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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary

Criminal Code Amendment (Agricultural Protection) Bill 2019

Australian Pork Limited ("APL") welcomes the opportunity to provide support to the *Criminal Code Amendment (Agricultural Protection) Bill 2019* ("the Bill").

APL is the peak national representative body for Australian pig producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry. The Australian pork industry employs more than 36,000 people in Australia and contributes \$5.2 billion in gross domestic product to the Australian economy.

It is well established that unauthorised trespass has caused immense distress to the livestock production sector in recent years. Alongside farmers, the general public has been shocked at the audacity and recklessness of animal activists who have driven a relentless campaign to disrupt, threaten and destroy those who raise livestock for the purposes of food production. APL has been advocating for several years to alert state and federal governments of the damage this activity can do and strongly supports the regulatory reforms now underway to criminalise and apply stricter penalties and jail for trespass (and the theft of livestock) along with the use of carriage services to perpetrate those crimes.

Using a carriage service for inciting property damage/theft/trespass on agricultural land

The emergence of the 'Aussie Farms' attack map understandably made headlines upon its release earlier this year. The website itself has been live since 2014 and during that time has collected over 15,000 photos and 200 videos from more than 4,500 facilities. These photos and videos have been obtained through trespass and concealed cameras. It is most egregious that activists selectively pick through hours of photos and footage to edit together a "story" that places animal agriculture in the worst possible light. The resulting content is then made available on websites and social media for all animal activists globally

to use. As an example, a video taken in the dark of night and in the day present two entirely different stories – one dark and oppressing while the other is light and warm. The addition of light changes the way in which livestock facilities are portrayed.

Moreover, holding onto videos and photos for a “media” opportunity is in and of itself animal cruelty being perpetrated by activists if indeed animal cruelty is occurring in livestock production facilities and this is not immediately referred to the authorities to investigate. These same authorities cannot use edited footage for prosecution purposes as there is no chain of evidence once a video film has been edited.

It must be made clear that the claim made by animal activists that they are the conduit by which animal welfare improves is a logical fallacy. Whilst the ethical requirements and balanced reporting required by journalists is imperative to ensure the public does not receive biased information, no such ethical requirements exist for animal activists. This means that animal activists promote footage exactly as they wish it to be perceived and offer no counter argument or explanation beyond their own interpretation. When this perception refers to matters such as ‘speciesism’ – a term referring to one species’ use of another, it is impossible to be taken seriously, and is directly contrary to the overwhelming community expectation that humans consume meat. Criminalising, at a Federal level, the use of a mobile phone or camera to incite property damage, theft or trespass is a welcome step in attempting to stop the supply of illegal imagery to social media, and the drivers to obtain it.

Action requires both adequate legislation and enforcement

Farmers who operate within the law should not have to keep an ongoing watch on whether their piggery will be broken into, their animals hurt, killed or stolen, or whether they or their businesses will be defamed on online posts. The reality is that producers are frequently abused online, and in person and some have received menacing phone calls and death threats. It is a perpetual frustration of the double standards that farmers are faced with and is a situation that would not be tolerated in any other sector, or indeed any aspect of the broader community.

APL suggests that remedies to bring animal activists to within acceptable levels of behaviour in our communities must target a number of areas:

- The jurisdiction’s legislative arrangements
- The judiciary’s ability to treat these offences with the due risks faced by producers (remove from summary offences and impose significantly more stringent fines and jail sentences)
- Legislative and enforcement arrangements to create a unified government approach to animal activism and to align the resources and information across multiple agencies (police, biosecurity, animal welfare etc),
- Prosecutors to pursue referrals by the police with enough rigour to support a successful prosecution.

APL has compiled an information brief at [Attachment 1](#) which summarises the current legislative and prosecution deficiencies across Australia. This document provides APL’s policy position on how best to prevent unlawful animal activism. [Attachment 2](#) is a

submission sent recently to the Queensland Parliament in response to a Bill which introduces more severe penalties for unlawful trespass. APL strongly supports this move and encourages the Commonwealth Government to pass the proposed amendments to achieve similar aims.

APL is willing to provide further evidence to the Committee, either written or verbal, if it may assist with improving the situation for pig farmers across Australia.

Yours faithfully

Andrew Spencer
CEO

Enc Brief – Raising the status of farm trespass with the criminal justice system

*Submission dated 15 July 2019 to the Criminal Code (Trespass Offences)
Amendment Bill 2019 (QLD)*

Attachment I

Brief

Raising the status of farm trespass with the criminal justice system

Purpose

The increasing number of animal rights activist groups disrupting, threatening and damaging the property of livestock producers has led APL to seek the direct involvement of the criminal justice system. The purpose of this brief is to present clear information on the impacts and risks associated with unauthorised entry to livestock facilities and provide recommendations to the police, public prosecutors and judicial officers on how they may address these issues within their jurisdictions.

Background

There has been a disturbing change in the behaviour of animal rights groups in recent times. Animal activists have altered their activities from peacefully protesting or attending marches on public property, to running highly organised and threatening invasions of livestock facilities and farms. These types of activities usually accompany damage to property and a campaign of online abuse targeted at producers. It is this type of behaviour that requires the attention of law makers and enforcement bodies.

APL is seeking to engage the decision makers in criminal proceedings, being the police, public prosecutors and judicial officers, so that they fully understand the effects that violent and intrusive activism has on members on the community and consider these factors in laying charges and sentencing.

Effects on producers

Animal Biosecurity and Welfare

Biosecurity is arguably the greatest asset Australian agriculture possesses. As a result of our clean image, safe food and freedom from disease, Australia is able to provide high quality agricultural exports all over the world. Livestock producers, along with government and the general public, contribute significant financial resources to the maintenance of Australia's biosecurity system. Capital infrastructure, accredited feed, veterinary advice and quarantine periods are just some of the costs borne by producers to ensure that their livestock, and those of their colleagues and neighbours, remain free from disease. This investment is at risk of being wasted however, if groups with malicious intent towards the livestock industry continue to hold mass protests and invasions inside livestock facilities.

Workplace Health and Safety

Livestock businesses are secure, professional places. They face the same obligations as any other business in that they are required to provide a safe environment for staff, visitors and contractors. Owners, managers and employees of livestock businesses receive significant training to ensure they remain safe and aware of the risks that may arise in the course of their work. Some of these risks include the keeping of veterinary chemicals, machinery and goods on their properties to manage their

business which, if accidentally or deliberately mishandled, can cause serious injury or death. Additionally, the behaviours of unpredictable, large animals on rural properties can cause serious harm to uninvited trespassers who do not have an understanding of this behaviour. It is imperative that livestock producers maintain the right to determine who accesses their home and place of business, and that access be provided only by consent or legal compulsion.

Public Liability

The duty of care owed to the public by land owners is well established both in statute and the common law. However, farmers can only actively provide this duty of care if they are aware of who is on their farm and can monitor their activities. The invasion of farms by activists increases this risk to livestock producers who, particularly if they are a small producer, may not have public liability insurance, nor the capacity to monitor the actions of a group of malicious trespassers, untrained in the risks surrounding rural properties.

Disruption to Business

Australians overwhelmingly have the freedom to enjoy the quiet enjoyment of their property as well as to operate a legitimate business within the law. Businesses often take out insurance to manage risks of natural disasters or accidents and to ensure business continuity in the event of disruption. The interruption of a livestock business from animal activists is no different in its ability to close down a facility both at the time of the event and following a potential disease outbreak. However, insurance policies usually exclude disease outbreaks, and producers are therefore entirely exposed to any ongoing menace caused by animal activists.

Food Safety and Bioterrorism.

Australian livestock producers are concerned that animal activists are becoming bolder and more audacious as a direct result of the light penalties being imposed upon those charged. As an example, animal activist activity in 2003 claimed to have introduced pig meat into the feed of sheep designed for export so that their halal certification was withdrawn.¹ This sort of radical behaviour has impacts throughout the food system and affects food safety. Parallels can easily be drawn to the strawberry tampering crisis in 2018.

Technology based threats

The owners of livestock are regularly targeted through media channels such as Facebook, Twitter and in online blogs. The comments are often vindictive, vitriolic and defamatory to such an extent that Facebook has in some cases removed posts for breaching their community standards. Additionally, activist groups are making use of increasingly sophisticated technology, moving from fixed cameras to mobile videos and infrared video equipment. Often these images are hosted in overseas jurisdictions, making it impossible to have them removed under Australian law. The release of the 'Aussie Farms' map in January 2019 has publicised the contact details of producers, directly exposing them to further abuse and despite community, political pressure, and new Commonwealth privacy laws, remains online and a threat to livestock producers.

¹ <http://www.abc.net.au/pm/content/2003/s992902.htm>

Increasing prevalence of trespass likely

It is clear that there is an increase in the propensity of crimes fuelled by animal activism, and Australian livestock producers are extremely concerned. The animal activist organisation, 'Aussie Farms' has been actively encouraging trespass onto farming properties and processors for eight years, and through this activity has obtained over 14,000 photographs from almost 5,000 properties.² Given the number of producers on the 'Aussie Farms' database, there is a high likelihood of producers being watched and potentially invaded at any point in time.

Threat of legal action is not a deterrent

Industry is concerned that the current law is not being exercised sufficiently to deter the commission of offences against farm businesses. Activists have appeared at several farm invasions adorned with slogans such as "*One has a moral duty to disobey unjust laws*". This type of behaviour makes a mockery of the laws that are legislated and enforced to protect members of the public.

Whilst there certainly is scope for new legislation to protect livestock producers, there is also an opportunity for judicial officers to impose heavier discretionary penalties to adequately dissuade activists from deliberately turning their back on the law. The livestock industry would welcome such increases as an important step to protect livestock producers and attempt to reduce the incidence of trespass and related offences.

Criminal

Sentencing legislation exists in each Australian jurisdiction to allow judicial officers guidance in how to apply sentences and penalties to offenders who are found guilty. For specific offences, there are limitations to the maximum penalty that can be applied. For others, sentencing is at the discretion of the judicial officer. General deterrence, denunciation and community protection are pillars of Australian sentencing law and must be considered when imposing a sentence.³ Industry is concerned that recent sentences imposed for trespass have not adequately considered these sentencing principles.

Civil

Livestock producers have a restricted ability under civil jurisdiction to seek a remedy to the damage they have suffered. Aside from the often-prohibitive cost of civil litigation, actions of tort brought against individual activists do not adequately protect the livestock community against the tide of activism that is threatening Australian farmers. The activism community has an extensive network of well-funded supporters that have been relied on to compensate individuals for any damages a civil judgement may impose. Very often, the legal advice they receive in defending such actions is also provided *pro bono* through groups such as the Barristers for Animal Welfare Panel (BAWP).

² <https://www.aussiefarms.org.au/facilities>

³ https://www.districtcourt.wa.gov.au/_files/Sentencing%20Guide%201may07%20final.pdf

Recommendations

In considering all of the above matters, industry implores all decision makers in the criminal justice system to apply more appropriate weighting to the damaging effects that farm invasions and threatening behaviour has on livestock producers. Specifically, decision makers ought to review their policies on:

- whether to apprehend, arrest or move-on an individual or group suspected of carrying out a trespass or related offence
- whether to lay charges against an individual suspected of carrying out a trespass or related offence
- allowing or rejecting bail applications
- applying harsher penalties where discretionary sentencing is available

Serious consideration also ought to be given to the fact that farm invasions are fast becoming a public menace. It is unreasonable to require individual property owners to protect themselves from regular attacks from groups of malicious individuals. It is industry's view that relying on civil jurisdiction is no longer feasible to protect livestock producers against random, coordinated attacks and it is now the responsibility of the state to protect its citizens.

Attachment 2



15 July 2019

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Dear Secretary

Criminal Code (Trespass Offences) Amendment Bill 2019

Australian Pork Limited ("APL") welcomes the opportunity to provide support to the *Criminal Code (Trespass Offences) Amendment Bill 2019* ("the Bill").

APL is the peak national representative body for Australian pig producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry. The Australian pork industry employs more than 36,000 people in Australia and contributes \$5.2 billion in gross domestic product to the Australian economy.

APL wholly supports the passage of the Bill and commends the Queensland Government for its approach in attempting to reduce incidents of trespass on farming properties and at abattoirs. The unauthorised trespass, filming and surveillance of pig production facilities has been an increasingly common occurrence, and has caused damage to pig production facilities, as well as immense distress for individual farmers and their staff. Pig producers undertaking lawful businesses are being targeted by activist vigilantes, intent on undertaking illegal activities (e.g. trespass) with the objective of causing the industry harm, and to stop consumers eating pork. Additionally, carefully designed biosecurity protocols are being ignored by trespassers who often move from farm to farm within a region to place hidden cameras, damage property and disrupt businesses.

Specifically, with regards to biosecurity, damage caused by a disease-carrying trespasser (even endemic diseases) could have ongoing effects on an individual's business, livelihood and the animals they produce. Reckless trespass of other pig farms within the quarantine period could cause a farm or regional biosecurity incident, with losses that could escalate into the tens of millions of dollars. In extreme cases, with emergency diseases involved, it could mean the shutting down of one or more livestock sectors – and close valuable

export markets. These are not hypothetical situations – African Swine Fever is having a devastating effect on pig production in China, spreading largely due to the movements of people and vehicles through infected areas.

It is industry and government that collectively spend millions of dollars each year on traceability systems and biosecurity measures to ensure that the industry remains free from disease. Queensland's *Biosecurity Act 2014* stipulates that everyone has a biosecurity obligation. Animal activists are not exempt from this responsibility, yet they are undermining biosecurity integrity on farms through unlawful trespassing.

Incessant intimidation and threatening behaviour have become the modus operandi for animal activists and it is essential that this conduct is curbed as soon as possible. APL can make the following comments on how the proposed amendments to the *Criminal Code* may assist in reducing unlawful trespass.

Proposed sections within the Bill

Clause 5 Insertions of new ss 422-424

422 Aggravated trespass

Offences for breaches of biosecurity, as well as aggravated trespass laws have been legislated in other jurisdictions to attempt to reduce the threat of animal activism to farmers. The *Inclosed Lands Protection Act 1901 (NSW)* was amended following the 2016 Bradshaw Review to include aggravated trespass for individuals intending to commit a crime or risk a biosecurity breach. Courts have so far been limited in their ability to apply appropriate penalties to offenders, given that offences of trespass are typically listed as summary offences and carry small fines, e.g. the Gippie Goat Café incident in Victoria where the activist received a \$1 fine. The livestock production sector has been vocal in its claim that these penalties are wholly inappropriate and do not reflect the true harm caused to producers. Moreover, they do not create a deterrent for prospective offenders that the community expects of the criminal justice system. An offence of aggravated trespass is therefore appropriate to include in the *Criminal Code* and is welcomed by APL.

423 Serious criminal trespass

The inclusion of serious criminal trespass in the *Criminal Code* is a positive step in criminalising activities that occur on farming properties that are often overlooked by the police and the judiciary. Surveys undertaken by APL have found that in many cases, animal activists commit additional offences when trespassing onto farms, including stealing animals, interfering with equipment and stock and damaging property. These are deliberate actions intended to disrupt the business of livestock production as much as possible. APL has long argued that such behaviour ought to be recognised as criminal and dealt with accordingly, however often trespass is the limit of any charges laid. The nature of pig production is such that any delay or disruption to regular processes can create chaos in business operations. This is exacerbated by any interference with systems, stock or equipment, particularly when the damage or interference is not obvious, but is uncovered some time later when a management system fails, or animal health is compromised. As an

example, many sows will experience production impacts such as abortions and still births following trespass incidents.

424 Organised trespass

APL strongly supports the inclusion of an organised trespass offence. The model of unlawful animal activism has relied on the commission of minor and summary offences by a multitude of offenders, which collectively inflicts serious damage to individual producers and creates a climate of fear across the whole livestock industry. The organisers of such movements are often not present during the trespass and have therefore remained exempt from any prosecution. This section allows for the organisers of such criminal activity to be held responsible for the damage they cause through their networks.

Clause 6 Amendment of s 552BB (Excluded offences)

APL welcomes the exclusion of the offences from section 552BA, as it is important that indictable offences of this nature are not compelled to be heard summarily, and that Magistrates are provided with discretion to commit offenders to trial in the District or Supreme Courts. The nature of Magistrates Courts is to deal with summary and simple offences that by their nature do not substantially impact the broader community. More serious offences are appropriately dealt with by trial in the District or Supreme Courts. APL argues that it is appropriate that the proposed offences of aggravated trespass, serious criminal trespass and organised trespass are excluded from the requirement to only be dealt with summarily.

APL refers to the Minister's First Reading of the Bill which offered an example of a recent offender charged with trespass on the Sunshine Coast. In April 2019 the offender, who had trespassed onto the same piggery twice in six months, and two other farming properties within a 12 month period, was dealt with summarily in the Maroochydore Magistrates Court and received a \$400 fine, with no conviction recorded. The Magistrate provided a severe reprimand to the offender but was restricted via legislation in only imposing a penalty for trespass under the *Summary Offences Act 2005*. This shows the limitations that Magistrates currently have and exposes a legislative gap that this Bill ought to fill.

Moreover, it is clear that activists, including in the above case, are contemptuous of the Court's decisions. In the above case, in a car outside the Court, the activist offender noted that she only received a fine with no conviction and immediately announced her intention to trespass and steal livestock again. This video announcement was posted on Facebook.

The passage of the Bill will rightfully include trespass offences against farming properties in the *Queensland Criminal Code*. It is encouraging that the Government has committed to legislation which puts a stop to the light-handed approach that has so far been abused by offenders and plagued the livestock sector.

Enforcement of the proposed offences

While APL supports the inclusion of new offences in the *Criminal Code*, there is a degree of scepticism that remains over whether the new offences will be used to convict trespassers

to farming properties. There already exists a suite of indictable offences under which charges can be laid against offenders. The reluctance for police officers and prosecutors to rely on these laws is a concern not only in Queensland but across the country.

APL strongly recommends that the passage of this Bill is accompanied by a commitment from the Government to use the new offences for the purposes set out in the First Reading and public statements. APL, and indeed the entire livestock sector, will be closely following any further incidents of farm trespass and hope to see these new laws used by the justice system to penalise offenders and discourage future farm invasions. It is well established in the livestock sector that high profile charges of serious offences have reduced instances of trespass at least in the short term, whereas light penalties have emboldened activists to plan further attacks. APL cannot stress enough the importance that strong, enforceable legislation would set in protecting producers from the scourge of farm invasions.

Raising the status of farm trespass with the criminal justice system

APL also asks that the government ensure as far as possible, that police officers, public prosecutors and the judiciary are informed and educated as to the reasons that these laws have been created, being to create a general deterrent for those planning to engage in harmful invasions. Please see at [Attachment 1](#) a briefing paper that APL has created to inform relevant parties within the criminal justice system of the effects of animal activism, and reasons why more is needed from the legislature, the police and the judiciary.

Summary

Farmers who operate within the law should not have to keep an ongoing watch on whether their piggery will be broken into, their animals hurt, killed or stolen, or whether they or their businesses will be defamed on online posts. The reality is that producers are frequently abused online, and in person and some have received menacing phone calls and death threats. It is a perpetual frustration of the double standards that farmers are faced with and is a situation that would not be tolerated in any other sector, or indeed any aspect of the broader community.

APL is willing to provide further evidence to the Committee, either written or verbal, if it may assist with the passage of this Bill and see an improved situation for Queensland pig farmers.

Yours faithfully

Andrew Spencer
CEO

