. CATHERINE CUSACK: The impact of somebody discharging a firearm in the middle of the night somewhere on their property is more than just an intrusion into their workplace, isn't it? It presents a threat to your well-being and your responsibilities, which are very profound and perhaps different and more wide reaching than any other type of business in Australia, would you agree with that?

Mr ARKLE: I would think so, yes.

Ms JOHNSON: The provisions of this Act touch on the particularities around rural trespass, especially recognising animals and the potential for them to be harmed through gates being opened. Trespass on to a property not only puts the farmer at risk on their workplace and home but animals can create damage unwittingly. If you go into a cow paddock people that are trespassing do not understand that by interacting with the animal they might be doing something that the animal might react to. You have machinery and tractors moving. There are work places and there are actions where people do not have an insight or understanding. They are putting their personal safety at risk as well by trespassing on to farms.

The Hon. CATHERINE CUSACK: It is a 24-hour issue for the safety and wellbeing of everybody on that property?

Ms JOHNSON: Absolutely.

The Hon. CATHERINE CUSACK: Including people who are not employees but who are family members, as my colleague has been saying?

Ms JOHNSON: Yes.

The Hon. CATHERINE CUSACK: Given the special nature of that and the burden of responsibility that is on the farm, not just legally but an emotional and ethical responsibility, special protections to enable them

to fulfil those responsibilities are surely deserved. Their confidence in the law to allow them to perform that work is very important in relation to farming.

Ms JOHNSON: Yes, that is why the aggravating factors identify that and provide the enhanced protections. Not only to farmers but also other businesses.

Mr ARKLE: The build I would offer there is that there are established frameworks to allow people to visit farms under different circumstances. There is a clear framework if you are interested in hunting on a property. You can apply to the government and there is a register and certain farmers will be happy to accommodate hunters if they know where they are and what they are doing. There is a clear framework there. Farm tourism we have talked a little bit about; the visit my farm website. There are 50 farms I could visit this long weekend through making a booking. Similarly farmers have those obligations, given farms are workplaces, to offer proper induction to visitors as any workplace would under work health and safety laws.

The frameworks are there to allow legal access. A lot of our intensive livestock producers will willingly welcome visitors on to their properties when things like biosecurity are properly managed. There is no suggestion that we are impeding transparency. What we are dealing with here is unlawful access under whatever circumstances and putting some serious penalties around that to try and send a clear signal that if you want to go on farm then you should do it through the right channels. There are families at stake, there are businesses at stake and our industry is at stake.

The Hon. CATHERINE CUSACK: One other issue that I would like to amplify a little bit is that sometimes a protester, as you have said, with no knowledge of farming and very focused on a particular animal welfare issue, for example, or a hunter who has their mission, but they are not really familiar with farming; the things that they do inadvertently could be more damaging. It seems minor but it could be more damaging than they realised, like leaving a gate open or blocking an access or interfering with a pump. I wondered if you had comments on that? They might seem like little things to do but, in fact, they can have a profound effect.

Ms JOHNSON: I think the further build around that is biosecurity. We have seen people entering properties and attempting to take biosecurity measures. The thing is that with biosecurity you really need to be adhering to what the farmer has set up in terms of their biosecurity. The people unlawfully entering these properties do not understand the disease transmission pathways. They do not understand how you actually have to clean your boots, how you have to clean your hands, or how clean your equipment actually has to be. It is not only just in relation to how they interact on farm but also around that biosecurity risk.

They do not understand that if they are touching one animal in one pen and actually touch another animal in another pen they have provided a disease pathway. Biosecurity controls are not as easy as putting on boot cleaners and thinking you have done enough. There are a range of steps that are not understood around welfare. Just interaction with animals and understanding how animals act when they are used to being fed and understanding when animals, especially pigs, might be wanting food. It is not a welfare issue that is occurring there, they think they are about to be fed at 4.00 a.m. when they have quite a few hours before feed is coming.

The Hon. CATHERINE CUSACK: In terms of your comment that you are interested in exploring other ideas to add what are legitimate public concerns, for everyone to have that assurance that things are going as we would hope in terms of animal welfare. What are those ideas that you are proposing?

Ms JOHNSON: There is a range of activities being undertaken. There are industries that have set up what are called sustainability frameworks which essentially report on how they are performing in terms of animal welfare credentials, around economics and the environment. A big project has just been agreed to that is going to look at transparency right across agriculture, which is involving a number of our research and development corporations, the National Farmers' Federation and NSW DPI. It will, essentially, do a deep dive into what are the concerns and how industry can proactively go about addressing those.

The Hon. CATHERINE CUSACK: What is that project called?

Ms JOHNSON: Could I come back to you on that?

The Hon. CATHERINE CUSACK: Yes, sure.

Ms JOHNSON: I know I cannot take it on notice but I cannot remember it just off the top of my head.

Mr ARKLE: It is the Trust in Agriculture initiative that has been led by AgriFutures Australia, based in Wagga.

The Hon. JOHN GRAHAM: I just want to put the remainder of the questions from the Opposition. There are three issues to cover, each of which is material to where we will land on the bill. First, following on from my colleagues' questions, you pointed to the peculiarities in this bill about farming, and I agree there are some, but the central problem when we look at the submissions is that you are asking for protection on farm but these penalties apply to forests, to universities, to the waterfront, to workplaces, to public places if they are fenced or maybe even if they are temporarily barricaded. That is one of the concerns that has been put in the submissions. You have said that it was up to other industries to defend what they need in those other areas. I accept that. My question to you though is, if there was some way to draft a restriction where—and this would not be easy to do—if there was a way to restrict this to farms, would that deal with the Farmers Association concerns?

Mr ARKLE: We are looking for enhanced penalties to offer protection to farmers in this State—that is our interest.

The Hon. JOHN GRAHAM: On farm?

Mr ARKLE: On farm.

The Hon. JOHN GRAHAM: So if there was a way to draft it—I am not suggesting there would be because this would be difficult—as long as the on-farm protections are there you have satisfied your goals?

Mr ARKLE: That would be correct.

The Hon. JOHN GRAHAM: The second issue is just in relation to the information we have had on complaints. The two figures we have been given this morning, one is that 800 complaints are coming through to the councils about potential nuisance activities and three of those nuisance claims have gone to court. This bill deals with the three but does absolutely nothing to stop the 800. Is that interpretation correct?

Mr ARKLE: I do not think it is strictly correct. I think, as I mentioned in my comments on the nuisance shield, it sends an important signal in this sense, that that defence is there and that lawful farming activities should be respected.

The Hon. JOHN GRAHAM: It might send a general signal but there is no specific barrier to where most of these complaints go, which is to councils?

Mr ARKLE: No, that is correct. As we have mentioned, there is a big piece of work we need to do. I have touched on the regional planning framework, but the other piece of work—

The Hon. JOHN GRAHAM: Understood, but this bill does not do it. We agree on that.

Mr ARKLE: No, that is correct. There is a whole separate piece of work we need to do around the culture of local governments, the information we provide to people that are looking to move into farming areas about the realities of life on the land, that this bill does not deal with.

The Hon. JOHN GRAHAM: Finally, on the last issue, following on from my other colleagues' questions, you accept there is a risk here under this bill—there are farmers engaged in peaceful protesting in New South Wales against gas companies, against mining companies, against supermarkets—you accept there is a risk under this bill that they might go to jail?

Mr ARKLE: The penalties would be available to the courts if the case was so egregious as to warrant that. So yes.

The Hon. JOHN GRAHAM: You know how active the farming communities on the north coast of New South Wales are on Facebook, spreading information about coal seam gas [CSG] protests. You accept that some of those farmers might go to jail under this bill.

The Hon. TREVOR KHAN: That is a long bow.

The Hon. CATHERINE CUSACK: That is a smear against the farmers; they are not breaking the law.

The Hon. JOHN GRAHAM: Firstly, I invite the witnesses not the Government to—

The Hon. TREVOR KHAN: You have got to put a specific scenario, not a "Why don't we get the bogeyman down for a bit of a"—

The Hon. JOHN GRAHAM: Let me do that. Farmers on the north coast are encouraging other farmers to go and protest CSG activities; we know some of those peaceful protests are occurring on inclosed lands. That incitement on social media might be caught in this bill. Do you agree with that?

Mr ARKLE: Incitement is an offence presented in this bill. So yes, that would be within the gift of the courts to look at that as an option.

Ms JOHNSON: But, as the last witnesses said, those trespassers would need to do something aggravated. So they would need to go beyond.

The Hon. JOHN GRAHAM: They might have to hinder that undertaking, for example.

Ms JOHNSON: Yes.

The Hon. JOHN GRAHAM: I think we agree on that.

Ms JOHNSON: There is quite a bit of flexibility in the penalties that can be administered. That is why we are very comfortable that they are not being a required minimum.

The CHAIR: Thank you. That concludes your questioning. Thank you for your time and candour.

(The witnesses withdrew.)

NAOMI SHARP, Co-Chair, Human Rights Committee, NSW Bar Association, affirmed and examined

Ms SHARP: Thank you for inviting the NSW Bar Association to speak today. The association is grateful to be afforded the opportunity to set out its views on the proposed right to farm legislation. The Bar Association acknowledges that trespass, property damage and theft are unlawful. The Bar Association also wishes to acknowledge the importance of freedom of expression and freedom of political communication under the Australian Constitution. Lastly, the Bar Association acknowledges that the protection of animal welfare and the protection of the environment are important societal goals and matters of continuing public concern and interest. The question is how all of these rights and interests are to be appropriately balanced. The Bar Association has carefully considered the bill and does not believe that an appropriate balance has been struck with the Right to Farm Bill and that is why the Bar Association does not support it in its current form.

The Bar Association notes in particular the public interest in the welfare of farm animals and in the health and safety surrounding our food and its consumption. It is the case that the work of animal welfare activists has led to an important public debate and has increased a focus on protecting the welfare of animals. Their work has led to some important outcomes in the public interest. To give one example, it has led to a range of enforcement actions by the Australian Competition and Consumer Commission [ACCC], which has advanced consumer protection. Thus, for example, in 2013 the ACCC successfully pursued a number of court cases in which false and misleading claims had been made about the protection of animal welfare, and it was the work of animal welfare activists which supplied important evidence for those cases.

Those cases are the *ACCC v Turi Foods* [2013] FCA 1109, *ACCC v Luv-a-Duck Pty Ltd* [2013] FCA 1136 and *ACCC v Pepe's Ducks Ltd* [2013] FCA 570. The Bar Association's key concerns with the Right to Farm Bill are, first, the introduction of criminal penalties that are disproportionately severe in light of the underlying offences; secondly, that the proposed increases in penalty are against a backdrop where there is no public interest defence that would protect freedom of expression; and, thirdly, the wholesale removal of the common law tort of nuisance in a context of land upon which a commercial agricultural activity is conducted.

Can I start back in 1948, when the United Nations General Assembly adopted the Universal Declaration of Human Rights, which is now part of the customary international law worldwide and part of the law of Australia. Article 19 of that declaration says that everyone has the right to freedom of opinion and expression. There is also article 12, which says, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." I will also mention the 1976 International Covenant on Civil and Political Rights.

Article 19 says, "Everybody has the right to hold opinions without interference." Article 19.2 says, "Everybody shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers." Article 19.3 says, "The exercise of the rights provided for in paragraph 2 of this article carry with it special duties and responsibilities. It may therefore be subject to certain restrictions but they shall only be such as are provided by law and are necessary." The point here is that all of these rights and freedoms must be balanced and balanced when they come into conflict. With those initial observations in mind, can I start by drawing attention to the very broad definition of "inclosed lands" within the Inclosed Lands Protection Act. It includes, first of all, prescribed premises but also any land, either public or private, which is inclosed. The fact that the inclosed lands include public lands is very significant. It is readily apparent that some people may wish to engage in peaceful protest upon public land. The proposed amendments affect these people.

Can I then comment upon the proposed increases to the penalties for the offence of what I will describe as aggravated trespass? As Committee members would be aware, section 4 of the Inclosed Lands Protection Act creates an offence of unlawful entry into inclosed lands. There the penalty is a modest one of \$550. Section 4B deals with the circumstances of aggravation for that offence. At the moment these penalties are proportionate. The penalty is \$5,500 and there is no penalty of imprisonment. The penalties proposed to be increased under the right to farm legislation are proposed to be increased dramatically. Now it is proposed that the penalty will increase to \$13,200 and/or imprisonment of up to 12 months. There is now proposed a sentence of imprisonment. This is a very severe penalty in view of the underlying offence. It is proposed that that penalty will increase even further in the situation where the offender is accompanied by two or more others or where there is a circumstance of aggravation within subsection 1B; it is essentially a serious risk to safety. In that event it is proposed to increase the penalty to \$22,000 or three years imprisonment or both.

The concern of the Bar Association in view of these very significant penalty increases is that members of the public who wish to engage in peaceful protest, including on public land which is inclosed, will be committing an offence which exposes them to a term of imprisonment. The NSW Bar Association believes that such a penalty is likely to discourage people from exercising their right to peacefully protest. In the context of considering these very significant increases in penalty, the Bar Association also wishes to draw attention to the fact that there is no defence under the Inclosed Lands Protection Act which would serve to protect those who have engaged in political protest or sought to engage in freedom of political communication. Thus, there is no defence or nothing in the nature of a public interest defence. It is acknowledged that section 4 of the Act does contain a defence of lawful excuse. However, that is a term of some ambiguity and, in any event, it is not clear that it would protect those who sought to engage in peaceful protest.

Lastly, the NSW Bar Association is concerned about the proposal to remove the common law tort of negligence for a select number of members of our society who engage in commercial agricultural activities. The common law tort of nuisance has an important role to play in protecting the rights of people who are adversely affected by the activities of others on their land. The tort of nuisance is directed towards a person's actions that interfere with another person's use and enjoyment of their property. A nuisance may occur when someone or something unreasonably interferes with another person's ability to use or enjoy their property. It is easy to contemplate examples of people, corporations or even the Crown who could be adversely affected by removing this tort and therefore their recourse to damages and other relief in the courts.

To take just one example, imagine a situation where a flood of water comes from one farm causing a massive landslide into another farm, devastating crops and causing economic loss to that farmer. In the event the flood was not caused through unlawful activity or negligence, the affected farmer would be left without remedy under these proposed legislative amendments. In this situation the NSW Bar Association sees no proper justification for entirely immunising one sector of the community from a common law cause of action that has been developed incrementally by the courts over a significant period of time; there are safeguards within the cause of action itself and defences that have been developed to answer it. Thank you.

The Hon. EMMA HURST: Thank you, Ms Sharp, that was really useful. You mentioned in the beginning of your statement that there were several cases where evidence had been gathered that was quite useful for issues like consumer awareness, and various court cases that were won. In many of the submissions that we have received there have been allegations that the state of farmed animal welfare in Australia does not meet community expectations and that adequate monitoring, investigation and enforcement of animal welfare and cruelty laws in Australia are not up to standard, and that is the reason behind a lot of this trespass. Do you have any thoughts around that area?

Ms SHARP: It is not a particular area of expertise for me but perhaps I can go by way of anecdote, if I can. I recently read a book by Matthew Evans which is called *On Eating Meat* which presents a reasonably balanced view of the debate. One of the observations he did make is that there is quite a degree of opaqueness within commercial agricultural practice. He found as a journalist trying to get access to commercial farming operations to be particularly difficult. He wondered whether that was one reason why we have these situations where animal welfare activists are going into commercial agricultural facilities and doing what they are doing. That is an anecdote because, as I say, I do not have any particular area of expertise here.

The Hon. EMMA HURST: It could be an issue of transparency as to their motivation?

Ms SHARP: Yes. And that is right, these are all issues to be balanced and the point made by Matthew Evans in his book was a lack of transparency was giving rise to these incidents of trespass and where is the balance to be struck there?

The Hon. EMMA HURST: In your opening statement you mentioned about the right balance with animal welfare, environment and land rights. What do you think is the right balance if this bill is not the right balance?

Ms SHARP: The penalties are too severe. I think that they will have a chilling effect on people who do wish to raise important matters of public concern. That is one factor to be considered. That said, the New South Wales Bar Association acknowledges at the outset that trespass is unlawful and does acknowledge the concerns of farmers, those who live on their land, who feel that their safety is threatened. They are very important concerns to be balanced. A balance is different from a blunt instrument. The New South Wales Bar Association position is the present bill is a blunt instrument. Balance would be achieved through more proportionate penalties. It would also be achieved by creating an offence which I will describe in loose terms as a public interest defence.

One matter to which consideration ought to be given is whether these provisions in their current form could be unconstitutional because they may be seen to infringe the implied freedom of political communication which has been recognised in our Constitution. That implied freedom takes, as its starting point, that there is no absolute when it comes to freedom of expression, rather a balancing exercise needs to be pursued. The balancing exercise will take as its starting point whether the law is pursuing a legitimate concern which is consistent with representative government and responsible government and whether it has gone too far in seeking to achieve that legitimate concern and gone too far in inhibiting the freedom of political communication. That recognises that the freedom of political communication is not absolute but is something to be balanced against other societal interests.

Mr JUSTIN FIELD: I want to qualify that response, unless that is what the Hon. Catherine Cusack is seeking to do?

The Hon. CATHERINE CUSACK: Yes, I am. In terms of getting that balance right, which is what you are talking about, hypothetically talking for example, about vigilante action and let us say, I believe that one of your colleagues, a barrister, is involved in some conspiracy. It is in the public interest to expose that but the only way I can get that evidence is to break into his office and install a camera. Just in terms of balancing my right to political freedom, recognising that I would be trespassing by doing that, to me that would be a really serious offence. The Bar Association seems to think that there could be some justification in me doing that. Do I understand that correctly? You feel it is not so bad to break into somebody's office and install cameras or that would be bad, but it is not bad to do it someone's farm?

Ms SHARP: No, I do not think I have ever put it in such absolute terms. It will always depend on the particular circumstances but we do see that there is some role for people taking steps to protect and promote important public interest. We see that the bill in its present form is too blunt an instrument and that is why things need to be adjusted and carefully calibrated. We are not suggesting that there not be an offence—that is not our submission. Our submission is that the penalties are too severe and our submission is that a defence should be considered as well. But we are not saying that there should be open slather on people entering other people's houses and infringing their rights to privacy.

The Hon. CATHERINE CUSACK: Do you accept that there is a perception by the farming community that that kind of behaviour somehow is becoming legitimised, normalised and minimalised in relation to farms whereas really it is outrageous and horrific in relation to anybody else's business?

Ms SHARP: I certainly understand how deeply distressing farmers will find it when people enter onto their property.

The Hon. CATHERINE CUSACK: And sabotage their business?

Ms SHARP: There may well be examples where they have sabotaged their business. It may be another thing entirely if they are just taking a film record. It all depends on the circumstances. However, we are not submitting that there should not be an offence. We accept that there should be an offence and, in appropriate circumstances, the offence should be prosecuted. But the suggested penalties which suddenly go from \$5,500 to three years' imprisonment, we see as a disproportionate response to this matter.

The Hon. TREVOR KHAN: To a maximum of three years.

Ms SHARP: To a maximum of three years where currently there is no term of imprisonment and all of a sudden it is moving up to beyond the summary jurisdiction to three years' imprisonment. We do not see that as a carefully calibrated response. We do acknowledge that there must be balance.

The Hon. CATHERINE CUSACK: If I broke into your office tonight I could be charged with an offence that could have a prison sentence attached to it, surely?

Ms SHARP: Well then the obvious retort to that is the criminal law already accommodates that offence.

The Hon. TREVOR KHAN: The criminal law did not accommodate a protest outside an abortion clinic until 12 months ago. There was no penalty for embarrassing and harassing women outside abortion clinics as they entered and yet this Parliament chose to create an offence and indeed created a penalty that included a term of imprisonment. We did not have much trouble there in trying to protect women in those circumstances from the activity of protesters, did we?

Ms SHARP: I am not familiar with that legislation. That is a situation where a balance has been struck. But I am here to make a submission about the balance in the particular circumstances of this case.

The Hon. TREVOR KHAN: I am simply raising it because you say that in a sense we are moving an already existing offence where there is no term of imprisonment now to one where there is a criminal penalty. I have given you an example of a situation where there was not even an offence and we moved to a criminal penalty.

Ms SHARP: Yes. If my memory serves me correctly, I think that legislation of the nature you have just described was, in fact, the subject of a High Court challenge, was it not?

The Hon. TREVOR KHAN: Clubb and Edwards.

Ms SHARP: Yes, that is right. The key was the question of the balance to be struck.

The Hon. TREVOR KHAN: Indeed.

The CHAIR: You talked about sharpening the blunt instrument but going back you also talked about the ambiguity around inclosed land. Is it part of your submission that there needs to be some clarity about inclosed land, given that the title of the bill is the right to farm?

Ms SHARP: The right to farm title is somewhat of a misnomer because it does apply to all inclosed land. I was not suggesting that the definition of inclosed land was ambiguous, I was suggesting it is a very broad definition and therefore it encompasses all public land at the moment provided that it is enclosed within a way recognised by the legislation. There does seem to be some overreach if the objective is to protect farmers. There does seem to be some overreach in increasing those penalties so significantly for all inclosed land.

The CHAIR: Would your suggestion be to withdraw that overreach back a little bit to only include farms, or what are you suggesting?

Ms SHARP: I am not drafting the legislation.

The CHAIR: You are a legal professional.

Ms SHARP: Consistently with our submission it would be one way of more carefully calibrating or more carefully balancing rights and interests at issue.

The Hon. EMMA HURST: Ms Sharp, do you think that the penalties are still too harsh even for protecting farming land as well?

Ms SHARP: In the Bar Association's opinion they appear to be very harsh. The proposition of a three year term of imprisonment is a very harsh penalty.

The Hon. TREVOR KHAN: The proposition of a maximum term of three years.

Ms SHARP: The maximum is there because the maximum can be awarded.

The CHAIR: How often does it happen.

Ms SHARP: The maximum seems a very harsh penalty in the circumstances.

The Hon. EMMA HURST: Do you have concerns that within the bill there is also an aggravated offence of trespass if there is two or more people? Do you find that odd that it suddenly goes up if there is two people compared to one?

Ms SHARP: I do not necessarily find that odd. I can understand why that is a circumstance of aggravation.

Mr JUSTIN FIELD: I appreciate your being here and your comment that you are not drafting the legislation. Did you have a view on how a public interest offence might be included in the bill?

Ms SHARP: I cannot answer that off the top of my head but I would be happy to take it on notice and back to my committee.

The CHAIR: That is not really possible.

Ms SHARP: I see.

Mr JUSTIN FIELD: Would it be a matter of specifying a defence if the person was engaged in what they considered peaceful protest, would that be an appropriate offence to simply list in the bill?

Ms SHARP: That would go towards it, yes.

The Hon. TREVOR KHAN: That would have allowed people outside an abortion clinic to say "I am engaging in a peaceful protest" as I am harassing the woman.

Mr JUSTIN FIELD: What bill are we talking about here today?

The Hon. TREVOR KHAN: You want a peaceful protest, that is precisely the argument.

The CHAIR: Order!

Mr JUSTIN FIELD: I am asking the person here to give evidence to the inquiry a question that goes straight to their submission.

The Hon. TREVOR KHAN: Put a Dorothy Dixier to her and you will get the answer. Deal with real life situations.

Mr JUSTIN FIELD: I am going straight to the submission, Mr Khan.

The CHAIR: Members will keep their questions and comments directed towards the witness.

The Hon. PENNY SHARPE: I am interested in the comments around the nuisance shield and the impact of that. It is separate to the protest discussions that we are having. I know the Bar Association suggests that the whole clause should go. In trying to find the balance are there other examples? Is it particularly the way it is written is that it is very broad, which I think that it is. Do you think it should be tightened or whether you think the way it interplays with the private property rights and the rights of people impacted next door there is no way through that?

Ms SHARP: It just seems a very extreme approach to exclude the tort of negligence altogether. There does not seem to be any calibration of when it may be appropriate to exclude that tort. It has not been identified what the shortcomings of that tort are at this point. It is a serious thing to exclude a common law cause of action which has developed over a very long period of time and developed incrementally.

The Hon. PENNY SHARPE: In your submission you talk about the case in Ontario. Are there other examples that you are aware of? I am assuming that you do not have any other Australian examples given that you used an Ontario example. Other jurisdictions are clearly grappling with this.

Ms SHARP: Yes.

The Hon. PENNY SHARPE: I do think this is very blunt, the way in which the Government is proposing it. Are there other examples where it is a bit more thought out than what we are currently seeing?

Ms SHARP: As I understand the situation there has been quite a deal of legislative attention in the United States about this. There was a very useful discussion paper I came across in preparing this submission that we referred to in the first paragraph of our submission. It was a New South Wales parliamentary research service brief by Mr Gareth Griffith.

The Hon. PENNY SHARPE: Got that.

Ms SHARP: That had a useful discussion of the laws and how successful or otherwise they had been.

The Hon. PENNY SHARPE: I asked the NSW Farmers about this as well. I am interested in alternative dispute resolution around conflict between neighbours. We know that there are some hot spots across the State with change of use. Would you like to comment about that?

Ms SHARP: It is always useful to explore alternative dispute resolution, which is often far more efficient and less costly and, frankly, less stressful than going to court.

The Hon. JOHN GRAHAM: I want to ask one question about what is actually being done in relation to nuisance in this bill. The second reading speech refers to employing a defence to the tort of nuisance but the overview of the bill says the objects of this bill are as follows: To prevent an action for the tort of nuisance.

Ms SHARP: That is exactly what the bill does. If I look at clause 4 of the draft bill it says in clause 4, subclause (1), "No action lies in respect of nuisance by reason only..."; then it sets out its criteria. In its terms it operates to extinguish the cause of action in nuisance.

The Hon. JOHN GRAHAM: So why is the Minister in the second reading speech saying this is about providing a defence?

Ms SHARP: I cannot answer that.

The Hon. JOHN GRAHAM: That is not the effect.

Ms SHARP: As I understand, as I read this provision, it extinguishes the common law action of nuisance in the circumstances enumerated in subclause (1) (a) through (d).

The Hon. TREVOR KHAN: You would plead it in a defence if somebody brought the action in nuisance? You would plead the section?

Ms SHARP: You would plead the section as a bar, yes. In a technical way you could use a demurrer and say there is no action known to law because it has been extinguished.

The Hon. JOHN GRAHAM: I am not sure if you were here during the earlier discussion, but to clarify whether this activity is in the scope of the bill I was asking about farmers on the North Coast protesting coal seam gas action or one step removed from that, spreading social media information about protests which are occurring on inclosed lands protesting coal seam gas activity. That is now in the scope of this bill. Do you agree that activity could be caught up under the incitement provisions?

Ms SHARP: I was going to say that possibly could be caught in the incitement. That is a new offence that is sought to be introduced by this bill. That is not a tweaking of something that is currently there.

The Hon. JOHN GRAHAM: If people are caught up in this bill, if they are spreading Facebook information about coal seam gas protests they could go to jail under that offence?

Ms SHARP: Let me just check the penalty.

The Hon. TREVOR KHAN: It has a term of imprisonment.

Mr JUSTIN FIELD: One question on definitions. There has been some discussion this morning on the inclusion of "hinder" as well as "interference" in the first section 4B (a). Is there a substantial difference in your mind about including that term "hinder", part of 4B (1) (a)? Does that lower the bar?

Ms SHARP: One would assume it has been added to increase the reach of the offence because there is a principle of statutory construction that meaning has to be given to every word in the provision. You cannot ignore a new word if it is there. The obvious intention is to broaden the scope of activities that will fall within the reach of the defence.

Mr JUSTIN FIELD: Would you give us an indication of an activity that might hinder that would not previously have interfered?

Ms SHARP: I cannot think of something presently. I am not really sure what "hinder" would mean. I would need to look at what the case law said about what it means.

The Hon. TREVOR KHAN: Has the normal offence been like hinder police in the execution of their duty, as the terminology most commonly interpreted as hinder, and the courts have interpreted "hinder" to mean interfere?

Ms SHARP: I do not know.

The Hon. TREVOR KHAN: It is sort of a Local Court argument whether shouting at the policeman as he is trying to do an arrest constitutes hinder, or taking a photograph of a policeman constitutes hinder.

Ms SHARP: I am not familiar with the case law on what "hinder" means. I am not familiar with the case law which makes an offence of "hinder" in relation to a police officer. I can approach it as a matter of general principle though. As a matter of general principle, when it comes to statutory interpretation as a lawyer I would have to ascribe a different meaning to "hinder" than I would to "interfere" with.

The Hon. TREVOR KHAN: I agree with the analysis but I think you will struggle to find, as nuanced as we get, terribly much difference between hinder and interfere.

Mr JUSTIN FIELD: I am thinking about locking on to a vehicle versus standing in front of it. One is hindering and one is interfering.

The Hon. TREVOR KHAN: No, both of them are hindering and both of them interfering.

Mr JUSTIN FIELD: I am trying to find that line; that is all.

The Hon. TREVOR KHAN: I think you will struggle just on the basis of what happens with policemen.

Ms SHARP: I cannot assist you with that.

The Hon. TREVOR KHAN: I would love to find an answer because I went looking for it myself. You find a lot of stuff but it does not really help.

The Hon. EMMA HURST: I go back to two or more people, the penalty goes up to three years imprisonment if there are two people compared to one. Do you consider that an appropriate jump in penalties if it is two people compared to one person?

Ms SHARP: We do not consider it an appropriate jump in penalties in any case, no matter how many people there are. We see it as a very disproportionate penalty.

The Hon. EMMA HURST: I refer to the nuisance claim section of the bill. We have been advised by the Minister's office that there has only been three reported nuisance cases in New South Wales and the last one was in 2013. To me it does not seem that there is a flood of cases, but do you think that that number of cases is sufficient to warrant this nuisance shield under the bill?

Ms SHARP: The Bar Association does not consider it appropriate to extinguish on a wholesale basis the tort of nuisance, regardless of how many actions in nuisance there are. If there are only three it would tend to reinforce the submission we make that it is not appropriate to extinguish in a wholesale way this tort which is designed to protect people's rights and interests, the owners of the property.

The Hon. EMMA HURST: You also say in your submission that the Bar Association sees no proper justification for entirely immunising one particular sector of the community being those who carry out commercial agricultural activity from a common law cause of action developed incrementally by courts over a significant period of time. Will you discuss this point a little bit more? Will you elaborate on why you think that this shield for farmers is not warranted?

Ms SHARP: I suppose from a first principle response, the first principle is the notion of equality before the law. Everybody should be treated the same way before the law unless there is a particular justification for treating them otherwise. If you approach it from the perspective of what I will call the plaintiff or the claimant the question would be: Why do I have a right which I can vindicate if, say, my next door neighbour is a school yet I do not have that very same right if my next door neighbour is an occupier engaged in commercial agricultural activity? From that very first principle basis of equality before the law there is a concern that it leaves a person without proper protection when their rights and amenity is affected.

The Hon. EMMA HURST: Other witnesses were also asked that a lot of the time on these rural properties it could be farmer versus farmer disputes as well. Do you have concerns around that?

Ms SHARP: Again it is equality before the law issue. The complaining farmer is left without redress that would ordinarily be available because the tort of nuisance has been extinguished.

The Hon. JOHN GRAHAM: As a follow on, I thought one of your strongest points in your submission was that one of the things that is going on here is it might allow the appropriation of property value without compensation if there is some diminishment on the neighbouring property which is unable to be compensated. Often that might be farmer and farmer. Often that might be in a rural place: one rural landholder, one farmer against another but no recourse for that.

Ms SHARP: That is right.

The Hon. JOHN GRAHAM: Certainly no compensation available for that impact on the property.

The Hon. EMMA HURST: One other thing that came up, and I do not think it was mentioned in your submission so I apologise for putting you on the spot, was a concern that if somebody who worked in one of these facilities witnessed, for example, animal cruelty or a biosecurity risk, and reported it to authorities and felt that it had not been adequately addressed, may actually call an advocacy group or somebody else and they would fall under the incitement if that group then went and trespassed to gather evidence. Do you have concerns in regards to whistleblower protections and these workers' rights as well?

Ms SHARP: I must say I have not come here—

The Hon. EMMA HURST: Sorry to put you on the spot on that one.

Ms SHARP: That is okay. We always have to be concerned to protect whistleblowers. It would be necessary to carefully consider whether the proposed new incitement offence could have a chilling effect on whistleblowers, yes.

(Witness withdrew.)

(Luncheon Adjournment)

TARA WARD, Executive Director and Managing Solicitor with the Animal Defenders Office, affirmed and examined

The CHAIR: Do you want to make an opening statement?

Ms WARD: Yes, thank you for this opportunity to provide submissions to this Committee. The Animal Defenders Office Inc. and other entities that have made submissions have identified key areas of concern with the proposed bill. The first is that no credible or compelling evidence has been provided to demonstrate the need for the proposed laws in both the main clauses and schedule 2 to the Act. There is no evidence regarding the prevalence of actions in the tort of nuisance against agricultural activities, or, the impact of such actions on the carrying out of those activities. There is also no evidence or arguments to show how being able to rely on the proposed defence in clause 4 of the Right to Farm Bill would mitigate such an impact, given that the defendant, presumably the farmer, may have some evidential burden in relation to making out the defence.

Regarding the proposed amendments to trespass laws in the Inclosed Lands Protection Act, again the proponents of the bill have failed to provide evidence to support the supposed need for these amendments. It is also noted that the bill is unnecessary because there are existing laws that cover the field, whether long-standing property offences in the New South Wales Crimes Act, or new offences under the New South Wales Biosecurity Regulation or the Commonwealth Criminal Code Act regarding the use of carriage services to incite trespass, property damage or theft on agricultural land. Furthermore, it is unclear how the proposed Right to Farm Act, if it were to become an Act, could achieve its objective of preventing actions for the tort of nuisance given its main measure in clause 4 appears to be a defence, or may operate as a defence—that is not clear.

It is also unclear how the proposed Right to Farm Act could achieve its objective of reducing nuisance complaints when it appears most nuisance complaints are made to councils and the bill does not address these types of complaints. Rather than providing any meaningful protection for a particular sector of the community, which several commentators in the submissions have noted as being unjustified, these concerns demonstrate that the so-called right to farm aspect of the bill amounts to little more than a convenient but empty political slogan that is picked up periodically by political entities and refashioned to suit the political imperatives of the day. We caution against regarding it as anything more than that and submit that it is far from providing a sound basis for good law.

Another concern is that the proposed right to farm measures adversely affect the property rights of residents affected by nuisance. This is particularly undesirable when it would limit residents being able to complain about the use of so-called pest control measures such as 1080 poison baits. These baits are highly controversial due to the intense suffering they inflict on any animal who consumes them, and pose significant and unreasonable restrictions on neighbouring residents who have animals, including pets, of their own. If our animal cruelty laws are powerless to stop the use of these extremely inhumane forms of animal poison, then other legal avenues should not be closed to residents whose own animals are directly at risk by their use.

Finally, we suggest that the bill addressed a purported symptom, that is, citizen protests, and not the cause which is public and consumer concern about the treatment of farm animals, the vast majority of whom are bred, borne, raised and slaughtered completely out of sight. We therefore suggest the Government would better achieve its aims of protecting animal agriculture by exploring ways to increase industry transparency and visibility. It is for these reasons that the Animal Defenders Office does not support either the proposed right to farm provisions or the proposed amendments to the Inclosed Lands Protection Act in the bill.

The Hon. EMMA HURST: You note in your submission that in contrast to the significant increase in penalties for trespass New South Wales continues to have some of the lowest penalties for animal cruelty. Do you think that this disparity is part of what is fuelling the frustration for animal advocates?

Ms WARD: Absolutely, that is definitely one of the key concerns for animal advocates and, indeed, animal legal group organisations such as ours. One of the main concerns is that New South Wales does have the lowest penalties for animal cruelty in the country—that is just an easy comparison to make looking at other animal welfare laws. The other huge concern is enforcement. One of the reasons driving the concern about what is happening to farm animals behind the closed doors is the lack of enforcement of what animal welfare laws we do have regarding farm animals.

The Hon. EMMA HURST: Will you provide more details about that enforcement? I know that has come under question this morning in regard to whether that is an allegation or something that is genuinely happening?

The Hon. TREVOR KHAN: Point of order: We are looking at a bill. We are not looking at the general issue of animal cruelty, however described whether on farm or not. We are looking at a bill which deals with amendments to the Inclosed Lands Act. I suggest that the member is going well outside that.

The Hon. EMMA HURST: To the point of order: If this bill is about stopping trespass from animal advocates, I am trying ascertain their motivation for trespass. And if this bill is going to deter that trespass or would another bill be more adequate to try to stop that trespass.

Mr DAVID SHOEBRIDGE: To the point of order: We are surely allowed to investigate the legislative framework which this bill sits amongst. If other legislation addresses the same or similar activities, we need to know the legislative context.

The Hon. TREVOR KHAN: That is not what the question was.

The CHAIR: When you rephrased the question it was a better attempt. Will you put it in that context and we can move on?

The Hon. EMMA HURST: Yes. Going back to the motivations of advocates for trespass, do you believe that partly this has to do with inadequate farm animal welfare and inadequate enforcement? Can you give examples?

Ms WARD: I do believe that that is the main motivations for anyone who is concerned about the treatment of farm animals in premises where there is no transparency or visibility. I could also take it step back and put it back onto the proponents of the bill to question: Are animal advocates the main cause for farm trespass? The evidence from the NSW Police Force is that it is not animal advocates, it is illegal hunters. It is also anecdotally people associated with other farms, for example, for whatever reason. So there is that issue as well. But the whole animal advocate farm trespass may even be a red herring and therefore if they are not the main cause of farm trespass then will the bill achieve what it sets out to achieve?

The Hon. EMMA HURST: Do you think this bill will not deter trespass within those groups?

Ms WARD: I think it is up to the proponents of the bill to provide the evidence that it will. It is not up to groups such as ours to make the case for the bill.

The Hon. EMMA HURST: A number of other people have advocated earlier today that there should be rights for protesters and unions. Do you think that narrowing that scope is the solution? Do you think that the whole bill is problematic?

Ms WARD: I think the whole bill is problematic for the reasons that have been highlighted; some of those fundamental legal reasons that have been highlighted in some of the submissions and that is the lack of evidence to support what many regard as quite draconian increases in penalties, for example. Also the disproportionate nature of the penalties to what are summary offences. And then when you look at the right to farm clauses of the bill—and again we struggled with the way the bill was actually drafted creating both entirely new legislation and then tacking on amendments to a totally separate bit of legislation—however, the right to farm part of the bill we cannot see how it will protect the sector of the community that it claims to be protecting, or will protect.

Mr DAVID SHOEBRIDGE: I want to ask about the scope of the new provision, the new 4C which is about the offence of directing, inciting, counselling, procuring or inducing the commission of an offence under section 4B. What is your understanding of the scope of that provision? What sort of conduct would be captured by concepts of incitement or inducement?

Ms WARD: With such questions I turn to explanatory material. If the explanatory material has not demonstrated the kind of conduct that it is attempting, or the mischief that it is attempting to address then it raises the question of what is the conduct that it is purporting to deal with.

Mr DAVID SHOEBRIDGE: Words like "incite", it is not defined but its ordinary meaning is to encourage or to stir up. If you were running a Facebook page where you are talking about, maybe, animal cruelty and how particular farming practices create animal cruelty, then a discussion forms on that on the Facebook page

and people form the view that they will enter onto some land to expose that, would running that Facebook page incite?

Ms WARD: That is one of the questions we have been asking ourselves. Indeed, we are asked very similar questions when considering the Commonwealth's recently proposed—and now law—offences of using a carriage service to incite trespass, I think, damage to property. It was that very question: Where will the line be drawn? This was raised in the parliamentary debates about this very issue. I think one example was if someone re-tweet a tweet, is that going to be inciting? Where does that line start and, indeed, end? For example, an organisation such as ourselves, we defend animal activists. We have a strong record in advocating for animal protection. Will that go to increasing the likelihood that we would be considered to be inciting if we were to do something as completely innocuous as re-posting about, for example, the Aussie farms map?

Mr DAVID SHOEBRIDGE: Will you comment about a variety of words direct, incite, counsel, procure or induce? I think most of them has a more deliberative, conscious actions directed towards a particular outcome but "incite" seems to have potentially the broadest and most dangerous application. Do you agree?

Ms WARD: I agree with that and it goes to the strong concerns that our organisation, and a number of legal organisations raised about very similar offences under Commonwealth law. Of course, that raises the other issue of overlap between our State and Commonwealth law, given that there would be two very similar offences.

Mr DAVID SHOEBRIDGE: The concept of the shield or the defence, however it is described, would apply when somebody, for example, had been undertaking some fairly passive agricultural activities on the side of a large township like grazing, and had been doing that for more than 12 months, and then converted their use to more industrial farming like intensive chicken, intensive piggery or a feed lot as it would create significant odour and loss of amenity to the adjoining township. There would be a defence to any action in nuisance under this bill, would there not, even if the activity had changed so fundamentally?

Ms WARD: That would be my understanding. I think it was pointed out in one of the submissions that as it is currently drafted the so-called shield or defence would apply even where there had been a change in the agricultural activity as long as there had been some agricultural activity, or activities, during that 12 months then it would appear that it would apply.

Mr DAVID SHOEBRIDGE: You can see a rationale, can you not, if somebody has moved next to an intensive chicken operation with odours and smells they have gone into that consciously but if somebody has moved next to an open grazing—

Ms WARD: or a free range chicken which then converts to—

Mr DAVID SHOEBRIDGE: it is much more intense and much more impacting, I assume you would be troubled by removing their rights under nuisance to complain in those circumstances?

Ms WARD: Yes, that would be a serious concern, and again eroding the property rights of the neighbouring properties regarding that and, as far as I can see, quite unjustified. There is no public policy imperative there.

Mr DAVID SHOEBRIDGE: Information from the Government indicated the majority of nuisance cases in New South Wales and, in fact, across the country over the past few years, have actually been about neighbouring farms complaining about spray drift going across their boundaries. Do you have any view about whether people should be able to have an action about spray drift or maybe even GM pollen going into an organic farm?

Ms WARD: The spray drift, in particular, may be something that is not immediately discernible whereas the odour presumably or any visual impact from agricultural activities presumably would be discernible when a new resident purchases a neighbouring property. But it could be that spray drift or some of those other issues are not immediately discernible yet they would not be able to lodge a complaint about those or make a complaint when discovering the impact that it has on the use and enjoyment of their land.

Mr DAVID SHOEBRIDGE: This was not explained in the second reading speech or in the explanatory memorandum but do you know how importing the issue of negligence into a defence to a claim based upon a common law action of nuisance, how on earth that would actually play out in a court?

Ms WARD: It is one of the questions we had. How is this going to work? Will it reduce the impact on the defendant, presumably the person defending any action? Presumably the evidentiary burden would be on them

to produce evidence that they can raise that defence, or rely on it as a defence. We ask the question: How will that be done?

Mr DAVID SHOEBRIDGE: So far as you are aware, is it explained whether the concept of negligence in clause 4 of this bill would require a duty of care between plaintiffs, if you like, and defendants or is there a separate concept of negligence? Do you know how that will work out?

Ms WARD: I do not. I am not sure that anyone does on the evidence that we have seen.

Mr DAVID SHOEBRIDGE: We will find out after some very expensive litigation.

Ms WARD: Exactly, and if the objective of the bill is to prevent that kind of litigation we do not see that it is going to achieve that objective.

The CHAIR: In your submission you spoke about a lack of data to support the rise of farm invasions or trespass from animal activists. You also note that you represent animal activists. Do you have data within your capacity that gives an indication of the rate of these offences coming to court? Is there a rate of recidivism or repeat offenders?

Ms WARD: We have had, I would say, one case where we have represented activists that would fall under the kind of situation that this bill is intending to address. We have had one.

The CHAIR: Any repeat offenders coming through your door?

The CHAIR: One?

Ms WARD: Yes.

The CHAIR: Any case of repeat offenders coming through your door—

The Hon. EMMA HURST: There is one.

The CHAIR: No, in other matters that would not fit into this category in terms of animal activism and protests. You have only had one case in your total history?

Ms WARD: That would be covered by the kind of situations that is contemplated by the bill, it would be one.

The Hon. JOHN GRAHAM: Was that in New South Wales?

Ms WARD: Yes.

The Hon. JOHN GRAHAM: Are you aware of anyone who has been fined under the existing clause 4B aggravated provisions?

Ms WARD: In that case where we were the solicitors for the defendants, they pleaded guilty, and so were fined by the magistrate. But that was overturned at the District Court level.

Mr JUSTIN FIELD: Was that a 4B aggravated offence?

Ms WARD: Yes.

Mr JUSTIN FIELD: Just one, you are aware of?

Ms WARD: One that we have been involved in.

The CHAIR: Any cases involving groups? There is a clause that talks about two or more people and we do know from that day of action that there was a group—

Ms WARD: This was the case that involved more than one person. They were not members of any particular group but it involved more than one person.

Mr JUSTIN FIELD: Why was it overturned?

Ms WARD: It was a very quick decision and the District Court just overturned it. It set aside the sentence at the Magistrates Court level, the Local Court, and recorded no conviction.

The Hon. TREVOR KHAN: So it did not overturn—

Mr DAVID SHOEBRIDGE: It was an appeal on sentence—

Ms WARD: That is right.

The Hon. TREVOR KHAN: It did not overturn. It was a section 10.

Ms WARD: I want to clarify, that is right, it did not overturn because the guilty plea stayed—

The Hon. TREVOR KHAN: Were maintained.

Ms WARD: That is right. It was just a severity appeal, to clarify. The judge was just very quick in his decision and just said they were passionate activists. I think it may have also had to do with their records. None had a criminal record. They were all otherwise very upright members of the community, strong contributors, yes.

Mr JUSTIN FIELD: The question at hand related to interfering or attempting to interfere with the conduct of business or undertaking or did it relate to safety or biosecurity?

Ms WARD: It was alleged interference. I say "alleged" because the District Court also did not accept the business's claim that there had been interference; that they had lost operation time.

The Hon. JOHN GRAHAM: I found your submission useful as it covered a range of areas in the bill. We have then gone on to ask about many of those. I think in the evidence we have had this morning has covered a range of the areas. I want to ask about your observation about the nuisance complaints going to councils. We have been told three nuisance complaints have ended up in court, 800 have gone to councils but this bill really does nothing about the councils.

Ms WARD: So it would appear. That is our impression and that is going by statements by the Legislation Review Committee. That is what we were basing our comments on there that the vast majority go to councils which this bill is not doing anything about.

The Hon. JOHN GRAHAM: It does nothing about that part at all?

Ms WARD: That is right. Not only that it would appear, going back to our previous discussion, it is not even going to prevent the actions in the tort of nuisance from getting to court because it only arises as a defence if that is how it is intended to operate, and that is not clear.

The Hon. JOHN GRAHAM: I am interested in your submission that talks about a range of things that might be a nuisance, some of which were at the lower end, is the truth. You do talk about the use of 1080 baits—which have been banned in other countries. Will you give us a bit more background about where that issue is up to? Is there any additional background you want to put on the record in relation to that?

The Hon. CATHERINE CUSACK: How does the use of 1080 baits relate to the bill?

The Hon. JOHN GRAHAM: The submission of the Animal Defenders Office [ADO] is that the use of baits on a farm may cause a nuisance to a nearby property or farm.

Ms WARD: I think one of the reasons we referred to this is because it is up the severe end of the scale in terms of impact. We have heard horrendous stories of people whose domestic animals have directly or indirectly ingested these poisons and they have watched them die an horrific death. They are powerless to do anything because it is a legal form of so-called pest control. Also it goes to the issue of what some in the agricultural sector may regard as "established practice" but other areas of the community have serious reservations about its use because of its animal welfare impact. We just wanted to highlight that as an example and the raise the question of should these people be deprived of a legal remedy that they would otherwise have had were the bill to be passed.

The Hon. CATHERINE CUSACK: It is a really interesting issue for me. If your dog goes on someone else's property, particularly a sheep farm or something similar, the dog is not supposed to be on the property. Surely it is the owner's responsibility to keep the dog off other people's property?

Ms WARD: That is certainly one example of where unintended, shall we say, poisoning occurs. But we know of one particularly, again, horrible case where there were three dogs. Two of the dogs got out and were actually, I think, in an area where mining was occurring. The mining company laid the baits. The two dogs ingested the poison, came back, vomited the poison and the third dog that had remained on the property, consumed the dog's vomit and all three died a terrible painful death. So that is an example of where animals may not have even left their owner's property because of the laying of baits in neighbouring areas. It could also be wildlife, for example, may have ingested it and then the dog consume wildlife et cetera.

The Hon. CATHERINE CUSACK: This is where I am coming from. It is seen as absolutely critical in our national parks and a very effective tool against feral animals for those baits. You are probably aware they are dropped in by air in places like that in order to protect native wildlife. It is almost a miracle that it does not affect the marsupials but it does target the feral animals.

Ms WARD: In our view if an animal is sent in and feels then it does not matter what category we give that animal. If it is going to cause incredibly suffering then we would not condone it.

The Hon. CATHERINE CUSACK: I do understand that. That would be a political view, if I can put it like that.

Ms WARD: Exactly, that is right. We were just looking at that example of where—

The Hon. CATHERINE CUSACK: But this is really critical because it is a legal activity.

Ms WARD: Yes.

The Hon. CATHERINE CUSACK: It is political, kind of, opposition to it. The issue of how you protest about that—

Ms WARD: But it is a real issue if you have watched your pet die an excruciating death, and the pet has not even left the property.

Mr DAVID SHOEBRIDGE: We are not talking about protesting, we are talking about the first part of the bill.

The CHAIR: Which is a nuisance.

Mr DAVID SHOEBRIDGE: You are talking at cross purposes—

The Hon. CATHERINE CUSACK: But it not nuisance if it is a legal activity.

Mr DAVID SHOEBRIDGE: It is not a question of protest.

Ms WARD: I think that is the whole point about nuisance claims is where legal activities are occurring but they are affecting the use and enjoyment of the neighbouring properties.

The Hon. LOU AMATO: They bait areas. Recently they baited in my area and the whole area got notification of the poisoning occurring and they state the date it will occur. The whole community is aware of it.

Ms WARD: That is right. I think there is a legal limit of one kilometre—or whatever it may be—but in the case I was referring to earlier it was just outside that so they did not get notification. Unfortunately these situation do occur.

The Hon. LOU AMATO: You ought to have your pets penned up.

Ms WARD: This pet did not leave the property.

The CHAIR: But the other two dogs did?

Ms WARD: That is right. It could have been wildlife or anything so I am just saying that it is possible.

The CHAIR: I do not think the whole defence or shield argument has been touched on. In your view of the bill is this a partial or full defence in terms of the eyes of the law? What are we considering it as—a complete excuse or a mitigating excuse? How does the Animal Defenders Office [ADO] perceive that?

Ms WARD: I am not sure of how it will operate and whether indeed it is even—there is some talk of it in the explanatory material as a defence but there is other talk of it operating more in the full sense of the shield in that it would prevent the actions being brought. But we cannot see how it would operate as that. I cannot answer.

Mr DAVID SHOEBRIDGE: Should it operate like a limitations defence? Or would it operate like some sort of statutory immunity? Do you know how it is going to work?

The CHAIR: That is what I am trying to—

Ms WARD: I presume—if this is what we are getting at—that the plaintive would bring the action and then it would fall to the defendant to provide enough evidence to show that they can avail themselves of this defence in order to then—

Mr DAVID SHOEBRIDGE: Either require a mini trial or be an issue that is decided in the courts.

Ms WARD: That is right. In other words there will be litigation; it will not prevent litigation. That is the concern we have.

The Hon. TREVOR KHAN: Can I just observe, you can never stop people bringing an action. But would you not agree that if properly advised, a plaintiff would have to consider the potential that if you describe this as a defence that the defence may be run and they will bear the costs of any unsuccessful proceedings.

Ms WARD: That is right. I would just be concerned, as an advocate for anyone who may be defending such a claim, how you would meet the evidentiary burden of the defence as it currently is drafted. How is that going to work? I would just raise those questions: Has that been thought through? Is the sector that it is supposed to be protecting comfortable with the burden that this would put on them and do they regard it as a sufficient shield? From what I have seen with the draft and the minimal explanatory note, that is not clear to us.

The Hon. EMMA HURST: Ms Ward, earlier today we heard that there have only been three law cases of nuisance that have gone through and the last one was in 2013. Given there are so few cases, do you think that gives rise for this kind of legislation?

Ms WARD: I would say that would raise the issue of there being a lack of evidence—that it is not evidence-based law; there is not a need that it is addressing.

The CHAIR: Would you not say that the 800 that went to council, which did not necessarily make it to court, generates a discussion about need?

Ms WARD: But this bill is not addressing that.

The CHAIR: I recognise that but the fact that there are 800 that have gone to council, if this is drafted to your satisfaction that addressed those referrals to council, would that be helpful in reducing in the 800 that went to council? That is my question.

Ms WARD: To be satisfied that it is based on a sound need that it is addressing, I would like to see—the number of 800 seems large compared to three, but is that compared to how many agricultural enterprises are out there? The number may be minuscule compared to the number of properties against which such complaints could be made. It would be more evidence like that, that I would want to see to be satisfied that there is a need that the legislation would be addressing.

The Hon. EMMA HURST: You mention more broadly in your submission that this right to farm legislation is more about appealing to constituents than responding to a genuine, evidence-based need for the legislation as a whole. Can you discuss your thoughts around that a bit more?

Ms WARD: Yes, it goes to the points that we have already been discussing today and that is that it does not seem as though it will address what may be legitimate concerns by one sector in our community. If you look at the history or some recent attempts—we noted that in 2005 The National's tried to get a similar bill, also called "right to farm", and that was not viewed as essential or necessary then. In 2015 another political party raised the issue again and nothing came of it. It seems to be one of those convenient political slogans that a lot can be hung off, but there may not be the substance there to warrant changing the law.

The Hon. EMMA HURST: Do you think that animal advocates are being unfairly targeted by the Government through this bill?

Ms WARD: The first part of the proposed right to farm legislation does not have anything to do with animal advocates because it is about neighbouring nuisance claims. The second part could apply to anyone who trespasses on farms. This is the strange disparity: While the second reading speech and some of the explanatory material mentions animal activists, because of that lack of evidence of the incidence or prevalence of that kind of activity and also the fact that there is more evidence about other sectors of the community engaging in farm trespass, the rhetoric can try to target animal activist but, again, I do not see that there is any substance there.

The Hon. EMMA HURST: What do you think would be a more effective means of preventing trespass from all groups—from hunting to animal advocates? Is there a better piece of legislation we could be considering?

Ms WARD: That is a complex question in that it could again go to issue of enforcement of existing laws, given that many of the legal organisations who have commented have pointed to existing laws out there. So it may be a question of enforcement. When we do look at animal activists—if we want to accept the rhetoric

behind the bill, that it is about trying to curtail or stop people concerned about the treatment of animals from entering those premises or properties—then two things: Firstly, we need to have a look at the enforcement of our existing laws because that is the problem and it distinguishes it from other areas of concern—we have animal welfare laws but they are not adequately enforced, or enforced at all, when it comes to farm animals. Secondly, we need to consider ways to increase transparency and visibility. That would go a very long way to stopping these activities. It is that combination of issues: the lack of enforcement and the lack of transparency regarding the way in which farm animals are treated.

The Hon. CATHERINE CUSACK: That was a great question, thanks. You referred earlier to legitimate concerns of one sector—being the agricultural sector. I just wondered if you could tell us what you think those legitimate concerns are?

Ms WARD: I would say that their concerns are that their industry is under threat; that is the concern. It is not the alleged trespassers because there simply is not evidence of—I think it was in the second reading speech there was reference to families being intimidated in the middle of the night. I would like to see where that evidence is because I have not seen it. Personally, I think the legitimate concern is that the general community is concerned about the way we treat animals that we use.

Mr DAVID SHOEBRIDGE: And there are existing, quite significant, criminal penalties if somebody is intimidating somebody in their home, well outside of trespass.

Ms WARD: Absolutely, and as a member of the committee I would share those. I live in inner north Canberra and the house next door to me, which happens to be where my parents live, they were attacked; they had tent pegs thrown through their window at 3.00 a.m.—I happened to be up working so I heard it—and it happened to be by some schoolkids because they knew that my niece also lived in the same premises. My aged parents were in that room. There is no special law protecting us living in the inner north in Canberra, but I share those concerns about if there are vigilantes or attacks on people where people live while they are sleeping in their beds at night.

The CHAIR: What about where people work? We have noted there was a case reported in the media where they went into the abattoir and chained themselves to equipment. You said that you do not endorse people going in and intimidating people where they live. What about where people work?

Ms WARD: Did any intimidation occur?

The CHAIR: I am not too sure in that situation, but if it was to occur—

Ms WARD: Intimidation anywhere is not to be condoned in any workplace or in any situation. So in that sense they are legitimate concerns, but concerns raised in other submissions as well is why focus on one sector unless there is compelling evidence for the need to do that?

Mr DAVID SHOEBRIDGE: And section 545B of the Crimes Act already makes it an offence to intimidate somebody with a view to—

The CHAIR: That is why I wanted to get her to elucidate that.

The Hon. EMMA HURST: Have you ever seen any cases of animal advocates specifically being found guilty of intimidation?

Ms WARD: Absolutely none—

The CHAIR: There has only been one case apparently.

Ms WARD: —that we were involved in. There may only be one.

The Hon. CATHERINE CUSACK: Can I come back again to what you said earlier about compliance in the existing regime, which I guess you are saying this would be a better alternative route to going down to the legislation that is before Parliament, as I understand it? What would a better compliance regime look like?

Ms WARD: This is getting out of our area of expertise because my understanding regarding the farm trespass situation is that it is other groups or people who are conducting that trespass—in other words, the illegal hunting. We have spoken to police and we are in furious agreement about the scourge that these illegal hunters present. The police are very unhappy with this situation. Everybody shares that frustration, but it is out of my area of expertise to know what would be the best way to tackle that more prevalent incidence of farm trespass.

Mr DAVID SHOEBRIDGE: Some of that is about adequate policing resources compared to a single police officer.

Ms WARD: Exactly. In rural areas—

Mr DAVID SHOEBRIDGE: A single police officer is prohibited by work health and safety requirements from going out by themselves and confronting a situation where there may be some armed trespassers. There is basically a direction saying they are not allowed to go out by themselves. So adequate police resourcing would be one solution, would it not?

Ms WARD: I agree.

The CHAIR: That is bang on time. Thank you, Ms Ward, for your candour and your answers.

(The witness withdrew.)

RACHEL WALMSLEY, Policy and Law Reform Director, Environmental Defenders Office NSW, affirmed and examined

CHRIS GAMBIAN, Chief Executive, Nature Conservation Council of NSW, sworn and examined

KATE MINTER, Executive Officer, Unions NSW, affirmed and examined

PAULINE WRIGHT, President, NSW Council for Civil Liberties, affirmed and examined

The CHAIR: We will now proceed to opening statements.

Ms WRIGHT: Thank you very much. NSW Council for Liberties thanks you for the opportunity to address you here today. The Right to Farm Bill 2019 includes, broadly, two substantive areas of change. Firstly, it introduces provisions which give immunity to certain agricultural practices against the tort of nuisance. Secondly, it revises certain provisions of the Inclosed Lands Protection Act 1901 to broaden the application of certain offences and significantly increase the penalties for trespassing on inclosed lands. It also introduces the offence of directing, inciting, counselling or procuring or inducing the commission of aggravated unlawful entry.

The focus of the NSW Council for Civil Liberties submission was on the second part, set out in schedule two of the bill, which might, for convenience, be referred to as, we are calling it, "anti-protest provisions", but we also have some comments to make with respect to the nuisance provisions which do affect farmers and other people living in rural areas. I will deal firstly with major concerns regarding the anti-protest provisions. Broadly, those concerns are that the provisions appear to be a crackdown against free speech and basic principles of democratic governance including the fact that the objective of the laws seems to be to stifle political communication about the organisation of environmental and animal rights protest, which is contrary to implied right to freedom of political expression under our Constitution.

Existing trespass and other criminal laws already criminalise the activity the subject of the bill and the existing penalties, including those in the Inclosed Lands Protection Act, are already quite high; they are certainly sufficient. The Inclosed Lands Protection Act increase the fines from \$550 in 2016 all the way up to \$5,500, which is already a large fine. The bill is not limited to activists protesting on farms; it extends to any entry without authority, or staying after being asked to leave, on any inclosed lands, and that includes public places that are enclosed with a fence or even a temporary barrier.

The bill, we have said, is draconian and disproportionate to the level of criminality it seeks to address and infringes, in our view, at least two core principles of criminal law: that the criminal law should only be used to censure persons for substantial wrongdoing and that the penalty should be proportionate to that; and that laws should be enforced with respect for proportionality to the level of criminality. In this case it seems to us that the proposed new penalties are not proportionate to the level of criminality. We also know from research that draconian penalties do not work as a general deterrent. Those who you might be seeking to stop by these new laws—that is, the ones who want to be unlawful—are not going to be put off by draconian penalties. What it will do though is have a chilling effect on people who are lawful, law-abiding people who want to engage in peaceful protest.

Firstly, looking at the broadening of the aggravated offence to include hindering a business or undertaking. This means that for an offence to amount to an aggravated trespass, all that is required is the hindering of a business or an undertaking on inclosed lands under circumstances where the person has either entered uninvited or been asked to leave. Given that "inclosed land" has a very broad definition, which includes an enclosure formed by a temporary barrier—even on public land—means that the circumstances under which the aggravated offence might occur are very broad indeed. An example of an enclosure formed by temporary barriers was in the WestConnex protests, where the police enclosed certain parts of the protest demonstration with temporary barriers. This bill would criminalise the people who were within that enclosed area and potentially expose them to three years' jail. That is why we say it is disproportionate.

Under these new provisions, peaceful protesters might be subject to very severe offences, including the maximum penalty—which goes up from \$5,500 to \$13,200 and 12 months in jail, or if the offender is with two other people, all the way up to \$22,000 and three years in jail. That is a significant increase in penalty and totally disproportionate to the seriousness of the offence. We think that those are extraordinary fines and criminal penalties for this behaviour. They are harsh and disproportionate and unjustified on that basis. It should be stressed that the undertaking of a business that is taking place within inclosed land need not be agriculture. The bill is not

directed at farms at all, even though, perhaps, that is the intention. It can be any kind of activity. An undertaking is not specifically defined and would, by ordinary understanding, extend to almost anything: It could be a community fair, a worker in hospital, the sitting of Parliament, a concert, a police operation, a protest march, a demonstration or the conduct of a cafe.

By way of example, the forecourt of the barracks in Macquarie Street, Sydney, is an enclosed area because it has a wall around it. Inside that courtyard, as you probably know, there is a cafe, but there is also a large open space that has the character of a town square. That space is open to the public and anybody has the right to enter it. If a group of persons were to gather in the forecourt or engage in a sit-in or other peaceful type of demonstration and were asked to leave because their presence was perceived by the cafe owner to be hindering their business, then they could be exposed to criminal sanction of up to three years in jail if they remained there. That is not what we want to see in New South Wales for peaceful protests. Unlike interfering, hindering is passive; interfering is active—there has to be some kind of intention to do something. Even without intending to cause any disruption or trouble, those people could be guilty of a really serious crime carrying a penalty of up to three years in jail just by their peaceful presence in a place such as that.

The NSW Council for Civil Liberties is very concerned that these provisions may amount to that unwarranted incursion into the right to freedom of political communication or expression that is implied in the Constitution and it is our view that it might, on that basis, be open to constitutional challenge. It is recommended that if the bill is to be made law then amendments should be made to make it really clear that the offences do not apply to genuine, peaceful demonstration or protest. I will move to the nuisance provisions, because I have real concerns about those too. If we are talking about a Right to Farm Bill—

The Hon. JOHN GRAHAM: Chair, I might just stop there. We have read the submissions and I am conscious that this is actually quite a crucial panel so I do not know if we are able to move slightly more rapidly.

Ms WRIGHT: I will be really quick on this. The bill does two things. Firstly, it takes away the right of farmers. For instance, if you have two farms side-by-side and one farm has been doing horticulture for many years and decides to turn itself into a piggery and that causes offensive odour, it takes away the right of that other farm to complain of that nuisance.

Mr DAVID SHOEBRIDGE: Change of use?

Ms WRIGHT: Yes. So it is a really serious abrogation of people's common law rights to the tort of nuisance. Similarly, if there is a nuisance, even if it is a new activity, the court is restricted from making an order to stop the nuisance activity if there can be some other way of managing it—even if it is still offensive. We think that the bill unfairly abridges farmers'—and other people living in rural communities—rights to sue for nuisance.

Ms MINTER: Thank you for the opportunity to appear before the Committee this afternoon. Unions NSW and a number of our affiliated unions have made submissions to the inquiry. Our concerns are directed to schedule 2 to the bill and its impact on the right to protest. We believe that it seriously undermines the right to protest in this State. The expansion of the aggravated unlawful entry offence to include "hindering" captures a broad range of protest and advocacy actions. The exponential increase in penalties and the inclusion of jail sentences are disproportionate to the activities captured and are not aligned with community expectations around the right to protest. The inclusion of these changes in the Inclosed Lands Protection Act means the offences are not restricted to farms: They capture a broad range of public and private land, including shopping centres, parks, universities, TAFEs, hospitals, workplaces and car parks.

Unions and their members have a proud history of organising and participating in protest, including on inclosed lands. We protest to further the rights of our members, oppose cuts from government and employers and to stand up for what we believe is right. Protest has won us many rights and privileges that Australians hold dear today. Under this bill, a number of successful protests would have exposed participants to jail sentences. For example, a coalition of health unions successfully campaigned against this Government's plans to privatise five regional hospitals. The campaign included protest actions attended by hospital staff and community members. We won that campaign. Should the nurses, doctors and hospital workers face jail sentences for participating in protest actions that took place in hospital car parks or nearby parks? Surely such big crowds would have hindered the operation of the hospital or surrounding businesses in some way.

In recent years students and staff on university campuses across our State have protested and stood up against sexual harassment and assault on campus. Pressure has forced many universities to sit up, take notice and make campuses a safer place for students. But those protest actions may have hindered the operation of the university by restricting access to class or encouraging students to attend protests instead of going to class. Should

those young women leaders face criminal penalties for trying to make their place of study a safer place? Union picket lines may take place on inclosed lands. One of Australia's most famous was the Patrick waterfront dispute.

Etched in our industrial history, this dispute was about waterfront workers standing up against an overreach by their employer and government. It had broad public support and occurred on inclosed lands. Should those union members have faced criminal penalties for trying to save their jobs? Students, workers and concerned community members should not face criminal charges for standing up for issues they believe in or encouraging others to do so. This legislation goes too far. Protest works—maybe that is a scary concept for governments. But legislation that seeks to shut down dissent and the right to protest is not an appropriate response and it will not silence us.

Mr GAMBIAN: Thank you Chair and thank you for the opportunity to appear before you today. In 2014 a group of grandmothers joined a massive community protest in Bentley, just outside Lismore. They expressed themselves peacefully by way of a time-honoured tradition of civil disobedience: knitting. However modest their action may have been, the stakes could not have been higher—for thousands of members of the public, from grandmothers to grandchildren, shopkeepers to pensioners, workers, farmers, businesspeople. They were in one of the epic struggles of our generation to protect rich agricultural land from destruction by coal seam gas mining. And they won. The farm gate was left closed to the corporate interests of big business mining companies. If the bill currently before the Legislative Council, mischievously named "Right to Farm", were to pass, the knitting nannas would have committed an offence punishable with three years in jail.

The right to peaceful protest is a cornerstone of our democracy. In a functioning democracy, dissent is tolerated because all of the voices of citizens should be allowed, even if they are not always welcome. We do not have to agree with the message or even the motive, but we accept disagreement. Amplifying a message through direct action that might hinder a normal operation of an institution is accepted as a valid expression of dissent. Laws have always existed to protect property holders against trespass and against unreasonable or dangerous behaviour, and, indeed, the bill under consideration does not create new offences.

The punitive regime contemplated by the bill is excessive in the extreme. It is not in keeping with the Parliament's obligation to balance the legitimate interests of property holders against the legitimate democratic rights of citizens. Some of the most important and iconic struggles of the past century would have seen protesters at risk of three years imprisonment because of this law. To pass this law would be akin to saying that the thousands of citizens who protested at Bentley should have gone to jail, those who saved Terania Creek should have gone to jail, the workers who saved The Rocks should have gone to jail. In my view, the bill appears to have come out because of the ongoing turf war of politicians and parties within this place.

The parliamentarians must rise above the demands of the new cycle or even the electoral contest. Remember that they are the guardians of our freedoms. You have inherited our great democratic tradition that started with the Magna Carta and lives to this day. I urge the Committee to recommend removing provisions relating to increased penalties for aggravated trespass, and if that does not occur I hope the Parliament rejects this bill, to defend our civil liberties.

Ms WALMSLEY: Thank you. As you may know, the Environmental Defenders Office NSW [EDONSW] is a community legal centre and we specialise in public interest environmental law. We provide legal advice on environmental, planning and natural resource management laws to a range of clients including farmers and rural landholders. We also run a Citizen Representation Program that provides specialist legal advice and information about the laws that regulate protest activities concerning the environment. Based on our experience and expertise as specialist lawyers, we have four key areas of concern with the proposed bill. First, we see the bill as unnecessary regulation as there is already sufficient regulation of the conduct purportedly targeted—that is, animal welfare activists trespassing on farms. Our view is that the existing legislative framework deals adequately with relevant offences including trespass, obstruction and criminal damage. We do not support unnecessary or duplicative regulation.

Secondly, we are concerned with the scope of the bill. Despite the purported intention of the bill to target animal welfare activists trespassing on farms, the framing of the aggravated offence is not confined to achieve that objective and can just as easily apply to other kinds of political protesters and protest actions. In addition, the threshold for the commission of the aggravated offence is lowered by the bill from interfering with the conduct of a business while trespassing to simply hindering the conduct of a business or undertaking while trespassing. The application of the offence is therefore extremely broad and potentially covers activities significantly beyond animal welfare activists.

Thirdly, the increased penalties are disproportionate. Despite penalty increases in 2016, which are awaiting statutory review, the bill seeks to increase the maximum fine for aggravated trespass again to \$22,000, with a potential three-year custodial sentence. Such a disproportionate penalty carries with it the potential to create a chilling effect on the preparedness of citizens to participate in legitimate peaceful protest. The framing of the bill is sufficiently wide as to capture protest more broadly rather than what was apparently intended and, therefore, apply disproportionately harsh penalties to a wide range of peaceful protest activities. A bill of such extraordinary breadth must require careful scrutiny in terms of the appropriateness of legislative restraints on the freedom of political communication.

Finally, we are concerned about the potential adverse effects of the proposed immunity from nuisance for agricultural activities. The bill proposes to create a nuisance shield through firstly taking the step of removing any right of recourse to the law of nuisance for certain commercial agricultural activities and, secondly, by modifying the discretion of the court in remedying nuisance. These proposed amendments are not a proportionate response to the problems identified in the second reading speech. The majority of calls we get to the EDO legal advice line concerning nuisance from agricultural activities are actually from neighbouring farmers themselves; so this approach may simply exacerbate those tensions in rural communities. We submit that other options should be applied to address land use conflicts. In light of these concerns, our recommendation is that the bill is unnecessary, disproportionate and should not proceed. If the bill does proceed, amendments are needed and debate on the bill should be deferred until the statutory review of the previous amendments has been completed including by undertaking public consultation and evidence-based analysis of the effect of those amendments. Thank you.

The Hon. JOHN GRAHAM: Firstly, thank you for your submissions, they have been collectively very useful and we have been able to put them to some of the other witnesses prior to you being able to appear. I want to ask questions on a couple of issues you have not covered. First, you have all addressed the scope of this right to protest part of the bill. I want to address one specific issue as it relates to unions though because the agencies turned up this morning and said this does not change what unions can do in workplaces. That is clearly not your view. Do you want to expand on that? What does this practically do to penalise more harshly the work that unions do?

Ms MINTER: We have had limited time to review all the implications of the Act, but our concern is that primarily a lot of the focus has looked at protest actions and collective actions, but it also criminalises the actions of individuals; so union officials visiting worksites perhaps or union representatives having meetings in worksites or slightly off worksites, perhaps in car parks, could be captured by this legislation.

Mr DAVID SHOEBRIDGE: A stop work meeting would interfere with the conduct of a business.

Ms MINTER: Yes.

Mr DAVID SHOEBRIDGE: Unions do that sometimes, is my understanding, and they do it on areas that would meet the definition of inclosed lands. Is that right?

Ms MINTER: Yes, and that is our concern. A various range of union activities given the low threshold of what hindering might capture, absolutely—stop work meetings or union visits, even a union official visiting workers to talk about issues they have about their work could be considered a hindrance.

The Hon. TREVOR KHAN: Can I just ask a question that flows from that? Ms Minter, we will get on to the hinder and interfere because it interests me, although I think it is relatively minor. Section 4B exists in the Inclosed Lands Protection Act now; so apart from that issue as to the insertion of the word "hinder", is there anything else in the bill that causes you concern with regards to an amended section 4B?

Ms MINTER: In 2016, when the amendments were made to include the interfering in section 4B, we raised our concerns then around the actions of unions in workplaces as well as protests. We do continue to have concerns with that entire section.

The Hon. TREVOR KHAN: And I think I remember that then.

Ms MINTER: The exponential increase in penalties to include criminal offences is disproportionate to the offences that you are talking about here.

The Hon. TREVOR KHAN: To include a custodial penalty.

Ms MINTER: Yes.

Mr DAVID SHOEBRIDGE: Jail time.

The Hon. TREVOR KHAN: I understand the concept of custody and jail.

The Hon. JOHN GRAHAM: Thank you for the subtitles, Mr Shoebridge. Is one of the other things that concerns you the new offence of incitement? You have mainly addressed the other issues but I might ask first Ms Minter but then some of the others to address the issue of incitement. What is the scope of this, what activity might it capture, which is currently not captured by the law?

Ms MINTER: It seems incredibly broad. Inciting is including encouraging attendance at events. From a union perspective, union members handing out flyers to attend a rally or an event or a stop work meeting could be captured by this, communications officials of unions putting out notices on Facebook about an event that is occurring, word of mouth—it is so broad what could be captured of inciting someone to participate in an action on inclosed lands. We would be very concerned that we capture the everyday work of unions as well as the broader protest work.

Mr GAMBIAN: I have got some very serious concerns about the scope of that potential provision. On Monday night in Lismore I hosted an event launching our campaign relating to old-growth forests. Ninety or 100 people from Lismore turned up and there was discussion about various forest protests that might take place around the State in the next couple of months. By supporting those protests from the lectern suggesting that people should support the protest wherever they could and participate in them where possible is a pretty legitimate form of democratic freedom, I would have thought. Am I committing a criminal offence potentially under this bill? I would be concerned that I am, yes.

The Hon. JOHN GRAHAM: Finally, Mr Gambian, to go to your example about the coal seam gas activity—and we discussed this earlier in the day—it is not just the knitting nannas who might be affected by those provisions. A really significant number of farmers in those communities and also, in relation to those incitement activities, a significant number of people using social media, particularly Facebook in those North Coast communities, might now face jail time.

Mr GAMBIAN: That is quite right. Let us be blunt: the Bentley blockade would not have succeeded but for the efforts of the farmers. What was at stake was agricultural land. We were not doing anything with that action other than defending the interests of farms. For a farmer to be caught up by a bill that has been erroneously titled "Right to Farm" is anything but the right to farm, in fact. It is abolishing the right of farmers to take protest action.

The Hon. CATHERINE CUSACK: I want to clarify about Bentley that the camps were all on private land with the permission of the farmer who owned that land. I am confused when you say that those actions would be criminalised with this bill—can you explain to me how? Because there was no trespass at Bentley.

Mr GAMBIAN: I was not one of the organisers of the Bentley blockade but the advice that I have been given is that a great amount of the protest took place on private land—

The Hon. CATHERINE CUSACK: With permission.

Mr GAMBIAN: —not always with the permission of the farmers. I could be wrong; I stand to be corrected.

Mr JUSTIN FIELD: The site of the camp was on permitted land but not the site of the blockade.

The Hon. CATHERINE CUSACK: The whole plan there was to block the road—to block the equipment coming through.

Mr GAMBIAN: The point I make is that it is a semantic distinction because the act of protest often takes place on private land—out of necessity in many cases and just by the nature of the places that may be blockaded or protested. Whilst my example might cause you some confusion, I think the broader principle should not.

The Hon. CATHERINE CUSACK: I am just trying to narrow this down a bit because the concerns that have been raised by the panel have overwhelmingly related to hypothesis—if I can put it like that, you might disagree with that word—that this law can apply and will be applied to protesters on public land. Can I reel it back in to protest on private land, where trespass is involved. The advice we had this morning was that those provisions are triggered by an aggravating factor. The trespass itself does not trigger those new penalties—there needs to be an aggravating factor. Just in relation to that specific issue of private land where there is trespassers and an aggravating factor.

Mr GAMBIAN: The definition of an aggravating factor in the legislation that was amended a couple of years ago is in itself pretty broad. It does not take very much to fall foul of that provision. All you would need to do, if this bill goes through, would be to hinder or be perceived to be hindering or even intend to hinder, to fall foul of that provision. If you do it in company—you take a friend along—the punitive measures are even more extreme.

The Hon. CATHERINE CUSACK: But with the aggravating factor you would—

Mr GAMBIAN: Aggravating factor is a misnomer because what we are talking about is somebody conducting a protest. By the very nature of protest, no matter whom you are attempting to protest, you have to do something that gets somebody's attention at some point: It is not a protest if nobody notices. If business goes on as usual you have not really been part of a protest.

The Hon. CATHERINE CUSACK: Holding up a sign in a hospital car park is one thing, blocking the access of the ambulance would, I suggest, be an aggravating factor.

Mr GAMBIAN: The definition of aggravating factor is in the current Act and it is pretty broad.

The Hon. CATHERINE CUSACK: Are there examples of where it has been perversely applied?

Mr GAMBIAN: The Environmental Defenders Office [EDO] might have better information on that than I do.

The Hon. CATHERINE CUSACK: Some actual examples of where it is not working would be very helpful to the inquiry.

Ms WALMSLEY: I am not aware of any.

Ms WRIGHT: An answer to that is that the laws have hardly been used so every example has to be hypothetical.

The Hon. CATHERINE CUSACK: It is not being abused at the moment, would you agree?

Ms MINTER: Our concern is that if they are not being used, then why are they being beefed up and why are the penalties being significantly increased if there has not been any penalty notices issued? There is no evidence that the penalties in their current form are effective at stopping the behaviour.

The Hon. CATHERINE CUSACK: I think the answer is that the Government would say this is targeting trespassers on private land and the right to farm.

The Hon. PENNY SHARPE: It is not private land, it is public land as well—that is the whole point.

The Hon. CATHERINE CUSACK: The hypothesis is that this applies more broadly. That is not what the Government is saying here, is what you are saying? I am trying to get some examples that support the concerns that you have.

Ms MINTER: Our concern is that there is a disconnect between what the legislation is saying and what the Government is saying the legislation is saying. Yes, it has not been applied in the concerning ways that we think it might be to shut down protest, but that does not mean that it will not be, if it becomes law. The chilling effect that has been touched on, which seeks to limit behaviours before they happen, with people being scared to take protest action because they might be facing criminal charges, is a big concern. It does try to seek to shutdown dissent and the ability for people to feel empowered to speak up about government decisions or business decisions they oppose.

Ms WALMSLEY: I understand that the statutory review required of the previous set of amendments is due to commence next month, from November. So that is the perfect question to review: What has the impact been of the previous amendments and are there instances like that? But that information is not currently publicly available.

The Hon. CATHERINE CUSACK: We would be asking you for examples. As a member of the Government I have not noticed any chilling effect.

Mr DAVID SHOEBRIDGE: Ms Wright, there has been a bunch of discussion about private land and public land but neither of those terms are used in the Act. The term is "inclosed lands". Can you tell us the scope of inclosed lands—what it covers?

The Hon. TREVOR KHAN: We got a fair bit of evidence on this this morning. I think there is unanimous agreement that we all understand what inclosed lands means.

The Hon. JOHN GRAHAM: And the agencies have confirmed that the view put by this group about inclosed lands is agreed.

The Hon. TREVOR KHAN: It is a definition in the Act.

Mr DAVID SHOEBRIDGE: I will put something that is not hypothetical: A sit-in at a bank office, designed to make it inconvenient for people to enter or leave a bank branch. Would that amount to section 4 (b)?

Ms WRIGHT: Yes.

The Hon. TREVOR KHAN: There was an example in Coles of an argument over \$1 milk. We do not need an education on inclosed lands.

Mr DAVID SHOEBRIDGE: I will put this proposal, then. Was the issue raised about the prosecution of a group of women who were protesting at WestConnex, where contractors built a fence around them in a park in order to seek to apply the section of the aggravated offence. Are you aware of those circumstances?

Ms WRIGHT: Yes, that was the example I gave in my opening statement. That creates those temporary barricades on public land to create inclosed lands. If it can be said that that is hindering an activity or undertaking then that is the aggravated offence.

The Hon. TREVOR KHAN: I am a bit unclear on the example and the Hon. John Graham asked copious questions this morning on this front, as well. What was not clear to me, for the sake of edification, was if the police—and this is not the test I am applying—actually charged people with remaining on inclosed lands because they were within that temporary fence? Is that your concern? Again, I am not belittling it because of it.

Mr DAVID SHOEBRIDGE: The fence was erected and once it was erected they then directed them again to leave and then they said you are on inclosed lands. That is my understanding of the circumstances.

The Hon. TREVOR KHAN: Right, thank you.

The Hon. CATHERINE CUSACK: Who is they? The police?

Mr DAVID SHOEBRIDGE: The police.

Ms WRIGHT: That is my understanding.

The Hon. TREVOR KHAN: The consequence was that there was no prosecution but it was used as a way of getting people to move on.

The Hon. PENNY SHARPE: Where they could not previously get them to move on.

The Hon. TREVOR KHAN: Yes, I understand the tactic.

Mr DAVID SHOEBRIDGE: An example of a State forest, which is public land—ordinarily you would have access or egress from it. If logging is occurring at a State forest and then a gate is erected or some temporary fencing is erected across just part of the forest, perhaps a part of the forest adjoining a public road, would that convert that land to inclosed lands and therefore make activities—

The Hon. TREVOR KHAN: That would be for a magistrate to decide.

Ms WRIGHT: In my view, it would.

The CHAIR: Most States have partial fencing or partial gates so they already comply.

Mr DAVID SHOEBRIDGE: But that would be inclosed lands?

Ms WRIGHT: Yes.

The Hon. TREVOR KHAN: This may end up as a semantic exercise but a number of you have referred to the issue of the insertion of "hinder" and what that means. We took some evidence this morning from Senior Counsel and her view and that will be available on transcript in due course. I have had difficulty myself in differentiating "hinder" from "interference" and I know you have referred to that. On a quick search this morning, the only one I could find was a decision in *Plunkett v Cromer*, which is a South Australian decision dealing with

hinder, because the normal offence that many of us traffic lawyers deal with is hinder police in the execution of their duties, that sort of one.

In terms of defining "hinder", what the court in that case said was that "hinder" was to make another's performance of an activity substantially more difficult by interference. I end up in this circuitous argument as to how one actually differentiates "hinder" from "interference" when actually the term is used to explain the other. I know you have said it creates some sort of positive obligation. Clearly, in *Plunkett v Cromer* it did not. But if there is anything that you can think of that can direct our mind towards that differentiation, and I know you cannot take questions on notice, I would be really interested to hear.

Ms WRIGHT: My understanding is that "hinder" is a more passive action. If I sit down in front of a door to a cafe I may not be intending to interfere with the business of the cafe but I would be hindering people from entering.

The Hon. TREVOR KHAN: And you would be interfering with people as well.

Ms WRIGHT: Probably not.

Mr DAVID SHOEBRIDGE: If a new word is added the courts will strive to give it a meaning.

The Hon. TREVOR KHAN: Indeed, that is for Senior Counsels' views. You do not have to do Senior Counsels' views. That was her evidence.

Mr JUSTIN FIELD: But, Ms Wright, on what basis did you make the earlier statement that hindering is passive, interfering is active? Was that just based on your own common understanding of those words or on some other reason or argument that you have been privy to?

Ms WRIGHT: Under statutory interpretation, where there are two different words used in a section of a piece of legislation they have got to be given a meaning. They are taken to have a purpose in the piece of legislation. So if "hinder" is sitting there side by side with "interfere", then it has got to have a separate, different meaning to "interfere". You take the ordinary meaning.

The Hon. TREVOR KHAN: I understand the concept. I am just wondering what it is.

Ms WRIGHT: It is not defined.

The CHAIR: Unfortunately, in the dictionary under the word "hinder" it says "to interfere".

The Hon. TREVOR KHAN: That is the difficulty of it.

Ms WALMSLEY: That raises the question: What is the purpose of the amendment?

The Hon. TREVOR KHAN: Parliamentary Counsel do these things.

Ms WALMSLEY: If you have "interfere" in there already, there is no reason to put the word "hinder" in.

Mr DAVID SHOEBRIDGE: I think this conversation has identified the problem.

The CHAIR: Ms Wright, you mentioned in your statement that severe penalties do not deter people committing crimes. Giving someone 15 slaps on the wrist from a soft magistrate, so to speak, probably does not deter them either. In your mind, where is the balance? Where is there a point where the punishment deters the person from repeating or going back and doing that again, in the Civil Liberties opinion?

Ms WRIGHT: There are two kinds of deterrence: one is specific deterrence which is specific to a particular individual; the other one is general deterrence. What I am talking about is general deterrence. There has been a lot of research done to see whether harsh penalties actually stop people in general from committing crimes. It has been found that it does not. The only thing that ever seems to deter people in a general sense is the likelihood that they are going to be caught if they do a certain thing. We know that if somebody thinks they are going to be caught they are not going to do it, but the penalty itself is not something that goes into their minds.

The CHAIR: You would say an increased presence of law enforcement would be more of a deterrent because there is a high chance of them being caught?

Ms WRIGHT: Correct, and CCTV footage and that sort of thing. If people know that there are cameras watching them they are less likely to commit a crime than if there is not.

The Hon. EMMA HURST: Ms Minter, one of my concerns specifically was about the issue that could affect whistleblowers and it relates primarily to people who work in the meat industry, particularly in slaughterhouses. When I used to work for over 10 years in animal advocacy we would often get phone calls from people who worked inside slaughterhouses who said that they had contacted authorities and that they felt that the proper actions had not been taken. So they were calling animal groups to ask them to help them gather the evidence or to gather the evidence themselves. That would fall under incitement for trespass and is looking at a one-year jail term. Do you, as a union group, have concerns about the sort of silencing of whistleblowers within this legislation?

Ms MINTER: I am mindful that submissions were made by the Australian Meat Workers Union, NSW Branch, and also the Newcastle and Northern Branch, who are better to address these issues directly in terms of how they relate to their members. I think that is an interesting element that can be broadly captured by this bill, but we have not turned too much attention to it and I refer to those unions to talk about the impact on their members.

The Hon. EMMA HURST: My other question was to Ms Wright. Your submission highlights the fact that the bill is lacking sufficient justification and you highlight that the so-called risks created by animal advocates raised by the media and by MPs are not really backed by evidence. You give specific examples in regards to most images showing advocates in biosecurity, for example. Can you expand on this and your concerns around that?

Ms WRIGHT: Our concern is that there really does not seem to have been any evidence presented that the animal protesters have caused risks to health and safety by their protests. Firstly, we say that there have been few of those protests—from the evidence that we have been able to gather, there have been not many at all. Secondly, it seems that when the animal protesters do that, they have been filmed and photographed wearing safety coveralls and hair covers and all sorts of things, which are designed, it would seem, to prevent disease coming onto farms.

The Hon. EMMA HURST: So you say that they are kind of low-risk protesters and quite peaceful?

Ms WRIGHT: Yes, that is their intention it would seem.

The CHAIR: Would it also be their intention to circumvent the biosecurity laws by wearing that, do you think?

Mr DAVID SHOEBRIDGE: Or to comply with.

The CHAIR: Or comply—circumvent, comply.

Ms WRIGHT: They are obviously making an effort to comply and to not spread disease. That appears to be their intention.

The Hon. TREVOR KHAN: Or to look like the other workers that are going in and out of the premises.

Ms WRIGHT: I cannot get inside their heads.

The Hon. PENNY SHARPE: Ms Walmsley, you reflected in your submission, and I am very interested in the EDO's experience, of farmers being caught in relation to this bill both in terms of protests they have been involved in and whether you can speak to some of the examples that you have obviously worked with farmers on. Secondly, that nuisance issue as well. We have had a lot of discussion here this morning about how far it goes, whether it is a complete ban, whether it is a partial defence, all of those things. But I am interested in the practical application. What are the kind of nuisance cases that you and the EDO are involved with, particularly when it is a farmer and a change in use with one of their neighbours?

Ms WALMSLEY: As I said in my opening statement, we have a legal advice line for any community members and we do sometimes get calls about nuisance from agricultural activities. Often it is things like chook farms and the high-intensity things, and it is usually a neighbouring farmer who is calling us for advice. So there is that element of it that I spoke to earlier, that the amendments proposed here are going to exacerbate those tensions instead of addressing other methods of addressing land use conflict. We do not see these as helping those day-to-day problems. There was earlier evidence that there have actually only been three nuisance cases—a very small number of cases that have been to court, which I think is a good thing because we should be focusing on other options like alternative dispute resolution and other things that are going to be less aggravating for rural communities.

In terms of farmers themselves and their right to protest, that is becoming increasingly more important. A lot of EDO clients are farmers and landholders who call us, they want information on the law, they want to know what their rights are, they want to know if they are going to get in trouble for speaking out. We get calls saying, "I've been a conservative all my life but there is no water in my river", or, "My neighbour has done this. What can I do? Will I get in trouble if I speak out?" These are genuine people who want to have a healthy catchment, a healthy community; they want information on what the laws are, but they are concerned about taking action.

There are some brave farmers who have been doing successful protesting—we have heard about the CSG work. We have farmers constantly calling us around the Maules Creek area, from the Upper Hunter, who are trying to get information. They see industries in those areas and repeated breaches of mine operating conditions and so forth. They call us, they want to know can they do any action about this, what can they do? They see the mine next door. The fines that are given to mines for polluting and other breaches are usually around \$15,000, if you look at the latest—

The Hon. PENNY SHARPE: Compared to what is here?

Ms WALMSLEY: Yes, I have a list of fines to large for-profit mining companies. They are around \$15,000 for polluting a stream that the farmers use, and we are talking about applying a \$22,000 fine to a group of Knitting Nannas or a group of farmers who want to say, "This mine has polluted our stream". There is a disproportionate way that penalties are applied. Just on the earlier point, a lot of questions have been raised by this Committee about the hypotheticals we are talking about, if we actually had the proper review done of the last raft of amendments that is the perfect place to analyse what these offence provisions are doing, are there aggravated offences, what are the actual implications, is there effective deterrence? Because with the laws we have got, if they are better enforced we might be able to address these issues and strike the right balance without this level of overreach that is proposed in this bill.

Mr JUSTIN FIELD: Ms Wright or Ms Walmsley, the Minister in his second reading speech and certainly the Government this morning keep talking about their intention to protect legal protest in New South Wales. They seem to draw a distinction between legal protest and some other sort of protest. Are you aware of how protest is protected under New South Wales law at the moment?

Ms WRIGHT: Peaceful protest is legal. There are different kinds of protests. If you want to do a street march you have to get permissions. There are certain regulations that you have got to go through if you want to do a march or something down George Street—you need to get permission to do that. So there are those sorts of regulations around it. But peaceful protest is a right.

Mr JUSTIN FIELD: If you were to engage in a protest that involved you trespassing, entering inclosed lands, whilst you might have breached the law you still have a right to conduct that protest, correct?

Ms WRIGHT: That is right. The peaceful protest that is otherwise legal becomes illegal and subject to harsh penalties because of this legislation.

Mr JUSTIN FIELD: You indicated the potential for this bill to fall foul of the Constitution in terms of the implied right of political communication. What aspect of the bill concerns you most with regards to that?

Ms WRIGHT: It is basically the very harsh penalties, which means that it is going to have a chilling effect on people's right to express themselves legitimately and politically, and that is where I think that it falls foul of our Constitutionally implied right to freedom of expression.

The Hon. TREVOR KHAN: Freedom of political communication.

Ms WRIGHT: Political communication, correct.

Mr JUSTIN FIELD: You suggested an amendment to genuinely protect peaceful protest. How would you envisage that sort of protection might be implemented?

Ms WRIGHT: You would probably need to insert it into section 4B as an exclusion. There are other provisions in the bill that criminalise various things and you would just include them in the various—I think 4B, section 201, talks about mines.

Mr JUSTIN FIELD: Have we got examples of that in other areas of New South Wales or in other State laws where that right has been enshrined or a particular protection has been described?

Ms WRIGHT: I would have to take that on notice. I am not aware. Perhaps my colleague Ms Walmsley could comment on that.

Ms WALMSLEY: What examples are you after?

Mr JUSTIN FIELD: Of the right to peaceful protest being specifically prescribed in a piece of legislation or potentially a defence being made clear.

Ms WALMSLEY: I am not aware. We can take that on notice.

The Hon. TREVOR KHAN: It is not a right to protest. It is a right to political communication. It is a related but different concept in terms of falling foul of the implied freedom.

Mr DAVID SHOEBRIDGE: There is a right to protest in the public mind separate to the Constitutional limitation.

The Hon. TREVOR KHAN: That is absolutely right. In the public's mind they are two different concepts. The reason I have taken an interest in it is that two of us were involved in the safe access zone legislation, which clearly raised this issue. If you talk about a right to protest there on a public street, various of the people who will be concerned about political communication at this table were all in favour of preventing a right of protest within 150 metres of an abortion clinic. There was no right to protest. What there was that we had to deal with in that legislation was the implied freedom of political communication and we sought, luckily—more by good luck than management—to strike an appropriate balance.

Mr JUSTIN FIELD: But, as Ms Wright points out, public safety—and in that instance that was the case—is a common and legitimate justification for laws infringed by freedom of political communication.

The Hon. TREVOR KHAN: Indeed.

Mr JUSTIN FIELD: You also mentioned that you do not think in this instance that the public safety argument has been made, and that is where I guess it falls potentially foul of that implied right.

Ms WRIGHT: That is exactly right. We have not seen any evidence that indicates that there has been any threat to safety by these kinds of protests that are intended to be targeted by this bill.

Mr DAVID SHOEBRIDGE: I assume, Ms Wright, that the panel also has issues with proportionality because the response has to be proportionate to the risk. I assume that is part of your broader other concerns, is that right?

Ms WRIGHT: Yes, that is right.

Ms WALMSLEY: I just add on the former question, I think it is possible to differentiate the legislation you are talking about in that that legislation had a very specific location—100 metres from an abortion clinic.

The Hon. TREVOR KHAN: One hundred and fifty.

Ms WALMSLEY: This is talking about inclosed lands.

The Hon. TREVOR KHAN: I understand that argument.

The Hon. CATHERINE CUSACK: The protest concept was the same thing is what he is saying.

Ms WALMSLEY: Absolutely, but having clear legislation and you know what applies when—especially if there are criminal sanctions involved—you need that specificity, and what we are saying is this bill is too vaguely—

The Hon. TREVOR KHAN: I get your argument there.

The CHAIR: I note that some of you have offered to take questions on notice. Because of the tight time frame in terms of this inquiry and putting a report to the upper House, we cannot have questions taken on notice.

Mr DAVID SHOEBRIDGE: Again, thank you for engaging on these issues. Could I ask you about the word "incite" in the proposed new criminal penalty? If that was removed would that lessen your concerns but not remove your concerns about that new criminal penalty? What is your position on that?

Ms WRIGHT: It is not just inciting. I have got to find the actual word.

Mr DAVID SHOEBRIDGE: Direct, incite, counsel, procure or induce.

Ms WRIGHT: Those are quite concerning because they are acts preparatory to the commission of an offence and normally those sorts of incitement provisions go to really serious criminal behaviour like terrorism or really serious violent acts and things like that, whereas in this case it is a kind of summary offence, trespass. It is an act preparatory to a really minor offence, as the law has been seen in the past. We would say that the criminalisation of mere preparatory offences would only be acceptable where they are trying to address very serious offences.

Ms WALMSLEY: I would just add that if you look at the title of the bill and the second reading speech, that paints a picture of vigilantes trespassing on farms in the middle of the night—very direct crimes that potentially need to be addressed. But if you look at the word "incite", that could be someone sending on an email list, far removed from the actual farm site. Again, we need to look specifically at what we are trying to regulate here. Is it really welfare activist activities on a farm, where you are physically there or applying a criminal sanction to someone who is far removed from that actual immediate offence? That is disproportionate.

The Hon. CATHERINE CUSACK: In relation to trespassing, the Government is saying that the case studies that have been used are going onto someone's property in the night and putting hidden cameras somewhere. Would that fall under the definition of trespass and be treated as minor or would you be saying that should trigger break and enter and more serious provisions as a different way dealing with it?

Ms WRIGHT: The criminal law already covers that. If you are breaking into someone's house or their farm, that is a break and enter. It is dealt with by the criminal law in a different way—and so it should be.

The Hon. CATHERINE CUSACK: It is interesting to me that a group of hunters in a vehicle driving onto someone's land or a protester or whatever reason, seems to be called trespass. You will find signs in the bush everywhere, "Trespassers will be prosecuted". Where is the line between what is a break and enter and what is a trespass and would you want people going onto someone's land for a political protest to be treated with break and enter versus someone going onto someone's property to steal their animals for their own personal gain? There are two different motivations to trespassing, if I can put it that way.

Ms WRIGHT: If the motivation for entering onto somebody's property without their permission is to steal or to commit a crime, then the criminal law should be taking care of that. If it is entering for a purpose that is a minor purpose—not to harm anything, not to break anything, not to hurt anybody, not to steal anything but to stand there with a placard—there is a different level of moral culpability that applies. One is trespassing and one is a crime.

The Hon. CATHERINE CUSACK: If I can put it like this: Entering not for a self-serving purpose. They might still go and do stuff because they are so angry about how pigs are treated—they might go and sabotage a piece of machinery or something. But it is not self-serving; it is not a theft.

Ms WRIGHT: If they do that and damage property, then they will be charged with that crime of damaging property.

The Hon. TREVOR KHAN: They might be charged with break and enter and commit a serious indictable offence.

Ms WRIGHT: That is right.

The Hon. CATHERINE CUSACK: What about putting cameras in and not damaging anything? This is getting grey.

Ms WRIGHT: Yes, installing a camera—

The Hon. CATHERINE CUSACK: To get secret evidence.

Ms WRIGHT: There might be surveillance devices issues about that but I am not sure how that would work.

Ms WALMSLEY: Was that not subject to a previous amendment bill?

The Hon. CATHERINE CUSACK: The argument is that this is strengthening the penalties in relation to that activity. I am curious as to whether it should be treated as a criminal matter or as a trespass matter.

Mr DAVID SHOEBRIDGE: Putting unauthorised surveillance devices on somebody's property is a significant breach of the Surveillance Devices Act, which carries a separate penalty. I do not think there is any issue about that.

The Hon. TREVOR KHAN: And trespass is a criminal offence.

Ms WALMSLEY: I think what we are saying is that there are adequate laws in place to address these issues and there is discretion to get the balance right.

The Hon. CATHERINE CUSACK: Are they being enforced ineffectively? Is that the issue?

Ms WALMSLEY: We would need to have a review to confirm that.

Mr DAVID SHOEBRIDGE: Isn't your point that if there are a raft of laws that already criminalise this conduct and there is an existing concern about that conduct in the community, surely we should first look to the enforcement of the existing laws before we create another law that may just sit on the statute books and not address the concern? That is one of your points, is not it?

Ms WRIGHT: It is. There are already existing laws that adequately address the behaviour.

Mr DAVID SHOEBRIDGE: If doing more of the past action by governments has not worked in the past, what will make it work in the future?

Ms WRIGHT: It just means that the existing laws should be enforced if, indeed, there is evidence that there are non-peaceful protests going happening on agricultural premises of the type that you have referred to.

The CHAIR: That is time for this lot of witnesses. Thank you for coming and thank you for your responses.

(The witnesses withdrew.)

(Short adjournment)

FRANKIE SEYMOUR, Co-founder, Animal Protectors Alliance, affirmed and examined

ROBYN SOXSMITH, Co-founder, Animal Protectors Alliance, affirmed and examined

The CHAIR: Welcome back and we welcome our to last witnesses for this afternoon. You can proceed with an opening statement.

Ms SEYMOUR: The Right to Farm Bill and proposed amendments to the Inclosed Lands Protection Act would unreasonably increase penalties for acts of trespass, hindrance and interference, which are consistent with the long, democratic tradition and moral imperative of peaceful protest. It would introduce unreasonable penalties for organising or directing such peaceful protests. If passed, the proposed changes will seriously damage Australian democracy in three significant ways: by discouraging peaceful protest action, by treating farmers as somehow more valued and more vulnerable than anyone else in the Australian community and by denying the public's right to know what is really happening inside inclosed lands such as animal factories and, perhaps, mining sites. Under this bill the penalty for unlawfully rescuing an abused, neglected, sick or injured farm animal would be 40 times higher than the penalty for stealing or killing a farm animal under the Crimes Act.

A responsible government would not increase penalties and introduce new offences to discourage members of the public from rescuing suffering animals and exposing and protesting against animal cruelty. A responsible government would be changing the laws that allow the cruelty and enforcing them, so that such rescue and protest actions are no longer necessary. Although the proposed amendments apply to all inclosed lands, it is clear that the proposed changes are actually intended to spare farmers the embarrassment of so-called "farm invasions", when the routine cruelty of factory farms is exposed by those unlawful entries. This seems to be based on the false premise that farmers provide a more important contribution to Australian society than any other activity or industry. The Animal Protectors Alliance utterly rejects that premise.

Far from being sacrosanct, it is now well understood that animal agriculture is destroying the ecological processes upon which all living things, including humans, depend for their water, food, air and a tolerable climate. A responsible government would be compassionately encouraging and assisting animal producers to transition to less destructive ways of making a living before ecological collapse forces it on them. Animal Protectors Alliance opposes the bill in the name of abused animals, Australian democracy and global survival.

Ms SOXSMITH: What it is needed instead of legislation is to address the underlying cause of animal activism, which is a lack of transparency in animal agriculture that erodes consumer and public trust in industries that exploit and commit acts of extreme violence and cruelty to animals. This includes, but is not limited to: strengthening the whistleblower regime; establishing an independent office of animal protection that is resourced and budgeted; thoroughly reviewing the Prevention of Cruelty to Animals Act and enforcing its provisions; a legislative response requiring high-definition CCTV cameras in all animal use facilities that are monitored independently and streamed live over the internet and made available to the public; animal use facilities to have an open door policy; setting up compulsory, industry-accredited quality assurance protocols such as bio-check and welfare check; a robust regime of reporting cases of animal cruelty; and the Government to help farmers transition to other land uses before all animal production is shut down due to climate change and collapsing ecosystems.

The Hon. EMMA HURST: Thank you both so much for coming and for those opening statements. You mentioned in your submission that there are circumstances where an animal might be suffering but the RSPCA and other authorities are not even lawfully able to intervene because of exemptions within the Prevention of Cruelty to Animals Act. Do you feel that those gaps in the law—where the RSPCA is not able to lawfully act to prevent animal suffering—are one of the reasons for the motivation of animal advocates to trespass to gather evidence or to rescue animals and get them veterinary treatment?

Ms SEYMOUR: As far as I know it is the only reason for those sorts of actions.

The Hon. EMMA HURST: Do you think that the current legislation as it stands will deter animal activists from trespassing?

Ms SEYMOUR: It is hard to say. It would certainly discourage some people; some people it will not. You have to remember, of course, that it is very easy to go into a factory farm and rescue animals without anyone being the wiser, especially since they do not even notice that the animals have been taken. Certainly some people

would be intimidated out of doing it. Generally speaking, you are not going to silence protest by making more severe penalties because the causes will still be there.

The Hon. EMMA HURST: In your opinion, what do you think would need to happen for the Government to try to reduce the trespass? What would be a better way to stop people from wanting to go on to farm properties?

Ms SEYMOUR: I would say some of the things that Ms Soxsmith just mentioned—addressing the animal welfare issues and the animal suffering issues. If the public had a general sense that there was any thought going on in the Government to address the exemptions from the Prevention of Cruelty to Animals Act [POCTA] of offences against cruelty to animals on farms—and it goes for wild animals, too—people would not be so frustrated, disappointed, heartbroken and desperate that they would have to take those risks. People going into these places are taking risks now, especially if they do an open rescue, where they call the police from inside, which is how most of the actions I know about have taken place.

There are risks because you are still facing penalties—appropriate penalties. That is the way the law works. As a protest cause becomes popularised, and that sometimes takes unlawful actions to do, the Government starts to respond. In the meantime, yes, you take a few penalties. The penalties should not be so excessive. Our view is that the entire Inclosed Lands Protection Act needs to be reviewed as well and those penalties reduced back to those that are already covered by the Crimes Act.

The Hon. EMMA HURST: Ms Seymour, you mentioned that once activists are inside they often call the police from inside. Can you expand on why they call the police?

Ms SEYMOUR: They call the police because there are offences being committed against animals that the RSPCA and the police—particularly the police—have not responded to. On one occasion that I am personally aware of, the RSPCA was prevented by police from attending the suffering animals in the battery hen shed. Even though the RSPCA inspector was showing the man the legislation that allowed her to go in, he said "No, if you cross here we will arrest you." It is the failure of the police and the animal welfare authorities and the inspectorates, which is forcing people to take these actions.

The Hon. EMMA HURST: This morning we heard from the NSW Police that the majority of trespass is illegal hunters and the second is theft—farmer-to-farmer theft of animals, for example, or theft of firearms—and they were not sure how many trespasses there were by animal advocates; we could not get a number but we knew that it was much lower down the list compared to these much more likely crimes. Do you think that therefore animal advocates are being unfairly targeted by the Government through this bill, considering there are obviously much bigger issues here with illegal trespass?

Ms SEYMOUR: They are certainly being targeted in the rhetoric surrounding the bill. The actual wording of the bill suggests that it is not singling out animal activists at all; it seems to be addressing everybody including the illegal hunters. But all the rhetoric that surrounded it has indicated that the focus is on animal activism.

The Hon. EMMA HURST: Do you feel that it is appropriate under the bill that individuals who commit an aggravated offence in the company of two or more people will receive significantly harsher penalties than those who act alone—so we are looking at up to three years' jail time and up to 200 penalty units? Just to give you an example, if somebody trespassed onto a farm, shot an animal, dragged that body through the entire farm area, creating biosecurity risks, they have got a firearm on them, compared to, say, two people with a camera, without any weapons and they are in full biosecurity suits, but simply because there are two of them compared to one there is this sudden significant increase?

Ms SEYMOUR: It seems to be totally directed against protests, not necessarily animal protests but all protests because that is the most likely situation where two or more people would be going into an inclosed land.

The CHAIR: If somebody did do what Ms Hurst is describing, in the use of a firearm there would be additional criminal—

The Hon. TREVOR KHAN: We would not have to worry about the Inclosed Lands Protection Act.

The CHAIR: We would not worry about the inclosed lands Act. The illegal discharge of a firearm and possession of such would deliver some serious heavy penalties outside of the inclosed lands Act.

Mr DAVID SHOEBRIDGE: When it comes to people who are passionate about animal welfare, that passion can be so strong that criminal penalties are not going to stop their actions in the protection of animals. Would that be your view?

Ms SEYMOUR: That is absolutely true, yes. As I said, some people would be intimidated by an increase in penalties, but in my view most would not.

Mr DAVID SHOEBRIDGE: Indeed, by the Government moving in this way—many people see this is a political attack against them or activism—does it not run the risk of there being people in the activist community seeing this as an opportunity to gain profile and almost do a martyrdom kind of response to it?

Ms SEYMOUR: I think that is quite likely.

Mr DAVID SHOEBRIDGE: Which would be quite a perverse outcome for the proponents of this bill.

Ms SEYMOUR: There are certainly people who are angry enough to do that.

Ms SOXSMITH: I would agree with that. It would be very sad if that actually happened.

Mr DAVID SHOEBRIDGE: Indeed, putting themselves forward, challenging the extent of the laws, taking it to the High Court, you could see how in fact it may be in some ways perversely encouraging some of that activity by challenging the rights of the term "peaceful protest".

Ms SEYMOUR: Absolutely, and not just in animal activism either.

Mr JUSTIN FIELD: We have heard from the Government this morning and then from a number of other groups, and I must say I am confused about how many of these cases are actually going on in New South Wales. Ms Seymour, you seem to indicate you are aware of a number of these sorts of actions on farms. We have heard that there may not have been any use of the existing inclosed lands provision, or potentially just one, yet the Government seems to be indicating this is happening all the time. I am trying to get a sense of how often this is happening. Are you aware of anyone who has been charged under the aggravated provisions of the inclosed lands Act?

Ms SEYMOUR: Only the case that Ms Ward mentioned earlier.

Mr JUSTIN FIELD: You are aware of just that one as well?

Ms SEYMOUR: I am only aware of that one.

Mr JUSTIN FIELD: And that was in New South Wales?

Ms SEYMOUR: That was in New South Wales. There may be some in other States. Certainly the use of the open rescue to both rescue suffering animals and expose the cruelty inside and to protest against it has been widely used across most Australian States since about the early 1990s.

Mr JUSTIN FIELD: You are aware of more of those actions in New South Wales as well?

Ms SEYMOUR: Yes, there have been many. But, as I said, it is only the open rescues that ever come to the attention of the authorities. It would be they just go in, rescue a few animals that are in a particularly dreadful state and take them to a vet; that is done quite often without anyone being the wiser.

Mr JUSTIN FIELD: The actions that you are aware of that have come to the knowledge of the authorities, how have they been dealing with that up until now?

Ms SEYMOUR: Very, very poorly. For example, as I said, the people in the sheds will call the police. I do not know much about farm invasions on extensive livestock ranges, I have not heard of any.

Mr JUSTIN FIELD: Are you talking about mainly piggeries—

Ms SEYMOUR: Yes, piggeries and batteries. People will go in with the intention of using the opportunity to expose that. A few particularly sick animals will be spirited away before this happens but then the police will be called to come and do something about the offences under the Animal Welfare Act or the Prevention of Cruelty to Animals Act or whichever it is.

Mr JUSTIN FIELD: My question is more to what are the police doing with regards to the actions of the protesters or the activists?

Ms SEYMOUR: Sorry, I misunderstood you. The police will sometimes charge people, sometimes not; it depends largely on how many—if it is 40 or more they probably will not bother.

Mr JUSTIN FIELD: What are they charging them with?

Ms SEYMOUR: Trespass.

Mr JUSTIN FIELD: Just the general 4A trespass elements?

Ms SEYMOUR: Yes.

Mr JUSTIN FIELD: They have not been using the provisions under the 4B aggravated area even though they would have been interfering with the business.

Ms SEYMOUR: Yes. As someone else said earlier, just going on, trespassing, could be considered interfering or hindering just by being there on the premises.

Mr JUSTIN FIELD: But the examples you are aware of they have been charged with trespass, which I assume means they have been given an infringement notice and they have paid a fine?

Ms SEYMOUR: Yes. I am not aware in New South Wales of any actions that have come to the attention of the police, other than the one that Ms Ward mentioned, which have occurred since the Inclosed Lands Protection Act came through.

Mr JUSTIN FIELD: The aggravated provisions came through in 2016.

Ms SEYMOUR: Yes. I cannot speak to whether or not anybody has been charged, other than that one case, under that provision since it has been in force in New South Wales.

Mr JUSTIN FIELD: Do you think it is fair to say that the authorities, the Government, are not even using the laws that they currently have if this is such a problem that they say it is?

Ms SEYMOUR: Exactly.

The CHAIR: Just to clarify, you said that if there are 40 or more or there is a large group the police will not even bother. Do you see that as an indication potentially that there is a lack of resources to administer those infringement notices or arrests or whatever they decide is the action? Do you see that as potentially why they cannot implement the existing laws?

Ms SEYMOUR: I am not aware of their internal processes so I do not know why that has tended to be the case, but it seems like a reasonable explanation.

The CHAIR: It just seems strange that you would catch 40 people in the act of trespass and you would basically say, "See you later. On your way." There seems to be an issue there.

The Hon. TREVOR KHAN: It seems to be incredible, in fact.

Mr JUSTIN FIELD: The suggestion certainly was given this morning by the Government and by the NSW Farmers Association that some of these actions are threatening and intimidating in their nature, that people feel fearful that they might occur. From your experience, have the actions that you are aware of led to confrontations on the farms?

Ms SEYMOUR: No, generally not. Generally the police arrive before or the owners and/or managers of the property do not turn up at all.

Mr JUSTIN FIELD: There is no confrontation and no arguments? There is no one there to feel intimidated by the action in most instances?

Ms SEYMOUR: That would be my view but, of course, I am not aware of everything that has happened; of every action that has ever been brought to the attention of the police since, as I said, these sorts of actions began in the early 1990s.

Mr JUSTIN FIELD: The suggestion also was that often the farm buildings, and most of the ones that you have indicated, it is intensive agriculture often in sheds, are quite close to the homes of farmers. But that does not seem to be the instance in the actions of which you are aware of?

Ms SEYMOUR: I do not know. Sometimes they might be, sometimes they have not been. Sometimes there is a manager's office on the premises but no one actually living on the land at all, on that particular piece of

land at all. I think that would be variable but in my experience, I should say from the ones I know about and have heard of, there have not been confrontations between activists engaged in an open rescue and farmers—if you can call them farmers. Certainly not in the instances where people just go in a rescue some animals and leave again without anyone knowing.

As I said, in an intensive system there are so many animals, the managers do not know whether—I mean in the case of battery cages quite often the ones that are rescued are the ones that have fallen down into the manure pits so they are just losses, as far as the farmer is concerned anyway. No, I am not aware of any confrontations that have taken place but who knows a person who does not leave the house, but they know that a farm invasion is underway, because the police have been called, they might feel a bit intimidated just sitting in their houses. You cannot take responsibility for how people react to these things.

The Hon. TREVOR KHAN: When you are breaking into their property you cannot take responsibility? Surely you have an obligation to take responsibility.

Ms SOXSMITH: In the last 45 years of activists documenting and uncovering abuse on farms and in slaughter houses there has not been a single incident of an activist going anywhere near the homes of farmers.

The CHAIR: Reportedly.

The Hon. TREVOR KHAN: I hear your research.

The Hon. CATHERINE CUSACK: To understand the cause a bit more, what is the actual vision for farming in Australia?

Ms SEYMOUR: I am not sure what you mean, sorry.

The Hon. CATHERINE CUSACK: You talked about animal farming as if it were something that you wished to cease. Is that correct?

Ms SEYMOUR: Absolutely, yes.

Ms SOXSMITH: Yes.

The Hon. CATHERINE CUSACK: I am trying to picture the future, as you see it, in terms of cattle and sheep farming and livestock farming? Where is this going to? We are talking about cruelty protests but what is the big picture? I am entitled to ask this question, Mr David Shoebridge.

Mr DAVID SHOEBRIDGE: Point of order: We could spend the next half hour talking about the future of farming.

The Hon. CATHERINE CUSACK: No, I am asking for their vision. What are the goals of the organisation?

Mr DAVID SHOEBRIDGE: I take the same objection.

The Hon. CATHERINE CUSACK: Because this was the evidence that was given.

Mr DAVID SHOEBRIDGE: The terms of reference of this inquiry is about the bill, not about the future of farming.

The Hon. TREVOR KHAN: He is running protection. If you read page three of their submission you get fairly clear where they see it going.

The Hon. CATHERINE CUSACK: Yes.

The Hon. TREVOR KHAN: We are all going to be eating mung beans.

Mr DAVID SHOEBRIDGE: I am not running protection, I am taking a point of order.

The CHAIR: I want to hear the point of order clearly without interjections and then I can rule on it.

The Hon. TREVOR KHAN: I like lentils.

The Hon. CATHERINE CUSACK: I am trying to understand where the protest is going to end in terms of what is driving the process.

Mr JUSTIN FIELD: To the point of order: We actually traversed this question this morning when a member raised an issue that was directly raised in the submission and the contribution from the person in evidence and a bit of leeway was given.

The Hon. LOU AMATO: You were very generous then too. It should be extended.

The CHAIR: I was. Mr David Shoebidge was not present when I extended that generosity.

Mr DAVID SHOEBRIDGE: Okay I did not know about your earlier broad—

The Hon. TREVOR KHAN: On another occasion when he was not there.

Mr DAVID SHOEBRIDGE: I have been shot down. I will sit here and chomp on my mung bean.

The CHAIR: Given that they volunteered this information in their submission, I think it is warranted but I am conscious of the time.

The Hon. CATHERINE CUSACK: I understand. In terms of the protests, the rescues that you are doing is because of the anxiety of our animals being farmed?

Ms SEYMOUR: Yes.

The Hon. CATHERINE CUSACK: But is trespass and these sorts of strategies likely to be incorporated in a bigger agenda which is just about livestock per se?

Ms SEYMOUR: I have seen no indication that that is likely to happen at the moment. It is certainly the position of our organisation that animal farming has to go in its entirety but none of the protests, that I am aware of, have had that in mind.

The Hon. CATHERINE CUSACK: Evidence has been given by farmers that they have a sense that this form of protest is escalating? Do you agree with that?

Ms SEYMOUR: I would say so, yes.

The Hon. CATHERINE CUSACK: And that the movement is getting larger and becoming kind of more, I think your word was, frustrated?

Ms SEYMOUR: Yes, absolutely.

The Hon. EMMA HURST: I would like to ask a follow-up question. Do you think that that growing movement is coming from more consumer awareness about farming practices and a concern from the community about the way that animals are being treated legally or illegally?

Ms SEYMOUR: I think so, especially with the younger generation. I think that they are very, very aware.

The Hon. TREVOR KHAN: They do not even know where milk comes from.

The CHAIR: From almonds.

Ms SEYMOUR: I have to say, that that would not be the case if we had not had 20 to 30 years of people going in and bringing out the evidence both in the form of veterinary reports on the animals rescued and in the form of footage and photographs of the conditions inside those places.

The Hon. CATHERINE CUSACK: I want to ask about that as well. How do people identify where they are going and, not go through someone's front gate, but they seem to have a knowledge of where they are going or what they are looking for. Are groups working together or is it coming from employees? Would you provide the Committee with more information about how this is formulated in the first place?

Ms SEYMOUR: A lot of these places are laid out in a similar sort of way. Information on the layout gained by one group will then be transferred to other groups. And really it is just a trial and error thing: you check the place out and you see whether there is a way you can get into it without breaking anything or damaging anything. In most cases it is easy to get in without doing any damage or causing any distress to anyone or anything. That information gets passed on along with the information brought out about the horrific conditions inside.

The Hon. CATHERINE CUSACK: How many people are in your organisation?

Ms SEYMOUR: Our particular organisation has about 300.

The Hon. CATHERINE CUSACK: Would you describe them as activists?

Ms SEYMOUR: Some are, some are not.

The Hon. CATHERINE CUSACK: Are they throughout the State?

Ms SEYMOUR: No, it is actually an international organisation.

The Hon. CATHERINE CUSACK: In terms of New South Wales and geography where people are located and where premises are targeted, are there different groups? Do you work together?

Ms SEYMOUR: Yes, there are lots of individuals who get involved in this sort of thing without actually being members of groups and then there are others who do it in groups.

The Hon. CATHERINE CUSACK: Just acting alone?

Ms SEYMOUR: Yes.

The CHAIR: From your response to a question from the Hon. Catherine Cusack, would you then agree that your group's actions and that of other groups have become more organised and pre-meditated and I guess more carefully planned out?

Ms SEYMOUR: As an organisation we do not do anything like that. We do not do any entries. Some members of our group do and do it as individuals. Some do it as members of other groups.

The CHAIR: You just said that groups share information.

Ms SEYMOUR: Yes.

The CHAIR: Is that as far as it extends in terms of your group's involvement in those individual actions?

Ms SEYMOUR: Yes.

The Hon. EMMA HURST: Can I confirm that your organisation is involved in advocating for animal treatment but today you are just providing evidence from things that you have heard but that is not the activities of your organisation?

Ms SEYMOUR: That is correct. It is information that has come to us because of what we are.

The Hon. EMMA HURST: Is it information that you are aware of from people who have gone in and rescued?

Ms SEYMOUR: Yes.

The Hon. EMMA HURST: But you are not saying that your organisation does.

Ms SEYMOUR: No.

The Hon. CATHERINE CUSACK: I was not going there; do not worry.

The Hon. EMMA HURST: I just wanted to clarify.

The CHAIR: That is an important clarification.

The Hon. CATHERINE CUSACK: We have heard evidence—or a suggestion, an allegation—that when people do get fined there is financial support, potentially, to help them pay those fines.

Ms SEYMOUR: Sometimes the group they are part of, or their friends, will rally around and try to help them out, but there is nothing formal. There is no formal fundraising for that purpose.

Mr JUSTIN FIELD: You are not aware of international groups or foreign bodies providing funds to pay fines in Australia.

Ms SEYMOUR: I have never heard of anything like that.

Mr JUSTIN FIELD: I suspected as much.

Mr DAVID SHOEBRIDGE: The United Nations.

Mr JUSTIN FIELD: That was the strange suggestion we got this morning.

The Hon. EMMA HURST: That was a suggestion that we had earlier today. I think that was why Mr Field was clarifying.

The Hon. JOHN GRAHAM: Thank you for your submission. We certainly found it helpful earlier in the day as we were asking questions, particularly of the agencies. I mainly wanted to ask—following on from where my colleague was asking—about the change in the scope of these sorts of activities. We are interested just in New South Wales. Obviously there have been some incidents in other States, but just in New South Wales, I do not feel like we have been given a very good feel for whether the number of incidents is actually increasing. Certainly I think the discussion around them is. Certainly I accept the fear about whether or not this is going on. Those two things are increasing but is there any other information you would like to put on the record about the scope of these sorts of activities?

Ms SOXSMITH: I would just like to say that no statistical evidence is available on the number of incidents of trespass due to animal activism. There is none.

The Hon. JOHN GRAHAM: Okay. Thank you.

The Hon. TREVOR KHAN: You quoted some figures before. Were they non-statistical figures?

Ms SOXSMITH: My previous comment was that in 44 years of activists documenting and uncovering views on farms and in slaughter houses there has not been a single incident of an activist going anywhere near the homes of farmers.

The Hon. TREVOR KHAN: Well, that is a statistical figure of nil, I would say.

Mr DAVID SHOEBRIDGE: The absence of an event is different to a—

The Hon. JOHN GRAHAM: I can tell that it is the end of the day.

Mr JUSTIN FIELD: I think the distinction that was being drawn is that—

The Hon. TREVOR KHAN: I can be objectionable at any time of the day!

Mr JUSTIN FIELD: —even by the Government's own submission, this morning, they did not separate the instances of trespass as a result of animal welfare actions. I think that is the distinction you are drawing—correct?

Ms SOXSMITH: That is correct.

The Hon. EMMA HURST: Can I ask one more question? There have been a lot of people speaking up on behalf of people protesting to protect forests, protesting to protect workers. Do you feel that protesting to protect animals is some kind of a unique group, or do you think that all of those groups deserve the same kinds of rights and freedoms? We also heard earlier today about finding the balance of our laws to make sure that all people are treated equally.

Ms SEYMOUR: Absolutely. We agree with that. People who are involved in animal issues have usually started from being involved in human rights and/or environmental issues.

The CHAIR: I thank you two ladies for your submission and your answers this afternoon. You are free to go.

(The witnesses withdrew.)

The Committee adjourned at 16:18.