9 October 2019

The Hon Vickie Chapman MP
Attorney-General
GPO Box 64
ADELAIDE SA 5001

By email: agd@agd.gov.sa.au

Dear Ms Attorney

Summary Offences (Trespass on Primary Production Premises) Amendment Bill 2019

1. I refer to your letter of 4 September 2019 in relation to the draft Summary Offences (Trespass on Primary Production Premises) Amendment Bill 2019.

2. The Bill creates a new standalone aggravated farm trespass offence under section 17 of the Summary Offences Act 1953 (SA) (“the Act”). The Bill also proposes to increase penalties across a number of related offences, including trespassers on premises; interference with gates; disturbance of farm animals.

3. The Society met with the Minister for Primary Industries (“the Minister”) on 14 May 2019 to discuss trespass on agricultural land and biosecurity offences. The Minister expressed his concerns with respect to the increasing number of coordinated trespasses occurring on farms and primary production premises in South Australia. In addition, he indicated that there is a view amongst agricultural producers that the penalties for these offences are inadequate, particularly given the biosecurity implications they present.

4. Following this meeting the Society provided the Minister with a letter dated 22 May 2019 setting out existing laws with respect to trespass, as well as other legislative provision which may be relevant to the issue of farm trespass. A copy of this letter is enclosed. The Society considers there are a number of existing offences that could be used to address this issue.

5. The Society is aware that the Commonwealth Government has called on states and territories to increase penalties for trespass crimes related to agricultural land. The Society does not support any form of illegal activity carried out in the pursuit of animal welfare. Agricultural trespass can have serious biosecurity and economic consequences. Agricultural land is often geographically isolated and trespass can be particularly traumatic given that farmers and their families often reside on the premises.

6. The Society has considered the Bill and provides brief comment below with respect to the proposed new offence and increased maximum penalties.

**Being on premises for an unlawful purpose**

7. The Society notes the Bill creates a new offence of being on primary production premises for an unlawful purpose or without lawful excuse. The proposed offence attracts the following penalties:
Where the unlawful purpose is the commission of an offence punishable by a maximum term of imprisonment of 2 years or more – imprisonment for 2 years;

In any other case –

(i) if the offence is committed in aggravated circumstances - $10,000 or imprisonment for 12 months;

(ii) if the offence is not committed in aggravated circumstances - $5,000 or 6 months imprisonment.

8. Aggravated circumstances are defined to include:

8.1 Interferes with, or attempts to interfere with, primary production activities; or

8.2 Does anything that gives rise to a serious risk to the safety of the person or any other person on the premises; or

8.3 Does anything that involves, or gives rise to a risk of:

8.3.1 the introduction, spread or increase of a disease or pest;

8.3.2 or the contamination of any substance or thing; or

8.3.3 gives rise to any other risk, or kind of risk, related to primary production activities prescribed by the regulations; or

8.3.4 intentionally causes, or is recklessly indifferent as to whether they cause, damage to an operation or activity connected to the primary production activities at the premises.

9. In addition, the Bill provides that a person who is found guilty of an aggravated offence is liable to pay compensation to a person for injury, loss or damage to the person resulting from the offence of which the defendant has been found guilty, unless exceptional circumstances exist.

10. Compensation will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the defendant.

11. If the proposed offence is considered a necessary measure by the Parliament, the Society suggests that that drafting of the proposed sections 17(a2)(b) and (c) could be improved, as currently the language used is vague with respect to what constitutes aggravated circumstances. As currently drafted the provisions could be very broadly applied and would benefit from being more clearly defined within the legislation (i.e. terms such as “gives rise to”, “involves” and “safety”). In addition, the Society notes that neither offence requires proof of intention or recklessness.

**Increased penalties**

12. The Society notes the Bill also proposes to amend the existing offence of trespass on premises by including an increased monetary penalty if the premises are primary production premises. The existing penalty for trespass on premises is $2,500 or imprisonment for 6 months. The Bill provides
that where trespass has occurred on primary production premises it will be punishable by a maximum penalty of $5,000 or imprisonment for 6 months.

13. The Bill increases the maximum penalty for interference with gates from $750 to $1,500. It also introduces an expiation fee of $375. The Bill also includes an increase for the maximum penalty of disturbance of farm animals from $750 to $2,500 or imprisonment for 6 months.

14. The Society understands that similar measures are being taken with respect to increasing maximum penalties for agricultural trespass and biosecurity related offences by other jurisdictions. A maximum penalty is set by the Parliament and reflects its views about the seriousness of an offence compared with other offences. The Parliament should be guided by such principles as proportionality in this respect. Maximum penalties set out in legislation are generally for the worst and most serious examples of an offence. While there is a maximum penalty available for an offence, it is not always applied by the court. A judge or magistrate decides an appropriate penalty based on the circumstances of each individual case and is guided by the legislation, the common law and penalties applied in similar cases.

Are existing offences adequate?

15. As conveyed to the Minister at our meeting of 14 May and in the letter 22 May 2019, the Society considers there are a number of relevant existing offences that capture and criminalise trespass (and associated offences) on farms and primary industries processing facilities. It was also suggested that issues with respect to the charging and prosecuting of these offences could be a contributing factor to the perceived inadequacy with respect to penalties. These issues may not be addressed by increasing maximum penalties or creating a new offence.

16. The Society also notes the views of its Animal Law Committee who are concerned that the measures proposed in the Bill may amount to “Ag-Gag” laws. If it is considered necessary to introduce a new offence, it should also be accompanied by measures to promote compliance with animal welfare standards, including ensuring that reports/concerns with respect to animal cruelty can be duly investigated and acted upon where necessary. Such measures could involve increased funding to the RSPCA who are tasked with detecting, investigating and prosecuting animal cruelty.

17. In addition, non-legislative measures could also be taken with respect to community awareness and education around about the economic, biosecurity and animal welfare implications of on-farm trespassing.

Yours sincerely

Amy Nikolovski
PRESIDENT
T: (08) 8229 0200
E: president@lawsocietysa.asn.au
Encl: Letter to Minister for Primary Industries re Agricultural Trespass 22 May 2019.