



Inquiry into the provisions of the Criminal Code (Agricultural Protection) Bill 2019

31 July 2019

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Introduction

The Australian Dairy Farmers (ADF), the peak body representing dairy farmers nationally, welcomes the commencement of an inquiry into the provisions of the Criminal Code Amendment (Agricultural Protection) Bill 2019 by the Senate’s Legal and Constitutional Affairs Legislation Committee.

For some years now animal activists have been attempting to shut down the Australian dairy industry and shift consumers to plant based diets. They primarily seek to achieve these goals by:

1. falsely presenting the industry as condoning and hiding animal abuse to the public
2. undertaking criminal activities against dairy farmers.

This agenda has caused undue hardship to farmers. They have suffered lost production and revenue from ill-informed consumers ceasing to purchase dairy products and dealing with activists invading their farms. They also suffer from increased stress and fear of being attacked by activists sometime in the future.

Optimising animal performance and farm profitability requires healthy, content and productive farm animals. The average annual milk production per cow nationally has increased from 2,848 litres in 1979-80 to 6,070 litres in 2017-18 (Dairy Australia 2018). This is the result of improved herd genetics and advances in pasture management, supplementary feeding regimes and animal management. Given that each litre of milk per cow translates to increased profit for a farmer, it is not in their financial (and legal) interest to behave in a manner the animal activists portray.

ADF has developed this submission on the grounds that this is a community specific (livestock/dairy) national priority. On this basis it is critical that the committee understands the industry’s regulations, strategies and priorities to ensure its determinations and recommendations relating to the Bill are grounded in evidence.

Industry Overview

Australian dairy is a \$12 billion farm, manufacturing and export industry. This comprises of 42,000 people working in over 5,500 farms producing around 9 billion litres of raw milk per annum and processing companies transforming the milk into high value dairy products. Around 65 per cent of Australian dairy is sold on the domestic market. It is purchased from supermarkets and other retail or wholesale outlets for direct consumption or as ingredients in food and beverage. The total value of Australia's dairy exports is around \$2.8 billion per annum. This positions Australia as the fourth largest dairy exporter with 7 per cent of global trade. Approximately 125 Australian companies export dairy products to over 100 countries. The largest markets are China, Japan, Singapore, Malaysia and Indonesia (Dairy Australia 2019).

The dairy industry is serviced at the national level by ADF and Dairy Australia (DA). ADF is the national policy and advocacy body. It represents Australia's six dairying states. State bodies, known as State Dairy Farmer Organisations (SDFO), pay a membership fee to participate in ADF's national policy development and delivery. ADF, like other commodity groups, is a member of the National Farmers Federation (NFF). This is the peak body representing cross commodity agricultural issues across the country. DA is a Research Development Corporation (RDC) formed in 2003 to deliver farm research, development and extension (RD&E), industry and community marketing, policy research and trade and international market development. Areas covered in its RD&E program are pastures and forages, feedbase and animal nutrition, genetics and herd improvement, resource management, animal health and fertility, farm business and workforce management and advanced management technologies. A substantial amount of DA's work underpins ADF's industry policy development and government advocacy.

Policy positions relating to the Bill

The Australian dairy industry believes that:

1. no one person or organisation is above the law
2. human rights should always be protected by government at all levels
3. public reporting by media and other sources should be factual and based on evidence and science.

In response to the impact animal rights activism is having on the dairy industry, these values translate to the following objectives:

1. Farmers have a right to farm without the threat of invasion, sabotage or biosecurity outbreak posed by animal activists.
2. Animal activists trespassing onto farms or committing other crimes should be held to account by the criminal justice system. Their punishment should be proportionate to the crime committed and an effective deterrent to them and others in the future.
3. Farmers private and commercial information should not be accessed or disclosed by anyone without farmer consent.
4. Animal activists disclosing false information about the dairy industry to the public needs to be corrected by industry and government.

The risk of biosecurity outbreaks and economic and social loss from farm trespass

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. Governments across the country are similarly impacted by these events with resources having to be allocated to containment or eradication activities, investigations and prosecutions and various recovery efforts like restoring market access with international governments.

Animals, people and vehicles entering farms with traces of a disease infect herds, and possibly people and wildlife. For example, dirt on the shoes of a person could contain a type of endospore or bacteria that transmits an animal disease. To mitigate this risk farmers are encouraged to have various biosecurity protocols in place for entry on a farm. For example the completion of a visitor/staff risk assessment (<https://www.farmbiosecurity.com.au/wp-content/uploads/2019/02/Visitor-and-Staff-Risk-Assessment.pdf>). While there are varying adoption rates across the country, the problem is that when animal activists' trespass onto farms such protocols are never followed. This further increases the risk of a biosecurity outbreak.

Biosecurity outbreaks vary in impact and cost. Livestock affected by diseases may not always show obvious clinical signs of the disease, however, the disease may still be having a negative impact on productivity by, for example reducing milk production. While most of these cases are resolved inside the farmgate by the farmer and vet through medication and management, the farmer incurs the cost of revenue forgone and vet/medication bills. These and other negative impacts increase the further a disease spreads to other properties and furthermore if people and wildlife are infected. For example, the CSIRO (2017) estimate that if Australia were to be infected by FMD it would cost the economy up to \$50 billion over 10 years, primarily due to trade restrictions. This is in addition to the social impacts associated with 'animal culling and loss of income due to time to return to trade affecting producer psychological health.'

The federal *Biosecurity Act 2015 (Cth)* was introduced to manage biosecurity and human disease risks and emergencies. Section 310 defines a biosecurity risk as an invasive pest or disease. Sections 333 and 349 governs people entering or leaving the premises with contravention of procedures incurring imprisonment for 5 years or 300 penalty units, or both.

The adoption and extension of on farm biosecurity measures to farmers is achieved through a number of measures and pathways. Animal Health Australia (AHA) and Plant Health Australia (PHA) manage the joint initiative Farm Biosecurity (<https://www.farmbiosecurity.com.au/>), which provides generic biosecurity information for Australian farmers. As dairy farms are complex businesses with multifactorial biosecurity risks, Agriculture Victoria and DA have co-developed a Biosecurity Builder tool to address these specifically. Unfortunately, the extension and training of farmers to use this tool has been suppressed through inadequate funding. ADF has requested the Victorian Government continue to co-invest with DA to finalise and implement the tool.

The facts about animal health and welfare in the dairy industry

Animal activists argue the reason why they trespass on farms and breach farmer privacy is because they want to expose animal cruelty in the industry. For example, Mr Chris Delforce, Executive Director of Aussies Farms Inc. said in a media statement in response to the proposed NSW biosecurity laws that ‘once again, the issue of biosecurity is being used as an excuse to attempt to limit consumer awareness of the systemic cruelty occurring in farms and slaughterhouses across the country’ (Delforce 2019). In the same statement Mr Delforce said that ‘protest actions are being used (by the government) as a smokescreen to stem the tide of footage and photographs which have been, for many years, a source of great embarrassment and reputation damage for industries that engage in commercialised animal cruelty. Were these industries transparent and honest about what happens inside these facilities, there’d be no need for anyone to take it upon themselves to capture evidence of it.’ Other animal activist organisations like Direct Action Everywhere echo these views via similar media statements, websites and campaigns.

The Australian dairy industry has demonstrated its ability to put strategies in place to manage productivity and animal welfare issues consistent with changes in community values and biosecurity threats. Science has and will continue to play a key role in generating knowledge and promoting a well-informed debate on the appropriate treatment of animals. ADF recognises that this requires a multifaceted approach with the risks associated with change in technology and practice requiring continual attention, management and improvement. Any change in policy needs to be soundly based in science, otherwise the Australian dairy industry’s market access and animal ownership is compromised.

Australia has a very strong record in animal welfare RD&E. This is validated by the number of peer reviewed publications, presentations at international conferences, positions on international committees and advisory groups and significant number of collaborations. The most formal collaborations are:

1. Animal Welfare Science Centre (<https://www.animalwelfare-science.net/>)
2. CSIRO Livestock Industries division based at Armidale
3. Centre for Animal Welfare and Ethics based at the University of Queensland
4. Co-operative Research Centres and other joint funding initiatives.

Back in 2009 the then Primary Industries Ministerial Council (PIMC) endorsed a framework to better coordinate and more efficiently collaborate on agriculture RD&E. To implement the framework, PIMC endorsed 14 sectoral strategies including dairy and 9 cross-sectoral strategies including animal welfare and biosecurity over a four-year period since the framework's announcement. All primary industry government agencies, RDCs and the Australian Council of the Deans of Agriculture (ACDA) are signatories and deliverers of the framework (reconfirmed with the release of a *Statement of Intent* on 26 July 2017). This is the authorising and organising environment for animal welfare RD&E, including the collaborations. It also nominates the Victorian Government as lead government agency for dairy RD&E due to the industry's size and prominence in the state.

The *Australian Animal Welfare RD&E Strategy*, revised in 2017 under the framework, focuses on the following priorities:

1. Animal Welfare Assessment
2. Pain Assessment and Management
3. Management, Housing and Husbandry
4. Transport, Euthanasia and Slaughter Impacts
5. Attitudinal Effects on the Welfare of Livestock throughout the Value Chain
6. Education, Training and Extension

Australia's livestock industries, governments and research agencies such as the CSIRO are working to deliver these priorities across the country.

The Australian dairy industry's animal welfare standards and practices go beyond state and federal regulations. It has an internationally recognised *Australian Dairy Sustainability Framework* - a 'triple bottom line' (economic, social and environment) performance management system that includes a commitment to 'strive for health, welfare and best care for all animals throughout their lives'. This translates to achieving the following goals and targets:

1. 100 per cent compliant with legislated animal welfare standards
2. No routine use of calving induction
3. No tail docking
4. All calves disbudded with pain relief prior to two months of age
5. All farmers implementing a lameness strategy
6. All farmers, where relevant, have cooling facilities
7. Bobby calves managed appropriately

8. All farms are implementing a documented biosecurity plan
9. 25 per cent increase in the number of consumers who believe dairy farmers do a good job caring for animals
10. Use antibiotics responsibly - as little as possible or as much as necessary to protect the health and welfare of our animals
11. All dairy farmers access antibiotics from a registered vet and are using them responsibly under veterinary direction
12. Antibiotics that are of high importance to human Antimicrobial Resistance (AMR) in Australia are only used to treat dairy livestock in exceptional circumstances where no other alternatives exist.

Dairy farms are busy places. Tankers often pick up milk on a daily basis and vets and other service providers visit farms regularly. As most of these visitors are aware and are sometimes required to report or enforce industry standards, dairy farmers by default have transparency and accountability to the industry's animal health and welfare standards. For example, dairy processor contracts often require compliance to industry standards and milk tanker drivers are employed by dairy processors. This transparency plays a key role in enabling the industry to achieve a high level of compliance with state animal welfare law. For example, over the last five and half years (2012-2018) the Victorian Government prosecuted 71 cases across Victoria's livestock (sheep, beef, pork and dairy) industries (Agriculture Victoria 2019) for breaching the state's *Prevention of Cruelty to Animals Act 1986*. This is a very small offending rate considering there are 3,881 dairy farms operating in Victoria (Dairy Australia 2018).

Since 2005 DA has been regularly conducting the *Animal Husbandry Survey*. This is a statistically significant (between 400 – 600 participants) computer assisted telephone interview of dairy farmers randomly selected from the levy payer database. It tracks farmer adoption of the dairy industry's commitments to improving animal welfare, including disbudding practices, calf pathways, calving induction, lameness prevention, treatment of downer cows, and herd nutrition programs.

Since 2012, the Australian dairy industry has been publicly reporting (on an annual basis) against its *Australian Dairy Sustainability Framework* goals and targets. The latest December 2018 report highlighted incremental improvement across most categories. It also provided reasonable confidence that many of the industry’s 2020 targets will be achieved. However, despite the usefulness of the *Animal Husbandry Survey* there continues to be a lack of data in some commitment categories.



Figure 1: Australian Dairy Industry Sustainability Framework - Goal 7: Provide best care for all animals’ scorecard

Efforts are being made to develop these datasets and monitor them via a digital application but there are funding and resource constraints. Vets have a system called “Drugrite” to identify farmers who are able to responsibly receive and administer medications. There may be an opportunity to replicate this or link via ‘Farmrite’ or ‘Cowrite’, which are systems used by industry. DA is currently developing an online program that monitors animal health and welfare performance more efficiently. This is currently nearing the demonstration point in the project cycle.

The issue with animal activists, and media more broadly, is that the industry’s animal welfare record outlined above is not being explained to the Australian public. For example, some farmers have attempted to upload evidence e.g. CCTV footage of their good animal welfare practices to the Aussie Farms Inc. website, only to be refused access.

DA has responded to this and other social licence issues by launching a Dairy Matters Campaign in 2019. This is a website (<https://www.dairy.com.au/dairy-matters/you-ask-we-answer>) for any member of the public to obtain facts and ask questions about the dairy industry and its products. All material and answers provided by DA are based on evidence and science.

The proposed Criminal Code Amendment (Agricultural Protection) Bill 2019

For many years animal activists have been committing various crimes in an effort to shut down livestock industries. For example, back on the 17 March 2016 about 20 Animal Liberation Victoria activists gained access to the Dairy Australia headquarters at Southbank demanding an end to the dairy trade (Sampson 2016). More recently on 8 April 2019, the one-year anniversary of the animal rights documentary, *Dominion*, farms and abattoirs across the country were subject to invasion and protest by animal activists. The extent of these actions led to the Prime Minister Hon. Scott Morrison to describe the acts as ‘un-Australian and shameful’ (Chappell 2019). Such events have elevated a long-standing agriculture issue into the public arena.

Of this list of offences trespass is the most common. In the criminal law this crime is typically defined as someone entering private property without permission or via an unauthorised entry point and on most occasions refusing to leave after being asked to do so. Consistent with this definition the NFF, ADF and DA have been active in communicating to farmers how they should respond when confronted by an activist/s entering their farm. For example the NFF established the ‘Activist trespass response tips for farmers’ website page (<https://farmers.org.au/news/activist-trespass-response-tips-for-farmers/>).

Individual states are primarily responsible for legislating and enforcing the crime of farm trespass. A key issue is these laws are inconsistency in scope, penalty and enforcement. In particular, penalties are often prescribed at a maximum only creating an opportunity for the courts to issue grossly inadequate penalties like non convictions, good behaviour bonds, adjourned undertakings, diversion or nominal fines.

Most Australian states have recognised the shortcomings of their legislation and in recent times have either strengthened their laws or established a process to do so. ADF’s consultation with its SDFOs and Western Australian Police Force found that the Western Australian legislation has been the most effective punishment and deterrent across the states but only when the maximum fine is imposed.

ADF commends the swift action of the Australian Government in responding to the publication of the Aussie Farms Repository website (<https://www.aussiefarms.org.au/>) in January 2019 and the national day of protest on 8 April 2019. The government almost immediately acted to prescribe the website as an organisation under the *Privacy Act 1988* exposing Aussie Farms Inc. to potential penalties of up to \$2.1 million if it is found to breach the Act. The proposed *Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth)* is like an addendum to the government's initial action. It enables prosecution of those who use a carriage service, such as the internet, to incite another person to trespass, damage, destroy or steal property on agricultural land. ADF supports the Bill on the grounds that it:

1. fills a gap in the legislative framework
2. introduces serious criminal penalties to ensure that farmers are adequately protected
3. does not restrict those who lawfully disclose animal cruelty, mistreatment or other criminal activity
4. is compatible with human rights and freedoms
5. will incur next to no cost to farmers and taxpayers.

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