

Animal Welfare and Trespass Legislation Amendment Bill 2020
Explanatory Memorandum

Part 1 – Preliminary

1. Short title	Clause 1 provides that the short title of the proposed Act is the <i>Animal Welfare and Trespass Legislation Amendment Act 2020</i> .
2. Commencement	<p>Clause 2 provides that the Act will come into operation as follows:</p> <ul style="list-style-type: none"> • Part 1 will commence on the day on which the Act receives the Royal Assent; and • The rest of the Act on the 14th day after that day.

Part 2 – *Animal Welfare Act 2002* amended

3. Act Amended	Clause 3 provides that Part 2 amends the <i>Animal Welfare Act 2002</i> (the Animal Welfare Act).
4. Section 5 amended	Section 5 provides for the definition of key terms used in the Animal Welfare Act. Clause 4 amends this section by inserting the definition of ‘ designated inspector ’, which is defined to mean a general inspector designated under proposed section 35A(1) as a designated inspector.
5. Section 35A inserted	<p>Clause 5 introduces proposed section 35A which would allow the CEO, by written notice, to designate as a designated inspector, a general inspector who is a member of the staff of the Department.</p> <p>'Department' means the department of the Public Service principally assisting the Minister in the administration of the Animal Welfare Act (see definition of 'Department' in section 5(1) of the Animal Welfare Act). This is currently the Department of Primary Industries and Regional Development.</p> <p>A designated inspector will have the function set out in the proposed section 37(1)(aa) and the powers of entry conferred by the proposed section 38(1A).</p> <p>The designation remains in force for the period set out in the notice of designation unless before that period has ended the designation is cancelled by the CEO, or the general inspector ceases to be a general inspector.</p> <p>Under subsection (3), the CEO may by way of a written notice, restrict the authority of the designated inspector to exercise a power under section 38(1A) (power to enter an intensive</p>

	<p>production place; abattoir; or knackery) by limiting all or any of the following:</p> <ul style="list-style-type: none"> (a) the places where a power may be exercised; (b) the times when a power may be exercised; (c) the circumstances in which a power may be exercised. <p>The powers of the inspector under section 38(1A) are then limited to the extent set out in the notice (subsection (4)). The restriction on the inspector’s power by written notice may occur at the time the inspector is designated or at any other time and may be varied or cancelled by the CEO by written notice to the inspector (subsection (5)).</p>
<p>6. Section 36A inserted</p>	<p>This clause introduces proposed section 36A which inserts definitions for the following terms:</p> <ul style="list-style-type: none"> • abattoir; • animal source food production; • animal source food production facility; • intensive production; • intensive production place; and • knackery. <p>‘abattoir’ is defined to mean any place that is used for or in connection with the slaughtering of animals for the sale of human consumption, which includes holding yards. This definition is referred to in section 70A(1) of the <i>Criminal Code Act Compilation Act 1913</i> (the Criminal Code), inserted by clause 10, which will be dealt with later in this explanatory memorandum. The specific reference to holding yards was included in this definition to make it clear for the purposes of the Criminal Code that the proposed aggravated trespass offence can be committed at holding yards.</p> <p>‘animal source food production’ and ‘animal source food production facility’ are defined in section 70A(1) of the Criminal Code, inserted by clause 10, which will be dealt with later in this explanatory memorandum.</p> <p>‘intensive production’ is defined to mean an activity that is carried out at an animal source food production facility during which, in the ordinary course of production, any animals involved in the production do not have the opportunity to graze or forage outside.</p> <p>This definition of intensive production has been crafted to ensure that inspections are targeted towards higher risk production methods, and to specifically exclude extensive farming operations where grazing is a key component of the animal food production system.</p> <p>The places that can be inspected are defined by reference to, and are a subset of, the places that are captured by the amendments to the Criminal Code, inserted by clause 10.</p> <p>‘intensive production place’ is defined to mean a non-residential place where intensive production is carried out. This definition expressly refers to non-residential places to ensure</p>

	<p>that the powers of a designated inspector do not extend to a residence.</p> <p>'knackery' is defined to mean any place used for, or in connection with the slaughtering and processing of animals for sale for animal consumption which includes holding yards. This definition is referred to in section 70A(1) of the Criminal Code, inserted by clause 10, which will be dealt with later in this explanatory memorandum. The specific reference to holding yards was included in this definition to make it clear for the purposes of the Criminal Code that the proposed aggravated trespass offence can be committed at holding yards.</p>
<p>7. Section 37 amended</p>	<p>Clause 7 adds to the statement of functions of general inspectors, set out in section 37(1). The new function (if the inspector is a designated inspector) is of monitoring compliance with Part 3, court orders made under section 55(1) and directions given by a general inspector under section 40(1) or 47(1), in relation to any of the following:</p> <ul style="list-style-type: none"> i. intensive production; ii. an activity carried out at an abattoir; iii. an activity carried out at a knackery.
<p>8. Section 38 amended</p>	<p>Clause 8(1) confers on a designated inspector the power to enter a place for the purposes of carrying out the new function of monitoring compliance as set out in section 37(1)(aa). Under the provision, a designated inspector may enter at any time any of the following places:</p> <ul style="list-style-type: none"> (a) if the inspector believes on reasonable grounds that a place is an intensive production place - that place; (b) an abattoir; or (c) a knackery. <p>This provision was crafted with the intention that a designated inspector would be able to form a reasonable opinion that a place meets the definition of an intensive production place without detailed prior knowledge of the facility. This aspect of the power is crucial because without it an inspector's ability to enter an intensive production place would be significantly limited.</p> <p>Clause 8(2) is a consequential drafting amendment.</p>

Part 3 – The Criminal Code amended

<p>9. Act amended</p>	<p>Clause 9 provides that Part 3 amends the Criminal Code.</p>
<p>10. Section 70A amended</p>	<p>Clause 10 amends section 70A of the Criminal Code ('Trespass'). The amendments create a new offence of aggravated trespass.</p> <p>The amendments to subsection (1) insert definitions for the following terms:</p> <ul style="list-style-type: none"> • abattoir; • animal source food production; • animal source food production facility; • animal source food production place; • circumstances of aggravation; • family member; • interfere with; and • knackery. <p>'abattoir' has the meaning given in the Animal Welfare Act under the proposed section 36A, inserted by clause 6.</p> <p>'animal source food production' is defined to mean an activity that is carried out at an animal source food production place (animal source food production facilities, abattoirs; and knackeries) for the purpose of, or in connection with, commercial food production.</p> <p>The qualifier 'commercial' excludes activity that is carried out purely or primarily as a hobby.</p> <p>'animal source food production facility' means any of the following places, operated for the purposes of commercial food production:</p> <ol style="list-style-type: none"> a) a farm or other place where an animal is reared or fattened; b) a dairy farm; c) an egg farm or other place where poultry are kept to produce eggs. <p>These terms are intended to be given their ordinary meanings. Paragraph (a) is intended to capture the raising and fattening of animals such as cattle, poultry and pigs.</p> <p>Again the qualifier 'commercial' excludes activity that is carried out purely or primarily as a hobby.</p> <p>'animal source food production place' is defined to mean any of the following places:</p> <ol style="list-style-type: none"> a) an animal source food production facility; b) an abattoir; c) a knackery.

‘circumstances of aggravation’, in relation to a trespass on an animal source food production place, is defined to mean circumstances in which a person, in the course of, or as a result of committing the trespass –

- a) interferes with, or intends to interfere with, animal source food production; or
- b) in the context of another person’s engagement in animal source food production, assaults, intimidates or harasses, or intends to assault, intimidate or harass —
 - i. the other person; or
 - ii. a family member of the other person.

This definition provides the foundation for the new offence of aggravated trespass created under proposed subsection 70A(2A).

Paragraph (a) of the definition is concerned with adverse impacts on relevant commercial activities. The concept of ‘interference’ is separately defined (see below).

Paragraph (b) of the definition is concerned with adverse impacts on persons involved in animal source food production and family members of such persons. The inclusion of family members is intended to protect farming families, for whom agricultural land is often a home as well as a workplace.

The term ‘family member’ is separately defined (see below).

The reference in paragraph (b) to, ‘in the context of another person’s engagement in animal source food production’ is designed to exclude scenarios that are not connected to animal source food production, such as personal disputes between neighbouring farmers.

‘family member’, in relation to a person, is defined to mean:

- a) the spouse or de facto partner of the person; or
- b) a parent, child, brother, sister, uncle, aunt or cousin of the person or of the person’s spouse or de facto partner; or
- c) the spouse or de facto partner of a person referred to in paragraph (b); or
- d) a grandchild or grandparent of the person or of the person’s spouse or de facto partner;
- e) a guardian or ward of the person;
- f) if the person is an Aboriginal person or Torres Strait Islander (indigenous person) - a person regarded under customary law or tradition of the indigenous person’s community as a member of the extended family or kinship group of the indigenous person.

As already noted, this term is used in paragraph (b) of the definition of ‘circumstances of aggravation’.

The definition recognises that multiple generations and branches of a family may be affected by trespass on agricultural land.

	<p>In order to trigger the circumstances of aggravation, it must be shown that the intimidation, assault or harassment of a person's family member is linked to the person's involvement in animal source food production.</p> <p>'interfere with', in relation to animal source food production, is defined to include any of the following—</p> <ol style="list-style-type: none"> a) negatively impact biosecurity, as defined in the <i>Biosecurity and Agriculture Management Act 2007</i> section 6, in relation to animal source food production; b) create a risk to the welfare, safety or health of an animal involved in animal source food production; c) in the course of the animal source food production - create a risk to the integrity or safety of meat, eggs or dairy products; d) release an animal involved in animal source food production, or cause it to escape, from an animal source food production place or an enclosure at that place; e) destroy, damage or steal property used in animal source food production; f) give a person engaged in animal source food production reasonable grounds to believe that something referred to in paragraph (a) to (e) has occurred or is likely to occur; <p>As already noted, this term is used in paragraph (a) of the definition of 'circumstances of aggravation'.</p> <p>The definition is inclusive; it does not exhaustively define the conduct or consequences that constitute interference.</p> <p>Paragraph (a) refers to the definition of biosecurity contained in section 6 of the <i>Biosecurity and Agriculture Management Act 2007</i>. This definition is as follows:</p> <p><i>biosecurity</i> means protection from the adverse effect an organism has or may have on —</p> <ol style="list-style-type: none"> a) another organism; or b) a human being; or c) the environment, or part of the environment; or d) agricultural activities, fishing or pearling activities, or e) related commercial activities carried on, or intended to be carried on, in the State or part of the State. <p>It follows that paragraph (a) is concerned with the undermining of protective arrangements which are in place. Actual harm does not need to be demonstrated.</p> <p>Paragraph (b) adopts language used in Part 3 of the <i>Animal Welfare Act 2002</i> (WA).</p> <p>Paragraph (c) is concerned with the risk of food contamination, which may produce adverse health effects and economic losses.</p> <p>Paragraph (d) is concerned with the release or escape of animals. This would apply, for example, where animals escape as a result of a trespasser leaving a gate open.</p>
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Paragraph (e) is concerned with the destruction or theft of, damage to, or interference with property used in animal source food production. The reference to interference is intended to capture scenarios where the trespasser does anything with or to equipment that prevents it from functioning in the usual way.

Paragraph (f) recognises the reality that persons involved in animal source food production may have imperfect knowledge of the risks or harms created in the course of, or a result of, a trespass. Such persons may reasonably invest time or other resources in mitigating an apprehended harm or risk, despite the apprehension ultimately proving to be unfounded. An example is where a farmer is aware that a gate has been left open, and reasonably believes that this is likely to result in animals escaping.

'knackery' has the meaning given in the Animal Welfare Act under the proposed section 36A, inserted by clause 6.

Amendment to section 70A(2)

Section 70A(2) makes provision for the existing offence of trespass (without any circumstances of aggravation) and provides the penalty for this offence.

The amendment modernises the drafting of the penalty for the existing offence of trespass but does not change what penalty applies (imprisonment for 12 months and a fine of \$12,000). Further, the existing wording of the well-established offence elements is maintained.

Proposed section 70A(2A)

Proposed section 70A(2A) creates the offence of aggravated trespass. The maximum penalty provided is imprisonment for 2 years and a fine of \$24,000; this is double the maximum penalty for trespass simpliciter.

Proposed section 70A(2B)

Proposed section 70A(2B) provides a minimum penalty for aggravated trespass. The minimum penalty applies only to adult offenders and where the court does not impose a term of imprisonment.

The court is not obliged to impose the minimum sentence if it is satisfied that there are 'exceptional circumstances' provided in proposed section 70A(2C).

The minimum penalty comprises:

- a) a community order; and
- b) a fine of at least \$2,400.

The *Sentencing Act 1995* (the Sentencing Act) defines 'community order' to mean a community based order (CBO) or an intensive supervision order (ISO).

A community order made under subsection 70A(2B)(a) must contain:

	<p>i. a supervision requirement with a direction that the person must not enter or remain on a place related to animal source food production, specified, or of a kind specified, in the order; and</p> <p>ii. a community service requirement.</p> <p>A <i>supervision requirement</i> is a requirement that the offender must contact or receive visits from a Community Corrections Officer. When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender (see sections 65 and 71 of the Sentencing Act).</p> <p>A <i>community service requirement</i> is a requirement that the offender do unpaid community work (see sections 67 and 74 of the Sentencing Act).</p> <p>Proposed subsection 70A(2B)(b) seeks to deploy these existing legislative powers for the purpose of deterring further offending by persons convicted of aggravated trespass.</p> <p>Under Part 18 Division 4 of the Sentencing Act, a person who breaches a requirement of a community order:</p> <ul style="list-style-type: none"> • commits an offence under the Sentencing Act; and • is liable to be resentenced for the offending that led to the imposition of the community order. <p>Under Part 18 Division 3 of the Sentencing Act, a person who reoffends while subject to a community order is liable to be resentenced for the offending that led to the imposition of the community order.</p> <p>Proposed section 70A(2C) provides that subsection (2B) – which creates the minimum penalty for adult offenders – does not apply in a particular case if the court is satisfied that exceptional circumstances exist in that case. This discretion might be invoked where, for example, the offender has impaired decision making capacity or is experiencing financial difficulty such that the minimum fine would not be appropriate.</p> <p>Clause 10(3) is a consequential drafting amendment.</p>
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Part 4 – Restraining Orders Act 1997 amended

11. Act amended	Clause 11 provides that Part 4 amends the <i>Restraining Orders Act 1997</i> .
12. Section 5 amended	The proposed amendment to section 5 ('Term used: family order') fixes a referencing error that has been identified in the Act.

<p>13. Section 34 amended</p>	<p>The proposed amendment to section 34 ('Grounds for misconduct restraining order') inserts a reference to proposed section 70A(2A) of the Criminal Code (the provision that creates the offence of aggravated trespass). The effect of this amendment is that a court may make a Misconduct Restraining Order (MRO) if it is satisfied that, unless restrained, the respondent is likely to commit aggravated trespass.</p>
<p>14. Section 35 amended</p>	<p>Proposed new subsection (2A) of section 35 ('Matters to be considered by court generally') sets out the matters that the court is to have regard to when considering whether to make an MRO for the reason listed in section 34(a)(iv) (which refers to the offence of aggravated trespass).</p>
<p>15. Section 36 amended</p>	<p>The proposed amendment to subsection (1) of section 36 ('Restraints on respondent') provides that the court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent committing the offence of aggravated trespass. The amendment to subsection (3) inserts reference to new subsection 1(d), which refers to the commission of aggravated trespass.</p>