

DRAFT SECOND READING SPEECH

HON. JEREMY ROCKLIFF MP

Primary Industry Activities Protection Amendment Bill 2016

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Mr Speaker, I move that the Bill now be read a second time.

The purpose of this Bill is to amend the *Primary Industry Activities Protection Act 1995*. This Act protects primary producers from court action under the common law tort of nuisance. It is sometimes referred to as Tasmania's 'right to farm' law.

Our Government has ambitious plans for the iconic and vital agricultural industries of this State. One of the most important things we can do for the agricultural sector is to get as many impediments as possible out of its way, and to empower and support it to do what it does best – produce food and fibre.

The Act was originally designed to ensure that a primary producer who has been operating peacefully and lawfully for some time, can confidently continue with their usual activities without fear that a new neighbour might object to the noise, dust, smell or other consequence of farming. And then sue to either impede or stop them.

With the most rural and dispersed population of any State in Australia, Tasmania has always had to manage an increased likelihood of conflict between farmers and their non-farming neighbours.

We very much want to encourage people to move to the beautiful rural areas of Tasmania, and enjoy the many benefits that can come from such a lifestyle.

However, new arrivals to rural areas can sometimes be confronted by the realities of living near agricultural producers. Sometimes a harvester will have to go all night in order to get a time-sensitive crop off the paddock. Sometimes gas guns have to fire periodically to keep birds off the fruit at a critical time. Sometimes a farmer will have to spray, perhaps from a plane, in order to deliver a viable crop. Sometimes a cow will simply bellow all night!

The Government also acknowledges that many land use conflicts arise or escalate because of a lack of communication and understanding between neighbours. To be clear, the very best way

to avoid conflict, between neighbours of any variety, is to communicate openly in good faith, and to try and find sensible compromises whenever concerns are raised. No policy or legislative instrument can substitute for that.

However, the law of nuisance in Australia has developed in an unusual way. If a newly arrived neighbour sues a farmer for nuisance, it is no defence to argue that the neighbour 'came to the nuisance'. In other words, the fact that the farmer was there first, obviously already operating when the neighbour arrived, does not protect that farmer in any subsequent nuisance lawsuit.

When the Act was passed by the Groom Government in 1995, it simply sought to restore some balance to this situation, to ensure a Tasmanian farmer could feel confident investing in the future of his or her business.

And a commercial farm is a business. They do require significant investment. The risk that a non-farming neighbour might move in and seek, through unilateral action in a court, to shut a farming operation down was not one the Groom Government was prepared to impose on Tasmania's farmers, and it is not one this Government is prepared to impose on them now.

The *Primary Industry Activities Protection Act 1995* has been protecting Tasmania's farmers from nuisance lawsuits for over 20 years. It was time to ask if this long-standing legislation continues to fully serve its purpose. Accordingly, one of the commitments our Government took to the 2014 election was to review the Act, with a view to further strengthening the legal position of farmers.

I instructed the Department of Primary Industries, Parks, Water and Environment to undertake a comprehensive review process, which included calling for submissions from stakeholder organisations and the public.

16 submissions were received, including from peak bodies in agricultural and forestry, agricultural businesses, local government, and individuals. All of these submissions are now available on the Department's website.

These submissions were carefully considered, and the final report of the Review was released in February 2016. Its major conclusion was that the Act, although short, was very confusingly drafted.

The Act currently imposes nine separate and convoluted conditions or 'tests' on either the individual, the land or the activity in question, before a farmer can rely on the protections of the Act.

This has resulted in a situation in which many farmers, the very people who should feel confident relying upon the protections of the Act, are instead confused and apprehensive about it.

This was most evident in Section 4 (c) of the Act. It requires that the contended activity not be substantially different from activities previously undertaken on that land, unless the difference is attributable to improved technology or practices. As almost all change to primary production activity can be attributable to improved technology or practices, this condition could rarely, if ever, be relied upon by a potential plaintiff. Nevertheless, many primary producers often mistakenly concluded that this condition meant that they could lose their protection from lawsuits if they innovated or diversified.

As such, there will be no equivalent to section 4(c) in the amended Act.

In fact, the Bill takes entirely new approach to section 4, which is the main functional clause of the Act. The Act will henceforth ensure a primary industry activity carried out on a 'farm' does not constitute a nuisance if only **five** basic conditions are met. These conditions will be that:

- the farm is being used for (or prepared for use as) a primary production business;
- the activity does not contravene State, Commonwealth or council laws;
- the zoning of the land enables it to be used for primary industry, and the land has been in that zone for a continuous period of at least one year;
- the activity would not have constituted a nuisance if it had been carried out when the land was initially zoned for primary industry; and
- the activity is not being improperly or negligently carried out.

These conditions provide clarity for farmers and re-inforce that only legitimate farming activities are afforded protection under the Act.

The secondary conclusion of the Review was that it was unclear whether farmers would be covered by the protections of the Act when undertaking activities related to farm forestry.

Forestry is an enterprise which is integrated on many farms in Tasmania as part of a mixed farming business. However, if the activity a neighbour objected to relate to plantation forestry,

the current Act would have only extended protection to the farmer if the relevant Court was prepared to generously interpret the definitions within it. If the activity related to native forestry, the Act's protections would not have been available at all.

Accordingly, this Bill will ensure that planting trees, establishing forests, growing or harvesting timber is a protected 'primary industry' for the purposes of the Act. This is a sensible extension of the Act to support farm forestry.

However, the Bill also explicitly states that this protection does not extend to Crown or Forestry Tasmania land.

I wish to stress that neither the current Act, nor this Bill, seeks to limit the activities that are protected by the Act. It simply states that the activity must be carried out for, or in connection with, primary industry.

Farming is evolving every day, and we cannot conceive of all the activities that farmers of the future will need to undertake to continue to put food on all of our tables.

It is therefore the intention of this Government to ensure that the broadest range of activities, associated with cropping, livestock, farm forestry or any other primary industry, are covered by the protections of this Act.

This Bill has the support of the peak bodies in industry, including the Tasmanian Farmers and Graziers Association, the Forest Industries Association of Tasmania, and Private Forests Tasmania.

Mr Speaker, in conclusion this Bill will result in simpler legal protection for our vital farming sector, and ensure it extends to farm forestry, which forms a vital part of many mixed farm enterprises in Tasmania.

It will also put both primary producers and their neighbours in a much better position to understand and utilise the Act.

Mr Speaker, the Government fully supports the introduction of this Bill.

I commend this Bill to the House.