



QUEENSLAND FARMERS' FEDERATION

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Submission

15 July 2019

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Via email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Re: Criminal Code (Trespass Offences) Amendment Bill 2019

The Queensland Farmers' Federation (QFF) is the united voice of intensive, semi-intensive and irrigated agriculture in Queensland. It is a federation that represents the interests of peak state and national agriculture industry organisations, which in turn collectively represent more than 13,000 farmers across the state. QFF engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland farmers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- Queensland Chicken Growers Association (QCGA)
- Queensland Dairyfarmers' Organisation (QDO)
- Australian Cane Farmers Association (ACFA)
- Flowers Australia
- Pork Queensland Inc.
- Queensland United Egg Producers (QUEP)
- Queensland Chicken Meat Council (QCMC)
- Bundaberg Regional Irrigators Group (BRIG)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Theodore Water Pty Ltd.

QFF welcomes the opportunity to provide comment on the Criminal Code (Trespass Offences) Amendment Bill 2019 (the Bill). We provide this submission without prejudice to any additional submission from our members or individual farmers.

The united voice of intensive agriculture



Background

Animal welfare and liberation movements have been around in Australia for a long time. While credibility concerns (particularly accuracy and integrity of information used to pursue their cause) have always been present, over the past couple of years their actions towards legitimate businesses have become more disruptive and extreme.

Queensland's intensive animal farmers have experienced coordinated animal activist attacks, despite adhering to world leading animal welfare standards. The radical actions we have seen from activists invade farmers' privacy, threaten the welfare of their animals, pose unacceptable risks to their businesses and have implications for food security. The constant threat of being the next target also hinders farmers' ability to operate their businesses to produce the highest quality food, fibre and foliage as they must wear the economic and social costs of these actions.

The Queensland Government's recent introduction of regulations under the *Biosecurity Act 2014* require people entering any farming operation to comply with the property's biosecurity management plan or face fines of \$652.75, either issued on the spot or later after further evidence is gathered. The regulations also enable individual fines of \$2,611 to be imposed if a farmer chooses to prosecute. While this is a step in the right direction, significant and unjustified activist activity continues. Therefore, a suitable deterrent must be realised to stop activists from unjustifiably interrupting legitimate Queensland business activities.

QFF understands the Bill seeks to protect all legitimate and legal businesses and individuals from unlawful trespass activities by introducing three new criminal trespass offences: 'aggravated trespass', 'serious criminal trespass' and 'organised trespass'. These offences attract potential imprisonment and fines significantly greater than the current penalties for trespass under Queensland law.

It should be noted, QFF does not have in-house legal counsel and has not engaged legal expertise to review the Bill but offers the following general comments.

Trespass in Queensland

Pursuant to section 5 of the *Summary Offences Act 2005* (Qld), "A person must not unlawfully enter, or remain in a dwelling or the yard for a dwelling;¹ and a person must not unlawfully enter, or remain in, a place used as a yard for or a place used for, a business purpose".² For this offence of trespass, the penalty imposed is a fine of 20 penalty units, equivalent to \$2,669,³ or 1 year's imprisonment. However, land used for agricultural or horticultural purposes, grazing or animal husbandry attracts the lesser offence of unlawfully entering farming land and a maximum penalty of 10 penalty units at \$1,334.50 or six months imprisonment.⁴

Despite the separation under law, farms are usually businesses, workplaces and family homes. Trespassing on farming land also threatens the welfare of animals and has implications for food safety and biosecurity. It is clear from the escalating animal activist activities that the current trespass law is no longer sufficient to protect farmers from interference with the possession of their land.

Enforcement issues

The view that 'one has a moral responsibility to disobey unjust laws' is one that many animal rights activists use to justify trespassing on farmers' properties and wilfully disrupting and creating unacceptable risks to their businesses. Australia has a comprehensive animal welfare framework, with

¹ *Summary Offences Act 2005* (QLD), s 5(1).

² *Ibid* s 5(2).

³ *Penalties and Sentences Regulation 2015* (QLD), reg 3.

⁴ *Summary Offences Act 2005* (QLD), s 13(1).

state and territory governments responsible for animal production and welfare laws and their enforcement. The Queensland Government advises that it is committed to ensuring that all animals in the state have appropriate standards of welfare.⁵ Through Biosecurity Queensland, it develops, monitors and enforces animal welfare policy, legislation and standards. Considering the complex framework in place and government law setting and enforcement, QFF challenges the view held by activists and considers that ‘one has not only a legal but a moral responsibility to obey what are just laws’.

There are several issues with the enforcement of the current trespass law. Offenders are only being charged with the offence of unlawfully entering farming land when they are arrested by Queensland Police, who in some case see no need to take that step. For example, during a coordinated animal activist incident at a Darling Downs feedlot in March 2019, over 100 protesters entered onto the business’ land despite the property owner’s objections and police made no arrests.⁶ If police are unwilling to enforce the current trespass laws on farming land, the law no longer provides adequate protection for the farmer.

In most animal activist cases, the court orders that no conviction be recorded for the offender often due to their young age, lack of previous convictions or risk of preventing future employment and travel. However, many offenders who do not have convictions recorded go on to reoffend and again escape conviction. This leaves fines as the only suitable punishment where a prison sentence is not ordered.

Fines are often imposed by the court as a penalty for animal activists who have been found guilty of unlawfully entering farming land. The courts take into account various factors when determining the amount, remembering this offence carries as maximum fine of \$1,334.50. The court will consider the offender’s capacity to pay the prescribed fine and what is a ‘significant’ amount to the individual. While these factors are considered with relation to the individual, offenders often pay their fines using crowdfunding. One activist has been receiving more than \$2,000 a month in donations which is used to pay for legal fees. A GoFundMe page raised \$8,250 to help three activists pay for legal representation after being charged by police.⁷ By crowdfunding their fines, it is difficult for the courts to impose and enforce a penalty on an individual offender.

Farmers have the option to initiate legal action to obtain civil remedies where protesters have trespassed on their property. Nominal damages of a token amount may be awarded for trespass to land where an interference with a farmer’s land may be proven but there is no damage. Where trespass has caused actual damage, the measure of compensatory damages is regarded as the diminution in the value of the property caused by the trespass. Or in the case that the trespass has caused damage to personal property, damages to the extent of the owner’s interest in the goods can be recovered. Finally, where trespass to land is done wilfully, as in all animal activist protests, exemplary damages may be awarded to punish and deter the offender. However, identifying the offender and quantifying any losses may be difficult, and these actions are often lengthy and costly and have rarely proven to be worth the effort for many farmers thereby limiting their ability to resolve these trespass disputes.

QFF consider the current offence of unlawfully entering farming land does not provide a sufficient penalty to denounce the offending behaviour, punish the offender or deter the offender or other members of the community from committing the same offence pursuant to sentencing principles in Queensland. And due to the difficulty for farmers to access civil remedies following trespass on their property, deterring potential offenders is the most suitable way for the law to respond.

⁵ Queensland Government, ‘Animal welfare and ethics’, Department of Agriculture and Fisheries. <<https://www.daf.qld.gov.au/business-priorities/biosecurity/animal-biosecurity-welfare/welfare-ethics>>.

⁶ ‘Call for tougher trespass laws after dozens of animal rights activists invade feedlot’, *ABC News* (Online, 26 March 2019) <<https://www.abc.net.au/news/2019-03-25/animal-activist-cattle-property-invasion-call-for-tougher-laws/10937664>>.

⁷ Chantelle Francis, ‘Animal activists seek public donations to break into farms and steal livestock’, *The Weekly Times* (Online, 15 January 2019) <<https://www.weeklytimesnow.com.au/news/national/animal-activists-seek-public-donations-to-break-into-farms-and-steal-livestock/news-story/eed897a2bdcbf807a6dc364618de955f>>.

The Bill intends to introduce three new offences including aggravated trespass with a maximum penalty of \$13,055 fine or three years imprisonment; and serious criminal trespass and organised trespass which both attract a maximum penalty \$391,650 or 10 years imprisonment. QFF agrees in principle with the increased penalties for offenders, particularly where they have committed multiple offences, but makes no comment on the fine amount or length of prison sentence. It is incumbent upon the Parliament to ensure it delivers adequate protections and a suitable deterrent for would be and repeat offenders so farmers and society can operate without threat of disruptive, costly and damaging law-breaking behaviour.

Jurisdictional comparison

Trespass laws and penalties vary significantly across Australian states and territories. Excepting the Australian Capital Territory, which relies on civil remedies, trespass is a criminal offence in all other jurisdictions. The following table sets out the different trespass offences relating to animal activists entering farming land without permission and the penalties associated with a conviction.

State	Legislation	Maximum Penalty
Queensland	<ul style="list-style-type: none"> Trespass - <i>Summary Offences Act 2005</i> (QLD), s 11. Unlawfully entering farming land - <i>Summary Offences Act 2005</i> (QLD), s 13. 	<ul style="list-style-type: none"> 20 penalty units (\$2,669) or 12 months imprisonment. 10 penalty units (\$1,334.50) or six months imprisonment.
New South Wales	<ul style="list-style-type: none"> Unlawful entry on inclosed lands - <i>Inclosed Lands Protection Act 1901 No 33</i> (NSW), s 4. Aggravated unlawful entry on inclosed lands - <i>Inclosed Lands Protection Act 1901 No 33</i> (NSW), s 4B. 	<ul style="list-style-type: none"> 5 penalty units (\$550). 50 penalty units (5,500).
Victoria	<ul style="list-style-type: none"> Wilful destruction, damage etc. of property - <i>Summary Offences Act 1966</i> s 9. Trespass—land used for primary production - <i>Summary Offences Act 1966</i> s 50A. 	<ul style="list-style-type: none"> 25 penalty units (\$4,130.50) or six months imprisonment.
Tasmania	<ul style="list-style-type: none"> Unlawful entry on land – <i>Police Offences Act 1935</i> (TAS) s 14B. 	<ul style="list-style-type: none"> 25 penalty units (\$4,200) or six months imprisonment.
South Australia	<ul style="list-style-type: none"> Trespassers on premises - <i>Summary Offences Act 1953</i> (SA), s 17A. Disturbance of farm animals - <i>Summary Offences Act 1953</i> (SA), s 17C. 	<ul style="list-style-type: none"> \$2,500 fine or six months imprisonment. \$750 fine.
Western Australia	<ul style="list-style-type: none"> Trespass - <i>Criminal Code Act Compilation Act 1913</i> (WA) s 70A. 	<ul style="list-style-type: none"> \$12,000 fine or 12 months imprisonment.
Northern Territory	<ul style="list-style-type: none"> Trespass – <i>Trespass Act 1987</i> (NT) s 5. 	<ul style="list-style-type: none"> 20 penalty units (\$3,100) or six months imprisonment.

Queensland and Victoria are the only two jurisdictions in which a specific offence of trespassing on agricultural land exists. In other states and territories this is covered by the standard trespass offence, thereby giving agricultural land the same status as a private dwelling or business. However, the penalty for trespass on farming land in Victoria is three times that of Queensland. The only states with a lesser penalty for trespass than Queensland are New South Wales and South Australia. Penalties in Western Australia are the toughest in the nation, with the maximum penalty for trespass being 12 months imprisonment or a \$12,000 fine and are considered a very real deterrent to activists.

Jurisdictional responses to increased activism

Other jurisdictions are considering new laws to protect farmers from coordinated attacks by animal activists. The Victorian and South Australian governments have vowed to review their legal protections

for farmers against trespassing protesters.⁸ Under proposed laws in Western Australia, animal rights activists convicted of trespassing on farms will face fines of up to \$24,000 and two years in jail, in addition to a new type of community order that prevents them from entering any agricultural property for years.⁹ The Australian Government recently introduced new offences for the incitement of trespass, property damage, or theft on agricultural land with penalties of up to five years' imprisonment.¹⁰ Tasmania enacted the *Workplaces (Protection from Protesters) Act 2014* (TAS) which protects businesses and workplaces, including agricultural businesses, from invasion or hinderance by protesters.¹¹ The penalty for committing such an offence is a maximum fine of \$100,000 for organisations¹² or \$10,000 for individuals and where an individual is a repeat offender, a maximum fine of \$10,000 and/or four years imprisonment may be imposed.¹³

Clearly, other jurisdictions have seen a need for greater intervention to combat rising activism. This Bill provides the Queensland Government with the opportunity to take the same step and better protect farmers from interference with the property by animal activists.

The Bill intends to house the proposed trespass laws under Chapter 39 of the *Criminal Code Act 1899* (QLD) ('Criminal Code') with 'burglary, housebreaking and like offences'. While the offences of burglary,¹⁴ entering or being in premises and committing indictable offences¹⁵ and unlawful entry of vehicle for committing an indictable offence¹⁶ are no doubt more serious, other analogous offences are contained in the Criminal Code. For example, regarding agriculture, unlawfully using stock applies to "any person who unlawfully uses an animal that is stock, without the consent of the person in lawful possession thereof".¹⁷ For such an offence, a fine to the value of the animal or a prison sentence of five years may be imposed. Conversely, the crime of wilful damage occurs where a person "wilfully and unlawfully destroys or damages any property" and if no other punishment is provided, imprisonment for five years may apply.¹⁸ While both of these crimes differ to those proposed by the Bill, the decreased imprisonment time may be balanced by the larger fines imposed. Therefore, the penalties imposed by the Bill may be considered consistent with those covered by the Criminal Code and make a reasonable comparison for conduct they intend to prevent.

Community acceptance

QFF recognises and respects the right of individuals and groups to meet and engage in peaceful protest to pursue common goals.¹⁹ However, this right does not extend to entering onto another's property without their permission to interfere with their farm business activities as many animal activists have done recently. Farmers and the general community are concerned about the current offence of unlawfully entering farming land, particularly that the resulting penalties do not reflect the crime itself or the potential damage caused.

⁸ Bianca Hall and Benjamin Preiss, 'Animal activist crackdown looms as parliament probes farm trespass law', *The Age* (online, 1 May 2019) <<https://www.theage.com.au/politics/victoria/animal-activist-crackdown-looms-as-parliament-probes-farm-trespass-law-20190501-p51j1q.html>>; 'Trespass laws under state govt microscope', *Stock Journal* (online, 7 July 2019) <<https://www.stockjournal.com.au/story/6255043/trespass-laws-under-state-govt-microscope/>>.

⁹ Jenne Brammer, 'New laws crack down on meathead activists', *The West Australian* (online, 25 May 2019) <<https://thewest.com.au/news/wa/new-laws-crackdown-on-meathead-activists-ng-b881210019z>>.

¹⁰ *The Criminal Code Amendment (Agricultural Protection) Bill 2019* (Cth).

¹¹ *Workplaces (Protection from Protesters) Act 2014* (TAS) s 6.

¹² *Ibid* s 17(1).

¹³ *Ibid* s 17(2).

¹⁴ *Criminal Code Act 1899* (QLD) s 419.

¹⁵ *Ibid* s 421.

¹⁶ *Ibid* s 427.

¹⁷ *Ibid* s 445.

¹⁸ *Ibid* s 469.

¹⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 21,22.

For example, in April 2018, almost 70 animal liberation activists forced entry into a farrowing house at a sunshine Coast piggery.²⁰ 34 protesters were due to face court, with one protester charged with unlawfully entering farming land, fined \$150 and given a warning by the Magistrate but not convicted.²¹ While another was fined \$400 without conviction.²² Both are repeat offenders with the latter then later receiving a \$1,300 fine and no conviction for her fourth offence despite failing to present for court after leading more than 100 protesters into a dairy and feedlot on the Darling Downs.²³ Another repeat offender and leader at the Darling Downs protests was fined \$1,000 for his second offence and also escaped conviction.²⁴

These examples are indicative of the courts reluctance to record a conviction and impose the maximum fine or imprisonment to punish and prevent future trespass offences. Many farmers, members of the community and community groups have expressed their dissatisfaction with the leniency of penalties imposed by the courts on these animal activists. Feedback from the community has also indicated that the recent introduction of \$652.75 fines for failing to comply with a farm's biosecurity management plan are not significant enough to deter future offenders and QFF agrees.²⁵

Under Queensland's *Biosecurity Act 2014*, all Queenslanders have a 'general biosecurity obligation' (GBO). This means that everyone is responsible for managing biosecurity risks that are: under their control; and that they know about or should reasonably be expected to know about. Under the GBO, individuals and organisations whose activities pose a biosecurity risk must: take all reasonable and practical steps to prevent or minimise each biosecurity risk; minimise the likelihood of causing a 'biosecurity event', and limit the consequences if such an event is caused prevent or minimise the harmful effects a risk could have, and not do anything that might make any harmful effects worse.²⁶ Clearly, activists (particularly repeat offenders) are not complying with their GBO.

The Queensland Police Union has labelled repeat offenders 'professional protesters' and accused them of wasting valuable police time and resources. With protests often occurring in regional and rural areas where they have limited staff numbers, police are being diverted from the 'real police work of tackling crime' to keep the local communities safe.²⁷

Conclusion

A law is the product of the social conditions at the time it is made, it is not static and should change to respond to the current social and political values of a community. In an era of increasing actions towards legitimate businesses that have become more disruptive and extreme, the current offence of unlawfully entering farming land does not meet the expectations of farmers and the community in punishing and preventing future offences of trespass on farms and does not reflect the potential risk to farming businesses. Other jurisdictions already have higher penalties for this type of trespass, and/or are

²⁰ Francesca McMackin, 'Animal liberation group stages protest at Sunshine Coast piggery', *The Sunshine Coast Daily* (online, 6 April 2018) <<https://www.couriermail.com.au/news/queensland/crime-and-justice/animal-liberation-group-stages-protest-at-sunshine-coast-piggery/news-story/9eafb0168b3d413e9dcb23d64cdb699d>>.

²¹ Kelsey Wilkie, 'Vegan, 22, is given a slap on the wrist after storming a piggery in protest over claims the animals were being mistreated', *The Daily Mail* (online, 23 March 2019) <<https://www.dailymail.co.uk/news/article-6841211/Militant-vegan-given-slap-wrist-storming-piggery-protest.html>>.

²² Amber Hooker, 'Vegan activist who 'stormed' piggery slammed for arrogance', *The Sunshine Coast Daily* (online, 3 April 2019) <<https://www.sunshinecoastdaily.com.au/news/vegan-activist-who-stormed-piggery-slammed-for-arr/3689618/?cspt=1562654159|57a4d22926cb5154ddeb008646703878>>.

²³ Cassandra Glover and Chantelle Francis, 'Farm invasion Darling Downs: No-show animal activist escapes jail', *The Weekly Times* (online, 9 May 2019) <<https://www.weeklytimesnow.com.au/news/rural-weekly/farm-invasion-darling-downs-noshow-animal-activist-escapes-jail/news-story/b6ec3dd903215c6b467d9ccd40b2035b?btr=cdccf5ff1b83e82e0b6fc5b8fe6d8efe>>.

²⁴ Ibid.

²⁵ Toby Crockford and Stuart Layt, 'Surrendered sheep in quarantine after Queensland abattoir protest', *The Brisbane Times* (online, 8 April 2019) <<https://www.brisbanetimes.com.au/national/queensland/surrendered-sheep-in-quarantine-after-queensland-abattoir-protest-20190408-p51bwm.html>>.

²⁶ Queensland Government, 'General biosecurity obligation', Department of Agriculture and Fisheries. <<https://www.daf.qld.gov.au/business-priorities/biosecurity/policy-legislation-regulation/biosecurity-act-2014/general-biosecurity-obligation>>.

²⁷ Renee Viellaris, 'Adani mine: Push to freeze welfare of 'professional protesters'', *The Courier Mail* (online, 26 May 2019) <<https://www.couriermail.com.au/news/queensland/queensland-government/adani-mine-push-to-freeze-welfare-of-professional-protesters/news-story/86b2b7042c7235198d03f92bc01b7177?btr=4ae2efd31afd3e56fd275e394d05958>>.



considering introducing new laws to impose greater penalties for this behaviour. QFF supports the principle of this Bill as it would provide the courts with the legislative consent to impose a greater sentence and bring the penalties for trespassing on farming land back in line with farmer and community expectations. It is incumbent upon the Parliament to set appropriate penalties to ensure legislative protections sufficiently punish and deter would be and repeat offenders so farmers and society can operate their legitimate businesses without threat of disruptive, costly and damaging law-breaking behaviour.

Yours sincerely

Travis Tobin
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