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2 August 2019

Parliament of Victoria

Legislative Council

Economic and Infrastructure Committee

**A Submission relating to the:**

**Inquiry into the Impact of Animal rights Activism on Victorian Agriculture**

**Summary of key points in submission:**

1. Any cruelty to any animal is unacceptable and the Government must provide adequate legislation and resources to protect animals from human harm. The prevention and detection of animal cruelty is paramount.
2. Current legislation relating to trespass seems to lack the required integrity to combat the extreme and irresponsible mayhem of animal activists who are inflicting a profound effect on people and businesses involved in primary production.
3. Now, is an appropriate time for the introduction of a new criminal offence - 'Aggravated Trespass'. Mandatory punitive penalties are required to deter unwarranted perilous activism. Victims and primary production operations must be afforded better protection.

**'Aggravated trespass':**

Factually, there is genuine fear and apprehension amongst primary producers and others because of the unreasonable and obnoxious actions of animal activists raiding their properties and breaching the peace. The continued threat is frightening and farmers feel vulnerable and unprotected by the laws of our land. Court-imposed penalties are atrocious and offensive to victims and our decent community standards.

A new clearly defined criminal law needs to be introduced. Stronger legislation is required to bring about some law and order and provide some comfort from this reckless civil disorder.

A new offence of 'Aggravated Trespass' would be akin to the offence of 'Aggravated Burglary' (Section 77 (1) of the Crimes Act 1958) – where the fear experienced by people is a major element of the offence. The crime of 'Aggravated Trespass' should in effect deter the irresponsible and intimidating conduct of animal activists on farms and private land.

Because of its seriousness, 'Aggravated Trespass' should be an offence included into the Crime Act 1958. Penalties must portray a robust deterrent value i.e. hefty fines and/or likely imprisonment. Repeat offenders must face a strong possibility of mandatory imprisonment.

Given that many of these invasions occur in the wee hours of the night, there should be a mandatory provision for the Courts to double the penalty if the offending does occur between sunset and sunrise.

Animal activists or for that matter, any person entering onto private land with an intention to conduct a breach of the peace or any other unlawful activity should be guilty of the proposed offence of 'Aggravated Trespass', as soon as they step foot onto the property.

A 'reverse onus' clause, would also mean that offenders would be guilty unless they could satisfy the Court that their trespassing actions were reasonable and justified, in considering all the circumstances of the case.

#### **Suggested wording of the offence - 'Aggravated trespass':**

A person is guilty of 'Aggravated Trespass' if he or she enters onto private land without the consent of the owner or occupier or a representative of the owner or occupier and at the time of entering onto the private land, he or she had the intention to breach the peace by way of intimidating, threatening, assaulting, damaging or generally disrupting the ordinary everyday proceedings of any primary production business or the processing of any primary production produce being conducted on such private land.

#### **Rural farming properties are vulnerable to criminal activity:**

Farming properties are vulnerable to criminal acts. There has been an increase in livestock thefts and burglaries on farms, some involving the theft of firearms which is a particular concerning issue for authorities.

Due to magnitude and remoteness, farming properties cannot be adequately secured like city dwellings and buildings. CCTV and other electronic security are not cost effective and have problems due to vastness, etc.

Farmers cannot sufficiently protect their livestock and large properties, 24/7. The rural community ethos of trust that has stood the test of time is being eroded by dishonest and desperate criminals preying on this vulnerability. Criminals particularly target rural and remote properties because the likelihood of them being caught and convicted is remote.

Crimes affecting pastoral properties has a devastating effect and impacts on the livelihood and welfare of farming families. The success rate of convictions for farm related crimes is very low. The recovery of stolen livestock is almost zero. Victoria Police fail in this area.

The agricultural industry has a right to be better protected from criminal behaviour including activism trespass. Prevention and a deterrence factor are always the best policy.

**The current Trespass law:**

Victorian legislation covering ‘trespass’ in my opinion, is antiquated, confusing and rarely enforced. The scope and intentions of the parliament regarding ‘trespass’ lacks clear definition and direction. This ‘greyiness’ requires amendment and clarity.

Basically, current trespass laws allow a person to enter onto private land and it is only when they are asked to leave and they fail to do so, the offence of trespass is actually committed.

The purpose and intent of the Summary Offences Act 1966 was to provide for laws relating to certain Police Offences.

Part One, ‘Provisions applicable throughout Victoria’ - Division 2 - ‘General’ offences - Section 9 relates to ‘Destroying, Damaging or Injuring Property – Trespass’.

Sub Sections (1) (e), (f) and (g) of Section 9, relate to various trespass scenarios.

Section 9 (1) (3) basically deals with an incident where a person who without lawful excuse, wilfully trespasses on private place, unless for a legitimate purpose.

Section 9 (1) (f) basically deals with an incident where a person neglects or refuses to leave a private place, unless the person has a lawful excuse.

Section 9 (1) (g) basically deals with an incident where a person without lawful excuse enters any place (private or public) in a manner likely to cause a Breach of the Peace or a reasonable apprehension of a Breach of the Peace. (A Breach of the Peace is a common law offence where basically harm is done or likely to be done to a person or his property when he or she is present, the victim being in fear of being harmed or assaulted)

Extraordinarily, Part 2 of the Summary Offences Act 1966, under the heading ‘Trespass for certain purposes’ - Section 50A ‘Trespass – land used for primary production’, in sub-section (5) basically deals with an incident where a person enters defined and gazetted primary production land with the intention of ferreting during a fire danger period.

A definition of ‘Primary Production’ land is described in Section 50A (1) of the Summary Offences Act which states: ‘primary production’ means “*farming, agricultural, horticultural, viticultural, pastoral or grazing operation and without affecting the generality of the foregoing provisions includes dairy farming, poultry farming and bee farming operations.*”

There seems to be very few prosecutions launched for trespass, and certainly animal activists seem to escape any prosecution under these provisions. Why? I don’t know.

[REDACTED]

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