Review of the *Primary Industry Activities Protection Act 1995*

ISSUES PAPER

19 JUNE 2014

Department of Primary Industries, Parks, Water & Environment

Tasmania
Explore the possibilities

Further information about the Review

Please refer to the Department's website www.dpipwe.tas.gov.au.

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Foreword

The Tasmanian Government recognises that agriculture is a key strength in the State's economy and is committed to growing the value of the agricultural sector in Tasmania tenfold to $10 billion per year by 2050.

As part of the Government's AgriVision 2050 Plan, the Government has committed to a review of the *Primary Industry Activities Protection Act 1995* (the Act) to strengthen the legal position of farmers, allowing them to respond to the food security challenge and get on with what they do best.

Accordingly, the Minister for Primary Industries and Water has directed the Department of Primary Industries, Parks, Water and Environment to undertake a review of the Act.

When the Act commenced in 1995 it signalled an important step in the protection of agricultural practices in Tasmania, affording a level of protection to the farming community against legal actions.

The review of the Act is an important opportunity for stakeholders to reflect on the Act's operation and to suggest ways to improve its efficiency and effectiveness and whether any changes are required to the Act to strengthen the legal position of farmers.

This Issues Paper has been prepared to provide information on the current operation of the Act and the matters that could be considered in making a submission to this review.

Responses to this Issues Paper will help inform the findings of the review. I encourage you to make a submission and the Department looks forward to your feedback.

John Whittington
Acting Secretary

How to use this Issues Paper

This Issues Paper is to help you have your say on how you think the Act is working and to help you prepare your submission for the review.

The Issues Paper is organised into four main sections:

1. **About the review** – this section includes the terms of reference for the review, explains the review process and how to have your say on the Act's operation

2. **About the Primary Industry Activities Protection Act** – this section provides background as to why the Act was introduced and details some of the main points about the Act's operation

3. **Arrangements in other jurisdictions** – this section provides an overview of jurisdictional arrangements for the protection of farming rights, including the origins of such laws

4. **Other policies and initiatives in respect to agricultural land protection** – this section outlines other agricultural land protection initiatives in place in Tasmania.

The primary focus of the review is the Act. However, any other relevant issues raised that would help inform the review will also be considered.

We invite you to read the paper and respond to issue/s associated with the terms of reference which most interest you.

About the review

TERMS OF REFERENCE

The Minister for Primary Industries and Water has requested the Department report against the following terms of reference:

1. The effectiveness of the Act in meeting the objective to protect persons engaged in primary industry by limiting the operation of the common law of nuisance in respect of certain activities that are incidental to efficient and commercially viable primary production.
2. Whether changes are required to the Act to strengthen the legal position of farmers.
3. Any other relevant matters.

HOW TO HAVE YOUR SAY

All submissions must be made in writing and are to be received by **5pm, Monday 4 August 2014**.

All submissions should address the Terms of Reference.

Send your submission by post to:

The Project Team - Review of the Primary Industry Activities Protection Act 1995
Department of Primary Industries, Parks, Water and Environment
GPO Box 44
HOBART TAS 7001

Or by email to: PIAP@dpipwe.tas.gov.au

All submissions will be treated as public information and made available on the Department's website. If you wish for your submission to be treated as confidential, either whole or in part, please note this in writing at the time of making your submission.

No personal information other than the name of individual submitters will be disclosed.

The *Right to Information Act 2009* and confidentiality

By law, information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). When making your submission, please detail any reasons why you consider the information that you have provided is confidential or should not be publicly released. Your reasons will be taken into account in determining whether or not to release the information in the event of an RTI application for assessed disclosure.

Questions

The following questions are intended to assist you in preparing your submission. They are not exhaustive, and your submission can include any information you believe to be relevant to the Government's consideration of this matter.

1. Are there any other examples of innovative laws protecting primary industry activities that Tasmania can learn from?

2. Are legal protection laws the appropriate mechanism to resolve land use conflicts?

3. Has the *Primary Industry Activities Protection Act 1995* been an effective tool in upholding farmer's rights?

4. Are the definitions in the *Primary Industry Activities Protection Act 1995* sufficiently clear and do they cover all relevant activities?

5. How could the *Primary Industry Activities Protection Act 1995* be improved?

6. Mandatory disclosure of neighbouring agricultural activities is not currently required under Tasmania's land sales legislation. Would mandatory disclosure help prevent land use conflicts?

Contents

About the *Primary Industry Activities Protection Act 1995*

WHY WAS THE ACT INTRODUCED?

The Act was passed in October 1995 after consultation with the Tasmanian Farmers and Graziers Association, industry, state and local government and the general public.

The Act represented a new legislative approach designed to protect the right of farmers to conduct their farming activities. It was developed against a backdrop of increasing concern about new and existing threats to legal agricultural activities. Of particular concern were the clashing interests of agriculture with the expectations of lifestyle and semi-rural property owners. Long existing farming activities were increasingly under threat as a result of complaints about some of the inevitable consequences of farming activities, including noise, tractor traffic etc. Prior to 1995, the pursuit of common law nuisance actions, or the threat of them to farmers in the State, had led to falling productivity in a number of farms and rural communities.

The Act was designed to address these concerns by affording a level of protection to the farming community against legal actions.

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 practices.

WHAT THE ACT DOES

The Act protects persons engaged in primary industry by limiting the operations of the common law of nuisance in respect of certain activities that are incidental to efficient and commercially viable primary production.

It is the only protection of farming activities specific (or 'right to farm') legislation in Australia, and is similar to legislation in the USA in that it extinguishes the common law right to claim nuisance in certain circumstances.

KEY POINTS ABOUT THE ACT'S OPERATION

DEFINITIONS

Section 3 defines the key terms used in the Act.

Nuisance

The Act defines *nuisance* as a public or private nuisance actionable at common law.

Primary industry

The definition of *primary industry* in the Act includes:

- planting, growing or harvesting crops;
- breeding, rearing or managing livestock;
- agisting livestock;
- obtaining dairy, wool, eggs or other produce from livestock;
- obtaining juice, seeds or other produce from crops.

Primary industry activity

The Act states that an activity is a *primary industry activity* if:

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

Primary industry use

The Act provides that an area of land is in *use for primary industry* if:

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

PROTECTION AGAINST NUISANCE CLAIMS

Section 4 is the substantive clause of the Act which effectively limits legal actions for common law nuisance. It also outlines a number of requirements which must be satisfied to obtain the protection of the substantive provisions.

Common law nuisance

The common law of nuisance exists independently of any legislation and forbids a person from using their property in way that causes harm to others. A breach of the common law may give rise to a cause of action in either private or public nuisance. A private nuisance refers to an act that interferes with a person's reasonable use and enjoyment of their land. A public nuisance is an activity that endangers the life, health, property or comfort of the public generally, or obstructs the public in the exercise of its rights. The interference must be substantial and unreasonable to constitute a nuisance.

Unreasonable interference could be considered to occur where noise from an agricultural activity prevents people from sleeping at night or holding a conversation within a dwelling, and where there are no mitigating reasons for conducting the noise-causing activity at that time, or in that location.

Farming activities which have most commonly given rise to complaints about nuisance due to noise include gas guns, tractor use at night, irrigation/drainage pumps, night harvesting and livestock near a neighbour's house.

Specified circumstances must exist

The Act provides that a primary industry activity does not constitute a nuisance if:

- the land has been used for primary industry for a continuous period longer than one year; and
- the activity did not constitute, or would not have constituted, a nuisance carried out on that land at the beginning of that continuous period; and
- the activity is not substantially different to the primary industry activities that were, or might reasonably have been, carried out on that land at the beginning of that continuous period or, if the activity is substantially different, the difference is attributable to improved technology or agricultural practices; and
- the activity is not being improperly or negligently carried out; and
- 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.

Primary industry activities cannot therefore constitute a nuisance in circumstances where land use conditions in the locality of the primary industry activity have changed, provided the activity has been carried out for one year.

If all the requirements in section 4 of the Act 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 some other order for the management, modification or diminution of

the activity can be made that would resolve the issue. The Court is also able to make any other order it thinks fit in respect of the nuisance, including awarding damages or costs.

Where the Act will not apply

While the Act provides protection against nuisance actions, it also makes clear where the legal protection of the Act will not apply.

The definition of a primary industry activity provides that the activity to be practised cannot contravene or fail to comply with an enactment of the State or of the Commonwealth or a council by-law. Further, that improper or negligently carried out actions by a primary producer cannot receive protection under the Act (section 4(d)).

Section 6 also provides that no provision in the Act affects the operation of any other Act. This effectively means no other legislation is constrained or affected in its operation by this Act. The Act thus seeks to provide a responsible level of protection to the farming community without in any way compromising any other enactment.

LINKAGES WITH ENVIRONMENTAL LEGISLATION

Although the Act does not override other legislation, 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.

Arrangements in other jurisdictions

Approaches to protecting agricultural land and the right of farmers to undertake everyday farming activities vary, ranging from regulatory with high levels of government involvement to advisory in nature with low level government intervention. The development of laws to protect farms and related operations has been central to this key challenge of providing for the 'right to farm'.

'RIGHT TO FARM'

ORIGINS

'Right to farm' is a concept most commonly associated with the United States of America (USA). Between 1963 and 1994, every State in the USA enacted some form of 'right to farm' legislation, designed to protect agricultural operations by allowing owners or operators who meet the legal requirements of the 'right to farm' law a defence to nuisance suits which might be brought against the operation. These laws were originally developed against a backdrop of increasing concern about the loss of agricultural land, occurring as a result of conflicts in potential uses of agricultural land and from the increasing urban encroachment into agricultural areas.

FUNCTIONS AND PURPOSE

'Right to farm' laws are generally designed to: (1) strengthen the legal position of farmers when neighbours bring common law actions for nuisance against them; and/or (2) protect farmers from anti-nuisance regulations and unreasonable controls on farming operations.

'Right to farm' laws are intended to discourage adjoining property owners from suing farmers. They help established farmers who use sound farming practices prevail against nuisance actions. They acknowledge the importance of farming to a State and put non-farm rural property owners on notice that generally accepted agricultural practices are reasonable activities to expect in rural farming areas.

TYPES OF 'RIGHT TO FARM' LAWS

There are various types of 'right to farm' laws: the traditional; the laws requiring generally accepted agricultural management practices; laws which protect specific types of agricultural activities; laws protecting feedlots; and laws protecting activities located within agricultural areas.

Traditional 'right to farm' laws protect 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, but offer no protection for agricultural activities which could be classified as a nuisance when the activities began, or activities which are negligently or improperly conducted.

The use of generally accepted agricultural management practices is a key feature of some 'right to farm' laws and is required in order to be protected from a nuisance action. These laws usually create a presumption of reasonableness on the part of an agricultural activity if standard practices are followed. Some laws reflect that if an agricultural activity is in conformity with federal, state and local laws concerning agricultural practices or permit requirements, a presumption is created that the agricultural practice is a good agricultural practice and that there are no adverse effects on public health or safety.

Other 'right to farm' laws list specific agricultural activities which are protected from nuisance actions. Examples of specific agricultural activities which may be protected are: odour from livestock, manure, fertiliser, feed; noise from livestock or farm equipment; dust created during ploughing; and use of chemicals if in accordance with approved practices.

Some 'right to farm' laws also offer specific protection to animal feedlots, particularly if the complaint relates to odour or waste.

The requirement for an agricultural activity to be located within an acknowledged and approved agricultural area in order to have protection is also the basis of some 'right to farm' laws. These laws are usually part of a broader agricultural land preservation statutory program. Some 'right to farm' laws grant absolute protection from nuisance actions for activities conducted within the confines of a properly created agricultural area.

COMMON ATTRIBUTES OF 'RIGHT TO FARM' LAWS

A common feature of most 'right to farm' laws is the requirement that the agricultural activity must have been in existence before any change in the surrounding area occurred. Changes in the surrounding area commonly refer to development in the area, someone moving in, a business being opened or other activity. Some laws also require that an "established date of operation" be set. If the agricultural activity should expand or change in significant ways, a new established date of operation may be set. The period of time in which the agricultural activity must have been in existence before the change in the surrounding neighbourhood is commonly one year. However, some laws require unchanged activity for more than one year, while other laws require only a prior existence with no specific time requirements.

Another common, pivotal feature required in order to be afforded protection is that there must not have been a change on the farm. The change must have occurred in the surrounding area. Most 'right to farm' protection is given to those operations which can point to the change in the

surrounding area while the agricultural activity remains unaffected. If the agricultural activity is changing, either in size or methods used, the protection may be lost.

Often, if an agricultural activity expands or adopts changes in technology, it will lose its protected status unless specified requirements can be met. These often include a requirement: for a new time period to run after each expansion; that a "reasonable" expansion will not affect the original established date of operation so long as "significant" differences in environmental pressures on neighbours and livestock has not occurred; that complete relocation of the operation has not occurred. There is however little consistency among 'right to farm' laws on whether and to what extent a change in established date of operation will occur with expansion or adoption of technology in respect to agricultural activities.

Most 'right to farm' laws extinguish protection if the agricultural practice is carried out in a negligent or improper manner. 'Right to farm' laws also do not afford protection to water pollution and soil erosion caused by agricultural activities.

In addition, most 'right to farm' laws require that the agricultural practice be in compliance with all relevant laws applicable to the agricultural practice.

PROTECTION OF FARMING ACTIVITIES LEGISLATION

Tasmania is the only Australian jurisdiction which currently has legislation which specifically protects farming activities.

Other reforms have been progressed in other States and Territories, and in some instances, attempts have been made to enact specific laws to protect farming activities. The Victorian Parliament recently amended the *Sale of Land Act 1962* to compel vendors to declare matters such as noises and smells affecting the relevant property, in a checklist available to potential purchasers. This replaces a generic warning about neighbouring agricultural activity that was previously a required inclusion in all land sales contracts in the State.

A similar reform was attempted in South Australia, on two separate occasions (2009 and 2012 Amendment Bill), but failed to garner sufficient Parliamentary support. The most recent Right to Farm Bill in South Australia, introduced by Family First MLC Rob Brokenshire, was specifically aimed at protecting the right of farmers to operate machinery, move stock and carry out other standard farming practices, irrespective of the time or location.

The Bill proposed that 'protected farming activity' be a defence to civil penalties under the *Environmental Protection Act 1993*, nuisance claims and other civil liabilities prescribed by regulation. The development of planning principles consistent with, and to further, the objects of the Bill were also proposed, as well as an amendment to the *Land and Business (Sale and*

Conveyancing) Act 1994 to require a person who buys land in farming areas to be notified that there are farming enterprises operating in the area. The legislation passed the Upper House but was rejected by the Government in the Lower House on the basis it was not the appropriate mechanism to uphold farmers' rights.

In NSW in 2005, the *Protection of Agricultural Production (Right to Farm) Bill* was introduced in the NSW Parliament as a Private Member's Bill. The Bill aimed to protect agricultural activities by clearly identifying to potential purchasers existing agricultural activities on adjoining land. The Bill required a vendor under a contract for 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 the purchaser, and for those notices to be taken into account in any subsequent proceedings by the purchaser to limit or prohibit the use of that rural land for rural purposes.

A brief discussion of the history of legislation specifically aimed at protecting farming activities is contained in the Appendix.

Other policies and initiatives in respect to agricultural land protection

HOW ARE RURAL LANDS CURRENTLY PROTECTED?

While not specifically related to the Act, it is worth noting that there are various initiatives, in addition to the *Primary Industry Activities Protection Act*, that have been implemented in Tasmania to protect agricultural land.

STATE POLICY ON THE PROTECTION OF AGRICULTURAL LAND

State Policies are made under the *State Policies and Projects Act 1993* and articulate the Tasmanian Government's overarching position on sustainable development, especially in relation to land use planning. While State Policies do not override legislation, they are statutory instruments that govern land use strategies and their implementation through land use zoning and planning provisions in a planning scheme. The Premier is the Minister responsible for State Policies.

A *State Policy on the Protection of Agricultural Land* ('PAL Policy') was introduced in 2000 and revised in 2009. The PAL Policy provides strategic planning principles to conserve and protect agricultural land so that it remains available for the sustainable development of agriculture, recognising the particular importance of prime agricultural land. Its objective is to enable the sustainable development of agriculture by minimising conflict with, or interference from, other land uses and non-agricultural use or development on agricultural land that precludes the return of that land to agricultural use.

The 2000 PAL Policy was not consistently implemented in all planning schemes. Over time, it contributed to an inconsistent pattern of planning decisions, especially in relation to residential development in rural areas. The revised 2009 PAL Policy addressed this and other issues.

The first phase of the implementation of the 2009 PAL Policy has been through three Regional Land Use Strategies declared by the former Minister for Planning in October 2011 and local land use strategies prepared by councils. In most instances, these strategies have been supported by extensive mapping of agricultural land and those rural areas not suitable for primary production.

The second implementation phase involved the preparation of new statewide and regionally consistent interim planning schemes in accordance with the Planning Scheme Template for

Tasmania ('the Template') and specifically the application of consistent Template zones appropriate for rural land uses.

The Template zones that protect agricultural land are the Significant Agriculture Zone or the Rural Resources Zone. Both zones contain land use and development planning provisions that support primary industries. Under these zones, planning controls for residential development unrelated to a farming activity are reasonably onerous. This is to ensure valuable agricultural land is not unnecessarily impacted by inappropriate residential development that may impede current and future economic use and development of agriculture. However, the strategies and interim planning schemes have recognised that not all rural land is productive agricultural land and may therefore be suitable for some form of residential development. Where such areas have been strategically identified, one of the following Template zones has been applied - Rural Living, Environmental Living or Low Density Residential. These zones enable varying forms of residential development in rural areas.

The principles in the PAL Policy are to be implemented through planning schemes and other relevant planning instruments. Where a decision is made in accordance with the provisions of a planning scheme approved under the *Land Use Planning and Approvals Act 1993* as being in accordance with the Policy, then the decision is taken to be in accordance with the Policy. The PAL Policy therefore is implemented primarily through Planning Schemes.

State Polices are to be reviewed at least once within the period of 5 years from the date on which it came into operation, and at least once within each period of 5 years from the date on which the last review was conducted.

PLANNING SCHEME PROVISIONS

A planning scheme is binding on all members of the community, State Government Agencies, and public authorities (unless specifically excluded). Unless exempt or not requiring a planning permit, a new development or change of land use is to be submitted as a development application to a planning authority (a council) for assessment in accordance with the planning provisions in the planning scheme.

As the 2009 PAL Policy is implemented through planning schemes, assessments of development applications in areas zoned Significant Agriculture or Rural Resources are to be conducted in accordance with the land use and development planning provisions under each zone. The PAL Policy is not self-executing and does not form part of assessments of individual development applications.

All councils have prepared a new interim planning scheme to replace their existing planning scheme. 16 interim planning schemes have been declared and are operational. A further 12

have been submitted to the Minister for Planning for declaration. All interim planning schemes are required to comply with the PAL Policy before they can be declared and made operational by the Minister.

NEW GOVERNMENT INITIATIVES

The Government is undertaking a number of new initiatives in support of its commitment to 'Cultivating Prosperity in Agriculture', backed by its long-term 2050 vision for agriculture.

GOOD NEIGHBOUR CHARTER

The Government is committed to developing a Good Neighbour Charter that details the rights and responsibilities of the Crown and adjoining landowners when it comes to the management and spread of fire, wildlife and weeds across property boundaries.

Work on the development of a Good Neighbour Charter to provide a consistent approach with solutions to common issues across the State has commenced, with a review of arrangements in other jurisdictions currently underway. Some examples already exist in Tasmania also, such as the industry developed Good Neighbour Charter for commercial forestry.

REGULATION REDUCTION CO-ORDINATOR

The Government has taken steps to appoint a Regulation Reduction Coordinator to effectively regulate the Tasmanian business environment, boost productivity and reduce operating costs, with the recruitment process for the key role underway.

The Regulation Reduction Coordinator will play an active role in working with industry to develop streamlined approval processes in areas such as quality assurance, environmental management systems and water development.

The position will also play a lead role in auditing all government regulations and delivering the Government's target of a red and green tape reduction of 20 per cent. This is intended to boost productivity and reduce operating costs.

ONE SINGLE STATEWIDE PLANNING SCHEME

The Government is committed to implementing a single planning scheme for Tasmania, replacing the more than 30 schemes currently in place.

To achieve this goal, the Government has taken steps to establish a Planning Reform Taskforce which will commence work on the single statewide planning scheme.

The Planning Reform Taskforce has been appointed and is made up of local government and public and private sector experts with practical experience in dealing with the State's planning and approvals system.

Any other relevant matters

Submissions on any other relevant issues that would help inform the review are welcome. Such issues, where relevant, may be referred to the Office of the Coordinator General or the Regulation Reduction Coordinator, or other relevant agency to respond directly. Similarly, issues may be referred to the new Planning Reform Taskforce in the Department of State Growth for consideration, where appropriate.

Although outside the scope of the review, it is recognised that a range of other issues impact on farmers, including in respect to other regulatory matters such as land use planning and forestry. These issues will be considered, if raised in the context of this review, and presented to the Minister.

References

Acts/Bills

Agricultural Practices (Disputes) Act 1995 (WA)
Environmental Management and Pollution Control Act 1994 (Tas)
Primary Industry Activities Protection Act 1995 (Tas)
Property Agents and Land Transactions Act 2005 (Tas)
Protection of Agricultural Production (Right to Farm) Bill 2005 (NSW)
Right to Farm Bill 2012 (SA)

Case law

Attorney-General v PYA Quarries Ltd [1957] 2 QB 169 at 190
Hargrave v Goldman (1963) 110 CLR 40
Sedleigh-Denfield v O'Callaghan [1940] AC 880 at 896-7

Agricultural Practices Board of Western Australia, *Annual Report 2011,* September 2011

Lapping, M, Penfold, G. and Macpherson, S., 1983, *Right-to-farm laws; Do they resolve land use conflicts?*, Journal of Soil and Water Conservation. November-December 1983

McNeil, H, '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?', *Local Government Law Journal,* Volume 12, Number 2, November 2006

Murray, Trevor, *Farmland Preservation in Australia: Emerging Issues - Fragmented Responses*, La Trobe University Research Online, 2007

Second Reading Speech, *Protection of Agricultural Production (Right to Farm) Bill 2005,* Hansard, NSW Parliament, 2005

Second Reading Speech, South Australian *Right to Farm Bill 2012,* Hansard, South Australian Parliament, 2013

'Support for SA right-to-farm', *Stock Journal,* November 2013

Victorian Farmers Federation, 'State government backflips on 'Right-to-farm', February 2014 (VFF press release)

Appendix

HISTORY OF THE PROTECTION OF FARMING ACTIVITIES LEGISLATION IN AUSTRALIA

Western Australia

The Western Australian Parliament enacted the *Agricultural Practices (Disputes) Act 1995* during the term of Premier Richard Court MLA. Although considered to be 'right to farm' legislation, it took a very different approach to most other jurisdictions.

The *Agricultural Practices (Disputes) Act 1995* established the 'Agricultural Practices Board' to which disputes between rural land users in relation to odour, noise, dust, smoke, fumes or spray drift could be referred and mediated. Its stated purpose was:

> *to ensure that normal farm practices, understood and accepted by the rural community, but not always understood by or initially acceptable to persons unfamiliar with the rural lifestyle who encounter these practices by reason of an increasing urbanisation of rural areas, are not, whether by reason of that lack of understanding or because of an unwillingness on the part of the farmer to modify any such practice in a practicable and acceptable manner, made the subject of premature litigation contrary to the public interest.*

The WA legislation was not intended to usurp the roles of administrative authorities or courts in relation to nuisance, trespass or other causes of action.

In March 2002, a review of the *Agricultural Practices (Disputes) Act 1995* found there was no need for its continuation, and recommended its repeal. When the Act was initially introduced it was thought 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. There was however 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 never called upon to determine a dispute. Instead, where the activities of neighbours resulted in a nuisance (such as odour, noise, dust etc), Local Government Authorities employed Environmental Officers to investigate these types of disputes.

The Board stopped operating in 2006, and the Department of Agriculture and Food (WA) continued to provide all services required for the Agricultural Practices Disputes Board.

The *Agricultural Practices (Disputes) Act 1995* was repealed on 7 December 2011. During the second reading of the Repeal Bill, the Government noted that "the years since the *Agricultural Practices (Disputes) Act* was introduced have shown that there is no need for this Act. Potential conflicts resulting from competing land uses are best addressed through effective land use planning".

New South Wales

The *Protection of Agricultural Production (Right to Farm) Bill 2005* was introduced in the NSW Parliament as a Private Member's Bill by the Deputy Leader of the Nationals, Mr Donald Page MP, on 24 March 2005. The Bill was intended 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.
In his second reading speech, the Member introducing the Bill stated:

> *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.*

The Bill placed responsibility for rural land use notices upon Councils, and made no provision for the costs associated with implementing the rural land use notice concept.

The Bill failed to pass the Lower House.

South Australia

The South Australian *Right to Farm Bill 2012* was introduced in the Legislative Council by the Hon Robert Brokenshire MLC on 14 March 2012. Its intent was to ensure that properly conducted farming activities are adequately dealt with under planning and development laws and were given protection from certain liability; and to make related amendments to the *Development Act 1993,* the *Environment Protection Act 1993* and the *Land and Business (Sale and Conveyancing) Act 1994.*

The objects of the Bill were to ensure protected farming activities are not adversely impacted by changes in land use, and that the planning system adequately addresses issues of food security and the continued viability of farming activities. It also proposed that 'protected farming activity'

be a defence to civil penalties under the *Environmental Protection Act,* nuisance claims and other civil liabilities prescribed by regulation.

The Bill represented arguably the strongest 'right to farm' legislation in the country. It passed the Upper House, but was rejected by the Government in the Lower House in late 2013 on the basis that it was not the appropriate mechanism to uphold farmer's rights, and would diminish the Environment Protection Authority's capacity to prosecute for non-complying activities.

Victoria

Victoria has never passed 'right to farm' legislation. A Victorian Government inquiry into the feasibility of 'right to farm' legislation was undertaken in 2001. It found better notification during the sale of land, including warnings to purchasers about the possible amenity impacts of agricultural activities, could assist in alleviating rural land use conflict. It also recommended the establishment of a Rural Disputes Settlement Centre. None of these recommendations have yet been implemented.

Legislation introduced in the Victorian Parliament on 4 February 2014 and passed on 8 May amended the *Sale of Land Act 1962* to require vendors to declare matters such as noises and smells affecting land which potential buyers would accept during the sale process.

Prior to the amendment, the Section 32 notice under the *Sale of Land Act* included a general warning to purchasers: "Important notice to 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."

The amendment changes the Act's generic warning on neighbouring agricultural activity to a full checklist designed to make buyers aware of farming activity in the area and minimise post-sale problems.

The Victorian Government has stated that delivering the changes would give potential property buyers better information and give security for neighbouring properties where there were established farms. It considers the proposed amendment is a practical and common sense outcome both for farmers and for prospective buyers.

The commencement date for the new amended section 32 is not known at this stage but is expected to be either 1 September 2014 or 1 October 2014. The Bill provides for all provisions to come into operation on 1 July 2015, if they have not already commenced.

The Victorian Farmers Federation has expressed concerns about the impact of this legislative change.

Queensland

Research undertaken to support the preparation of this Issues Paper has indicated that no 'right to farm' legislation has been passed, or attempted to pass, the Queensland Parliament.