



New South Wales

Right to Farm Bill 2019

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to prevent an action for the tort of nuisance being brought in relation to a commercial agricultural activity where it is occurring lawfully on agricultural land,
- (b) to require a court to consider alternative orders to remedy a commercial agricultural activity that is found to constitute a nuisance rather than order the activity to cease,
- (c) to extend the circumstances of aggravation for an offence of entering inclosed lands without permission or failing to leave inclosed lands when requested to do so and to increase the maximum penalty for the aggravated offence,
- (d) to create an offence of directing, inciting, procuring or inducing the commission of the aggravated offence,
- (e) to modify offences of leaving a gate open on inclosed lands to apply the offences where the gate is removed or disabled, to specify that a gate includes a cattle grid or any moveable thing used to inclose land and to increase the maximum penalties for the offences,
- (f) to specify how proceedings for an offence under the *Inclosed Lands Protection Act 1901* are to be dealt with.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act, including *commercial agricultural activity*, which means an agricultural activity carried out for, or in connection with, a primary production business.

Clause 4 provides that an action for the tort of nuisance cannot be brought in relation to a commercial agricultural activity if the activity is carried out lawfully (and not negligently) on agricultural land that has been used for the purposes of agriculture for at least 12 months.

Clause 5 provides that if a court finds that a commercial agricultural activity (that is not protected by clause 4) does constitute a nuisance, the court is not to order the complete cessation of the activity if the court can instead make an order that would permit the continuation of the activity in a manner—

- (a) that is managed, modified or reduced, and
- (b) consistent with an efficient and commercially viable agricultural operation, and
- (c) unlikely to significantly disturb the other party to the proceedings.

Clause 6 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 provides for the making of transitional regulations and provides that the proposed provisions do not apply to current proceedings.

Schedule 2 Amendment of Inclosed Lands Protection Act 1901 No 33

The *Inclosed Lands Protection Act 1901* defines *inclosed lands* as a school, child care service, hospital or nursing home, or any other public or private land that is inclosed or surrounded by a fence or wall or other erection or natural feature, and includes a building.

Section 4 of that Act creates an offence if a person enters into inclosed lands without the consent of the owner or occupier or fails to leave when asked to do so by the owner or occupier. Section 4B of that Act creates an aggravated offence if a person commits the offence under section 4 on land on which a business or undertaking is conducted and does, or attempts to do, certain things while on the land.

Schedule 2[1] and [2] make it clear that the aggravated offence includes circumstances in which the person hinders, or attempts or intends to hinder, the conduct of the business or undertaking.

Schedule 2[3] introduces 2 new elements of aggravation into the aggravated offence. These are damaging property or wilfully or negligently releasing stock while on the inclosed land.

Schedule 2[4] increases the maximum penalty for the aggravated offence from \$5,500 to—

- (a) \$13,200 or imprisonment for 12 months, or both, or
- (b) \$22,000 or imprisonment for 3 years, or both if—
 - (i) the offender was accompanied by 2 or more persons when the offence occurred, or
 - (ii) the offender did something that gave rise to a serious risk to the safety of the offender or any other person on the inclosed land.

Schedule 2[5] creates a new offence of directing, inciting, procuring or inducing the commission of the aggravated offence with a maximum penalty of \$11,000 or imprisonment for 12 months, or both.

Schedule 2[6] updates offences of wilfully or negligently leaving a gate open on inclosed lands to apply the offences where the gate is removed or disabled, to specify that a gate includes a cattle grid or any moveable thing used to inclose land and to increase the maximum penalties for the offences from \$220 to \$1,650.

Schedule 2[7] omits an old provision providing for the recovery of penalties and replaces it with a standard provision setting out how proceedings for an offence under the *Inclosed Lands Protection Act 1901* are to be dealt with.



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New South Wales

Right to Farm Bill 2019

No. , 2019

A Bill for

An Act to provide for matters relating to farm trespass and the defence of agricultural enterprises;
and for other purposes.

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Right to Farm Act 2019</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Definitions	6
(1) In this Act—	7
<i>agricultural activity</i> means an activity carried out for, or in connection with, agriculture.	8
<i>agriculture</i> includes aquaculture and forestry.	9
<i>commercial agricultural activity</i> means an agricultural activity carried out for or in connection with a primary production business within the meaning of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth.	10
Note. The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	11
(2) Notes included in this Act do not form part of this Act.	12
4 Lawful agricultural activity does not constitute nuisance	13
(1) No action lies in respect of nuisance by reason only of the carrying out of a commercial agricultural activity if—	14
(a) the activity is carried out lawfully, and	15
(b) the activity is not carried out negligently, and	16
(c) the activity is carried out on agricultural land, and	17
(d) the land on which the activity is carried out has been used for the purposes of agriculture for a period of at least 12 months.	18
(2) In this section—	19
<i>agricultural land</i> , in relation to a commercial agricultural activity carried out for, or in connection with, a particular type of agriculture, means land used lawfully for that type of agriculture.	20
5 Courts to not order cessation of agricultural activity if other order available	21
(1) This section applies if in proceedings a court finds that a commercial agricultural activity carried out by a party to the proceedings constitutes a nuisance.	22
(2) The court must not order the complete cessation of the commercial agricultural activity if the court is satisfied that it could make an order that would permit the continuation of the activity in a manner—	23
(a) that is managed, modified or reduced, and	24
(b) consistent with an efficient and commercially viable agricultural operation, and	25
(c) unlikely to significantly disturb the other party to the proceedings.	26
(3) Subsection (2) does not limit or otherwise prejudice the power of a court to make any other order it thinks fit in respect of the nuisance, including an order as to damages or costs.	27

6 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Schedule 1	Savings, transitional and other provisions	1
Part 1	Provisions consequent on enactment of this Act	2
1	Regulations	3
(1)	A regulation (a <i>transitional regulation</i>) may make provision about a matter for which—	4 5
(a)	it is necessary to make provision to allow or facilitate the doing of any thing to achieve the transition to the operation of this Act, and	6 7
(b)	this Act does not make provision or sufficient provision.	8
(2)	A transitional regulation may have retrospective operation to a day not earlier than the commencement of this Act.	9 10
(3)	A transitional regulation must declare it is a transitional regulation.	11
(4)	This clause and any transitional regulations expire 2 years after the commencement of this Act.	12 13
2	Existing proceedings	14
	Sections 4 and 5 do not apply to proceedings commenced before the commencement of this Act.	15 16

Schedule 2	Amendment of Inclosed Lands Protection Act 1901 No 33	1
		2
[1] Section 4B Aggravated unlawful entry on inclosed lands		3
Insert “or hinders” after “interferes with” in section 4B(1)(a).		4
[2] Section 4B(1)(a)		5
Insert “or hinder” after “interfere with”.		6
[3] Section 4B(1)(h) and (i)		7
Insert at the end of section 4B(1)(g)—		8
	, or	9
	(h) damages property, or	10
	(i) wilfully or negligently releases any livestock.	11
[4] Section 4B(1)		12
Omit the penalty. Insert instead—		13
	Maximum penalty—	14
	(a) 120 penalty units or imprisonment for 12 months, or both, or	15
	(b) 200 penalty units or imprisonment for 3 years, or both if—	16
	(i) the offender was accompanied by 2 or more persons when the offence occurred, or	17
	(ii) the aggravating circumstances are those set out in subsection (1)(b).	18
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		20
[5] Section 4C		21
Insert after section 4B—		22
4C Direct, incite, counsel, procure or induce aggravated unlawful entry		23
	A person must not direct, incite, counsel, procure or induce the commission of an offence against section 4B.	24
		25
	Maximum penalty—100 penalty units or imprisonment for 12 months, or both.	26
		27
[6] Section 5		28
Omit the section. Insert instead—		29
5 Leaving gate open		30
(1) A person who enters into or upon the inclosed lands of any other person and wilfully or negligently leaves open, removes or disables a gate is guilty of an offence.		31
		32
	Maximum penalty—15 penalty units.	33
		34
(2) A person who enters into or upon any road lawfully inclosed within the lands of any other person through a gate (not being a public gate within the meaning of the <i>Roads Act 1993</i>) and wilfully or negligently leaves open, removes or disables the gate is guilty of an offence.		35
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	Maximum penalty—15 penalty units.	39
(3) In this section—		40

gate includes a cattle grid or any moveable thing used to inclose land including a slip panel or moveable fence.

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[7] Section 8

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Omit the section. Insert instead—

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8 Proceedings for offences

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(1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily—

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(a) by the Local Court, or

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(b) by the Supreme Court in its summary jurisdiction.

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(2) The maximum term of imprisonment that the Local Court may impose for an offence against this Act or the regulations is 2 years or the maximum term of imprisonment provided by law for the offence, whichever is the shorter term.

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