

Monday, 12 August 2019

## Get the balance right on farm trespass laws, says Law Council

Proposed farm incitement of trespass laws would duplicate existing state and territory provisions and could stifle legitimate public debate, says the Law Council of Australia.

At today's senate hearing into the Criminal Code Amendment (Agricultural Protection) Bill 2019, the Law Council will raise concerns the legislation could have unintended consequences.

"I acknowledge this legislation was an election commitment by the government, Law Council President, Arthur Moses SC, said. But we are concerned the legislation doesn't get the balance right in ensuring legitimate rights and freedoms of expression are not unduly compromised."

The Law Council highlighted four key issues:

- the potentially broad scope of the proposed measures which could stifle legitimate public dialogue;
- the extent to which the proposed measures overlap with existing state and territory offences covering similar conduct;
- the adequacy of the proposed exemptions for journalists and whistle-blowers; and
- the severity of the penalties attached to the proposed offences.

The bill seeks to amend the Criminal Code, introducing two new offences that would apply if a carriage service was used to transmit, publish or distribute materials to incite trespass, property damage or theft on agricultural land.

Mr Moses SC said while the Law Council recognised trespass, property damage and theft was unlawful and could cause harm to farming properties, all jurisdictions already had laws criminalising the incitement of such conduct.

"The primary mischief which this bill seeks to deal with is already dealt with by state and territory legislation," Mr Moses SC said.

"Overlapping legislation creates unnecessary confusion for members of the public and potential demarcation disputes between federal and state law enforcement. These are matters best dealt with by state and territory law enforcement agencies rather than placing a further burden on our overworked federal law enforcement agencies."

"The bill could also have a chilling effect on debate surrounding issues of food production practices. Despite providing exemptions for journalists and whistleblowers, the laws could make media outlets reluctant to pursue legitimate stories, especially given weak whistleblower protections that do not ensure immunity from prosecution."

To improve the bill, the Law Council has proposed a number of changes:

- the requirement to prove disclosure of 'offending' material was not in the public interest;
- limiting of the maximum penalty for the proposed offences; and
- the establishment of a comprehensive whistleblower regime.

---

**Anne-Louise Brown**

P 0406 987 050

E [Anne-Louise.Brown@lawcouncil.asn.au](mailto:Anne-Louise.Brown@lawcouncil.asn.au)

*The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.*