



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.