

Portfolio Committee No. 4 - Industry

# **Right to Farm Bill 2019**

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## Terms of reference

That:

- (a) the provisions of the Right to Farm Bill 2019 be referred to the Portfolio Committee No. 4 - Industry for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly,
- (c) that the committee report by Monday 21 October 2019, and
- (d) on the report being tabled, a motion may be moved immediately for the first reading and printing of the bill and that the bill proceed through all remaining stages according to standing and sessional orders.

The terms of reference were referred to the committee by the Legislative Council on 24 September 2019.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 24 September 2019, p 445.

## Committee details

### Committee members

<b>Hon Mark Banasiak MLC</b>	Shooter, Fishers and Farmers Party	<i>Chair</i>
<b>Hon Emma Hurst MLC</b>	Animal Justice Party	<i>Deputy Chair</i>
<b>Hon Lou Amato MLC</b>	Liberal Party	
<b>Hon Catherine Cusack MLC</b>	Liberal Party	
<b>Mr Justin Field*</b>	Independent	
<b>Hon John Graham MLC</b>	Australian Labor Party	
<b>Hon Trevor Khan MLC</b>	The Nationals	
<b>Hon Mick Veitch MLC</b>	Australian Labor Party	

\*Mr Justin Field MLC was a participating member for the duration of the inquiry.

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## Chair's foreword

On 24 September 2019, the Legislative Council referred the provisions of the Right to Farm Bill 2019 to Portfolio Committee No. 4 – Industry for inquiry and report.

Through amendments to existing legislation and the creation of a new stand-alone Act, the bill seeks to strengthen protections for farmers to support the important work they do as primary producers of the State's food and other commodities.

During the four week inquiry, the committee received evidence from a cross section of stakeholders in government, industry and the community. There was especially strong community interest in the provisions of the bill, with the committee receiving several thousand proforma letters. The number of submissions and concerns raised speaks to the fact that consideration of the bill was rushed.

The contributions of witnesses and submission authors were enlightening and well-considered, bringing a variety of perspectives to bear on the keys issues and adding much in value to committee deliberations.

As the inquiry unfolded, stakeholders raised a number of concerns about the bill for further consideration and debate as the bill continues its passage through the Parliament.

Referral of the bill enabled the committee to gain a broad understanding of stakeholder perspectives.

I note that subsequent to the committee taking evidence and preparing its report, the bill was amended in the Legislative Assembly on 16 October 2019. The amendments to the bill reflect some of the committee comments and concerns identified by stakeholders as set out in this report.

On behalf of the committee, I wish to express my gratitude to my committee colleagues and all who participated in the inquiry at such short notice.



The Hon Mark Banasiak MLC

**Committee Chair**

## Finding

### Finding 1

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That a statutory review of the 2016 amendments to the *Inclosed Lands Protection Act 1901* was required three years after the commencement of the Act and apparently has not occurred. This review should inform future consideration of the issues dealt with in this bill.

## Recommendation

### Recommendation 1

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That the Legislative Council proceed to debate the Right to Farm Bill 2019, and that the NSW Government address the committee comments and concerns identified by stakeholders as set out in this report, during debate in the House.



## Conduct of inquiry

The Selection of Bills Committee recommended that the provisions of the bill be referred to the committee on 24 September 2019.

On tabling of the Selection of Bills Committee report later that day, the Legislative Council resolved to refer the provisions of the bill to the committee for inquiry and report.

The committee received 391 submissions and 2,829 copies of two different proformas.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts and tabled documents.

The committee heard evidence and prepared its report on the first print of the bill, prior to the bill being amended in the Legislative Assembly on 16 October 2019.



# Chapter 1 Overview

## Reference

- 1.1 The Right to Farm Bill 2019 was introduced into the Legislative Assembly on 17 September 2019 by the Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales.
- 1.2 On 24 September 2019, the Selection of Bills Committee recommended that the provisions of the Right to Farm Bill 2019 be referred to Portfolio Committee No. 4 – Industry for inquiry and report by 21 October 2019.<sup>2</sup>
- 1.3 On tabling the Selection of Bills report that day, the Legislative Council agreed to the motion of committee chair the Hon Natasha Maclaren-Jones MLC, and referred the provisions of the bill to Portfolio Committee No. 4 – Industry.<sup>3</sup>

## Background and purpose of the bill

- 1.4 The Right to Farm Bill 2019 seeks to create a new Act to protect commercial farmers from nuisance claims and amend the *Inclosed Lands Protection Act 1901* to modify certain trespass offences.
- 1.5 The Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales, in his second reading speech, said that farmers and farming businesses require more protection from nuisance claims by neighbours and from 'unlawful disruption by protestors'.<sup>4</sup>
- 1.6 The Minister said that farm trespass is increasing and that protests on farms 'are becoming more organised and more aggressive'.<sup>5</sup> The Minister stated:

Since 2014, according to the Bureau of Crime Statistics and Research, there has been a 27 per cent increase in the number of recorded incidents of trespass on farms and rural properties. The tactics of animal rights groups who trespass on farms are becoming more organised and more aggressive ...<sup>6</sup>

<sup>2</sup> Selection of Bills Committee *Report No. 24 – 24 September 2019*, p 2.

<sup>3</sup> *Minutes*, NSW Legislative Council, 24 September 2019, p 445.

<sup>4</sup> The Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>5</sup> The Hon Adam Marshall MP, Wales, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>6</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

1.7 The Minister emphasised that agricultural work already poses significant risks to safety and that disruption by protestors 'exponentially increases the inherent dangers',<sup>7</sup> stating:

Farms are one of the most dangerous workplaces in Australia. Any increase, even slightly, to the known risks or any change to the integrity of equipment could be catastrophic for farmers, employees and, indeed, for the trespassers themselves.<sup>8</sup>

1.8 The Minister noted that the NSW Government 'fully supports the right to protest' but said that 'the right to protest does not allow, nor excuse, people breaking the law by trespassing on farms and other primary production facilities'.<sup>9</sup>

1.9 Addressing the first part of the bill, the Minister noted the bill would introduce a nuisance shield which would 'help to protect lawful primary producers from conflict and interference caused by neighbours and other land users'.<sup>10</sup>

## Overview of the bill's provisions

1.10 The objects of this bill, as set out in the explanatory note, are as follows:

- a) to prevent an action for the tort of nuisance being brought in relation to a commercial agricultural activity where it is occurring lawfully on agricultural land,
- b) to require a court to consider alternative orders to remedy a commercial agricultural activity that is found to constitute a nuisance rather than order the activity to cease,
- c) to extend the circumstances of aggravation for an offence of entering inclosed lands without permission or failing to leave inclosed lands when requested to do so and to increase the maximum penalty for the aggravated offence,
- d) to create an offence of directing, inciting, procuring or inducing the commission of the aggravated offence,
- e) to modify offences of leaving a gate open on inclosed lands to apply the offences where the gate is removed or disabled, to specify that a gate includes a cattle grid or any moveable thing used to inclose land and to increase the maximum penalties for the offences, and
- f) to specify how proceedings for an offence under the *Inclosed Lands Protection Act 1901* are to be dealt with.<sup>11</sup>

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<sup>7</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>8</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>9</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>10</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 3.

<sup>11</sup> Right to Farm Bill 2019, Explanatory Note, First Print, p 1.

***Right to Farm Act***

- 1.11** The bill would create a new Act – the Right to Farm Act – that modifies common law nuisance. Under the bill, a person could not sue for nuisance for commercial agricultural activity alone, as long as the agricultural activity is lawful, not negligent, and on agricultural land that has been used for agriculture for the last 12 months.
- 1.12** 'Agricultural activity' is defined in the bill as an activity carried out for, or in connection with, agriculture. 'Agriculture' includes aquaculture and forestry.
- 1.13** The proposed Right to Farm Act would also require that, if a claim of nuisance is successful, a court must consider alternatives to ordering that the agricultural activity completely stop.<sup>12</sup>

***Inclosed Lands Protection Act 1901***

- 1.14** Schedule 2 of the bill seeks to amend the *Inclosed Lands Protection Act 1901* by strengthening the offence of aggravated unlawful entry on inclosed lands with increased maximum penalties, additional aggravating factors and a new offence of inciting aggravated unlawful entry.
- 1.15** The bill would add additional aggravating factors – of damage to property and releasing livestock. It also adds 'hindering' to the existing aggravating factor of interfering with business.
- 1.16** The bill increases the maximum penalty for the aggravated offence from 50 penalty units to 120 penalty units or imprisonment for 12 months, or both. It also makes provision for a further maximum penalty (of 200 penalty units or imprisonment for 3 years, or both) if the unlawful aggravated entry involves serious risk to safety or if 'the offender was accompanied by 2 or more persons when the offence occurred'.<sup>13</sup>
- 1.17** The bill also creates a new offence – that of directing, inciting, procuring or inducing aggravated unlawful entry. The maximum penalty for this offence is 100 penalty units or imprisonment for 12 months, or both.
- 1.18** The bill replaces the Act's previous section 5, which provided a penalty for leaving a gate or slip-panel open on inclosed land. The proposed new section 5 creates an offence so that 'a person who enters into or upon the inclosed lands or another person and wilfully or negligently leaves open, removes or disables a gate is guilty of an offence'.<sup>14</sup> The proposed new section 5 also specifies that the term gate may include a cattle grid or 'any moveable thing use to inclose land'.<sup>15</sup>

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<sup>12</sup> Right to Farm Bill 2019, First Print.

<sup>13</sup> Right to Farm Bill 2019, First Print.

<sup>14</sup> Right to Farm Bill 2019, First Print.

<sup>15</sup> Right to Farm Bill 2019, First Print.



## Chapter 2 Key issues

This chapter explores the key issues to emerge from the written and oral evidence, and the varying viewpoints put forward by stakeholders on elements of the bill. It consists of two sections. The first section is a discussion of the proposed nuisance shield. The second section examines the headline concerns raised by participants about the trespass provisions of the bill.

### Nuisance claims

This section provides an overview of the debate around the nuisance provisions in the Right to Farm Bill 2019, starting with how the provisions seek to balance the rights of farmers and their neighbours and the potential deterrence value of the new provisions. This is followed by discussion of the key issues raised by stakeholders regarding the proposed nuisance shield and remedy to be granted by a court.

#### Balancing the rights of farmers and neighbours

- 2.1** Debate around the bill's nuisance provisions focused on balancing the rights of farmers with the rights of their neighbours.
- 2.2** In his second reading speech, the Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales, emphasised the need to protect farmers 'from conflict and interference caused by neighbours and other land users'.<sup>16</sup> The Minister stated that 'complaints about normal and legal farming practices against primary producers occur all over this State and threaten daily operations'.<sup>17</sup>
- 2.3** These claims were supported by submissions from farming industry groups. The Australian Chicken Meat Federation noted that conflicts are extremely disruptive and time consuming,<sup>18</sup> and Australian Pork Limited stated that the bill protects farmers from having to defend against potential vexatious claims.<sup>19</sup>
- 2.4** The National Farmers' Federation said that the measures 'support the right of farmers to conduct lawful business activities without the burden of complaints from neighbours and other third parties'.<sup>20</sup> Similarly, Mr Pete Arkle, Chief Executive Officer of the NSW Farmers' Association, defined the nuisance provisions as 'an important first step towards better management and mitigation of these conflicts'.<sup>21</sup>

<sup>16</sup> The Hon Adam Marshall MP, Minister for Agriculture and Western New South Wales, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 3.

<sup>17</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 3.

<sup>18</sup> Submission 217, Australian Chicken Meat Federation, p 7.

<sup>19</sup> Submission 142, Australian Pork Limited, p 1.

<sup>20</sup> Submission 206, National Farmers' Federation, p 2.

<sup>21</sup> Evidence, Mr Peter Arkle, Chief Executive Officer, NSW Farmers' Association, 3 October 2019, p 16.

- 2.5** In his second reading speech, Minister Marshall noted that 'the realities of farming are often not well understood by those who choose to live near farms'.<sup>22</sup> This sentiment was echoed by the Australian Chicken Meat Federation, which said that noise, smell and sounds are part of the reality of farming.<sup>23</sup> Others, in particular the Environmental Defenders Office NSW and the Animal Defenders Office, noted that nuisance claims may also arise from interference due to flooding, fire and light,<sup>24</sup> as well as harmful substances, such as chemical sprays or pest control baits.<sup>25</sup>
- 2.6** A number of submissions did not think the nuisance provisions in the bill struck the right balance between the rights of farmers and their neighbours. The NSW Bar Association said that clause 4 is 'a blunt instrument that makes no attempt to balance the competing rights and interests of those carrying out commercial agricultural activities and those affected by such activities'.<sup>26</sup> Ms Naomi Sharp SC, Co-Chair, Human Rights Committee, NSW Bar Association argued that the tort of nuisance plays an important role in protecting the rights of people adversely affected by the activities of others on their land, stating:
- 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.<sup>27</sup>
- 2.7** The Environmental Defenders Office NSW observed that the tort of nuisance goes further than a trivial annoyance but is available when there is a 'substantial or unreasonable interference in the use or enjoyment of adjacent land'.<sup>28</sup> Their view was that the bill was a disproportionate response as it 'would allow commercial agricultural operators to substantially and unreasonably interfere with the property rights of the owners of adjacent land (including other agricultural operations)'.<sup>29</sup>
- 2.8** Similar concerns about impacts on the rights of neighbours were shared by other stakeholders. The Humane Society stated that this part of the bill 'provides unfair and unjustifiable benefits to owners and operators of agricultural land',<sup>30</sup> and is unjust by denying compensation to a person who has been wronged.<sup>31</sup> The NSW Council for Civil Liberties characterised the provisions as a significant abrogation of common law rights.<sup>32</sup>

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<sup>22</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 3.

<sup>23</sup> Submission 217, Australian Chicken Meat Federation, p 7.

<sup>24</sup> Submission 144, Environmental Defenders Office NSW, p 3.

<sup>25</sup> Submission 186, Animal Defenders Office, p 3.

<sup>26</sup> Submission 146, NSW Bar Association, para 7.

<sup>27</sup> Evidence, Ms Naomi Sharp SC, Co-Chair, Human Rights Committee, NSW Bar Association, 3 October 2019, p 28.

<sup>28</sup> Submission 144, Environmental Defenders Office NSW, p 3.

<sup>29</sup> Submission 144, Environmental Defenders Office NSW, p 3.

<sup>30</sup> Submission 189, Humane Society International Australia, p 2.

<sup>31</sup> Submission 189, Humane Society International Australia, p 2.

<sup>32</sup> Evidence, Ms Pauline Wright, President, NSW Council for Civil Liberties, 3 October 2019, p 45.



- 2.9** Some organisations pointed out that this provision would affect all neighbours of agricultural lands, including farmers themselves. The NSW Bar Association noted that this includes farmers, as well as corporations and even the Crown.<sup>33</sup> The Environmental Defenders Office NSW advised that the majority of phone calls they receive regarding nuisance from agricultural activities are from neighbouring farmers.<sup>34</sup>
- 2.10** The NSW Council for Civil Liberties said that the bill would mean that a farmer living next to another farmer would not be able to sue them for nuisance,<sup>35</sup> and Ms Pauline Wright, President, NSW Council for Civil Liberties, gave the following example:
- 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.<sup>36</sup>
- 2.11** This example illustrates another concern expressed by witnesses – that neighbours would be unable to sue for nuisance where the use of land had changed from one type of agricultural activity to another. Ms Tara Ward, Executive Director and Managing Solicitor of the Animal Defenders Office noted that the nuisance shield would prevent a person from bringing an action when neighbouring agricultural activity changes to more intensive, disruptive agricultural activity.<sup>37</sup> This was also a concern of the Environmental Defenders Office NSW which recommended that the nuisance provision should only provide a shield for continuing activities of the same nature and intensity.<sup>38</sup>
- 2.12** In response, the NSW Government argued that planning legislation would assist in balancing the rights of neighbours. Mr Scott Hansen, Director General, Department of Primary Industries, gave evidence that a farmer moving from growing a crop to intensive animal production, for example, would trigger a development application which would take into account ways to mitigate things like odour, dust and noise.<sup>39</sup>
- 2.13** The NSW Government also noted that the provisions of the bill do not prevent neighbours from seeking relief through other means. Mr Hansen advised that the bill 'does not remove the right for landholders affected ... utilising existing laws such as the Environmental Planning and Assessment Act 1979'.<sup>40</sup>

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<sup>33</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 28.

<sup>34</sup> Evidence, Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office NSW, 3 October 2019, p 47.

<sup>35</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, 3 October 2019, p 45.

<sup>36</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, 3 October 2019, p 45.

<sup>37</sup> Evidence, Ms Tara Ward, Executive Director and Managing Solicitor, Animal Defenders Office, 3 October 2019, p 37.

<sup>38</sup> Submission 144, Environmental Defenders Office NSW, p 3.

<sup>39</sup> Evidence, Mr Scott Hansen, Director General, Department of Primary Industries, 3 October 2019, p 10.

<sup>40</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 2.

**Deterring nuisance claims**

- 2.14** Stakeholders questioned whether the new provisions would deter nuisance claims. Australian Pork Limited expressed the view that the bill would deter vexatious nuisance claims against farmers.<sup>41</sup> This view was supported by Mr Arkle of the NSW Farmers' Association who stated that the bill 'sends an important signal to people thinking about complaints and thinking about taking civil action against their neighbours'.<sup>42</sup>
- 2.15** On the other hand, concerns were raised by the Humane Society that the provisions would instead deter farmers from containing their agricultural activity to their own land.<sup>43</sup>
- 2.16** There was also a suggestion that the low numbers of nuisance claims to date do not justify the introduction of new provisions to deter these type of claims. Mr Hansen did not dispute the assertion that there have been only three reported nuisance claims in New South Wales.<sup>44</sup> Ms Sharp, on behalf of the NSW Bar Association, responded to a question on the number of nuisance claims, noting: '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 ...'<sup>45</sup>
- 2.17** Mr Arkle, on behalf of the NSW Farmers' Association gave evidence that, while there may have been low numbers of nuisance claims to date, up to 800 complaints have been raised with local councils.<sup>46</sup> Ms Tara Ward, Executive Director and Managing Solicitor, Animal Defenders Office noted, however, that the bill would not prevent complaints being made to local councils,<sup>47</sup> and therefore could not achieve an objective of reducing most nuisance claims.<sup>48</sup>
- 2.18** In response to questioning about this, Mr Hansen conceded that the bill would not prevent the incidence of nuisance claims raised with local councils.<sup>49</sup> Mr Hansen also observed that, despite a low number of current nuisance cases, continued urbanisation and predictions of future population growth presented a risk of future claims.<sup>50</sup>
- 2.19** In discussions around deterring nuisance claims, a number of submission authors advocated for alternatives to court cases in resolving conflicts among farmers and neighbours. These alternatives include improved land use planning laws, as proposed by the Environmental Defenders Office NSW,<sup>51</sup> and the introduction of an agriculture commissioner, as proposed by the NSW Farmers' Association.<sup>52</sup>

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<sup>41</sup> Submission 142, Australian Pork Limited, p 1.

<sup>42</sup> Evidence, Mr Arkle, NSW Farmers' Association, 3 October 2019, p 17.

<sup>43</sup> Submission 189, Humane Society International Australia, p 2.

<sup>44</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 11.

<sup>45</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 33.

<sup>46</sup> Evidence, Mr Arkle, NSW Farmers' Association, 3 October 2019, p 16.

<sup>47</sup> Evidence, Ms Ward, Animal Defenders Office, 3 October 2019, p 39.

<sup>48</sup> Evidence, Ms Ward, Animal Defenders Office, 3 October 2019, p 35.

<sup>49</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 10.

<sup>50</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 10.

<sup>51</sup> Submission 144, Environmental Defenders Office NSW, p 3.

<sup>52</sup> Evidence, Mr Arkle, NSW Farmers' Association, 3 October 2019, p 22.

- 2.20** Ms Sharp of the NSW Bar Association commented that alternative dispute resolution is often far more efficient, cost-effective, and less stressful, than court.<sup>53</sup> Ms Rachel Walmsley, Policy and Law Reform Director, Environmental Defenders Office NSW, observed that it would be 'less aggravating for rural communities'.<sup>54</sup>
- 2.21** The sentiment that the land use planning system is a better way to resolve disputes was echoed in proforma submissions the committee received from individuals objecting to the bill, which argued that the bill 'elevates and prioritises the status of particular commercial ventures above other lawful land uses'.<sup>55</sup> These proformas concluded that 'the planning system is best placed to both set the parameters for sustainable commercial developments, and resolve issues that do arise due to conflict of land use or other complaints'.<sup>56</sup>
- The nuisance shield: a defence or bar to a claim?**
- 2.22** A number of organisations raised questions around how the nuisance shield would work. For example, Ms Ward of the Animal Defenders Office questioned whether the shield prevents a claim for nuisance being brought in the first place or acts as a defence to a claim once the action has been established.<sup>57</sup>
- 2.23** The bill states that 'no action lies in respect of nuisance by reason only of the carrying out of a commercial activity (as long as the activity is carried out lawfully, not negligently, on agricultural land, and on land that has been used for the purposes of agriculture for a period of at least 12 months)'.<sup>58</sup>
- 2.24** The Animal Defenders Office noted that the explanatory note to the bill indicates the section means an action cannot be brought.<sup>59</sup> Ms Sharp of the NSW Bar Association also gave evidence that she interpreted that section of the bill as operating 'to extinguish the cause of action in nuisance'.<sup>60</sup>
- 2.25** In the Minister's second reading speech, however, Minister Marshall stated that the bill 'seeks to protect farmers by providing them with a defence against common law nuisance action'.<sup>61</sup> The NSW Government reiterated this interpretation to the committee, where Mr Hansen said the bill was designed 'to provide a defence against an action for the tort of nuisance ...'.<sup>62</sup>
- 2.26** There was also concern that the bill introduces elements of negligence into the tort of nuisance. According to the NSW Government, 'to be able to access this defence the activity needs to be

<sup>53</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 31.

<sup>54</sup> Evidence, Ms Walmsley, Environmental Defenders Office NSW, 3 October 2019, p 52.

<sup>55</sup> Proforma B, 898 copies received as at 3 October 2019, p 1.

<sup>56</sup> Proforma B, 898 copies received as at 3 October 2019, p 2.

<sup>57</sup> Evidence, Ms Ward, Animal Defenders Office, 3 October 2019, pp 37-38.

<sup>58</sup> Right to Farm Bill 2019, cl 4.

<sup>59</sup> Submission 186, Animal Defenders Office, p 2.

<sup>60</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 31.

<sup>61</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 3.

<sup>62</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 2.

carried out lawfully, not carried out negligently ...'.<sup>63</sup> Ms Ward questioned how this would work in practice and raised concerns that it had the potential to shift the evidentiary burden on to the farmer to prove that they have not been acting negligently or unlawfully.<sup>64</sup>

- 2.27** When asked about how negligence would be defined in these cases, Mr Paul McKnight, Executive Director, Policy, Reform and Legislation, Department of Communities and Justice indicated that negligence 'is a flexible standard' that would be determined by the courts on a case-by-case basis.<sup>65</sup>

### **Remedies for nuisance**

- 2.28** There was also debate around the second part of the bill relating to nuisance – the provision relating to the remedy a court can grant. That section provides that, if a court finds that commercial agricultural activity constitutes a nuisance, the court cannot order that the agricultural activity stop altogether if it can make an order that instead allows the agricultural activity to continue in a modified way.<sup>66</sup>
- 2.29** In his second reading speech, Minister Marshall noted that this section 'sets out conditions a court must consider before ordering farming activities to cease based on nuisance findings related to agricultural production'.<sup>67</sup> In evidence to the committee, Mr Hansen of the Department of Primary Industries noted that this section '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'.<sup>68</sup>
- 2.30** This was described as a 'sensible approach' in the submission by Australian Pork Limited, which approved of the requirement for a court to find alternatives that are 'less onerous to the agricultural business and achieve the same outcome for the community'.<sup>69</sup>
- 2.31** The Environmental Defenders Office NSW, however, argued that the section creates a new test which is different to the 'substantial and unreasonable interference' test for establishing nuisance. The new test is that the court must order a remedy that is 'unlikely to significantly disturb'.<sup>70</sup>
- 2.32** According to the Environmental Defenders Office NSW, this means some degree of the disturbance may continue.<sup>71</sup> This was of particular concern to the NSW Council for Civil

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<sup>63</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 2.

<sup>64</sup> Evidence, Ms Ward, Animal Defenders Office, 3 October 2019, p 38.

<sup>65</sup> Evidence, Mr Paul McKnight, Executive Director, Policy, Reform & Legislation, Department of Communities and Justice, 3 October 2019, p 9.

<sup>66</sup> Right to Farm Bill 2019, cl 5.

<sup>67</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 3.

<sup>68</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 2.

<sup>69</sup> Submission 142, Australian Pork Limited, p 1.

<sup>70</sup> Submission 144, Environmental Defenders Office NSW, p 4.

<sup>71</sup> Submission 144, Environmental Defenders Office NSW, p 4.

Liberties: Ms Wright gave evidence that read together with new section 4, the modified remedy would apply to a nuisance that could be a new, more intrusive agricultural activity.<sup>72</sup>

- 2.33** The Humane Society argued that, as the changes to the nuisance elements in the bill require illegal or negligent activity for a claim of nuisance, to then require a court to order a particular remedy 'compounds this injustice by protecting any illegal or negligent activity ...'.<sup>73</sup>

### **Committee comment**

- 2.34** Agricultural work will always involve some level of disturbance to neighbours. We note the importance of balancing the rights of farmers to be free to do their work and the rights of neighbours to reasonable use and enjoyment of their property.
- 2.35** The committee calls on the NSW Government to address stakeholder concerns about whether this bill strikes the appropriate balance during debate in the House.
- 2.36** We note stakeholder concerns about how the nuisance shield will impact on the rights of neighbouring landholders. To date, there have been low numbers of nuisance claims taken to court, and much higher numbers of complaints made to local councils. We acknowledge the potential for a future increase in land use conflicts and disputes between neighbours in rural areas.
- 2.37** Stakeholders raised questions about how the nuisance shield and remedy will work in practice. We call on the government to clarify how the nuisance shield and remedy would work in practice during debate on the bill. If the bill is passed, we call on the government to closely monitor the implementation of the nuisance shield provisions.
- 2.38** The next section considers elements of the bill relating to farm trespass. Our comments on these aspects of the bill, together with our recommendation on whether the bill should proceed, are outlined at paragraphs 2.105 to 2.111.

## **Farm trespass**

This section discusses the impact of farm trespass as well as specific elements of the bill. Issues concerning the definition of inclosed lands, the adequacy of existing laws and the proportionality of the proposed new laws are considered against the backdrop of growing public interest in animal welfare.

### **Impacts of trespass on farmers**

- 2.39** The financial, emotional and psychological costs of unlawful trespass on farmers and their families – as well as biosecurity risks to livestock – were detailed in submissions and evidence received by the committee.

<sup>72</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, 3 October 2019, p 45.

<sup>73</sup> Submission 189, Humane Society International, p 2.

- 2.40** In his second reading speech, Minister Marshall cited a 27 per cent increase in the number of recorded incidents of trespass on farms and rural properties.<sup>74</sup>
- 2.41** In respect of this increase, the committee notes the evidence from Mr Cameron Whiteside, Detective Inspector and State Crime Rural Coordinator, NSW Police Force, that 'Illegal hunting was the most cited factor associated with the trespass, followed by theft and other associated farm crimes'.<sup>75</sup>
- 2.42** Ms Annabel Johnson of the NSW Farmers' Association detailed anecdotal evidence from various Association members who have been victim to unlawful trespass on their properties. Reading from members' statements, Ms Johnson described the distress, fear, mental anguish and feelings of violation experienced by farmers as a result of unlawful trespass onto their properties:
- 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.
- [...]
- 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.<sup>76</sup>
- 2.43** In relation to these experiences of trespass, Ms Johnson asserted that, in subsequent investigations, no cases of animal cruelty were found on those farms.<sup>77</sup>
- 2.44** One submission author, the owner of a small farm, described trespass as one of the many pressures farmers are subject to, stating 'our own experience includes facing down armed trespassers, never-ending weed invasion from uncontrolled public lands, collecting dead and dying stock killed by domestic and wild dogs ...'.<sup>78</sup>
- 2.45** Reflecting on the peculiarities of rural trespass, Ms Johnson impressed upon the committee that 'the situation of farmers is unique as there is generally a connection between the residence and the business: their workplace is also their home'.<sup>79</sup>

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<sup>74</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>75</sup> Evidence, Mr Cameron Whiteside, Detective Inspector and State Crime Rural Coordinator, NSW Police, 3 October 2019, p 3.

<sup>76</sup> Evidence, Ms Annabel Johnson, Policy Director, NSW Farmers' Association, 3 October p 17.

<sup>77</sup> Evidence, Ms Johnson, NSW Farmers' Association, 3 October p 18.

<sup>78</sup> Submission 256, Name Suppressed, p 1.

<sup>79</sup> Evidence, Ms Johnson, NSW Farmers' Association, 3 October p 17

**2.46** Farmers described instances of trespass which resulted in loss of stock, damages, theft of machinery, and the financial impact this has on agricultural businesses. For example, Mr John Payne stated:

Recently we had a period over several nights, where unknown persons trespassed on our property and callously killed a substantial number of our goat kids, in one case trussing one up before killing them. All just for fun and sport! We staked out our property every night in a hidden location hoping to catch the perpetrators and came close, albeit at great personal risk. Financially it cost us thousands. This is one of several events where people have trespassed and shot our animals for fun, or hunted for pigs or wildlife, with little fear of detection, arrest and prosecution.<sup>80</sup>

**2.47** Equally salient to considerations of impact were risks to safety – the safety of family members, employees, the public and trespassers themselves. Minister Marshall, in his second reading speech, emphasised that agricultural work already poses significant risks to safety and that disruption by protestors 'exponentially increases the inherent dangers'.<sup>81</sup> The NSW Farmers' Association drew attention to the many safety risks within commercial farming properties and the potential for harm, injury or worse when unauthorized persons enter a farm or interfere with farming operations.<sup>82</sup>

**2.48** Commercial farms have strict protocols in place to mitigate biosecurity risks, including access controls to prevent traces of disease being carried onto a property via other animals, unauthorised persons or vehicles.

**2.49** In its submission to the inquiry, Australian Pork Limited emphasised Australia's exemplary biosecurity system and the serious threats to biosecurity from unlawful trespass on farms. In reference to the pork industry, Australian Pork Limited claimed that a biosecurity incursion such as African Swine Fever could result in billions of dollars' worth of damage to the industry.<sup>83</sup>

**2.50** In its submission to the committee, Australian Dairy Farmers expanded on similar biosecurity concerns for the dairy industry, including pain and suffering to animals themselves, stating that:

Animal diseases such as foot-and-mouth (FMD), bovine spongiform encephalopathy (BSE) or mad cow disease, anthrax and others are an ongoing threat to the dairy industry. Any outbreak will cause a degree of pain and suffering, possibly death, to livestock. This reduces animal welfare, farm production, market access and profit for farmers and the supply chain. In some cases, it will also have adverse impacts on human health and the environment.<sup>84</sup>

<sup>80</sup> Submission 178, Mr John Payne, p 1.

<sup>81</sup> The Hon Adam Marshall MP, Second Reading Speech: Right to Farm Bill 2019, 17 September 2019, p 2.

<sup>82</sup> Evidence, Ms Johnson, NSW Farmer's Association, 3 October p 23.

<sup>83</sup> Submission 142, Australian Pork Limited, p 2.

<sup>84</sup> Submission 89, Australia Dairy Farmers, p 6.

### **Transparency around animal welfare**

**2.51** Stakeholders highlighted the increasing public interest in animal welfare outcomes and the need for greater transparency in animal-related agricultural practices. This was often cited in evidence as a counter-balance to the stronger protections for farmers set out in the bill.

**2.52** For example, in its submission, RSPCA Australia noted the increasing levels of public awareness of animal welfare issues and emphasised the importance of public trust, confidence and transparency in animal-related agricultural practices. This organisation concluded that:

Government has a significant role to play in promoting transparency and building trust by ensuring robust animal welfare compliance monitoring systems are in place and that there is public reporting on compliance activities to provide assurances to the community that appropriate standards are being met.<sup>85</sup>

**2.53** In evaluating the objects of the bill, the Animal Defenders Office called for greater transparency in the way animals are treated in commercial agriculture to eliminate the need for the type of protest activities the bill seeks to address:

As an absolute minimum, the ADO submits that CCTV could be installed in animal enterprises and made publicly available.

The ADO submits that requiring transparency in animal-use industries would be a more effective way of dealing with animal advocate activities targeting animal agriculture facilities. This is because transparency would negate the purpose of such activities, being to expose the conditions and treatment of the animals.<sup>86</sup>

**2.54** Ms Sharp, on behalf of the NSW Bar Association, also highlighted the important role that animal activists have played to promote transparency within the industry:

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.<sup>87</sup>

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<sup>85</sup> Submission 191, RSPCA Australia, p 2.

<sup>86</sup> Submission 186, Animal Defenders Office, p 8.

<sup>87</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 27.



**2.55** According to the Humane Society, one of the issues lies with existing animal welfare laws which it considered to be inadequate and therefore ineffective in exposing instances of animal mistreatment:

... it is notable that in response to increased animal activist protest there has been no move by the government to better existing animal welfare laws in order to hold farmers accountable for mistreatment of animals. It is pertinent to recall that the vast majority of producer breaches of animal cruelty laws and standards would not be public knowledge without the efforts of direct activism - activism which has at common law been found to be squarely within the public interest and therefore legal.<sup>88</sup>

**2.56** Stakeholders also highlighted the importance of ensuring the bill does not affect adversely whistleblowers from exposing animal cruelty. For example, Ms Sharp of the NSW Bar Association noted that:

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.<sup>89</sup>

**2.57** Similar animal welfare concerns were raised in submissions by the Animal Justice Party<sup>90</sup>, the NSW Young Lawyers Animal Law Committee<sup>91</sup>, FOUR PAWS<sup>92</sup> and Vegan Australia<sup>93</sup>.

### **Definitions of inclosed lands and trespass**

**2.58** A number of stakeholders raised concerns about how inclosed lands and trespass are defined under the present legislation, noting that while the bill seeks to amend the *Inclosed Lands Protection Act 1901*, the underlying definition of 'inclosed lands' remains unchanged. This point was emphasised by Mr Hansen of the NSW Department of Primary Industries, when he informed that committee that 'what [the bill] does not seek to do is change the definition of inclosed lands.'<sup>94</sup>

**2.59** 'Inclosed lands' is defined by Section 3 of the *Inclosed Lands Protection Act 1901* as:

(a) prescribed premises, or

(b) any land, either public or private, inclosed or surrounded by any fence, wall or other erection, or partly by a fence, wall or other erection and partly by a canal or by some natural feature such as a river or cliff by which its boundaries may be known or recognised, including the whole or part of any building or structure and any land occupied or used in connection with the whole or part of any building or structure.<sup>95</sup>

<sup>88</sup> Submission 189, Humane Society International, p 4.

<sup>89</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 34.

<sup>90</sup> Submission 192, Animal Justice Party, p 17.

<sup>91</sup> Submission 21, NSW Young Lawyers Animal Law Committee, p 8.

<sup>92</sup> Submission 124, FOUR PAWS, p 1.

<sup>93</sup> Submission 125, Vegan Australia, p 6 .

<sup>94</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 2.

<sup>95</sup> *Inclosed Lands Protection Act 1901*, s 3.

**2.60** In the same section, 'prescribed premises' is defined as land occupied or used in connection with any of the following:

- (a) a government school or a registered non-government school within the meaning of the *Education Act 1990*,
- (b) a child care service,
- (c) a hospital,
- (d) a nursing home within the meaning of the *Public Health Act 2010*,

and any building or structure erected on that land, but does not include all or part of any building or structure that is for the time being occupied or used for a purpose unconnected with the conduct of such a school, child care service, hospital or nursing home.<sup>96</sup>

**2.61** Many stakeholders expressed the view that such a definition, as applied to the offence of trespass, was too broad and could apply to any number of private and public places, not just land used for agricultural purposes. These stakeholders suggested that the bill could potentially apply to peaceful protest activities – such as sit-ins, workers' meetings, student rallies and strikes – staged within places captured by the statutory definition of 'inclosed lands'.

**2.62** Unions NSW asserted that the bill goes beyond protecting farmers from trespass, and could restrict union access to workplaces as well as undermining the right to protest more generally:

The Bill goes beyond its stated intention of regulating protest actions on private farms. This Bill restricts and criminalises the right to protest on all inclosed lands. Further, the Bill may restrict union access to workplaces to conduct meetings with and represent the interests of union members. As such, this Bill is an overreach, designed to criminalise dissent and frustrate a legitimate right to protest.<sup>97</sup>

**2.63** The committee received submissions from a number of other unions voicing similar concerns, including the Electrical Trades Union of Australia,<sup>98</sup> the New South Wales Nurses and Midwives Association,<sup>99</sup> the Maritime Union of Australia<sup>100</sup> and the Australian Workers Union.<sup>101</sup>

**2.64** Unions NSW asserted that many of the protest activities not specifically targeted by the bill typically occur in workplaces and, as a result, participants in such activities would be liable for the more serious crime of aggravated trespass and could face harsh penalties including a custodial sentence.<sup>102</sup>

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<sup>96</sup> *Inclosed Lands Protection Act 1901*, s 3.

<sup>97</sup> Submission 188, Unions NSW, p 2.

<sup>98</sup> Submission 129, Electrical Trades Union of Australia, p 2.

<sup>99</sup> Submission 190, New South Wales Nurses and Midwives Association, p 13.

<sup>100</sup> Submission 386, Maritime Union of Australia, p 4.

<sup>101</sup> Submission 390, Australian Workers Union, p 2.

<sup>102</sup> Submission 188, Unions NSW, p 3.

**2.65** The Nature Conservation Council of New South Wales took similar exception with the very broad definition of 'inclosed lands', submitting to the committee that 'it would appear to include even public land closed off with temporary barricades'.<sup>103</sup>

**2.66** This contention was supported by Ms Wright of the NSW Council for Civil Liberties who gave evidence that 'inclosed lands', as defined by the legislation, would apply to public places enclosed by a temporary barrier:

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.<sup>104</sup>

**2.67** In response to assertions about temporary enclosures and whether they would or would not be captured, Mr Hansen of the NSW Department of Primary Industries reiterated that anything that could currently be defined as 'inclosed lands' under the current legislation would also be defined as 'inclosed lands' should the bill be enacted as law.<sup>105</sup>

### **Circumstances of aggravation**

**2.68** In considering the objects of the bill, it is important to understand which offences already exist under the present legislation – and remain unchanged by the bill – and which offences are new.

**2.69** In response to questioning by the committee, Mr McKnight of the Department of Communities and Justice confirmed that the base offence of trespass as set out in Section 4 of the *Inclosed Lands Protection Act 1901* remains unchanged. The bill before parliament does not seek to amend this.<sup>106</sup> Similarly, the offence of 'aggravated' trespass already exists in legislation, with established criteria for aggravation set out in Section 4B of the same Act.

**2.70** The bill seeks to expand the offence of aggravated trespass by introducing new elements of aggravation (as set out in paragraphs 1.14 to 1.18) while also amending Subsection 1 of Section 4B to include the act of 'hindering' the conduct of business. By inserting the word 'hinder' into Subsection 1 of the 4B provisions, the bill creates a new offence of aggravated unlawful trespass which 'hinders', or attempts to 'hinder', the conduct of business.

**2.71** Under the proposed amendments, an act of trespass would therefore be considered aggravated if it either 'interferes with' or 'hinders' the conduct of business.

**2.72** Evidence heard by the committee was divided on the impact of the addition of the word 'hinder' and the difficulties courts may face with interpretation.

<sup>103</sup> Submission 187, Nature Conservation Council of New South Wales, p 1.

<sup>104</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, p 44.

<sup>105</sup> Evidence, Mr Hansen, Department of Primary Industries, 3 October 2019, p 6.

<sup>106</sup> Evidence, Mr McKnight, Department of Communities and Justice, 3 October 2019, p 7.

**2.73** In relation to the addition of the word 'hinder', Ms Sharp of the NSW Bar Association gave evidence that:

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.<sup>107</sup>

**2.74** The NSW Council for Civil Liberties gave evidence that the addition of the word 'hinder' broadened the scope of the provision:

The addition of the element of "hindering" to the Act as proposed by the Bill, imposes a significantly lower threshold than the former test of "interfering with" a business or undertaking in section 4B(1)(a). Hindering is not defined and is so broad as to capture passive, peaceful protests such as sit-ins.<sup>108</sup>

**2.75** The difficulties of interpreting and differentiating these words formed a significant line of questioning at the public hearing. Ms Sharp observed:

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.<sup>109</sup>

**2.76** In giving evidence for the NSW Government, Mr McKnight of the Department of Communities and Justice offered the view that the intention of 'hinder' is to give 'colour' to the types of activities and behaviours targeted: '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'.<sup>110</sup>

### **Adequacy of existing law and penalties**

**2.77** Stakeholders were divided as to the adequacy of existing penalties for farm trespass.

**2.78** A number of farming stakeholders told the committee that the existing laws and penalties are inadequate given the evolving and increasingly sophisticated nature of protest activities targeting alleged animal cruelty on commercial properties in New South Wales, and therefore supported the introduction of the new offence of incitement. This is despite the fact that, as noted earlier, NSW Police identified that illegal hunting – rather than animal activism – is the 'most cited factor associated with the trespass'.<sup>111</sup>

**2.79** In its submission, the Australian Chicken Meat Federation noted the increasing use of digital technologies to gather evidence of alleged animal cruelty, disseminate information online, identify and disclose the location of individual properties and mobilise protestors into action on

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<sup>107</sup> Evidence, Ms Sharp QC, NSW Bar Association, 3 October 2019, p 32..

<sup>108</sup> Submission 145, NSW Council for Civil Liberties, p 5.

<sup>109</sup> Evidence, Ms Sharp SC, NSW Bar Association, 3 October 2019, p 32.

<sup>110</sup> Evidence, Mr McKnight, Department of Communities and Justice, 3 October 2019, pp 4-5.

<sup>111</sup> Evidence, Mr Whiteside, NSW Police, 3 October 2019, p 3.

those properties.<sup>112</sup> In consideration of these issues, the Australian Chicken Meat Federation concluded that 'the existing NSW trespass laws fail to address the culpability of persons who promote or incite others to commit trespass'.<sup>113</sup>

- 2.80** The Australian Chicken Meat Federation expressed strong support for the proposed new offences as set out in the bill before parliament:

The Right to Farm Bill 2019 further extends the protections given to farmers and others involved in agricultural pursuits by creating a new offence for inciting, directing, counselling, inducing or procuring others to trespass. This closes an obvious gap in the current legislation, whereby persons who organise farm trespasses and promote or incite others to commit a trespass, but who do not actually participate in the trespass themselves, are currently effectively guiltless under law, whereas in reality, they are active facilitators of the trespass offence.<sup>114</sup>

- 2.81** Other stakeholders added their voice to calls for new penalties and new offences that recognise the particularity of rural trespass on commercial farms, as distinct from common circumstances of trespass in urban areas. For example, the NSW Farmers' Association gave evidence of the emergence of what they perceived to be a much more insidious and bold form of on-farm protests than has previously been witnessed, claiming that protest groups are becoming increasingly confrontational and threatening to landowners.<sup>115</sup>

- 2.82** As a supporter of the bill, the National Farmers' Federation acknowledged that there are already existing trespass laws in place, but claimed they do not adequately address the particularities of rural trespass on commercial farms.<sup>116</sup>

- 2.83** Writing in support of tougher penalties for farm trespass, Australian Pork Limited highlighted the importance of deterrence:

The adequacy of financial penalties for offenders must be carefully considered so that they achieve the aim of deterring trespass. Crowdfunding and media campaigns have limited the effect of financial penalties as individuals have the capacity to raise thousands of dollars relatively quickly, rendering the penalty redundant.<sup>117</sup>

- 2.84** By contrast, Ms Frankie Seymour from the Animal Protectors Alliance gave evidence that she was not aware of any 'formal fundraising' or groups providing funds to individuals to pay fines.<sup>118</sup>

- 2.85** Other stakeholders expressed contrary views on the need for new trespass laws and increased penalties. For example, in responding to questioning by the committee, Ms Walmsley of the Environmental Defenders Office NSW asserted that the current laws and penalties are adequate:

<sup>112</sup> Submission 217, The Australian Chicken Meat Federation, p 6.

<sup>113</sup> Submission 217, The Australian Chicken Meat Federation, p 6.

<sup>114</sup> Submission 217, The Australian Chicken Meat Federation, p 6.

<sup>115</sup> Evidence, Ms Johnson, NSW Farmers' Association, 3 October 2019, p 21.

<sup>116</sup> Submission 206, National Farmers' Federation, p 2.

<sup>117</sup> Submission 142, Australian Pork Limited, p 2.

<sup>118</sup> Evidence, Ms Frankie Seymore, Co-founder, Animal Protectors Alliance, 3 October 2019, p 63.

... 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.<sup>119</sup>

**2.86** Ms Wright of the NSW Council for Civil Liberties advanced a similar view, stating that:

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.<sup>120</sup>

**2.87** Ms Wright highlighted that the *Inclosed Lands Protection Act 1901* was already amended in 2016 to introduce tougher penalties for the offence of trespass.<sup>121</sup>

**2.88** In its submission to the inquiry, the NSW Young Lawyers Animal Law Committee summarised the effect of the 2016 amendments as being to significantly increase penalties:

The ALC notes that the *Inclosed Lands Protection Act 1901* was already amended in 2016 to address the particular concerns relating to the use of lock on devices and unlawful entry onto private property of the kind the Bill now seeks to address, by way of the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016*. That amending Act introduced section 4B of the ILPA, effectively increasing the penalty from 5 penalty units to 50 penalty units where a person unlawfully entered onto private property for the purpose of interfering with the conduct of the business or undertaking ....<sup>122</sup>

**2.89** A statutory review of the 2016 amendments to the *Inclosed Lands Protection Act 1901* was required three years after the commencement of the Act and apparently has not occurred.<sup>123</sup>

**2.90** A number of submissions from animal welfare bodies, including the Animal Defenders Office, asserted that the rationale for some trespass on agricultural land was the frustration of animal advocates at the disparity between the increased penalties for trespass proposed under the bill and the penalties for animal cruelty set by the *Prevention of Cruelty to Animals Act 1979* which remain some of the lowest in the country.

**2.91** In its submission to the inquiry, the Animal Defenders Office highlighted the disparity between the proposed new penalties for trespass and the existing penalties for animal cruelty:

The ADO notes that the Minister stated in the Second Reading Speech for the Bill that: The suite of measures contained in the Right to Farm Bill 2019 means New South Wales will have the toughest penalties for farm trespass in the country for this sort of offence. The ADO notes that in contrast, animal cruelty penalties under NSW animal welfare

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<sup>119</sup> Evidence Ms Walmsley, Environmental Defenders Office NSW, 3 October 2019, p 46.

<sup>120</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, 3 October 2019, p 44.

<sup>121</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, 3 October 2019, p 44.

<sup>122</sup> Submission 216, NSW Young Lawyers Animal Law Committee, p 4.

<sup>123</sup> *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act 2016*, Sch 3.

laws remain the lowest in the country, and that there would be a significant public interest in increasing these penalties given the high level of concern about the treatment of farm animals in the general community.<sup>124</sup>

### Proportionality of new penalties

**2.92** A key issue raised in evidence is whether the proposed new penalties for trespass are reasonable and proportionate to the seriousness of the offence. As highlighted in paragraph 1.16, the bill significantly increases the maximum penalty for the offence of aggravated unlawful entry on enclosed lands and introduces the possibility of a custodial sentence for the first time.

**2.93** According to the NSW Council for Civil Liberties, one measure of proportionality might be the extent to which the new penalties are commensurate with penalties for other 'minor', 'trivial' or summary offences.<sup>125</sup> This organisation labelled the proposed new penalties as 'draconian' and 'disproportionate' to the seriousness of the offence:

Such criminalisation is beyond justification, particularly in respect to offences as minor and trivial as trespass and hindering an undertaking. Such offences are the subject of summary criminal prosecution in every local court across the country on every day of the working week. In this respect, the proposed legislation is draconian and disproportionate and might be said to infringe at least two of the four core principles of criminalisation ...<sup>126</sup>

**2.94** Submissions from various other stakeholders echoed this view:

- The NSW Bar Association characterised the penalties as 'inappropriate' and 'disproportionate'<sup>127</sup>
- The Nature Conservation Council of New South Wales called them 'disproportionate' and 'anti-democratic'<sup>128</sup>
- The Animal Justice Party referred to the new penalties as 'excessive' and 'disproportionate'<sup>129</sup>
- Ms Kate Minter, Executive Officer, Unions NSW described the new penalties as 'disproportionate to the activities captured' and 'not aligned with community expectations around the right to protest'<sup>130</sup>

**2.95** In giving evidence, Mr Chris Gambian, Chief Executive of the Nature Conservation Council of New South Wales cited the 'Bentley Blockade' – a coal seam gas protest in 2014 near Lismore (NSW) – to bolster the Council's opposition to the proposed new penalties and offences. Referring to a group of grandmothers who took part in this protest, Mr Gambian stated that, if

<sup>124</sup> Submission 186, Animal Defenders Office, p 7.

<sup>125</sup> Submission 145, NSW Council for Civil Liberties, p 7.

<sup>126</sup> Submission 145, NSW Council for Civil Liberties, p 7.

<sup>127</sup> Submission 146, NSW Bar Association, p 4.

<sup>128</sup> Submission 187, Nature Conservation Council of New South Wales, p 2.

<sup>129</sup> Submission 192, Animal Justice Party, p 10.

<sup>130</sup> Evidence, Ms Kate Minter, Executive Officer, Unions NSW, 3 October 2019, p 45.

the bill currently before parliament were to become law, these 'knitting nannas' would have committed an offence punishable with three years in jail.<sup>131</sup>

- 2.96** In its questioning of witnesses, the committee also sought to understand the deterrence value or potential of the proposed new penalties. Ms Wright of the NSW Council for Civil Liberties told the committee that, according to research, harsher penalties have little deterrence value:

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.<sup>132</sup>

### **The chilling effect on the right to protest**

- 2.97** A common thread throughout much of the evidence relates to the potential for the proposed new penalties to stifle or inhibit peaceful protest activities in a range of fields, not just for animal welfare causes. This was referred to at various times throughout the hearing as 'the chilling effect'.
- 2.98** The committee received a large volume of submissions and proformas from individuals objecting to the bill on the basis that it would undermine the right to peaceful protest: 'The right to peacefully protest is a fundamental right of a healthy democracy, but that right is being undermined by provisions within this bill'.<sup>133</sup>
- 2.99** Many submission authors also told the committee they objected to the bill on the basis that it would undermine the right to peaceful protest. They felt that 'the provisions of this bill are anti-democratic and impose upon our fundamental rights',<sup>134</sup> and that 'such draconian laws and disproportionate penalties will prevent many people from participating in peaceful protest'.<sup>135</sup> Submission authors were also concerned that a wide range of protests could be caught up in the provisions, arguing that 'the new Bill will cover anyone protesting'.<sup>136</sup>
- 2.100** Greenpeace Australia opposes the bill before parliament, contending that it will undermine the right to protest which it said has been so important in shaping liberal democracies around the world.<sup>137</sup> In a similar vein, Ms Sharp of the NSW Bar Association impressed upon the committee that the very significant penalties are likely to discourage peaceful protest:

... 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

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<sup>131</sup> Evidence, Mr Chris Gambian, Chief Executive, Nature Conservation Council of New South Wales, 3 October 2019, p 46.

<sup>132</sup> Evidence, Ms Wright, NSW Council for Civil Liberties, 3 October 2019, p 51.

<sup>133</sup> Proforma A, 1,931 copies received as at 3 October 2019.

<sup>134</sup> Submission 325, Ms Petra Jones, p 1.

<sup>135</sup> Submission 299, Name Suppressed, p 2.

<sup>136</sup> Submission 279, Name Suppressed, p 2.

<sup>137</sup> Submission 195, Greenpeace Australia, p 1.



imprisonment. The NSW Bar Association believes that such a penalty is likely to discourage people from exercising their right to peacefully protest.<sup>138</sup>

- 2.101** Ms Sharp further suggested that the Bill in its current form may be considered an infringement on the implied freedom of political communication enshrined in the Constitution.<sup>139</sup> This was a position shared by the Human Rights Law Centre, which considered that the bill could burden the implied freedom of political communication:

Protests about the environment are a form of political communication that is protected in the constitution. [...] In our view, the Committee ought to closely inquire into the extent to which the Bill would prohibit onsite environmental protests, the likes of which were found to be of critical constitutional importance in [Brown v Tasmania]. ... we consider there are real risks the Bill could burden the implied freedom of political communication in a manner that is unconstitutional.<sup>140</sup>

- 2.102** The committee heard evidence that farmers themselves could be caught by the provisions of the bill. In response to questioning by the committee, Mr Gambian of the Nature Conservation Council of New South Wales noted that the many farmers who participated in the 'Bentley Blockade' would be captured by what is being proposed in the bill.<sup>141</sup>

- 2.103** Similarly, commenting on the reach of the new offence of incitement, Ms Sharp formed the view that any farmers who disseminated social media information about the coal seam gas protests could be subject to the incitement provisions set out in the bill.<sup>142</sup>

- 2.104** This concern was shared by a number of other stakeholders, including Unions NSW who argued that:

The offence effectively criminalises the act of organising a peaceful protest. The wording is broad and has a potentially low threshold. Under the current wording it is possible that an individual on social media inviting their friends to a protest event could be liable of a criminal offence. A union official or union communications officer encouraging attendance to a rally or union meeting, may similarly find themselves committing a criminal offence.<sup>143</sup>

### Committee comment

- 2.105** The challenge before the committee in considering the present bill is how to balance the property rights of farmers – and thereby support their essential work as primary producers – with the need for transparency around animal welfare practices on farms.

<sup>138</sup> Evidence, Ms Sharp QC, NSW Bar Association, 3 October 2019, p 28.

<sup>139</sup> Evidence, Ms Sharp QC, NSW Bar Association, 3 October 2019, p 29.

<sup>140</sup> Submission 222, Human Rights Law Centre, p 2.

<sup>141</sup> Evidence, Mr Gambian, Nature Conservation Council of New South Wales, 3 October 2019, pp 46-48.

<sup>142</sup> Evidence, Ms Sharp QC, NSW Bar Association, 3 October 2019, p 32.

<sup>143</sup> Submission 188, Unions NSW, p 6.

- 2.106** We recognise that the longevity and health of this industry is vital in ensuring food security for current and future generations. At the same time, the committee also acknowledges the importance of transparency and the groundswell of public interest in how their food has been produced and farmed animal welfare.
- 2.107** Animal welfare, environmental, union, legal and civil liberties groups all raised concerns about the bill including the definition of 'inclosed lands', which remains unchanged in this bill, and the difficulty of interpreting additional aggravating factors, such as the addition of the word 'hinder' and the creation of the new incitement offence. In particular, stakeholders were concerned about the proportionality of the new penalties and the potential chilling effect on the right to protest.
- 2.108** However, industry supported the bill as it stands, drawing attention to the need for strong laws to address the particular impacts of farm trespass.
- 2.109** A number of stakeholders highlighted the disparity between the increased penalties for trespass proposed under this bill and the comparatively low penalties for animal cruelty in New South Wales. The committee considers that the NSW Government should investigate the enforcement regime under the *Prevention of Cruelty to Animals Act 1979* and consider potential evidence to the Select Committee on Animal Cruelty Laws in New South Wales.
- 2.110** The committee notes that a statutory review of the 2016 amendments to the *Inclosed Lands Protection Act 1901* was required three years after the commencement of the Act and apparently has not occurred. This review should inform future consideration of the issues dealt with in this bill.

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**Finding 1**

That a statutory review of the 2016 amendments to the *Inclosed Lands Protection Act 1901* was required three years after the commencement of the Act and apparently has not occurred. This review should inform future consideration of the issues dealt with in this bill.

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- 2.111** Considering the balance of evidence, the committee recommends that the bill proceed, and the committee's comments and stakeholder concerns be addressed by the NSW Government during debate on the bill.

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**Recommendation 1**

That the Legislative Council proceed to debate the Right to Farm Bill 2019, and that the NSW Government address the committee comments and concerns identified by stakeholders as set out in this report, during debate in the House.

---

## Appendix 1 Submissions

No.	Author
1	Tanya Aitkens
2	Name suppressed
3	Miss Shannon Roberts
4	Ms Lisa Binks
5	Ms Stella Savvas
6	Mrs Rebecca Duffy
7	Natasha Charlton
8	Kim Dutton
9	Name suppressed
10	Name suppressed
11	Name suppressed
12	Miss Sam Whitecotton
13	Mrs Mihaela Kozman
14	Mr John Anderson
15	Miss Roslyn Woodward
16	Name suppressed
17	Ms Kimberley Deeney
18	Name suppressed
19	Mr Ezequiel Tolnay
20	Ms Zoe Daly
21	Name suppressed
22	Paul Hildred
23	Ms Charlotte McCabe
24	Miss Grace Hughes
25	Confidential
26	Name suppressed
27	Dr Christine Townend
28	Lindy Stacker
29	Teresa Kiernan
30	Name suppressed
31	Name suppressed
32	Name suppressed

<b>No.</b>	<b>Author</b>
33	Name suppressed
34	Ms Deborah Olds
35	Ms Marguerite Morgan
36	Name suppressed
37	Ms Julie Pennell
38	Name suppressed
39	Mr Paul Daly
40	Mr Jarryd Gillen
41	Mr Simon Gould
42	Mr Leon Gross
43	Name suppressed
44	Name suppressed
45	Name suppressed
46	Andrew Oxley
47	Ms Judith Clark
48	Mr William Douglas
49	Ms DIANNE BECKER
50	Ms Jane Flitter
51	Mrs Maike Coates
52	Mrs Margaret Mangelsdorf
53	Mr Rohan Laxmanlal
54	Ms Danielle Geagea
55	Name suppressed
56	Miss Nicole Watsom
57	Confidential
58	Name suppressed
59	Name suppressed
60	Ms Tracey Hamilton
61	Ms Anjie Moore
62	Mrs Anne Roberts
63	Ms Kirsten Mackenzie
64	Mr Temple Eyre
65	Ruth Haig
66	Confidential
67	Name suppressed

<b>No.</b>	<b>Author</b>
68	Professor David Brooks
69	Ms Kimberley Constantine
70	Ms Janice Dutton
71	Mrs Davina MacLachlan
72	Mr Joel Carter
73	Mr Douglass Hitchon
74	Mrs Tracey de Wet
75	Ms Franklin Hynes
76	Mr Chris Parker
77	Ms Kay Bromwich
78	Mr David Doyle
79	Miss Paulette Williams
80	Confidential
81	Mr Peter Arthur
82	Mr Karl Augustine
83	Ms Anjie Moore
84	Name suppressed
85	Ms Fiona Jane Mari
86	Mr David Gorbach
87	Name suppressed
88	Name suppressed
89	Australian Dairy Farmers
90	Name suppressed
91	Name suppressed
92	Ms Sabrina Nizeti Panebianco
93	Mr Bill Newell
94	Name suppressed
95	Miss Johanna Evans
96	Name suppressed
97	Name suppressed
98	Name suppressed
99	Michael Bresnik
100	Ms Sandra Ellims
101	Mr Ian Munce
102	Name suppressed

<b>No.</b>	<b>Author</b>
103	Ms Francoise Dupen
104	Name suppressed
105	Ms Lana Williams
106	Ms Sonya King
107	Name suppressed
108	Name suppressed
109	Mr Ian Parisotto
110	Mr Charles Davis
111	Ms Michele Belfanti
112	Wildlife Carers Group
113	Mr Eddie Houghton-Ward
114	Mr Mark Cutler
115	Miss Heather Mackenzie
116	Mr Darryl Adams
117	Nambucca Valley Conservation Association Inc.
118	Mr Paul Collaros
119	Ms Neena Love
120	Dr Sue Schofield
121	Mrs Virginia Burns
122	Name suppressed
123	Animal Justice Party Sydney South Regional Group
124	FOUR PAWS Australia
125	Vegan Australia
126	Animal Care Australia Inc
127	North Coast Environment Council
128	National Parks Association of NSW
129	Electrical Trades Union of Australia, NSW Branch
130	Clarence Valley Conservation Coalition Inc
131	Narelle Taylor
132	Ms Donna Allen
133	Name suppressed
134	Ian Anderson
135	NSW Farmers
136	Miss Nicole Luhrs
137	Peter Wood

<b>No.</b>	<b>Author</b>
138	Ms Julie Parker
139	Mrs Sandra Ferns
140	Georgia Blomberg
141	Love Rescue Collaborate
142	Australian Pork Limited
143	Friends of the Forest (Mogo)
144	EDO NSW
145	NSW Council for Civil Liberties
146	New South Wales Bar Association
147	Confidential
148	Ms Heather Edwards
149	Animal Protectors Alliance
150	Ms Jacquelyn Johnson
151	Mr Joel Newman
152	Mr Michael G Rice
153	Ms Samantha Ryan
154	Mr Bruce McQueen
155	Name suppressed
156	Name suppressed
157	Ms Nanette Nicholson
158	Mr Rob Hanlon
159	Mr Mark Hansen
160	Ms Kathryn Woolfe
161	Ms Louisa Vlahos
162	Confidential
163	350.org Australia
164	Miss Rosina Rayns
165	Name suppressed
166	Mr Max Garrod
167	Mr Anthony Thompson
168	Name suppressed
169	Name suppressed
170	Name suppressed
171	Name suppressed
172	Mr Thomas Port

<b>No.</b>	<b>Author</b>
173	Name suppressed
174	Mrs Katalin Charlton
175	Mrs Martine Porret
176	Miss Dani Stevenson
177	Mr John Commens
178	Mr John Payne
179	Mrs Darlene Watkins
180	Name suppressed
181	Name suppressed
182	Name suppressed
183	Ms Carolina Rodriguez
184	Name suppressed
185	Name suppressed
186	Animal Defenders Office
187	Nature Conservation Council of New South Wales
188	Unions NSW
189	Humane Society International Australia
190	NSW Nurses & Midwives' Association
191	RSPCA Australia
192	Animal Justice Party
193	Australasian Meat Industry Employees Union NSW Branch
194	Let the ladies go pty ltd
195	Greenpeace Australia Pacific
196	Australian Conservation Foundation
197	World Animal Protection
198	Australasian Meat Industry Employees Union (Newcastle & Northern NSW Branch)
199	Raymond J Cox
200	Ms Candace Chidiac
201	Mr Paul Baker
202	Mr David Milne
203	Name suppressed
204	Mr Terry Sutherland
205	Ms Karen Sommers
206	National Farmers' Federation
207	Name suppressed



<b>No.</b>	<b>Author</b>
208	Name suppressed
209	Name suppressed
210	Mrs Leoni Mcgee
211	Name suppressed
212	Name suppressed
213	Ms Sonya Skok
214	Name suppressed
215	PETA Australia
216	NSW Young Lawyers
217	Australian Chicken Meat Federation (on behalf of the NSW Chicken Meat Council)
218	Confidential
219	Mrs Rachel Sussman
220	Name suppressed
221	Name suppressed
222	Human Rights Law Centre
223	Ms Mary Ann Gourlay
224	Ms Inez Hamilton-Smith
225	Name suppressed
226	Ms Katy McMurray
227	Confidential
228	Ms Jo Warner
229	Confidential
230	Ms Louise Cusack
231	Confidential
232	Mrs Susan Moran
233	Mr Rodney Blundell
234	Name suppressed
235	Name suppressed
236	Confidential
237	Ms Janet Catesby
238	Mr Geoff Brimley
239	Miss Carly Sticpewich
240	Ms Cindy Kerr
241	Ms Jasmine Alexandra
242	Ms Eva Caprile

<b>No.</b>	<b>Author</b>
243	Mr Ralph Graham
244	Mr Malcolm Ritter
245	Name suppressed
246	Name suppressed
247	Ms Sharon Church
248	Mrs Lenore Taylor
249	Ms Kay Podmore
250	Name suppressed
251	Name suppressed
252	Name suppressed
253	Name suppressed
254	Name suppressed
255	Name suppressed
256	Name suppressed
257	Name suppressed
258	Name suppressed
259	Name suppressed
260	Name suppressed
261	Dr Jeffery Bateson
262	Name suppressed
263	Name suppressed
264	Mrs Meg Nielsen and Peter Nielsen
265	Name suppressed
266	Name suppressed
267	Mrs Barbara Murphy
268	Mr Paul Murphy
269	Dr Asha Persson
270	Ms Karen Vegar
271	Name suppressed
272	Name suppressed
273	Name suppressed
274	Name suppressed
275	Name suppressed
276	Mr Paul Mahony
277	Ms Isabella Smith

<b>No.</b>	<b>Author</b>
278	Toni Gundry
279	Name suppressed
280	Confidential
281	Confidential
282	Anti-Speciesist Action Collective
283	Ms Elizabeth O'Hara
284	Mrs Jessica Bateman
285	Name suppressed
286	Dr James Vicars
287	Dr Miranda Coulson
288	Name suppressed
289	Name suppressed
290	Name suppressed
291	Name suppressed
292	Name suppressed
293	Confidential
294	Name suppressed
295	Name suppressed
296	Ms Deborah Hawkins
297	Mr Mark Berriman
298	Mr Samuel Grew
299	Name suppressed
300	Mr Michael Powell
301	Ms Anne Maher
302	Mr John Staker
303	Mrs Kim McDonald
304	Ms Jan Kendall
305	Ms Catherine Blasonato
306	Ms Carole Li
307	Mr David Nicholson
308	Name suppressed
309	Ms Leah Parker
310	Mr Matthew Stellino
311	Name suppressed
312	Ms Karen Deer

<b>No.</b>	<b>Author</b>
313	Name suppressed
314	Ms Barbara Morgan
315	Mrs Margaret Gissing
316	Name suppressed
317	Mr Jake Taylor
318	Ms Carolina Chambers
319	Mrs Karen Burgess
320	Ms Sarah Stephenson
321	Ms Helen Johnstone
322	Name suppressed
323	Name suppressed
324	Mr Trevor Church
325	Ms Petra Jones
326	Name suppressed
327	Mrs Trisha Jarvis
328	Ms Judith Essex-Clark
329	Miss Mia Port
330	Name suppressed
331	Ms Kirsten Lunoe
332	Ms Sarah Avery
333	Name suppressed
334	Ms Vittoria Clerici
335	Mrs Moira Ferres
336	Name suppressed
337	Ms Janice Haviland
338	Mr Martin Derby
339	Name suppressed
340	Name suppressed
341	Name suppressed
342	Mr Craig Penny
343	Name suppressed
344	Name suppressed
345	Mr Paul Obern
346	Name suppressed
347	Mrs Julie Watson

<b>No.</b>	<b>Author</b>
348	Ms Lorraine Rhodes-Roberts
349	Mr Patrick Murphy
350	Name suppressed
351	Name suppressed
352	Miss Dorlene Haidar
353	Mrs Laura Leone
354	Miss Carolann Butler
355	Name suppressed
356	Name suppressed
357	Mr John Desmond
358	Mrs Trisha Jarvis
359	Ms Judith Essex-Clark
360	Name suppressed
361	Ms Francisa Miller
362	Name suppressed
363	Name suppressed
364	Confidential
365	Name suppressed
366	Ms Julie Power
367	Ms Deb Moore
368	Ms Emma Cung
369	Name suppressed
370	Mr Allan Sambell
371	Ms Christine Devine
372	Name suppressed
373	Name suppressed
374	Name suppressed
375	Ms Cathy Gilmore
376	Mrs Roslyn Hemmings
377	Mr Darren Brollo
378	Mrs Sonia Parker
379	Name suppressed
380	Name suppressed
381	Mr Daniel Honig
382	Name suppressed

<b>No.</b>	<b>Author</b>
383	Name suppressed
384	Mrs Marie Bennett
385	Name suppressed
386	Maritime Union of Australia
387	Mr Brian Heighes
388	Mr Raymond Cox
389	Ms Cheryl Forrest-Smith
390	Australian Workers' Union
391	Australian Duck Meat Association Incorporated

## Appendix 2 Witnesses at hearing

Date	Name	Position and Organisation
3 October 2019, Macquarie Room, Parliament House	Mr Scott Hansen	Director General, Department of Primary Industries
	Mr Simon Vincent	Director Strategy and Policy, Department of Primary Industries
	Mr Paul McKnight	Executive Director, Policy, Reform and Legislation, Department of Communities and Justice
	Mr Cameron Whiteside	Detective Inspector & State Crime Rural Coordinator, NSW Police
	Mr Pete Arkle	CEO, NSW Farmers Association
	Ms Annabel Johnson	Policy Director – Livestock, NSW Farmers Association
	Ms Naomi Sharp SC	Co-Chair of the Human Rights Committee, NSW Bar Association
	Ms Tara Ward	Volunteer Lawyer and Executive Director, Animal Defenders Office
	Mr Chris Gambian	Chief Executive, Nature Conservation Council of NSW
	Ms Rachel Walmsley	Policy and Law Reform Director, Environmental Defenders Office NSW
	Ms Kate Minter	Executive Officer, Unions NSW
	Ms Pauline Wright	President, NSW Council for Civil Liberties
	Ms Frankie Seymour	Co-founder, Animal Protectors Alliance
Ms Robyn Soxsmith	Co-founder, Animal Protectors Alliance	





## Appendix 3 Minutes

### Minutes no. 7

Wednesday 25 September 2019

Portfolio Committee No. 4 - Industry

Member's Lounge, Parliament House, Sydney, at 10.32 am

#### 1. Members present

Mr Banasiak, Chair

Ms Hurst, Deputy Chair

Mr Amato

Ms Cusack

Mr Graham

Mr Khan

Mr Veitch

#### 2. Inquiry into the provisions of the Right to Farm Bill 2019

##### 2.1 Terms of reference

The committee noted the following terms of reference:

- a) the provisions of the Right to Farm Bill 2019 be referred to the Portfolio Committee No. 4 - Industry for inquiry and report,
- b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly,
- c) that the committee report by Monday 21 October 2019, and
- d) on the report being tabled, a motion may be moved immediately for the first reading and printing of the bill and that the bill proceed through all remaining stages according to standing and sessional orders.

##### 2.2 Proposed timeline

Resolved on the motion of Mr Amato: That the committee adopt the following timeline for the administration of the inquiry:

- Thursday 3 October – full day hearing
- Wednesday 16 October 2019 (8.00 am) – report deliberative
- Thursday 17 October 2019 (9.00 am - 10.00 am) – report deliberative reserve date
- Monday 21 October 2019 – table report.

##### 2.3 Closing date for submissions

Resolved on the motion of Ms Hurst: That the closing date for submissions be Tuesday 1 October 2019.

##### 2.4 Stakeholder and witness list

Resolved on the motion of Ms Hurst: That the following organisations be invited to appear as witnesses at the hearing on Thursday 3 October:

- NSW Farmers
- NSW Department of Primary Industries/Justice/Attorney General
- NSW Police
- NSW Council for Civil Liberties
- Law Council of Australia
- NSW Bar Association

- Law Society of NSW
- NSW Young Lawyers Animal Law Committee
- Animals Australia
- Animal Defenders Office
- RSPCA Australia
- Animal Law Institute
- Legal Aid
- Nature Conservation Council of NSW
- NSW Environmental Defenders Office
- Humane Society International
- Unions NSW
- 4 Paws.

Resolved on the motion of Ms Hurst: That the following organisations be invited to make a submission:

- NSW Farmers
- NSW Department of Primary Industries/Justice/Attorney General
- NSW Police
- NSW Council for Civil Liberties
- Law Council of Australia
- NSW Bar Association
- Law Society of NSW
- NSW Young Lawyers Animal Law Committee
- Animals Australia
- Animal Defenders Office
- RSPCA Australia
- Animal Law Institute
- Legal Aid
- Nature Conservation Council of NSW
- NSW Environmental Defenders Office
- Humane Society International
- Unions NSW
- Animal Liberation
- Voiceless
- 4 Paws.

### **2.5 Advertising**

The committee noted that the inquiry will be advertised via social media, stakeholder letters and a media release distributed to all media outlets in New South Wales.

### **2.6 Conduct of the inquiry**

Resolved on the motion of Mr Graham: That there be no questions on notice taken at the public hearing to be held on Thursday 3 October or supplementary questions from members.

## **3. Adjournment**

The committee adjourned at 10.54 am, until Thursday 3 October 2019 (public hearing).

Tina Higgins  
Committee Clerk

**Minutes no. 9**

Thursday 3 October 2019

Portfolio Committee No. 4 – Industry

Macquarie Room, Parliament House, 9:15 am

**1. Members present**Mr Banasiak, *Chair*Ms Hurst, *Deputy Chair*

Mr Amato

Ms Cusack

Mr Field (participating for the duration of the inquiry into the provisions of the Right to Farm Bill)

Mr Graham (from 9.30 am)

Mr Khan

Mr Primrose (substituting for Mr Graham until 9.30 am)

Ms Sharpe (substituting for Mr Veitch for the duration of the inquiry into the provisions of the Right to Farm Bill)

Mr Shoebridge (participating from 1.47pm)

**2. Previous minutes**

Resolved, on the motion of Ms Cusack: That draft minutes no. 8 be confirmed.

**3. Correspondence**

The Committee noted the following items of correspondence:

***Received***

- 26 September 2019 – Email from the Hon Mark Buttigieg MLC, Opposition Whip, to the secretariat, advising that the Hon Penny Sharpe MLC will be substituting for the Hon Mick Veitch MLC for the duration of the inquiry into the provisions of the Right to Farm Bill 2019
- 26 September 2019 – Email from Ms Emily Dyball, Office of Justin Field MLC, to the secretariat advising of Mr Field's intention to participate for the duration of the inquiry into the provisions of the Right to Farm Bill 2019
- 27 September 2019 – Email from Ms Gina Higham, Executive Assistant to CEO and Deputy CEO, Legal Aid, to secretariat, advising that Legal Aid is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 27 September 2019 – Email from Ms Emilia Michael, The Animal Law Institute, to secretariat, advising that The Animal Law Institute is unavailable to make a submission and attend the public hearings scheduled for Thursday 3 October 2019
- 30 September 2019 – Email from Dr Jed Goodfellow, Science and Policy Team Lead, RSPCA Australia, to secretariat, advising that RSPCA Australia is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 30 September 2019 – Email from Ms Glenys Oogjes, CEO, Animals Australia, to secretariat, advising that Animals Australia is unavailable to make a submission or attend the public hearings scheduled for Thursday 3 October 2019
- 30 September 2019 – Email from Mr Daniel Cung, Chair, Animal Law Committee, NSW Young Lawyers, The Law Society of New South Wales, to secretariat, advising that NSW Young Lawyers is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Mr Evan Quartermain, Head of Programs, Humane Society International, to secretariat, advising that Humane Society International is unavailable to attend public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Ms Isilay Kizilcik, Supporter Relations Team, FOUR PAWS Australia, to secretariat, advising that FOUR PAWS Australia is unavailable to attend public hearings scheduled for Thursday 3 October 2019

- 1 October 2019 – Email from Mr Douglas Brand, Receptionist/Admin, Law Council of Australia, to secretariat, advising that Law Council of Australia, is unavailable to make a submission
- 1 October 2019 – Email from Mr Mark Johnstone, Director, Policy & Practice, The Law Society of New South Wales, to secretariat, advising that the Law Society of New South Wales is unavailable to make a submission or attend the public hearings scheduled for Thursday 3 October 2019
- 1 October 2019 – Email from Ms Sarah Waladan, Head of Legal and Regulatory Affairs, Free TV, to secretariat, advising that Free TV is unavailable to attend the public hearings scheduled for Thursday 3 October 2019
- 2 October 2019 – Email from Ms Phoebe Fear, Australian Veterinary Association, advising that Australian Veterinary Association is unavailable to attend the public hearings scheduled for Thursday 3 October 2019.

#### 4. Consideration of terms of reference – Independent Review of Coal Seam Gas Activities

The committee considered the following terms of reference:

1. That Portfolio Committee No. 4 - Industry inquire into and report on the implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales, and in particular:
  - (a) the status of the implementation of the recommendations,
  - (b) the effectiveness of the implementation of the recommendations and whether or not there are gaps in implementation,
  - (c) whether any other inquiry findings or other major reports relating to unconventional gas in Australia or the east coast gas market published since the release of the Chief Scientists are relevant to the suitability or effectiveness of the Chief Scientists recommendations, and
  - (d) any other related matters.
2. That the committee report by Tuesday 12 November 2019.

Ms Sharpe moved: That the terms of reference be adopted.

Mr Khan moved: That motion of Ms Sharpe be amended by omitting ' Tuesday 12 November 2019' and inserting instead ' Friday 20 December 2019'.

Amendment put and passed.

Original question, as amended:

That the committee adopt the following terms of reference:

1. That Portfolio Committee No. 4 - Industry inquire into and report on the implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales, and in particular:
  - (a) the status of the implementation of the recommendations,
  - (b) the effectiveness of the implementation of the recommendations and whether or not there are gaps in implementation,
  - (c) whether any other inquiry findings or other major reports relating to unconventional gas in Australia or the east coast gas market published since the release of the Chief Scientists are relevant to the suitability or effectiveness of the Chief Scientists recommendations, and
  - (d) any other related matters.
2. That the committee report by Friday 20 December 2019.

The committee divided.

Ayes: Mr Banasiak, Ms Hurst, Ms Sharpe, Mr Primrose.

Noes: Mr Amato, Ms Cusack, Mr Khan.

Question resolved in the affirmative.

## 5. Conduct of the inquiry – Independent Review of Coal Seam Gas Activities

### 5.1 Proposed timeline

Resolved, on the motion of Mr Khan: That the closing date for submissions be Sunday 27 October 2019, and that following consultation with the chair, the secretariat circulate dates for the hearing and report deliberative to the committee for consideration.

### 5.2 Stakeholder list

Resolved, on the motion of Ms Hurst: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### 5.3 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

## 6. Inquiry into the exhibition of exotic animals in circuses and the exhibition of cetaceans on New South Wales

### 6.1 Proposed inquiry timeline

Resolved, on the motion of Ms Hurst: That the committee adopt the following timeline for the administration of the inquiry:

- Sunday 24 November 2019 – Submission closing date (as resolved at meeting on 26 September 2019)
- March/April 2020 – Hearing and site visits
- Week of Monday 22 June 2020 – report deliberative
- Friday 26 June 2020 – table report

### 6.2 Stakeholder list and online questionnaire

Resolved, on the motion of Ms Hurst: That the stakeholder list be as follows:

- NSW Department of Primary Industries
- Exhibited Animals Advisory Committee
- The Animal Welfare Advisory Council
- Bob Carr – former Premier NSW
- Lennon Bros Circus
- Stardust Circus
- Dolphin Marine Conservation Park (Coffs Harbour)
- The Southern Cross University Whale Research Group
- Di Evens RSPCA
- Naomi Rose The Whale Sanctuary Project
- Dr Nick Gales
- G Iossa, CD Soulsbury and S Harris – University of Bristol
- Action for Dolphins
- Animal Defenders Office
- Animal Liberation NSW
- Animal Welfare League NSW
- Animals Australia

- Australian Veterinary Association
- Four Paws Australia
- Humane Society International
- Organisation for the Rescue and Research of Cetaceans in Australia
- People for the Ethical Treatment of Animals (PETA) Australia
- RSPCA Australia
- Voiceless
- World Animal Protection
- Sea Shepherd Australia
- Sentient
- NSW Young Lawyers Animal Law Committee
- Animals Asia
- Animal Law Institute
- Western Plains Zoo
- Western Sydney Zoo/Zambi Wildlife Retreat
- Local Government NSW
- RSPCA NSW
- Taronga Zoo
- TripAdvisor
- Virgin Holidays

Resolved, on the motion of Ms Hurst: That the proposed amendments to the online questionnaire, as circulated via email in track changes, be agreed to.

## **7. Inquiry into the provisions of the Right to Farm Bill 2019**

### **7.1 Allocation of questions**

Resolved, on the motion of Ms Sharpe: That the allocation of questions to be asked at the hearing be left in the hands of the chair.

### **7.2 Questions on notice and supplementary questions**

The committee noted that there would be no questions taken on notice or supplementary questions for the hearing, as previously resolved.

### **7.3 Public submissions**

The committee noted that the following submission were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 3-9, 12-15, 17, 19, 20, 22, 23, 24, 27, 28, 29, 34, 35, 37, 39-42, 46-54, 56, 60-65, 68, 70-74, 76, 77, 78, 81-83, 85, 86, 89, 92, 93, 95, 99, 100, 117, 123-130, 135, 142, 144-146, 149, 163, 186 -198, 206, 215, 216, 217.

### **7.4 Name suppressed submissions**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submissions nos. 2, 10, 11, 16, 18, 21, 26, 30-33, 36, 38, 43, 44, 45, 55, 58, 59, 67, 84, 87, 88, 90, 91, 94, 96, 97, 98 with the exception of the author's name, which is to remain confidential, at the request of the author.

### **7.5 Partially confidential submissions**

Resolved, on the motion of Mr Kahn: That the committee authorise the publication of submission nos. 31, 69, 75, 79, 97 and 141, with the exception of the following identifying and/or sensitive information, which is to remain confidential, as per the recommendation of the secretariat:

- the names and locations of individual properties, or

- hyperlinks to websites, which may show footage of alleged animal cruelty at particular properties, including hyperlinks too numerous to be checked by the secretariat.

#### **7.6 Confidential submissions**

Resolved, on the motion of Mr Khan: That the committee keep submission nos 25, 57, 66 and 80 confidential, as per the request of the author.

#### **7.7 Approach to proformas and late submissions**

The committee noted that approximately 3,000 copies of two proformas had been received. The proformas are either identical to, or a variation on, the samples circulated to members.

Resolved, on the motion of Mr Khan: That:

- proformas not be treated as submissions
- one copy of each proforma be published on the committee's website, noting the number of responses but without the authors' names
- proformas and submissions received after 3 October 2019 not be accepted, other than in exceptional circumstances such as organisations invited to be witnesses but that were unable to attend the hearing.

#### **7.8 Provision of documents to participating members**

Resolved, on the motion of Ms Sharpe: That Mr Field, who has advised the committee that he intends to participate for the duration of the inquiry, be provided with copies of inquiry related documents, including unpublished submissions.

#### **7.9 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The Chair declared the public hearing for the inquiry into the Right to Farm Bill 2019 open for examination.

The following witnesses were sworn:

- Mr Scott Hansen, Director General, Department of Primary Industries
- Mr Simon Vincent, Director Strategy and Policy, Department of Primary Industries
- Mr Paul McKnight, Executive Director, Policy, Reform and Legislation, Department of Communities and Justice
- Mr Cameron Whiteside, Detective Inspector & State Crime Rural Coordinator, NSW Police,

Mr Banasiak left the hearing at 10.00 am.

Mr Scott Hansen tendered the following document:

- Opening statement by Mr Scott Hansen, Director General, Department of Primary Industries, dated 3 October 2019

Mr Banasiak joined the hearing at 10.20 am.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Mr Pete Arkle, CEO, NSW Farmers Association
- Ms Annabel Johnson, Policy Director – Livestock, NSW Farmers Association

The evidence concluded and the witnesses withdrew.

The following witness was sworn:

- Ms Naomi Sharp SC, Co-Chair of the Human Rights Committee, NSW Bar Association

The evidence concluded and the witness withdrew.

The public hearing adjourned for lunch at 12.45pm.

Witnesses, the public and the media were readmitted.

The following witness was sworn:

- Ms Tara Ward, Volunteer Lawyer and Executive Director, Animal Defenders Office

The evidence concluded and the witness withdrew.

The following witnesses were sworn:

- Mr Chris Gambian, Chief Executive, Nature Conservation Council of NSW
- Ms Rachel Walmsley, Police and Law Reform Director, Environmental Defenders Office, NSW
- Ms Kate Minter, Executive Officer, Unions NSW
- Ms Pauline Wright, President, NSW Council for Civil Liberties

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Frankie Seymour, Co-founder, Animal Protectors Alliance
- Ms Robyn Soxsmith, Co-founder, Animal Protectors Alliance

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.20 pm.

## 8. **Tendered documents**

Resolved, on the motion of Ms Sharpe: That the committee accept and publish the document tendered by Mr Scott Hansen during the hearing.

## 9. **Adjournment**

The committee adjourned at 4.20 pm, until Tuesday 15 October 2019 at 6.30 pm.

### **Clerk to the Committee**

### **Draft minutes no. 11**

Wednesday 16 October 2019

Portfolio Committee No. 4 – Industry

McKell Room, Parliament House, 8.04 am

### 1. **Members present**

Mr Banasiak, *Chair*

Ms Hurst, *Deputy Chair*

Mr Amato

Mr Graham

Mr Khan

Mr Veitch



## 2. Previous minutes

Resolved, on the motion of Ms Hurst: That draft minutes no. 9 be confirmed.

## 3. Correspondence

The Committee noted the following items of correspondence:

### *Received*

- 3 October 2019 – Email from Hon Mark Buttigieg, to secretariat, advising that the Hon Peter Primrose will be substituting for the Hon John Graham for the duration of the inquiry into the implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales.
- 3 October 2019 – Email from Hon Emma Hurst MLC, to the secretariat, advising that Mr Justin Field will be substituting for Ms Hurst for the duration of the inquiry into the implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales.
- 15 October 2019 – Email from the Hon Mark Buttigieg, to secretariat, advising that the Hon Penny Sharpe MLC will no longer be substituting for the remainder of the duration of the inquiry into the Right to Farm Bill 2019.

## 4. Inquiry into the provisions of the Right to Farm Bill 2019

### 4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 101, 103, 105, 106, 109, 110, 111, 113-116, 118-122, 131, 132, 134, 136, 137, 139, 140, 143, 148, 150, 152-154, 157-161, 166, 167, 172, 174, 176-179, 183, 199-202, 204-205, 210, 213, 219, 222-224, 226, 228, 230, 233, 237-244, 248-249, 261, 264, 267, 269, 270, 277, 278, 283-284, 286-287, 296-298, 300-303, 305-307, 309, 310, 312, 314, 315, 317-321, 325, 327-329, 331, 332, 334, 337, 338, 342, 345, 347-349, 352-354, 357-359, 361, 366-368, 370, 371, 375-378, 381, 386-388 and 390-391.

### 4.2 Name suppressed submissions

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submissions nos. 102, 104, 108, 122, 133, 155, 156, 165, 168-171, 173, 180-182, 184, 185, 203, 207-209, 211, 212, 214 220, 221, 225, 234, 235, 245, 246, 250-260, 262, 263, 265, 266, 271, 272-275, 279, 288-292, 294, 295, 308, 311, 313, 316, 322, 323, 330, 336, 339, 340, 343, 344, 346, 350, 351, 356, 362, 365, 369, 372-374, 379, 380, 382, 383 and 385, with the exception of the author's name, which is to remain confidential, at the request of the author.

### 4.3 Partially confidential submissions

Resolved, on the motion of Mr Veitch: That the committee authorise the publication of submission nos. 107, 112, 138, 142, 151, 164, 175, 232, 247, 268, 276, 282, 285, 299, 304, 324, 326, 333, 335, 341, 355, 360, 363, 384 and 389, with the exception of the following identifying and/or sensitive information, which is to remain confidential, as per the recommendation of the secretariat:

- the names and locations of individual properties, or
- hyperlinks to websites, which may show footage of alleged animal cruelty at particular properties, or
- hyperlinks too numerous to be checked by the secretariat.

### 4.4 Confidential submissions

Resolved, on the motion of Mr Amato: That the committee keep submission nos. 147, 162, 218, 227, 229, 231, 236, 280, 281, 293 and 364 confidential, as per the request of the authors.

### 4.5 Consideration of Chair's draft report

The Chair submitted his draft report, entitled *Right to Farm Bill 2019 [Provisions]*, which, having been previously circulated was taken as being read.

Ms Hurst moved: That paragraph 2.34 be omitted.

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative

Mr Khan moved: That paragraph 2.34 be amended by omitting 'without the threat of legal action' before 'and the rights of neighbours to reasonable use and enjoyment of their property'.

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Noes: Ms Hurst.

Question resolved in the affirmative.

Ms Hurst moved: That paragraph 2.35 be amended by omitting 'The committee calls on the NSW Government to address stakeholder concerns about whether this bill strikes the appropriate balance in debate in the House' and inserting instead 'The committee calls on the NSW Government to recognise stakeholder concerns that the bill does not strike an appropriate balance between the rights of farmers and the rights of neighbours to reasonable use and enjoyment of their property'.

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That paragraph 2.36 be amended by omitting 'We commend the government for taking steps to reduce nuisance claims proceeding to court action. However, we note stakeholder concerns about how this will impact on the rights of neighbouring landholders. To date, there have been low numbers of nuisance claims taken to court, and much higher numbers of complaints made to local councils. We acknowledge the potential for a future increase in land use conflicts and disputes between neighbours in rural areas' and inserting instead 'To date, there have been low numbers of nuisance claims taken to court, and much higher numbers of complaints made to local council. However, local council complaints are not addressed by the provisions of the bill.'

Question put.

The committee divided.

Ayes: Ms Hurst, Mr Graham, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Khan.

There being an equality of votes, question resolved in the negative on the casting vote of the chair.

Mr Khan moved: That paragraph 2.36 be amended by omitting 'We commend the government for taking steps to reduce nuisance claims proceeding to court action. However' before 'we note stakeholder concerns about how this will impact on the rights of neighbouring landholders.'

Question put.

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Noes: Ms Hurst.

Question resolved in the affirmative.

Ms Hurst moved: 'That paragraph 2.37 be amended by omitting 'We encourage the government to work with stakeholders to clarify these issues. The committee calls on the government to closely monitor the implementation of the provisions and the number of nuisance claims taken to court, as well as complaints to local councils' and inserting instead 'In light of these unanswered questions, and the significant concerns raised by stakeholders, the committee does not consider there is sufficient justification for the nuisance provisions in the bill to be enacted.'

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Mr Veitch moved: 'That paragraph 2.37 be amended by omitting 'We encourage the government to work with stakeholders to clarify these issues. The committee calls on the government to closely monitor the implementation of the provisions and the number of nuisance claims taken to court, as well as complaints to local councils' and inserting instead 'We call on the government to clarify how the nuisance shield and remedy would work in practice during debate on the bill. If the bill is passed, we call on the government to closely monitor the implementation of the nuisance shield provisions.'

The committee divided.

Ayes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Noes: Ms Hurst.

Question resolved in the affirmative.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.40:

'In respect of this increase, the committee notes the evidence from Mr Whiteside, NSW Police that 'Illegal hunting was the most cited factor associated with the trespass, followed by theft and other associated farm crimes.' [FOOTNOTE: Mr Whiteside, Evidence, 3 October, p 3.]

Ms Hurst moved: 'That paragraph 2.42 be omitted.'

Question put.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: 'That paragraph 2.42 be amended by omitting 'Ms Johnson underscored that' and inserting instead 'Ms Johnson asserted that'.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.53:

'Ms Sharp, on behalf of the NSW Bar Association, also highlighted the important role that animal activists have played to promote transparency within the industry:

'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' [FOOTNOTE: Ms Sharp, Evidence, 3 October, p. 27]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.53:

'Stakeholders also highlighted the importance of ensuring the bill does not affect adversely whistleblowers from exposing animal cruelty. For example, Ms Sharp noted that:

'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' [FOOTNOTE: Ms Sharp, Evidence, 3 October, p. 34]

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.70:

'The NSW Council for Civil Liberties gave evidence that the addition of the word 'hinder' broadened the scope of the provision:

The addition of the element of 'hindering' to the Act as proposed by the Bill, imposes a significantly lower threshold than the former test of 'interfering with' a business or undertaking in section 4B(1)(a). Hindering is not defined and is so broad as to capture passive, peaceful protests such as sit-ins. [FOOTNOTE: NSW Council for Civil Liberties, Submission, p. 5]

Resolved, on the motion of Ms Hurst: That paragraph 2.74 be amended by inserting "This is despite the fact that, as noted earlier, NSW Police identified that illegal hunting – rather than animal activism – is the 'most cited factor associated with the trespass' [FOOTNOTE: Mr Whiteside, Evidence, 3 October, p 3.]" after '..and therefore supported the introduction of the new offence of incitement.'

Ms Hurst moved: That paragraph 2.76 be omitted.

Question put and negatived.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.79:

'By contrast, Ms Seymour from the Animal Protectors Alliance gave evidence that that she was not aware of 'any formal fundraising' or groups providing funds to individuals to pay fines. [FOOTNOTE: Ms Seymour, Evidence, 3 October p. 63]

Resolved, on the motion of Mr Graham: That paragraph 2.84 be amended by inserting 'and apparently has not occurred' after '..was required three years after the commencement of the Act'.

Resolved, on the motion of Ms Hurst: That paragraph 2.85 be amended by omitting: 'An alternative perspective, put forward by various animal welfare bodies including the Animal Defenders Office, argued that the issue is not the adequacy of trespass laws, but the inadequacy of penalties for animal cruelty set by the Prevention of Cruelty to Animals Act 1979' and inserting instead the following:

'A number of submissions from animal welfare bodies, including the Animal Defenders Office, asserted that the rationale for some trespass on agricultural lands was the frustration of animal advocates at the disparity between the increased penalties for trespass proposed under the bill and the penalties for animal cruelty set by the Prevention of Cruelty to Animals Act 1979 which remain some of the lowest in the country.'

Resolved, on the motion of Ms Hurst: That paragraph 2.92 be amended by inserting 'in a range of fields' after 'new penalties to stifle or inhibit peaceful protest activities' and before 'not just for animal welfare causes'.

Resolved, on the motion of Ms Hurst: That the following new paragraph be inserted after paragraph 2.98:

'This concern was shared by a number of other stakeholders, including Unions NSW who argued that:

The offence effectively criminalises the act of organising a peaceful protest. The wording is broad and has a potentially low threshold. Under the current wording it is possible that an individual on social media

inviting their friends to a protest event could be liable of a criminal offence. A union official or union communications officer encouraging attendance to a rally or union meeting, may similarly find themselves committing a criminal offence. [FOOTNOTE: Unions NSW, Submission, p. 6]

Ms Hurst moved: That paragraph 2.99 be amended by omitting 'and thereby support their essential work as primary producers'.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That paragraph 2.100 be amended by omitting 'We recognise that the longevity and health of this industry is vital in ensuring food security for current and future generations. At the same time, the committee also acknowledges the importance of transparency and the groundswell of public interest in how their food has been produced' and inserting instead 'The committee acknowledges the importance of transparency in the animal agriculture industry and the groundswell of public interest in farmed animal welfare.'

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That paragraph 2.100 be amended by inserting 'and farmed animal welfare' after 'the groundswell of public interest in how their food has been produced'.

Resolved, on the motion of Ms Hurst: That paragraph 2.101 be amended by omitting 'Some stakeholders raised concerns around elements of the bill' and inserting instead 'Animal welfare, environmental, union, legal and civil liberties groups all raised concerns about the bill.'

Resolved, on the motion of Ms Hurst: That paragraph 2.101 be amended by inserting 'and the creation of the new incitement offence' after 'such as the addition of the word hinder.'

Resolved, on the motion of Ms Hurst: That paragraph 2.102 be amended by omitting 'Other inquiry participants, however' and inserting instead 'However, industry' before 'supported the bill as it stands, drawing attention to the need for strong laws to address the particular impacts of farm trespass.'

Ms Hurst moved: That paragraph 2.102 be amended by inserting 'the leading cause of which was identified as illegal hunting' after 'the particular impacts of farm trespass'.

The committee divided.

Ayes: Mr Graham, Ms Hurst, Mr Veitch.

Noes: Mr Amato, Mr Banasiak, Mr Khan.

There being an equality of votes, question resolved in the negative on the casting vote of the chair.

Resolved, on the motion of Mr Graham: That paragraph 2.103 be amended by inserting 'and apparently has not occurred' after '...was required three years after the commencement of the Act'.

Mr Graham moved: That the following finding be inserted after paragraph 2.103:

### **Finding 1**

That a statutory review of the 2016 amendments to the *Inclosed Lands Protection Act 1901* was required three years after the commencement of the Act and apparently has not occurred. This review should inform future consideration of the issues dealt with in this bill.

The committee divided.

Ayes: Mr Banasiak, Mr Graham, Ms Hurst, Mr Veitch.

Noes: Mr Amato, Mr Khan.

Question resolved in the affirmative.

Ms Hurst moved: That paragraph 2.104 be amended by omitting 'the committee recommends that the bill proceed, and the committee's comments and stakeholder concerns be addressed by the NSW Government during debate on the bill' and inserting instead 'the committee recommends that the Legislative Council decline to give the bill a second reading'.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That the following committee comment and recommendation be inserted after paragraph 2.104:

**Committee comment**

A number of stakeholders highlighted the disparity between the increased penalties for trespass proposed under this bill, and the comparatively low penalties for animal cruelty in NSW. The committee therefore recommends that the NSW Government increase penalties for animal cruelty offences under the *Prevention of Cruelty to Animals Act 1979*.

**Recommendation 2:** That the NSW Government increase penalties for animal cruelty offences under the *Prevention of Cruelty to Animals Act 1979*.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That the following new paragraph be inserted after paragraph 2.103:

'A number of stakeholders highlighted the disparity between the increased penalties for trespass proposed under this bill, and the comparatively low penalties for animal cruelty in NSW. The committee considers that the NSW Government should investigate the enforcement regime under the *Prevention of Cruelty to Animals Act 1979* and consider potential evidence to the Select Committee on Animal Cruelty Laws in New South Wales.'

Ms Hurst moved: That the following committee comment and recommendation be inserted after paragraph 2.104:

**Committee comment**

A significant number of stakeholders highlighted the need to improve transparency in the animal agriculture industry, particularly in light of increasing public awareness and concern about the welfare of farmed animals. The committee therefore recommends that the NSW Government introduce legislation mandating that all animal agriculture operations (including knackeries and abattoirs) install and maintain CCTV cameras, with footage from the CCTV cameras to be made available to the public in real time via a live-stream.

**Recommendation 3:** That the NSW Government introduce legislation mandating that all animal agriculture operations (including knackeries and abattoirs) install and maintain CCTV cameras, with footage from the CCTV cameras to be made available to the public in real time via a live-stream.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Ms Hurst moved: That Recommendation 1 be omitted and the following recommendation be inserted after paragraph 2.104:

**Recommendation 1:** That the Legislative Council decline to give the bill a second reading, for the following reasons:

- the bill is not evidence-based and lacks sufficient justification for the incursion it imposes on the rights of private property owners;
- the increase the breadth of offences and size of penalties proposed by the bill is disproportionate, and has a potential chilling effect on whistleblowers and the right to protest; and
- the bill is unlikely to reduce trespass by animal activists because it does not address the underlying issues of farmed animal cruelty and transparency.

The committee divided.

Ayes: Ms Hurst

Noes: Mr Amato, Mr Banasiak, Mr Graham, Mr Khan, Mr Veitch.

Question resolved in the negative.

Resolved on the motion of Mr Veitch: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- That the report be tabled on Monday 21 October 2019.

## 5. Adjournment

The committee adjourned at 9.16 am *sine die*.

Madeleine Foley

**Clerk to the Committee**





## Appendix 4 Dissenting statement

### **The Hon Emma Hurst MLC, Animal Justice Party**

This Right to Farm Bill 2019 was strongly opposed by the majority of stakeholders who participated in this inquiry. Groups from across the spectrum, including animal advocates, environmental, union, legal and civil liberties groups, all expressed serious concerns about the impact the Bill will have on the rights of private property owners, whistleblowers and protestors.

In light of this widespread opposition to the bill, it is disappointing that my motion to recommend that the Legislative Council decline to give the Bill a second reading was not successful.

This is not an evidence-based law. During the course of this inquiry, we were not provided with any compelling statistics from the Government about the number of farm trespasses that have been committed by animal advocates, or that the number is increasing. By contrast, we heard undisputed evidence from the NSW Police that the leading cause of rural trespass is illegal hunting.

The unfortunate truth is that this Bill will not address any of the problems it purports to address, and will actually cause more harm.

The nuisance shield provisions will cause harm to neighbours of farms, who will be unable to bring court proceedings for nuisance in respect of serious interferences like odours, noise, chemical spray drift and sewerage. It will also do nothing to address the growing number of complaints to council about the negative impacts of intensive animal agriculture. The Government has not provided sufficient evidence or justification for this significant incursion on the rights of property owners.

The amendments to the Inclosed Lands Protection Act 1901 will cause harm to our democratic society by inappropriately expanding the scope of offences to target activists and whistleblowers, and disproportionately increasing penalties such that they will have a chilling effect on protest activities in NSW.

The Australian public have a right to know what life looks like for the millions of animals that are intensively farmed in NSW each year. But right now, that information is being hidden by industry. This bill would work to further stifle transparency in an industry that cruelly treats and kills millions of animals each year, largely out of public view.

As we heard during this inquiry, what is really needed is an immediate review of our animal protection laws, including a properly funded and functioning enforcement agency. Increasing penalties for animal cruelty under the Prevention of Cruelty to Animals Act 1979 – which are currently among the lowest in the country – should be where the Government is focussing their energies, rather than increasing penalties for trespass without adequate justification.

The reality is that this bill will not stop animal advocates from making the strategic decision to trespass onto farming property when it is necessary to expose the people and practices harming animals. Not while the Government continues to ignore the groundswell of public interest in the treatment of

farmed animals. Improving transparency within factory farms and slaughterhouses by mandating that CCTV cameras be installed, and footage made available to the public in real time via live stream, would be a good start to show the Government is listening to community concerns.

A handwritten signature in blue ink, consisting of several loops and a final vertical stroke, located on the left side of the page.