

ANIMAL WELFARE AND TRESPASS LEGISLATION AMENDMENT BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [3.51 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Animal Welfare and Trespass Legislation Amendment Bill 2021. The bill was introduced into the previous Parliament as the Animal Welfare and Trespass Legislation Amendment Bill 2020. The 2021 bill I am reading in today is identical to the 2020 bill that was introduced into the Legislative Council during the fortieth Parliament.

The bill will amend three primary acts: the Western Australian Criminal Code, the WA Restraining Orders Act 1997 and the WA Animal Welfare Act 2002. This bill has been prepared in response to a number of incidents occurring nationally and across our state when people have trespassed on land used for commercial animal food production, and interfered with those businesses, purportedly to draw attention to inhumane animal husbandry practices. There is a need to protect our agricultural sector and, in particular, regional farming families from the adverse economic, biosecurity and personal effects of this type of trespass. It is also evident that the WA community cares very strongly about animal welfare. There is a clear need to maintain community confidence in the animal welfare practices employed by our agricultural sector. High consumer confidence in animal welfare has the added benefit of securing the long-term viability of commercial animal food production. The bill responds to these complex issues by bringing together a number of law reform measures in a single package. I will address each of these in turn, starting with the reforms set out in parts 3 and 4 of the bill.

Criminal Code and Restraining Orders Act amendments: The amendments to the Criminal Code and the Restraining Orders Act are aimed at deterring trespass on land used for animal-source food production. The bill increases the applicable criminal penalties and improves accessibility to misconduct restraining orders in specific circumstances. The current maximum penalty for trespass under section 70A of the Criminal Code is imprisonment for 12 months and a fine of \$12 000. The bill seeks to amend the Criminal Code to provide for circumstances of aggravation when in the course of or as a result of the trespass on an animal-source food production place, an offender interferes with, or intends to interfere with, animal-source food production; or assaults, intimidates or harasses, or intends to assault, intimidate or harass, a person in the context of their engagement in animal-source food production or a family member of the person. That the trespass occurred on an animal-source food production place is a key element of the aggravated offence. This is defined to mean an abattoir, a knackery or an animal-source food production facility, and is intended to capture traditional family animal farms, piggeries, poultry barns, feedlots, abattoirs and knackeries.

Finally, the offence must be committed in circumstances of aggravation. The first circumstance of aggravation is that the person has interfered with animal-source food production. This includes negatively impacting biosecurity, damaging or stealing property, or releasing or causing animals to escape. The second circumstance of aggravation is that the trespasser intimidates, harasses or assaults a person engaged in animal-source food production or a family member of such a person. The reference to “family members” recognises the reality that farms are often family homes as well as commercial operations. This circumstance of aggravation applies only when the intimidation, harassment or assault occurs in the context of the person’s engagement in animal-source food production. This is designed to exclude disputes of a purely personal nature. This offence has been narrowly framed with the deliberate intent of minimising the risk of unintended impacts. The amendments introduced by this bill are not aimed at stifling protest; instead, they are intended to deter or prevent trespass that has an adverse effect on relevant commercial operations or that unreasonably targets persons engaged in such operations.

It is also important to note that the new offence contained in this bill does not propose to expand the circumstances in which a person commits the offence of trespass. When a person has a lawful right to access land or to enter property, the offence of trespass is not committed and the proposed circumstances of aggravation do not apply. This principle applies in the industrial context; for example, a person exercising the right of entry under division 2G of the Western Australian Industrial Relations Act 1979 or part 3-4 of the commonwealth Fair Work Act 2009 does not commit trespass and will therefore not be affected by the new measures. The government has been very considered in drafting this new offence to ensure that it is appropriately directed.

The proposed maximum penalty for the new offence of aggravated trespass is two years’ imprisonment and a fine of \$24 000. This is double the usual maximum penalty for trespass, reflecting the seriousness of the conduct. If a court does not impose a term of imprisonment, it must impose a minimum penalty of a community order and a fine

of at least \$2 400, unless exceptional circumstances exist. A community order made pursuant to the minimum penalty must contain a direction prohibiting the offender from attending specified kinds of places—for example, animal farms—and a requirement that the offender undertake unpaid community service. A person who commits another offence while subject to a community order or who breaches a condition of the community order may be resentenced for the original offence. This will allow penalties to be escalated for repeat offending to the maximum penalty of two years' imprisonment and a \$24 000 fine.

In addition to the harsher penalties available under the proposed new Criminal Code offence, part 4 of the bill will amend the Restraining Orders Act to make it easier for a person who has been, or may in the future be, affected by aggravated trespass to obtain the protection of a misconduct restraining order.

Animal welfare amendments: I now turn to the amendments to the Animal Welfare Act, contained in part 2 of the bill. The Animal Welfare Act creates powers of entry and inspection for the purposes of investigating animal cruelty. At present, these powers do not allow for the implementation of a monitoring program and permit only general inspectors to enter a place either by consent or when the inspector reasonably suspects that an offence has been, is being or is likely to be committed. These powers are inadequate to meet the community's expectations; namely, the appropriate authorities have, and exercise, the necessary powers to monitor for compliance with animal welfare standards in animal-source food production.

The powers-of-entry provisions in this bill are limited to designated inspectors employed by the Department of Primary Industries and Regional Development and may be exercised only when monitoring activities in abattoirs, knackereries and intensive production places. An “intensive production place” is defined to mean a non-residential place where intensive food production is carried out. This definition will ensure that the powers of a designated inspector do not extend to a residence. Limiting the powers of entry in reference to intensive production places, abattoirs and knackereries will also help to ensure that inspections are targeted towards higher risk production methods. This specifically excludes extensive farming operations for which grazing is a key component of the animal food production system.

The proposed amendments will provide a level of assurance to concerned members of the public that animal welfare standards in these types of establishments can be properly monitored by the appropriate authorities. Taken together, these reforms address the difficult question of how best to encourage transparency in and extend protections to commercial animal farming operations. Most of us here in WA consider ourselves to be animal lovers and do not want to see animals being mistreated. However, we equally do not support the activities of those who trespass on agricultural land, causing distress to animals and farmers and their families as well as negatively impacting on biosecurity.

The government has released the report of the independent review of the Animal Welfare Act. It was pleasing to see that the independent panel has put forward a number of recommendations that will both modernise the Animal Welfare Act and reflect the community expectation for a more proactive approach to compliance activities by inspectors. The bill we have developed, although focused on a narrow set of primary production activities, is consistent with those recommendations.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [1934](#).]

Debate adjourned, pursuant to standing orders.