



Attorney General; Minister for Commerce

Our Ref: 67-12372

The Honourable Matthew Swinbourn MLC
Chair, Standing Committee on Environment and Public Affairs
Legislative Council Committee Office
18-32 Parliament Place
WEST PERTH WA 6005



Dear Mr Swinbourn

PETITION NO.104 – RURAL CRIME

Thank you for your letter dated 13 June 2019 requesting comment on Petition 104 – Rural Crime (the Petition) and the related submissions of the principal petitioner, Mr Geoffrey Charteris, and the tabling Member, the Honourable Colin de Grussa MLC.

I have noted the concerns raised in the Petition and submissions, and sympathise with those who have been affected by the criminal conduct that has been described. The Government recognises the particular vulnerability of agricultural properties and is committed to ensuring that the justice system is responsive to these issues.

I note the responses to the Petition that have already been provided to the Committee by the Minister for Regional Development; Agriculture and Food; and Ports, the Honourable Alannah MacTiernan MLC; and the A/Minister for Police, the Honourable Stephen Dawson MLC. The comments below are confined to those matters raised in the Petition and submissions that fall within my portfolio responsibilities.

Aggravated trespass

The Petition recommends the creation of an aggravated version of the offence of trespass, to apply where, in the course of trespassing, the offender:

- creates an enhanced biosecurity risk;
- has an intention to engage in stock theft; or
- is in possession of hunting equipment.

As the Committee has already been advised, I am developing amendments to section 70A of the *Criminal Code (WA)* (the Criminal Code) that will define circumstances of aggravation for the offence of trespass. Consistent with the proposal contained in the Petition, the circumstances of aggravation will make reference to biosecurity risks and the commission, or intended commission, of further offences (such as stealing).

The circumstances of aggravation will also apply where the trespasser intimidates or harasses farming families or workers – an important inclusion in light of the conduct described in Mr Charteris' submission.

An increased maximum penalty will apply to trespass committed in circumstances of aggravation. Offenders will also be subjected to community based orders containing bail-type conditions aimed at preventing further offending.

The reform package will also include amendments to the *Restraining Orders Act 1997* (WA) aimed at making it easier for agricultural landholders to obtain the protection of a misconduct restraining order where appropriate.

The Government's proposal was developed in light of recent incidents involving trespass on agricultural property by animal activists. However, the operation of the circumstances of aggravation will not be confined to cases that involve protest activity; it is interference with agricultural activity that is being targeted, not the expression of political views.

The amending legislation will be introduced at the earliest opportunity in accordance with standard drafting processes and the Government's legislative priorities.

Maximum penalty for trespass and illegal hunting

The Petition also calls for a review of the maximum penalties for trespass and illegal hunting.

The maximum penalty for the offence of trespass is imprisonment for 12 months and a fine of \$12,000. Trespass is an offence that is committed in a broad range of circumstances involving varying degrees of criminality. A blanket increase in the the maximum penalty for trespass could therefore result in disproportionate outcomes in some cases. The Government's proposal to link higher maximum penalties to circumstances of aggravation, as described above, avoids this risk.

Illegal hunting on private land may fall foul of the following offences under the Criminal Code:

- Criminal Damage (s.444) – maximum penalty of imprisonment for 10 years;
- Stealing (ss.371 and 378) – imprisonment for 7 years;
- Killing animal with intent to steal (s.382) – imprisonment for 7 years; and
- Unlawfully taking fish (s.436) and unlawful fishing (s.437) – imprisonment for two years and a fine of \$24,000.

I am of the view that increasing these maximum penalties would have minimal deterrent effect in comparison with the measures that the Government is adopting. These include the policing measures referred to in the Acting Minister for Police's submission and the creation of aggravated circumstances for the offence of trespass. In addition, increasing the maximum penalties could create inconsistency with the treatment of other offences in the Criminal Code.

Geographical isolation as an aggravating factor

The submissions lodged in support of the Petition recommend that geographical isolation be identified as an aggravating factor in the sentencing process.

Section 6 of the *Sentencing Act 1995* (WA) (the Act) requires the court to determine the seriousness of an offence with reference to, inter alia, the vulnerability of the victim and any aggravating factors. Section 7 defines aggravating factors as, '*factors which, in the opinion of the court, increase the culpability of the offender*'.

The Act does not identify specific aggravating factors that the court should take into account. Instead, the courts identify and apply these factors on a case-by-case basis in view of the submissions of the parties and in accordance with the common law.

The insertion of an express reference to 'geographical isolation' into the Act would be a departure from this current approach, and raise the question of why other relevant factors are not similarly prescribed.

I note that a reference to 'geographical isolation' was inserted into section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) following the NSW Review of Stock Theft and Trespass. However, the relevance of this comparison is limited by the differences in the surrounding legislative context; unlike the WA Act, the NSW Act contains an extensive list of aggravating factors.

A statutory review of the Act will commence in the second half of this year. The review will provide an opportunity to consider the treatment of aggravating factors in a systematic manner. I will ensure that the review process includes consideration of the role of 'geographical isolation' in the sentencing process.

Thank you for the opportunity to comment on the Petition and I trust that the information provided above assists the Committee in its deliberations.

Yours sincerely



Hon. John Quigley MLA
ATTORNEY GENERAL; MINISTER FOR COMMERCE

26 JUL 2019