Submission by Mervin C Reed – Chartered Financial Adviser, and Strategic Rural Consultant.

In response to your request I submit as follows:

Firstly, the present legislation is **flawed and actively encourages litigation against farmers**. It is full of encouragement for plaintiffs to litigate farmers out of business. It needs to be changed.

The updated legislation is not meant to be fair and just to anyone but farmers, as that is its function.

Examples of innovative Right to Farm laws can be found in Canada and in some United States Midwest state law registries.

The fundamental principle or all of these laws is that they define quite properly primary industry activities and prohibit any litigation against an activity considered by the legislation to be bone fide primary production activity.

This is what we need to achieve in Tasmania. This is what will encourage investment in high value farming activities.

Right to farm laws are the only mechanism available to assist and resolve the **fact that farmers are sitting ducks for professional litigants**, who will pick and choose the time and date, to bankrupt the farmer, and achieve their end aim of preventing the farming activity.

If there are no right to farm laws then there will be conflict as farmers will stop producing food, and the community will make the decision not to feed the public servants who would not support farmers.

The *Primary Industry Activities Protection Act 1995* has been an ineffective tool as the definitions and concepts contained in the Act **are quite poor**.

Therefore the improvements to the Act, need to focus on the two primary issues, which is the concept of nuisance and secondly the application of other legislation.

It is complete nonsense to have the Act written that says Inter alia in section 6 that " nothing in this Act derogates from the operation or effect of any other act".

In other words if you cannot use this act to stop the farming activity try another!

You also make the point about mandatory disclosure of neighbouring agricultural activities presently not been required under Tasmania's land sales legislation.

If the person purchasers residential land adjacent to class I agricultural land and fails to recognise that the farmer is going to farm the land, then caveat emptor applies.

I now turn to the detailed component of my submission in respect to the legislation.

I say that the **legislation as written presently is a failure**, and provides no real support for farmers.

The reason is simply based on the question of nuisance.

The concept of nuisance requiring action/proceedings in court :

nuisance means a public or private nuisance actionable at common law;

This appears to mean that whether or not an activity is a nuisance has to be decided by the courts.

This is clearly contemplated by **Section 5** which relates to limitations to orders the court may make in such an action.

This ***appears to encourage plaintiffs*** to seek orders from a court to prevent primary production activities which the plaintiff considers undesirable.

If the farmer is required to spray outcrop in the early morning or the late evening, or harvest the crop in the middle of the night then this is normal farming activity.

Underlying the Act is a presumption that agricultural activity is the same year in and year out, which is not accurate. It would be lucky to be the same one year in five.

There is no inherent need to provide any form of capacity to litigate against the farmer by anyone.

Section 4 sets out the circumstance in which these activities do not constitute a nuisance.

These relate mainly to periods and paragraph (d) that the activity is not being improperly or negligently carried out.

There is no definition of “improperly or negligently” which leads to the conclusion that this also needs to be decided by the courts.

Section 4 (e) states that “ 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.”

This paragraph is at odds with the preceding paragraphs which appear to indicate to set out other grounds for an action.

Therefore this whole concept of nuisance needs to be well understood by the person drafting changes to the act, **as if allowed to proceed as is, would constitute a government driven opportunity to litigate against farmers** with the intent to destroy the farming capacity that created in the minds of the plaintive their view of a nuisance.

It is this whole issue that you have to define farming activity must all broadly and comprehensively both as an activity that takes place 24 hours per day seven days per week 365 days per year, in order to set the same that any activity of farming may happen at any time as it is either subject to an animal gestation cycle, the weather, the growth rate of the crop depending on rainfall or irrigation, and the market.

It is this key issue of defining farming and defining what may not be litigated that is the primary function of this section of the act.

I now turn to the application of other legislation.

Section 6 states that “Nothing in this Act derogates from the operation or effect of any other Act.

The definition of **primary industry activity** means an activity which **(c)** does not contravene, or fail to comply with, an enactment of the State or Commonwealth or a council by-law.

This means that a farmer is subject to all other legislation relating to land or land use which might impinge on the ability to carry out primary production activities in a manner necessary to carry out those activities or even prevent the farmer from farming.

There is no requirement to not derogate the operation of acts from impacting farmers.

It is possible to exclude farmers from the operations of a range of existing legislation including the Environment Act, based on the farmer meeting present standards for operating the farm including storage, distribution, safety and occupational health, animal health, and the management of wildlife.

None of these acts need to apply to farmers in the context of this act. Therefore it would be feasible to put in a clause that says;

“A farmer meeting all of the definitions of farming, Farmer, and farm activity, under the *Primary Industry Activities Protection Act 1995,* is therefore not subject to any other legislation in relation to the operational needs of farmer, farming, and farm activity, and that in the first instance the protections of the *Primary Industry Activities Protection Act 1995(as amended)* shall apply and no action may be taken against the farmer in any court, to prevent the farmer from operating the farm.”

In summary it is these two key questions of the definition of nuisance, and the exclusion of the *Primary Industry Activities Protection Act 1995* from the impact of any other act for activities by a farmer undertaking farming and farm activity.

Remember in this case the primary focus of the government is to protect, encourage, expand, and consolidate the high quality high value farms across Tasmania.

There will be land clearing of plantations, and the return of this land to pasture and/or cropping. This change to the legislation is to support this focus of government and to encourage investment.

Unless these changes are made, there will be more a more litigation, by more and more fringe environmental and social groups were concerned that the concept of quiet enjoyment should prevail ahead of the community's interest in food production, and the farmers interest in farming.

Cheers

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As a general rule, the most successful man in life is the man who has the best information

That which can be asserted without evidence, can be dismissed without evidence.