

6 September 2019

Our ref: LP-MC

Committee Secretary
State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000

By email: SDNRAIDC@parliament.qld.gov.au

Dear Committee Secretary

Agriculture and Other Legislation Amendment Bill 2019

Thank you for the opportunity to provide submissions on the Agriculture and Other Legislation Amendment Bill 2019 (**the Bill**). The Society always appreciates the opportunity to provide our views on draft legislation.

We note that we have been somewhat disadvantaged in the preparation of the submission as a result of the constrained timetable and the commitments of our volunteer committee members.

We understand that Mr Mark Furner, Minister for Agricultural Industry Development and Fisheries, introduced the Bill on 22 August 2019. The Bill was referred to the committee and a submission due date of 6 September 2019 was set. We understand that the committee must table its report on 8 October 2019.

As there has been only a very brief opportunity to review the amendment to the various Acts, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We request that the government extend the period by which to provide feedback and also extend the reporting date of the Committee, so that the Committee has a reasonable opportunity to consider the draft legislation and provide more useful and in-depth feedback which will hopefully assist in improving the quality of the legislation being passed. The members of the Society are in a unique position to provide informed feedback based on their extensive experience in practice.

1. Introductory comments

We understand the policy rationale behind the proposal for the Bill and supports efforts to protect legitimate and legal businesses in Queensland from unlawful trespass activities.

The Society is supportive of proportional legislative responses and penalties for criminal conduct. However, we are of the view the current legislative regime in Queensland provides sufficient protections and covers the type of conduct contemplated by the Bill.

We note that this is an omnibus Bill that makes amendments to several pieces of legislation. In this regard, we highlight comments made by the Legal Affairs and Community Safety Committee in relation to the inappropriate nature of omnibus bills. In particular we note the Committee's remarks in its consideration of the Youth Justice (Boot Camp Orders) Other Legislation Amendment Bill 2012. Here, the Committee noted that omnibus bills,

Arguably may breach the fundamental legislative principle in section 4(2)(b) of the Legislative Standards Act 1992 because they fail to have sufficient regard to Parliament, forcing Members to vote to support or oppose a bill in its entirety when that (omnibus) bill may contain a number of significant unrelated amendments to existing Acts that would more appropriately have been presented in topic-specific stand-alone bills¹.

We also have concerns that many of the proposed amendments commence on assent. This is of particular concern in the context of offence provisions and creates issues of uncertainty for potential offenders and for enforcement agencies and practitioners advising of legal implications. We urge the government to reconsider the provisions of the Bill that commence on assent and suggest that commencement of the Bill be fixed on a date set by proclamation.

Due to the size of the Bill and the constrained timeframe for comments, QLS has limited its comments to those aspects outlined **below**.

2. Key issues

QLS has concerns that some of the proposed laws, which criminalise conduct, are targeted at a particular group. There is the risk that they will be broadened in the future to further impinge on the ability to legally protest and restrict freedom of movement.

QLS is particularly concerned about the proposed amendments to the *Summary Offences Act 2005* (Qld). In our view, any attempt to restrict such freedoms should be evidence based and plainly justified.

3. Amendment of *Summary Offences Act 2005*

QLS raises specific concerns with the following proposed changes to the *Summary Offences Act 2005* (**SOA**).

¹ *Youth Justice (Boot Camp Orders) Other Legislation Amendment Bill 2012*, Report No. 18, Legal Affairs and Community Safety Committee, November 2012, Legal Affairs and Community Safety Committee, page 5.

Clause 132

Clause 132 deals unlawful assembly. QLS has several concerns about this clause. First, as a general principle, laws that criminalise conduct should not be targeted at a particular group. QLS has concerns that broadening the scope of these provisions may lead, over time, to more restrictions on the right to protest, despite the stated intention outlined in the Explanatory Notes. Philosophically, there is good reason why in the past, the SOA has only criminalised protest conduct where there was a fear of violence. By definition, protest involves causing some sort of disruption and inconvenience, and almost always involves some sort of economic loss.

Secondly, in our view, concerns about biosecurity risks are more appropriately managed under biosecurity/agricultural legislation, rather than penal statutes.

Thirdly, as currently drafted, the provisions around economic loss need to be more clearly drafted and confined to the conduct to which the Bill seeks to address. A suggested amendment may be “causes economic loss, reasonably arising in the circumstances”, as opposed to “likely to cause”. The phrase “likely to cause” is too broad and vague. Given it is a penal statute, there needs to be an *actual* not a potential consequence, particularly given the potentially broad meaning of “economic loss”.

Fourthly, we note that section 22 of the *Human Rights Act 2019* protects the right to peaceful assembly and freedom of association. Whilst the provisions of the *Human Rights Act 2019* are yet to come into force, QLS urges the Government to consider whether these provisions are compatible with Parliament’s intent to protect this right.

Clause 133

Clause 133 proposes to enhance offences and increase the penalties in the SOA. We note that the amendment proposes to increase penalties for unlawfully entering farming land (section 13) so that they accord with the penalties for unlawful entry to a dwelling. The provision also seeks to extend the application of section 13 to a broader section of land. This would mean that section 13 would include unlawfully entering or remaining on land used not just for farming, but for other uses such as a holding facility (which includes a showground or a sporting ground) or the exhibition of animals.

QLS is concerned about the extension of this provision. In advocating for good law, QLS advocates for laws which are evidenced-based and not reactionary. QLS submits that there is no cogent or persuasive evidence that the current law is inadequate and that these penalties are necessary. Furthermore, there is no evidence that these provisions are appropriately adapted to achieve the desired effect.

4. Amendment of *Forestry Act 1959*

QLS notes that the proposed amendment of section 72 (Wild stock) significantly reduces the notice period presently required of a proposed muster or musters in addition to removing the requirement for two public notices in a newspaper.

The notification requirements in proposed section 72 (1AA) mean that notice of a proposed muster will only be given to the “*relevant landholder*” and “each person the chief executive reasonably believes is the owner of the stock”.

The proposed definition of “*relevant landholder*” is, for an affected area, “a landholder of land that adjoins the affected area”.

In addition to reducing the notice period and removing the public notification requirement, the amendments proposed to section 72 mean that another landholder who may be the owner of the stock will not receive notice of the muster if:

- their land does not adjoin the area; and
- the chief executive is not otherwise aware that they might own the stock.

There are significant consequences if an owner of stock is not notified, for example, under new section 72(6A(b)), the chief executive may sell, destroy or otherwise dispose of the stock.

Therefore, QLS submits that the requirements for public notification should be maintained, with the giving at least 14 days’ notice to claim the stock by publication on the Department’s website, in addition to those amendments in proposed new s.72(1AA). QLS also suggests that the public notification requirement be amended to require notification of a proposed muster on the Department’s website.

5. Amendment of *Biosecurity Regulation 2016*

We note under proposed section 94G(4)(c)(ii) that it is an offence to fail to comply with the measures in a biosecurity management plan. However, there are no details of the penalty that would apply. In our view any penalty should be subject to legislative scrutiny.

6. Amendment of *Animal Care and Protection Act 2001*

QLS notes the amendments in Clauses 4 and 5 with respect to:

- extending the duty of care to ensure that ‘any confinement or transportation of the animal’ is appropriate; and

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- providing an additional example of animal cruelty in section 18(2)(f)(iii) as '*confining the animal in or on a vehicle in a way that causes heat stress or other pain for the animal*'.

QLS consider that these amendments are in line with community expectations around animal welfare protection and appropriate duties of care.

7. Clause 16 - insertion of new 215D(1)(a)(ii).

QLS submits that the information sharing power is too wide. The proposed section will allow sharing of vehicle registry details "to identify ... a person whom the inspector reasonably suspects committed the offence". In our view this is wider than envisaged at page 3 of the Explanatory Note and may have privacy implications.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Team by phone on (07) 3842 5930 or by email to policy@qls.com.au.

Yours faithfully



Bill Potts

President