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## Right to farm laws

by Gareth Griffith

### 1. Introduction

In the lead up to the 2015 State election it was reported in [The Land](#) that the Coalition Government and NSW Farmers had entered into “an unprecedented” memorandum of understanding. Among the “key commitments” entered into were the reform of biodiversity laws and consideration of “proposals for a Right to Farm policy during 2015”.<sup>1</sup>

In July 2014, at its annual conference, NSW Farmers passed a motion calling for “right to farm” legislation.<sup>2</sup> Based on an article by Graham Brown, a NSW Farmers’ executive councillor, that argument seems to have two main aspects:

- primarily, granting immunity to farmers from litigation involving nuisance complaints, in particular those arising from the interface between the “smelly, sometimes noisy” realities of farming and “expanding urban centres”; and
- secondarily, providing protection from regulatory imposition by governments, State and local, referred to as “hindrances” to land use, including the placing by local councils of e-zones over agricultural property.

The article by Graham Brown concluded:

In the face of extractive issues, expanding urban centres and red and green tape on-farm, protecting and promoting our farmers’ ability to conduct business, manage the landscape, provide environmental stewardship and grow food, must be supported in legislation.

The case was expressly adopted on 23 June 2015 by Robert Brown MLC of the Shooters and Fishers Party. He spoke in favour of “right to farm” policy and, calling for a parliamentary inquiry into the issue, Mr Brown argued that:

The increasing trend of urban sprawl has presented some grim implications when the interests of agriculture clash with the lifestyle expectations of semi-rural property owners on the fringes of urban areas, or indeed in whole regions of New South Wales.<sup>3</sup>

This e-brief discusses the history and purpose of “right to farm” laws and their application in the US and Canada. The position in Australia is also discussed, as is the question of the place of such laws in the broader context of the system of planning legislation.

### 2. History and purpose

The first “right to farm” law was passed in the US State of Kansas in 1963, to protect feedlots; by 1994 every State had enacted “right to farm” laws in some form or other. These laws can be accessed through the National Agricultural Law Centre [website](#). Similar laws are in place in all of the Canadian Provinces.<sup>4</sup> By way of example, Illinois’ [Farm Nuisance Suit Act](#) provides (in part):

It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When non-agricultural land uses extend into agricultural areas, farms often become the subject of nuisance suits. As a result, farms are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Act to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed to be a nuisance.

“Right to farm” laws are therefore a form of statutory protection for farmers. Their detail varies from one jurisdiction to the other as to some extent do the purposes behind such legislation, which includes providing protection to farmers from regulatory restrictions placed on them by local authorities. However, the main or most clearly articulated purpose of such laws is to grant immunity to farmers from “nuisance” lawsuits brought by neighbours who are adversely affected by farming operations. Nuisance is a common-law tort concerning a person’s actions that interfere with another person’s use and enjoyment of their property. A nuisance occurs when someone or something unreasonably interferes with another person’s ability to use or enjoy their property.<sup>5</sup> Nuisances are often disturbances such as loud noises, offensive odours, smoke, dust, vibration, or even light.<sup>6</sup>

Articulating the key problem at issue, the US based Farm Foundation stated:

If neighbouring landowners brought a lawsuit against an agricultural operation and it was found to be a nuisance, courts had the option of closing the operation, altering the way it conducted its business, or assessing penalties to compensate the neighbouring landowner for the nuisance. Sometimes, even if a lawsuit failed, the cost of defending against the suit could threaten or even close the farming operation.<sup>7</sup>

Setting out the broad purpose of “right to farm” laws, a Canadian commentary noted that:

The premise behind right-to-farm legislation is that some farming practices, although ‘normal’, can be a disturbance to those living on or near adjacent lands. The common law of nuisance states that a person who unreasonably interferes with another person’s use and/or enjoyment of his or her land can be sued. Many states and provinces consider it to be in their interest to provide protection to farmers from potential nuisance lawsuits.<sup>8</sup>

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In both the US and Canada “right to farm” laws were developed against a backdrop of concern about the loss of agricultural land and the conflicts resulting from increasing urban encroachment into agricultural areas. The US based Farm Foundation stated:

These statutes were originally developed in the 1970s as state lawmakers were becoming more aware of and concerned about the loss of agricultural land. Losses of agricultural land were occurring in that period of our history from conflicts in potential uses of agricultural land and from the rising tide of urban encroachment into traditional agricultural areas. Persons not involved in farming were beginning to move into traditional agricultural areas and with them they were bringing new complaints concerning the way agricultural is: complaints concerning odor, flies, dust, noise from field work, spraying of farm chemicals, slow moving farm machinery, and other necessary by-products of farming operations.<sup>9</sup>

Similar issues are in play in Canada.<sup>10</sup> The [fact sheet](#) relating to Ontario’s 1998 *Farming and Food Production Protection Act* sets out the position in that Province, stating:

Rural Ontario is changing. Farms are increasing in size and complexity, and fewer people living in rural areas are farmers. In 2001, farmers made up only 1.7% of Ontario's total population of 11.4 million people, and only 10% of the rural population. That is, only about 1 in 10 people living in rural Ontario actually farms, and the number of farmers is dropping.

Urban residents are moving to towns and villages, rural routes and concession roads, drawn by the quality of life in rural Ontario. They value the tranquility, the sense of community and the lifestyle. Farmers appreciate their lifestyles as well, but they also see rural Ontario as a place of business, where the agri-food industry provides their livelihoods and contributes \$25 billion a year to the provincial economy.

As in many areas where industry and residences are located side-by-side, conflicts about the way business is carried out sometimes arise between farmers and their neighbours. Not surprisingly, nuisance complaints sometimes come from farmers themselves.

### 3. Key features

#### United States

From a US perspective, the Center for Media and Democracy [website](#) listed the common elements of “right to farm” laws as follows:

- Prohibiting local government from passing stricter laws on agriculture than the laws of the State (see for example the law in the State of [Idaho](#)).
- Restricting nuisance suits if the plaintiff moved to the area of an already established agricultural operation.
- Restricting nuisance suits if the farm operation engages in generally accepted agricultural practices that do not violate any laws.
- Restricting nuisance suits if the farm operation is located in an agricultural zone.

- Ordering the plaintiff to pay the legal fees of the defendant if they (the plaintiff) lose the case.

Most of these features find expression in the typology of US “right to farm” laws developed by the Farm Foundation.<sup>11</sup> Note that these “types” of laws are not mutually exclusive categories but, rather, a combination of the features or elements set out above.

With some adjustment,<sup>12</sup> the main types of US laws are as follows:

- **Traditional** laws protecting an agricultural activity if it has been in existence for at least one year prior to a change in the surrounding area which has given rise to the nuisance claim. In effect, the plaintiffs complaining against the farming activity are said to have “come to the nuisance”. Such laws do not protect agricultural activities which could be classified as a nuisance from when they first began, or activities which are negligently or improperly conducted (an example is the law in [Massachusetts](#)).
- **Laws that create a presumption of reasonableness** on the part of an agricultural activity if standard practices are followed. An example is the law in [Arizona](#), where the caveat is added - “unless the agricultural operation has a substantial adverse effect on the public health and safety”. The Arizona law adds that “Agricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practice and not adversely affecting the public health and safety”.
- **Laws protecting specific types of agricultural activities**, including odour from livestock, manure, fertiliser, or feed; noise from livestock or farm equipment; dust created during ploughing; and use of chemicals if in accordance with approved practices. Some laws also offer specific protection to animal feedlots. An example is the law in [Connecticut](#), but note in this respect that the protection afforded to agricultural activities is made subject to the condition that the activity at issue has “been in operation for one year or more and has not been substantially changed, and such operation follows generally accepted agricultural practices”.
- **Laws protecting activities located in acknowledged and approved agricultural areas or zones**. An example is the law of [Ohio](#) which provides a complete defence in civil actions for nuisance if:
  - (A) the agricultural activities were conducted within an agricultural district; (B) agricultural activities were established within the agricultural district prior to the plaintiff's activities or interest on which the action is based; (C) the plaintiff was not involved in agricultural production; and (D) the agricultural activities were not in conflict with federal, state, and local laws and rules relating to the alleged nuisance or were conducted in accordance with generally accepted agriculture practices.

With “right to farm” laws varying widely in their specific provisions, from the standpoint of analysis and litigation at least six critical issues emerge for consideration:

- the definition of “farming”;

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- the scope of the immunity provided under the law;
- the standard conduct required for protection under the law;
- the required timeline for its application, that is, for how long the challenged operation must have preceded the non-farming;
- whether changes or expansions to an operation may impact the defence; and
- whether and under what circumstances a successful defendant may recover legal fees.

Each of these issues is considered by US lawyer Tiffany Dowell, who discusses the variations between jurisdictions along with the relevant case law.<sup>13</sup> Dowell observes, for example, that even in States where only nuisance is expressly mentioned in the statute, courts have interpreted “right to farm” laws to provide a more extended legal defence to producers, barring both nuisance and trespass claims.<sup>14</sup> The broadest provision is found in the [Hawaii](#) statute which provides that the protections apply to claims brought in “nuisance, negligence, trespass, or any basis in law or equity”.

In terms of administration and oversight, different arrangements seem to apply across the States. Agricultural Boards are a common feature but not all of these have a statutory basis in the relevant “right to farm” laws.<sup>15</sup> An example of a statutory board is [New Jersey’s](#) State Agriculture Development Committee, established to monitor and review policies relating to agricultural land. In [New York](#) State “right to farm” law cases are heard by the statutory [Advisory Council on Agriculture](#), which also determines whether an activity is a “sound agricultural practice”, guidelines for which are set on this [website](#).<sup>16</sup> In the case of [Maryland](#), it is explained that:

One important feature of Maryland’s RTF law is requiring a county board’s review or Maryland’s agricultural mediation program to mediate all agricultural nuisance claims first. Requiring a county board review or mediation before bringing a lawsuit is one way to help reduce litigation costs, protect the financial status of agricultural operations, and offer a resolution of nuisance disputes outside a formal courtroom.<sup>17</sup>

Another variation to note is that California recently enacted legislation that mandated notification of the State’s “right to farm” statute prior to the conveyance of real estate located within one mile of a designated agricultural area.<sup>18</sup>

### Commentary on US laws

With so many laws in place and with so many differences in detail between those laws, it is only within the scope of this e-brief to offer a sample of views as to the operation of US right to farm laws.

A starting point is a 1998 article by Professor ND Hamilton, which first presented the case for “right to farm” laws before articulating ten reasons why they may be ineffective. Professor Hamilton began by noting:

It is difficult to accurately gauge the effectiveness of the laws in preventing nuisances suits against farmers because it is hard to estimate how many legal actions are not filed due to the existence of the laws. But even in light of the problems with quantifying results, most observers would agree the laws are a valuable protection for agriculture. The laws provide some sense of security for farmers making investments in improving and expanding their farming operations. The laws also alert and place on notice those non-farm owners who move into agricultural areas that use of their property may be subject to the rights of the nearby pre-existing farm operations.<sup>19</sup>

Professor Hamilton then turned to the operation of these laws and expounded the following ten reasons why they may be ineffective:

- Case law indicates the laws do not work as planned
- The idea has been legislatively abused and made too widely available
- The idea may lead to the increased regulation of agricultural practices
- The laws contribute to a growing sense of unfairness in the countryside
- The laws generally favour larger operations
- The laws may represent a taking of the neighbour's private property rights
- The laws may create political pressure for restricting agriculture
- The laws force litigation into other arenas
- The laws increase pressure for enactment and enforcement of environmental regulations
- The laws are not implemented as part of a comprehensive effort to protect farmland

On the last issue, it was said that “right to farm” laws can be used “to protect both farming operations and farmland from the impact of changes in the surrounding area”. For Professor Hamilton, for either the “farming operations” or “farmland” aspects of “right to farm” laws “to function most effectively the law must be part of a more comprehensive program, such as a system of planning, regulation, and economic incentives”.<sup>20</sup>

For Dowell, writing in 2011, the need for “right to farm” laws remains as long as the effects of urban sprawl finds expression in nuisance suits against farmers. However, Dowell was also of the view that “As potential protections to the farmer, comprehensive land-use planning processes may hold more long-term promise and be far less costly than defending nuisance actions”. Reviewing the new generation of environmental planning laws in place since “right to farm” laws were first enacted, Dowell argues that:

Ultimately the larger issue is how to fairly and efficiently address the changing regulatory environment, while still preserving the important protection of right to farm laws.<sup>21</sup>

A further issue canvassed by Dowell is the constitutionality of “right to farm” laws, specifically those cases challenging the constitutionality of Iowa’s statute, based on the argument that such laws constitute a “regulatory taking” of property contrary to the Fifth Amendment or its equivalent under the State constitution.<sup>22</sup> In 1998 it was held that, by permitting producers to act in a way that would, but for the legislation, constitute a nuisance, an easement had been created under the statute for which the property owners had not received compensation.<sup>23</sup>



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A 2012 [article](#) by Nicholas Buttino on the “right to farm” statutes in place in New York, Nebraska and Minnesota<sup>24</sup> is an example of a selected cross-jurisdictional study which is limited to a particular empirical focus of assessing the success of such laws in protecting the small farm heritage of these States. Buttino’s conclusion in this respect is that, because of changing agricultural demographics, “none of the statutes are effective”.<sup>25</sup> According to Buttino:

Much of the ambiguity regarding the effectiveness of right to farm statutes results from confusion about whom [sic] they are designed to assist. State legislatures often preface their right to farm statutes with a vague statement of intent. In these cases, it is unclear whether the legislature was most interested in protecting a rural farming culture, the environment, or the viability of an agricultural economy. Moreover, statutes designed to protect small farms may be more useful to large farms because the scale of nuisances often increases with farm size.<sup>26</sup>

A related concern expressed by the [Center for Media and Democracy](#) relates to a model “[Right to Farm Act](#)” proposed by the lobbying group American Legislative Exchange Council (ALEC), which is said to contain “several rather far-reaching measures to ensure that nuisance claims may not be brought against large, industrial agricultural operations”. The model ALEC Bill defines “person” to include corporations and, among its other features, “would allow a farm to avoid a nuisance suit if it was established before the plaintiff moves to the area and then the farm expands or substantially changes, for example, by building a hog confinement and a large manure lagoon on the property”. Aspects of this model Bill are said to be found in the laws of several States, including [Arkansas](#), [Florida](#) and [Indiana](#).

More positive from a single State perspective was the assessment of Paul Goeringer and Lori Lynch of the University of Maryland’s Center for Agricultural & Natural Resource Policy. After reviewing the content and operation of Maryland’s “right to farm” law, they concluded that the law “can provide powerful protections in certain situations”:

Both non-agricultural and agricultural neighbours should consider working together to develop communication to limit many disputes. But, when faced with a nuisance suit, an agricultural or silvicultural producer who has been in business for at least one year and has complied with all applicable federal, state and local laws, ordinances, and permits will have a strong defence.<sup>27</sup>

### Canada

Taking Ontario’s 1998 [Farming and Food Production Protection Act](#) as a guide, the “right to farm” laws in Canada have three main themes:

- No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.
- Farmers are protected from nuisance complaints made by neighbours about odour, dust, flies, light, smoke, noise and vibration, provided the farmers are following normal farm practices.
- A [Normal Farm Practices Protection Board](#) is established to determine what constitutes a normal farm practice and to resolve disputes regarding agricultural operations, either between individual

and individual or between individual and municipality. According to the [fact sheet](#) for the 1998 Act, the Board was established:

to hear from parties involved in formal complaints that cannot be resolved through mediation efforts. In other words, holding a hearing with the NFPPB is to be used as a last resort. The NFPPB then conducts a hearing to determine if the disturbance causing the complaint results from a normal farm practice. The very existence of the board aids in resolving nuisance issues. For those issues that cannot be resolved through local mediation, the board provides a less expensive and quicker forum for complaint resolution than the courts.

The performance of the NFPPB is set out in its [2014-2017 Business Plan](#), where it is reported that 153 of a total of 156 farm practice complaints (98 percent) in Ontario in the fiscal year 2013-2014 were resolved by specialists from the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), and therefore did not require involvement by the Board. The Board's [2011-12 annual report](#) gives an example of the kinds of complaints received: of 206 complaints 77 (37%) concerned odour, 73 (35%) noise and 34 (17%) flies. Writing in 2010 Anna Best of the University of Guelph commented:

The vast majority of complaints in Ontario have been resolved through mediation, with those formally heard by the Normal Farm Practices Protection Board slightly more often found in favour of the applicant. Board processes may offer an alternative to litigation that is less adversarial, more quickly resolved and less costly to plaintiffs and defendants. However, a balance between the needs of farm neighbours and of farmers needs to be maintained.<sup>28</sup>

In performing its functions, the [Normal Farm Practices Protection Board](#) seeks to balance the needs of the agricultural community with provincial health, safety and environmental concerns. The preamble to the 1998 Act states in this respect:

It is in the provincial interest that in agricultural areas, agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns.

Other Provincial laws follow this basic model, including Manitoba's [Farm Practices Protection Act](#), British Columbia's [Farm Practices Protection \(Right to Farm\) Act](#), Newfoundland and Labrador's [Farm Practices Protection Act](#), Nova Scotia's [Farm Practices Act](#) and Prince Edward Island's [Farm Practices Act](#). This last statute includes an equivalent preamble to the Ontario law, with the same requirement to balance the needs of the agricultural community with health, safety and environmental concerns.

### Commentary on Canadian laws

In its 2012 [report](#) on the Province's statutory regime, the Manitoba Law Commission commented that, bearing in mind the uncertainties that attend the common law of nuisance, "The regulatory scheme has many merits". The Commission observed that "Even some critics of right to farm legislation agree, in principle, that it serves a legitimate purpose".



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Nonetheless, it was recognised that, with many competing legal and social interests at stake, “right to farm” laws remain “controversial”, with commentators raising concerns about the “equity” of such laws and their impact on “environmental issues and private property rights”. Cited in this respect was the 2001 decision of the Ontario Court of Appeal in [Pyke v Tri Gro Enterprises](#), where it was said of that Province’s 1998 [Farming and Food Production Protection Act](#):

This Act represents a significant limitation on the property rights of landowners affected by the nuisances it protects. By protecting farming operations from nuisance suits, affected property owners suffer a loss of amenities, and a corresponding loss of property value. Profit-making ventures, such as that of the appellants, are given the corresponding benefit of being able to carry on their nuisance creating activity without having to bear the full cost of their activities by compensating their affected neighbours. While the Act is motivated by a broader public purpose, it should not be overlooked that it has the effect of allowing farm operations, practically, to appropriate property value without compensation.<sup>29</sup>

For the Law Commission, the most “significant improvement” of the Manitoba legislation over the common law is in the creation of the Farm Practices Protection Board “which offers a low-cost and accessible alternative to litigation in the courts”.<sup>30</sup> The same might be said of the Canadian model of “right to farm” legislation generally.<sup>31</sup>

That is not to say that the model has escaped some criticism. A 2004 review of conflict resolution in rural Ontario by Wayne Caldwell and his colleagues found that there were problems with the [Normal Farm Practices Protection Board](#) (NFPPB) “in terms of accessibility” for small farmers. They concluded that “It is simply the fact that the time and bookwork required to prepare for a NFPPB case is a significant deterrence to small farmers”.<sup>32</sup>

From an environmental perspective, in a 2008 article reviewing the work of the British Columbia’s [Farm Industry Review Board](#) (FIRB), Melina Lavery expressed concern about the “lobbying power of the farming industry”, commenting that:

Aside from legislative changes, changing the composition of the FIRB is one way in which decisions might be more balanced and the community voice might be heard more clearly amid the many industry interests that are currently in place.<sup>33</sup>

For its part, the [FIRB](#) states that it “has up to ten part-time board members” with “varied experience in areas such as law, policy, management, governance, agriculture, and animal welfare”. The Board’s decisions can be appealed to the courts and its procedures are oversights by the Office of the Ombudsperson. A review of the Board’s work explained that the principles to be applied in determining “normal farm practice”, as applied by the FIRB,<sup>34</sup> are as follows:

- The balance between farmers and their neighbours has been established by the Act itself. Where a farmer is carrying out a practice in a manner consistent with proper and accepted customs and standards as established by similar farm businesses under similar circumstances, the complaint must be dismissed;

- Farm operations do not automatically gain protection by showing that they follow some abstract definition of industry standards. BCFIRB's task is not to inquire into simply whether the farm practice is "proper" in the abstract, but also whether it is consistent with proper and accepted customs as established and followed by similar farm businesses under similar circumstances. The inquiry is both fact and site-specific. The same practice may qualify as a normal farm practice in one situation but not in another where the circumstances are different; and
- Depending on the practice under review, many relevant factors may be considered in determining normal farm practice, including proximity of the neighbours, their use of land and the degree of disturbance. It may also be relevant whether the farm operation came first.<sup>35</sup>

As for the 2012 Manitoba Law Commission report, it recommended measures designed to improve accessibility to that Province's Farm Practices Protection Board, including relating to remedies and enforcement. Issues of transparency were also considered, relating to the composition of the Board, the conduct of public hearings and the distribution of reasons for decision. For example, in respect to the Board's composition, it was recommended that the legislation be amended to require farming and non-farming membership, more akin to the statutory requirements in place in Nova Scotia, New Brunswick and Prince Edward Island. With appropriate safeguards for privacy, it was also recommended that the Board's decisions be made available to the public and not just to parties to proceedings as at present.<sup>36</sup>

#### 4. Laws and policies in Australia

##### Tasmania

The only "right to farm" legislation in Australia is Tasmania's [\*Primary Industry Activities Protection Act 1995\*](#). As discussed in the [2014 Issues Paper](#) by the Department of Primary Industries, Parks and Environment, the reasons why the Act was introduced were similar to those encountered in the US and Canada, based mainly on concern about threats to agricultural activity posed by increasing urban sprawl. According to the [2014 Issues Paper](#):

It was introduced to specifically stop the common law action of nuisance being used to prevent farmers pursuing the normal, legitimate and statutorily authorised activities which form a necessary part of good agricultural production.<sup>37</sup>

The [\*Primary Industry Activities Protection Act 1995\*](#) (PIAP Act) is relatively brief. Defined in the "interpretation" section are key words and phrases. Nuisance is defined to mean "a public or private nuisance actionable at common law". "Primary industry" and "primary industry activity" are also defined, the last as an activity which:

- (a) is carried out on an area of land that is being used for primary industry; and
- (b) is carried out for, or in connection with, primary industry; and
- (c) does not contravene, or fail to comply with, an enactment of the State or Commonwealth or a council by-law.

By s 3(2) an area of land is in use for primary industry if:

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- (i) it is zoned by a council for primary industry use; and
- (ii) it is being regularly used, or prepared for regular use, for primary industry; and
- (iii) its owner or occupier derives the principal means of his or her livelihood from primary industry.

The key substantive provision is s 4, which provides that a primary industry activity does not constitute a nuisance if the following requirements are satisfied:

- (a) the area of land has been used for primary industry for a continuous period longer than one year; and
- (b) the activity did not constitute, or would not have constituted, a nuisance carried out on that area of land at the beginning of that continuous period; and
- (c) the activity is not substantially different to the primary industry activities that were, or might reasonably have been, carried out on that area of land at the beginning of that continuous period or, if the activity is substantially different to those activities, the difference is attributable to improved technology or agricultural practices; and
- (d) the activity is not being improperly or negligently carried out; and
- (e) the only ground for claiming that the activity is a nuisance is that land use conditions in the locality of the area of land changed after the land had been in continuous use for primary industry for a period longer than one year.

Without restricting the court's power to make any order it thinks fit (s 5(2)), the PIAP Act does establish a limit on the power of courts in respect of findings of nuisance. This is to the extent that s 5(1) provides that if all the requirements of s 4 are not met, the court can find that a primary industry activity constitutes a nuisance, but the court must not order the complete cessation of that activity if:

satisfied that, by making some other order for the management, modification or diminution of the activity reasonably consistent with efficient and commercially viable primary production, the court could reasonably ensure that any continuation of the activity would be unlikely to significantly disturb the other party to the proceedings.

Under the PIAP Act primary industry activity is expressly required to comply with an enactment of the State or of the Commonwealth or a council-by-law (s 3(1)). It is also the case that improper or negligently carried out actions by a primary producer are not protected under the Act (s 4(d)). Further, s 6 declares that no provision in the PIAP Act affects the operation of any other Act, which means that the PIAP Act does not override any other legislation. For the [2014 Issues Paper](#), the PIAP Act can be said to seek "a responsible level of protection to the farming community without in any way compromising any other enactment". However, the review went on to note that:

the *Environmental Management and Pollution Control Act 1994*, which creates an offence of 'causing environmental nuisance' (section 53), states that noise emitted from or by a primary industry activity does not constitute

an environmental nuisance, if the activity meets the requirements of the *Primary Industry Activities Protection Act 1995*. It does not however extend that protection to any other forms of environmental nuisance, such as odour.<sup>38</sup>

The [2014 Issues Paper](#) invited submissions, specifically addressing a number of questions, including relating to the effective operation of the PIAP Act “in upholding farmers’ rights” and improvements that can be made to it. Submissions were also asked to consider the use of “mandatory disclosure of neighbouring agricultural activities”, something that is not currently required under Tasmania’s land sales legislation.

The submission of the Tasmanian Farmers and Graziers Association (TFGA) to the review argued (in part) that:

- “right to farm” laws need to form part of a “innovative and robust holistic planning scheme” that takes account of the critical role played by agriculture in the State’s economic, social and environmental life;
- the PIAP Act “has not been effective, being used only as a “tool of last resort”. As the only legal mechanism available to farmers, the Act “has resulted in much frustration, as drawn-out and expensive actions almost inevitably fail”;
- the PIAP Act is in need of substantial amendment, notably the definition in s 4 of those farming activities that do not constitute a nuisance and introducing what is meant by “improperly and negligently” under s 4(d). But amending the Act in isolation, without a wider overhaul of the planning system, “would be pointless”; and
- mandatory “buyer beware” certificates identifying existing agricultural uses should be introduced into sale of land contracts, again as “part of a larger suite of planning tools”.<sup>39</sup>

In its submission to the 2014 review [EDO Tasmania](#) covered similar ground based on very different assumptions. It started by asserting that “the Issues Paper seemingly elevates the economic value of farming above all other considerations” and went on to observe that land use conflicts “would be more effectively addressed through improvements to the planning system than in specific legislation restricting nuisance actions”. The submission argued (in part) that:

- there was no evidence in 1995 and none is presented in the Issues Paper “to demonstrate the prevalence of nuisance actions”;
- given the availability of other legal actions “it is questionable that the PIAP Act has any significant impact in reducing claims in relation to farming activities”;
- agricultural protection laws are not an appropriate mechanism for several reasons, including because they do not encourage long term dispute resolution, and because they are simplistic and ineffective. EDO Tasmania was only aware of one case in which the PIAP Act had been applied;<sup>40</sup> and
- as an interim measure the PIAP Act should require mandatory disclosure of neighbouring agricultural activities, to be replaced in time by a comprehensively revised planning scheme.<sup>41</sup>

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As to the need for such legislation, of the 16 submissions received during the review process none cited any cases where non-farming neighbours were impacting adversely on producers.<sup>42</sup> It remains to be seen whether the review results in any reform to what may be viewed as largely symbolic legislation of little real practical import.

### New South Wales

**Private Member's Bill:** In NSW the 2005 [Protection of Agricultural Production \(Right to Farm\) Bill](#) was introduced as a private members bill by the Deputy Leader of the Nationals, Don Page. It did not proceed beyond its second reading. As set out in the explanatory note for the Bill, its key features were as follows:

**Clause 4** requires a vendor under a contract for the sale of land that adjoins or is adjacent to rural land to attach a rural land use notice to the contract before it is signed by or on behalf of the purchaser. If such a notice is attached, the purchaser is taken to have been given the notice.

**Clause 5** requires Councils to issue rural land use notices and sets out the matters that must be contained in the notices. Councils must also keep registers of rural land use notices provided by them and make the registers available for public inspection. The proposed section also enables Councils to charge a reasonable fee for the notices or inspection of the register of notices.

**Clause 6** requires the fact that a notice was given to an owner of land that adjoins or is adjacent to rural land to be taken into account by a court or other body determining proceedings brought by the owner to limit, prohibit or otherwise impede the use of the adjoining or adjacent rural land for agricultural or agricultural management purposes.

The [second reading speech](#) of 24 March 2005 stated:

The object of the Protection of Agricultural Production (Right to Farm) Bill is to provide for rural land use notices to be given to purchasers of land adjoining or adjacent to rural land and for those notices to be taken into account in any subsequent proceedings by such purchasers to limit or prohibit the use of that rural land for rural purposes.

The [second reading speech](#) continued:

For many years farmers and landowners have been concerned about the threat to legal agricultural activities from neighbours who buy into a rural setting and then proceed to complain about existing agricultural activities next door. For example, on the North Coast of New South Wales many new residents are setting up bed-and-breakfast and cabin accommodation on land previously used for agricultural purposes or on land adjoining agricultural land. When their neighbours continue to undertake rural activities there is the potential for conflict over farm machinery noise, pest control and numerous other issues. In many cases, the new residents also raise their concerns about legal agricultural activities with various authorities, such as local and State governments, and request that they be closed down.<sup>43</sup>

Not addressed by the Bill was the issue of the imposition of conditions on farmers in the form of environmental or other laws.

An issue raised by the Legislation Review Committee referred to the strict liability aspect of clause 4 above, imposing a penalty of \$11,000 for failing to attach a rural land use notice to a contract for the sale of land.<sup>44</sup> The Tasmanian [2014 Issues Paper](#) commented that “The Bill placed responsibility for rural land use notices on Councils, and made no provision for the costs associated with implementing the rural land use notice concept”.<sup>45</sup>

**Section 149 planning certificates:** These last observations were based on a 2006 article by Helen McNeil, the thrust of which was to argue for a rounded strategic approach to resolving rural land use conflict in NSW, based in part on the existing planning framework but also encompassing a range of other approaches, including education, mediation and the implementation of best management practice. In respect to planning legislation, McNeil was of the view that the *Environmental Planning and Assessment Act 1979* was “the most appropriate legislative instrument” in NSW to deal with conflicts over rural land use. In particular, McNeil argued that:

Using s 149 to its full effect would mean that local government across NSW would be required to include standard information about neighbouring land use. This proposal may find opposition from developers and the real estate industry which may ultimately result in increases in the cost of conveyancing. However, it presents a workable way in which rural land use conflict can be managed and mitigated.<sup>46</sup>

When land is bought or sold the *Conveyancing Act 1919* requires that a s 149 Planning Certificate be attached to the Contract for Sale. By s 149(2) the certificate must specify “such matters relating to the land to which the certificate relates as may be prescribed”.<sup>47</sup> In addition, by s 149(5) “A council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware”. As McNeil explained by reference to Lismore City Council’s “Notice to Purchase of Rural Land”, some local councils “are using s 149 certificates as a means of advising purchasers of land about legitimate rural and agricultural uses and practices on rural land”.<sup>48</sup>

On this issue, in a document titled [Living and Working in Rural Areas](#),<sup>49</sup> the Department of Primary Industries advises those contemplating purchasing property to inquire into the local council’s policy on legitimate rural activities. The document states (in part):

The local council may provide a *Notice to Purchasers of Rural Land* as an *Annexure* to the standard Section 149 Planning Certificate. This annexure may outline:

- Council’s support for the ‘right’ to carry out legitimate farming practices.
- That council will not support any action to interfere in such uses provided they are carried out according to industry standards, relevant regulations or approvals.
- Legitimate rural land uses.
- That intending purchasers consider their actions in the light of potential conflicts.



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An example of a *Notice to Purchasers of Rural Land* is provided by the Department, which goes on to warn prospective purchasers to be aware that not every council will have a s 149 certificate *Annexure* addressing the council's policy "on rural issues and complaints over legitimate and routine practices in rural areas". The model *Notice to Purchasers of Rural Land* provided by the Department includes the statement that:

Intending purchasers of rural land who consider they may have objection or difficulty in living in the rural area where the above land uses and practices occur should seriously consider their decision to purchasing land in a rural area. Rural areas are dynamic and are subject to change. Some rural and agricultural practices involve the use of pesticides and can create odour, noise, dust, smoke, vibration, blasting and change the amenity of an area. While off site impacts from rural industries and rural activities should be minimised, they can rarely be completely eliminated. Some activities are carried out in the early morning, late evening and on weekends.

**"Existing use" under the EP&A Act.** A further issue to consider is the possible relevance of the "existing use" provisions under the *Environmental Planning & Assessment Act 1979*, which provide exceptions to the requirements of EPIs (Environmental Planning Instruments). Specifically, s 107(1), which is headed "'Continuance of and limitations on existing uses", provides that:

Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

Under the regulations, read with s 107(2) of the Act, minor alterations are permitted to the existing use but otherwise development consent is required for the enlargement, expansion and intensification of existing uses, as well as for the extension and rebuilding of buildings and works.<sup>50</sup>

The "existing use" provisions of the EP&A Act would seem to be relevant to those aspects of the "right to farm" debate that relate directly to planning issues, including presumably in relation to any council re-zoning of land.

A further question is whether, in the relevant circumstances, these provisions would preclude an action in nuisance or under any other aspect of the general law against a farmer. Is a general immunity provided therefore in respect to an "existing use"? It would appear not. Section 106(a) defines an existing use in part to be "the use of a building or land for a *lawful purpose*". In *Sydney City Council v Ke Su Investment (No 2)*<sup>51</sup> McClelland CJ explained that "lawful purpose" in this context applied only to planning law and not to the "host of statutory and common law provisions affecting" land use. It was not, his Honour said, for the Land and Environment Court, when considering whether an existing use is "lawful" for the purposes of the EP&A Act, "to inquire or determine whether such use infringes any of those other Acts or, for example, the common law governing nuisance".<sup>52</sup> In the context of the case at issue, it was said that "To hold that planning law does not forbid the use as a brothel of certain premises in Riley Street is not to abolish the common law misdemeanour of conducting a brothel".<sup>53</sup>

### Other Australian jurisdictions

**Western Australia:** Under the [Agricultural Practices \(Disputes\) Act 1995](#) the Western Australian Government of Richard Court established the Agricultural Practices Board. The Board's function was to manage the resolution of disputes over land use, but without encroaching on the power of the courts to deal with nuisance related matters. In its [2002-03 annual report](#) the Board defined its role as providing "quick, cost effective, practical, win-win solutions to disputes at a local level, thus avoiding lengthy and costly legal proceedings". That year the Board only received three applications for mediation, and only one in [2005-06](#). In the event, the Board ceased operating in 2006, with its functions taken over by the Agricultural Practices Disputes Board, from within the State's Department of Agriculture.<sup>54</sup> In 2011 the *Agricultural Practices (Disputes) Act 1995* was repealed altogether. The second reading speech commented:

It was thought when the Act was introduced that there would be a significant number of disputes about agricultural practices as a result of the encroachment of urban land use into rural areas. In fact there was only ever a very small and decreasing use of the Act. The provision for mediation was used only rarely, with three being the maximum in any one year and none at all being conducted in some years, including the last three financial years. The board was not ever called upon to determine a dispute.<sup>55</sup>

The Minister went on to say that experience had:

shown that there is no need for this Act. Potential conflicts resulting from competing land uses are best addressed through effective land use planning.

**South Australia:** In South Australia a [Right to Farm Bill 2012](#) was introduced as a private member's Bill by the Family First Party Upper House member Robert Brokenshire. The Bill was the successor to the Environment Protection (Right to Farm) Amendment Bills of [2009](#) and [2010](#), sponsored by the same member. Introducing the 2009 Bill, Mr Brokenshire said:

This bill is based in part on models adopted in northern America but also based on calls made by Australian farmers federations for the protection of farmers' rights to farm. Throughout the world, as we see increased urbanisation, increasingly we have farming enterprises continuing to operate at the fringes of urban sprawl or otherwise close to where people have moved for a farm change, sea change or green change.<sup>56</sup>

The 2009 and 2010 Bills proposed amendments to the *Environment Protection Act 1993* and the *Land and Business (Sale and Conveyancing) Act 1994*. In relation to the EPA, it would be a defence to a complaint under the Act if a farmer was conducting a "protected farming activity", namely, an activity condoned by a code of practice or by generally accepted standards and practices in the farming industry. The obligation would be on the EPA, not the farmer, to establish the defence. The relevant codes of practice would be prescribed by regulation. In relation to the *Land and Business (Sale and Conveyancing) Act*, the Bill proposed that a person who buys land in farming areas will be notified that there are farming enterprises operating in the area. The 2009 Bill was agreed to by the Legislative

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Council but stalled in the Lower House.<sup>57</sup> Of the debate in the Council it was reported that:

During debate on the bill, both the Greens and Labor expressed general sympathy for its objectives, namely that farmers have a right to conduct their farming activities, but fell short of supporting the drafting, saying that it was the wrong instrument for the job and would diminish the EPA's capacity to prosecute for non-complying activities. Criticism was also levelled at the broad scope of what might constitute "generally accepted standards and practices" in a given farming industry for the purposes of defining what is a protected farming activity.<sup>58</sup>

Introducing the 2012 Bill, Mr Brokenshire said it contained elements in addition to the previous Bills:

(1) clarifying immunity from liability and prosecution for farmers engaged in normal farming activities and (2) requiring right to farm principles to be enshrined in development plans through a consultation process.<sup>59</sup>

Proposed s 5(2) provided:

No prescribed civil liability lies in respect of an act or omission that is a protected farming activity.

Proposed ss 6(1) and (2) provided:

(1) The Minister must, within 6 months after the commencement of this section, develop planning principles that are consistent with, and seek to further, the objects of this Act.

(2) The Minister must undertake public consultation in developing, or subsequently altering, the planning principles in such manner as the Minister thinks fit.

Commenting on the Bill, the Tasmanian [2014 Issues Paper](#) said it "represented arguably the strongest 'right to farm' legislation in the country". It was also noted that the 2012 Bill passed the Upper House only to be defeated in the Lower House "on the basis that it was not the appropriate mechanism to uphold farmers' rights, and would diminish the Environment Protection Authority's capacity to prosecute for non-complying activities".<sup>60</sup>

**Victoria:**<sup>61</sup> Also considered in the Tasmanian [2014 Issues Paper](#) are recent changes to the Victorian [Sale of Land Act 1962](#). These included amendments to s 32, which formerly required the following warning to be provided to prospective purchasers:

The property may be located in an area where commercial agricultural production activity may affect your enjoyment of the property. It is therefore in your interest to undertake an investigation of the possible amenity and other impacts from nearby properties and the agricultural practices and processes conducted there.'

As amended, a vendor is no longer required to attach the section 32 statement to the contract of sale. Instead, a due diligence checklist must be provided to prospective purchasers either by the real estate agent or the

vendor. The [checklist](#) asks whether, in a rural setting, the surrounding land use is compatible with lifestyle expectations.

The Victorian Farmers Federation opposed this change. In its submission to Consumer Affairs Victoria it had proposed amending s32 statements “to detail prominent noises and smells to ensure these are acknowledged prior to land being purchased”; a Canadian style independent Board to deal with “right to farm” issues was also proposed.<sup>62</sup> Commenting on the new legislation, the Federation was of the view that the Coalition Government had “[back flipped](#)” on its 2010 election commitment to strengthen “right to farm” laws.

### 5. Conclusion

Under the MOU with NSW Farmers, the Baird Government has agreed that consideration be given to “proposals for a Right to Farm policy during 2015”. For the farming community this is one response to ongoing concerns about a range of issues, from the operation of native vegetation legislation to the capacity for local councils to place environmental zones over farm land.<sup>63</sup> For NSW Farmers it is argued that:

A right to farm is a multi-faceted concept which includes both obligations imposed directly on landholders which hinders farmers’ ability to manage land in the best interests of their agribusiness, and broader hindrances on agriculture in a wider land use planning context.<sup>64</sup>

“Right to farm” laws are found in all US States and Canadian Provinces, with the Canadian jurisdictions and some US States also establishing independent statutory Boards to adjudicate land use conflicts. In Australia, an Agricultural Practices Disputes Board was in place for some years in Western Australia; it was rarely used and the *Agricultural Practices (Disputes) Act 1995* was repealed in 2011. Currently, the only Australian “right to farm” law is Tasmania’s [Primary Industry Activities Protection Act 1995](#), which is the subject of ongoing departmental review. Neither the Tasmanian law, nor any of the proposed legislation from around Australia discussed in this e-brief, establishes a Board to mediate right to farm complaints; nor do they provide protection from State or local government laws restricting agricultural activity.

The issues canvassed in the “right to farm” debate are inherently controversial and views are almost certain to diverge according to the claims of interest and varying practical and ideological perspectives. Nonetheless, from the Tasmanian experience at least there is a body of opinion in support of mandatory disclosure of neighbouring agricultural activities in sale of land transactions. In a NSW context, this is broadly consistent with the argument on behalf of mandatory rural land use disclosure under s 149 planning certificates. A contrary argument is that such a requirement would add more “red tape”. It may also be the case that mandatory disclosure would lock farmers into agricultural activities as currently practised, thereby inadvertently stifling innovation and improvement.

It is also the case that commentary in the US, in NSW and further to the Tasmanian legislative review point to the need for any “right to farm” laws

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to be part of what the Tasmanian Farmers and Graziers Association describe as an “innovative and robust holistic planning scheme”. If that is the appropriate direction to take, then this may be a matter to consider as part of the general review of the NSW planning system, announced by the Planning Minister Rob Stokes in June 2015.<sup>65</sup>

In respect to nuisance actions, one consideration is the limitation on property rights created by “right to farm” laws. A threshold question to ask is whether a need for either specific “right to farm” legislation or some other legislative or policy approach has been empirically demonstrated? If so, how is this to be addressed?

<sup>1</sup> R Makim, “New deal puts ag at the political fore”, *The Land*, 26 March 2015.

<sup>2</sup> G Brown, “We have the right to farm”, *The Land*, 30 July 2014; the same article is available on the NSW Farmers [website](#); and see the NSW Farmers press release of 15 July 2014, “[Farmers press for legislated right to farm](#)”.

<sup>3</sup> *NSWPD*, 23 June 2015.

<sup>4</sup> P McCormally, “Right to farm legislation in Canada”, *Environment Probe*, July 2007; M Laverty, “[Right to farm legislation in British Columbia](#)” 2008.

<sup>5</sup> Anna Best, “[The development and effects of the Ontario Farming and Food Production Protection Act, 1998](#)” SURG Vol 4(1) 2010; In its 2012 report on [The Nuisance Act and the Farm Practices Protection Act](#), the Manitoba Law Commission cited the leading case of *Royal Anne Hotel Co. v. Ashcroft (Village)* (1979), 95 D.L.R. (3d) 756 at 760 (BCCA), citing Street, *Law of Torts*, at 215. The same report stated: “In deciding whether a given interference constitutes a legal nuisance, courts have asked if the defendant is using his property reasonably having regard to the fact that he or she has a neighbour. In other instances, the courts have questioned whether in the circumstances it is reasonable to deny compensation to the aggrieved party. These various formulations of the test highlight the importance of balancing the parties’ interests, and the highly fact- specific nature of the inquiry”. (p 4)

<sup>6</sup> P McCormally, “Right to farm legislation in Canada”, *Environment Probe*, July 2007.

<sup>7</sup> Farm Foundation, [Right to farm laws: history and future](#).

<sup>8</sup> W Caldwell and others, “The Normal Farm Practices Protection Board” from [Final Report: conflict resolution in rural Ontario](#), June 2004.

<sup>9</sup> Farm Foundation, [Right to farm laws: history and future](#).

<sup>10</sup> Anna Best, “[The development and effects of the Ontario Farming and Food Production Protection Act, 1998](#)” SURG Vol 4(1) 2010.

<sup>11</sup> This typology was later adopted by Tasmania’s Department of Primary Industries, Parks, Water and Environment in its [2014 Issues Paper](#) on the State’s *Primary Industry Activities Protection Act 1995* (discussed in a late section of this paper)

<sup>12</sup> The original typology included the protection of animal feedlots as a separate type of “right to farm” law.

<sup>13</sup> T Dowell, “Understanding and interpreting right to farm laws” (Summer 2011) 26(1) *Natural Resources & Environment* 39; see also the review of these laws in - R Rumley, “A comparison of the general provisions found in right to farm statutes” (2011) 12 *Vermont Journal of Environmental Law* 327.

<sup>14</sup> T Dowell, “Understanding and interpreting right to farm laws” (Summer 2011) 26(1) *Natural Resources & Environment* 39 at 40.

<sup>15</sup> See for example the Oregon [State Board of Agriculture](#) and its equivalents in [Kansas](#) and [Oklahoma](#).

<sup>16</sup> The guiding principles are that the practice should: be legal and necessary; not cause bodily harm or property damage off the farm; and achieve the results intended in a reasonable and supportable way.

<sup>17</sup> Center for Agricultural & Natural Resource Policy, “Understanding agricultural liability: Maryland’s right to farm law”, [Fact Sheet](#), July 2013, p 2. It is said that this process of local review acts as a “control against costly nuisance suits” (p 5).

<sup>18</sup> RH Pifer, “Right to farm statutes and the changing state of modern agriculture” (2012-13) 46(4) *Creighton Law Review* 707 at 712. The article discusses the value of these laws in relation to such developments as protecting farmers involved in direct marketing (Virginia statute) and from new animal confinement standards (North Dakota statute).



- <sup>19</sup> ND Hamilton, "Right to farm laws reconsidered: ten reasons why legislative efforts to resolve agricultural nuisances may be ineffective" (1998) 3 *Drake Journal of Agricultural Law* 103 at 104.
- <sup>20</sup> *Ibid* at 117.
- <sup>21</sup> T Dowell, "Understanding and interpreting right to farm laws" (Summer 2011) 26(1) *Natural Resources & Environment* 39 at 43.
- <sup>22</sup> The final clause of the 5<sup>th</sup> Amendment of the US Constitution provides "nor shall private property be taken for public use, without just compensation".
- <sup>23</sup> *Borman v Board of Supervisors*, 584 N.W.2d 309 (Iowa 1998) and *Gacke v Pork Xtra LLC*, 684 N.W.2d 168 (Iowa 2004). See endnote 29 for the comments of the Manitoba Law Commission.
- <sup>24</sup> According to Buttino, Nebraska and Minnesota have additional laws banning certain types of corporate farming.
- <sup>25</sup> NC Buttino, "An empirical analysis of agricultural preservation statutes in New York, Nebraska and Minnesota" (2012) 39(1) *Boston College Environmental Affairs Law Review* 99 at 123.
- <sup>26</sup> *Ibid* at 107.
- <sup>27</sup> Center for Agricultural & Natural Resource Policy, "Understanding agricultural liability: Maryland's right to farm law", *Fact Sheet*, July 2013, p 7.
- <sup>28</sup> Anna Best, "[The development and effects of the Ontario Farming and Food Production Protection Act, 1998](#)" SURG Vol 4(1) 2010.
- <sup>29</sup> (2001), 55 O.R. (3d) 257 at para. 75 (Ont CA), leave to appeal to SCC refused (2001) no. 493. The Manitoba Law Commission further observed that similar considerations led Iowa's highest court to find that State's right-to-farm legislation unconstitutional on the basis that it effects a taking of private property - *Gacke v. Pork Xtra L.L.C.*, 684 N.W. 2d 168, 173-174 (Iowa 2004); *Bormann v. Bd. of Supervisors*, 584 N.W. 2d 309, 321 (Iowa 1998), *cert. denied*, 525 U.S. 1172 (1999).
- <sup>30</sup> Manitoba Law Commission, [The Nuisance Act and the Farm Practices Protection Act](#), 2012, p 15.
- <sup>31</sup> For an overview from 1999 of the Canadian "right to farm" laws and the operation of the review Boards, including an account of the disputes dealt with to that time, see – JJ Kalmakoff, "The right to farm: a survey of farm practices protection legislation in Canada" (1999) 62 *Saskatchewan Law Review* 225. Between 1989 and 1999 there were 37 cases before the review Boards of Ontario, Manitoba, Saskatchewan, Alberta and Nova Scotia and in 23 (625) of those cases the producer was found to have violated accepted agricultural practice. In the same period there were no reported court cases relevant to the legislation.
- <sup>32</sup> W Caldwell et al, [Final Report: conflict resolution in rural Ontario](#), June 2004, p 16.
- <sup>33</sup> M Laverty, "[Right to farm legislation in British Columbia](#)", Environment Probe, 2008, p 19. For a review of the Board's 2013-14 activities see the [Ministry of Agriculture's Annual Service Plan Report](#), Appendix C.
- <sup>34</sup> As well as by the Ontario Court of Appeal it is noted.
- <sup>35</sup> [Looking Back at 75 years of the British Columbia FIRB, 1934-2009](#), p 25.
- <sup>36</sup> Manitoba Law Commission, [The Nuisance Act and the Farm Practices Protection Act](#), 2012, pp 34-38.
- <sup>37</sup> Tasmanian Department of Primary Industries, Parks, Water and Environment, [Review of the Primary Industry Protection Act 1995](#), Issues Paper, 19 June 2014, p 9.
- <sup>38</sup> *Ibid* p 12.
- <sup>39</sup> Tasmanian Farmers and Graziers Association, [Submission to Review of the Primary Industry Protection Act 1995](#), August 2014, pp 29-30.
- <sup>40</sup> Cited and discussed is *Williams Davies v Devonport City Council* [2002] TASRMPAT 145.
- <sup>41</sup> EDO Tasmania, [Submission to Review of the Primary Industry Protection Act 1995](#), 4 August 2014, pp 1-5.
- <sup>42</sup> E-mail correspondence to the author from AgriGrowth Tasmania, 25 June 2015. It seems that the only example of "conflict" arose from the expansion of a big agricultural business, resulting in smaller farmers leaving the region and neighbours complaining about such issues as vastly increased truck movements.
- <sup>43</sup> [NSWPD](#), 24 March 2005, p 14905.
- <sup>44</sup> Parliament of NSW, Legislation Review Committee, [Legislation Review Digest](#), No 4 2005, p 12.



- <sup>45</sup> Tasmanian Department of Primary Industries, Parks, Water and Environment, [Review of the Primary Industry Protection Act 1995](#), Issues Paper, 19 June 2014, p 24.
- <sup>46</sup> H McNeil, "Does the Environmental Planning and Assessment Act 1979 (NSW) or right to farm legislation provide a solution to the issue of rural land use conflict? (2006) 12(2) *Local Government Law Journal* 98 at 104.
- <sup>47</sup> The requirements for a planning certificate are set out under Schedule 4, clause 2 of the Environmental Planning and Assessment Regulation 2000, with clause 259 of the regulation setting out the fees for planning certificates: \$53 for a s 149(2) certificate and up to \$80 for advice given under s 149(5) of the EP&A Act.
- <sup>48</sup> H McNeil, "Does the Environmental Planning and Assessment Act 1979 (NSW) or right to farm legislation provide a solution to the issue of rural land use conflict? (2006) 12(2) *Local Government Law Journal* 98 at 103.
- <sup>49</sup> The full text of the document can be accessed on the Department's [website](#).
- <sup>50</sup> Environmental Planning & Assessment Regulation 2000, Part 5.
- <sup>51</sup> (1983) 51 LGRA 186.
- <sup>52</sup> (1983) 51 LGRA 186 at 204-205; and see D Farrier and P Stein eds, *The Environmental Law Handbook*, 5<sup>th</sup> edition, Redfern Legal Centre Publishing 2011, p 165.
- <sup>53</sup> (1983) 51 LGRA 186 at 205.
- <sup>54</sup> Tasmanian Department of Primary Industries, Parks, Water and Environment, [Review of the Primary Industry Protection Act 1995](#), Issues Paper, 19 June 2014, p 23.
- <sup>55</sup> [WA Parliamentary Debates \(LC\)](#), 21 September 2011, p 7416.
- <sup>56</sup> [SA Parliamentary Debates \(LC\)](#), 23 September 2009.
- <sup>57</sup> The 2009 Bill lapsed on prorogation, as did the 2010 Bill without being voted on in the Legislative Council.
- <sup>58</sup> Commentary on [www.piperalderman.com.au](http://www.piperalderman.com.au) from February 2010.
- <sup>59</sup> [SA Parliamentary Debates \(LC\)](#), 14 March 2012, p 529.
- <sup>60</sup> Tasmanian Department of Primary Industries, Parks, Water and Environment, [Review of the Primary Industry Protection Act 1995](#), Issues Paper, 19 June 2014, p 25. The 2012 Bill was received in the House of Assembly on 14 November 2013 and lapsed on prorogation. See this [ABC News](#) report from 21 November 2013.
- <sup>61</sup> McNeil commented on a 2001 Victorian inquiry into the feasibility of "right to farm" legislation, which found that "there was no single solution to urban-rural disputes" - H McNeil, "Does the Environmental Planning and Assessment Act 1979 (NSW) or right to farm legislation provide a solution to the issue of rural land use conflict? (2006) 12(2) *Local Government Law Journal* 98 at 108.
- <sup>62</sup> Victorian Farmers Federation, *Submission to section 32 red tape review*, 10 December 2012. The review document by Consumer Affairs Victoria can be accessed [here](#).
- <sup>63</sup> G Brown, "We have the right to farm", [The Land](#), 30 July 2014; the same article is available on the NSW Farmers [website](#).
- <sup>64</sup> *Ibid*.
- <sup>65</sup> W Glasgow, "Stokes to overhaul NSW's planning processes", *AFR*, 12 June 2015, p 6; and see the NSW Farmers [website](#) for the July 2015 annual conference.

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ISSN 1838-0204