

Passed by both Houses



New South Wales

Right to Farm Bill 2019

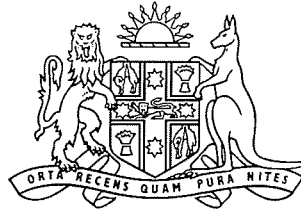
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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2019



New South Wales

Right to Farm Bill 2019

Act No _____, 2019

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Right to Farm Act 2019*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act—

agricultural activity means an activity carried out for, or in connection with, agriculture.

agriculture includes aquaculture and forestry.

commercial agricultural activity means an activity carried out for or in connection with a primary production business within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

4 Commercial agricultural activities do not constitute nuisance

No action lies in respect of nuisance by reason only of the carrying out of any of the following activities if the activity is carried out lawfully and not negligently and that type of activity has been carried out on the land for at least 12 months—

- (a) a commercial agricultural activity,
- (b) an activity carried out for the purposes of any of the following—
 - (i) any business or undertaking in which cattle, poultry, pigs, goats, horses, sheep or other livestock are kept or bred for commercial purposes (for example, a dairy, saleyard or feedlot),
 - (ii) a business or undertaking for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, including abattoirs, knackereries, tanneries, woolscours and rendering plants,
 - (iii) a business or undertaking for forestry (including timber mills) or aquaculture,
 - (iv) a show or competition involving livestock (including a rodeo).

5 Courts to not order cessation of agricultural activity if other order available

- (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.
- (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—
 - (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.

- (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.

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.

Schedule 1 Savings, transitional and other provisions

Part 1 Provisions consequent on enactment of this Act

1 Regulations

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
 - (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
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement of this Act.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This clause and any transitional regulations expire 2 years after the commencement of this Act.

2 Existing proceedings

Sections 4 and 5 do not apply to proceedings commenced before the commencement of this Act.

Schedule 2 Amendment of Inclosed Lands Protection Act 1901 No 33

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

agricultural land means inclosed lands on which any of the following businesses or undertakings are carried on—

- (a) a farm, being any business or undertaking for agricultural purposes (including an orchard, market garden, mushroom farm, vineyard, plant nursery or turf farm),
- (b) any other business or undertaking in which cattle, poultry, pigs, goats, horses, sheep or other livestock are kept or bred for commercial purposes (for example, a dairy, saleyard or feedlot),
- (c) a business or undertaking for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, including abattoirs, knackereries, tanneries, woolscours and rendering plants,
- (d) a business or undertaking for forestry (including timber mills) or aquaculture.

[2] Section 4B(1)(h) and (i)

Insert at the end of section 4B(1)(g)—

, or

- (h) damages property on agricultural land, or
- (i) wilfully or negligently releases any livestock.

[3] Section 4B(1)

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for an offence that occurs on agricultural land—
 - (i) 120 penalty units or imprisonment for 12 months, or both, or
 - (ii) 200 penalty units or imprisonment for 3 years, or both if—
 - (A) the offender was accompanied by 2 or more persons when the offence occurred, or
 - (B) the aggravating circumstances were those set out in subsection (1)(b), or
- (b) for an offence that occurs on land other than agricultural land—50 penalty units.

[4] Section 4C

Insert after section 4B—

4C Direct, incite, counsel, procure, commission or induce aggravated unlawful entry

A person must not direct, incite, counsel, procure, commission or induce the commission, on agricultural land, of an offence against section 4B.

Maximum penalty—100 penalty units or imprisonment for 12 months, or both.

[5] Section 5

Omit the section. Insert instead—

5 Leaving gate open

- (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.
Maximum penalty—15 penalty units.
- (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 *Roads Act 1993*) and wilfully or negligently leaves open, removes or disables the gate is guilty of an offence.
Maximum penalty—15 penalty units.
- (3) In this section—
gate includes a cattle grid or any moveable thing used to inclose land including a slip panel or moveable fence.

[6] Section 7A

Insert after section 7—

7A Act does not prevent permitted union activities or industrial action

- (1) Nothing in this Act makes it an offence for a person (including a representative of an industrial organisation) to enter or remain on inclosed land for the purposes of activities permitted under the *Industrial Relations Act 1996* or the *Fair Work Act 2009* of the Commonwealth.
- (2) In this section—
industrial organisation means—
 - (a) an industrial organisation of employees, or the State peak council for employees, within the meaning of the *Industrial Relations Act 1996*, or
 - (b) an employee organisation, or a peak council of employee organisations, within the meaning of the *Fair Work Act 2009* of the Commonwealth.

[7] Section 8

Omit the section. Insert instead—

8 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily—
 - (a) by the Local Court, or
 - (b) by the Supreme Court in its summary jurisdiction.
- (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.