

NEW SOUTH WALES

RIGHT TO FARM POLICY

NSW Department of Primary Industries







NSW RIGHT TO FARM POLICY

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Introduction

The concept of 'right to farm' has multiple facets but the common interpretation – and the one used in this policy - relates to a desire by farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users.

The NSW Government has developed a comprehensive, state-wide approach to deal with the issue of 'right to farm', which brings together a suite of responses including:

- » reinforcing rights and responsibilities
- » establishing a baseline and ongoing monitoring and evaluation of land use conflicts
- » strengthening land use planning
- » ensuring ongoing reviews of relevant environmental planning instruments include consideration of options to ensure best land use outcomes and to minimise conflicts
- » improving education and awareness on management of land use conflicts
- » considering potential future legislative options, should additional Government intervention be required.

Land use conflict occurs when there is disagreement or dispute as to the use of land. The activities of one land user might be perceived to, or actually does, infringe upon the rights, values or amenity of another.

In rural areas, land use conflicts can occur when agriculture impacts on residential uses, but conflicts can also arise when other land users impact on farmers, and also between different agricultural industries. In some circumstances, this can simply be about mutual respect and a right to coexist.

People who want to live in rural and agriculture areas are attracted by the open green space, fresher air and pleasant scenery. The desire to enjoy these landscapes should be accompanied by an understanding that rural land is used for productive purposes, such as agriculture. The reality is that normal farming practices can have impacts on neighbours ranging from residual noise, light, dust and other impacts.

In some local government areas, complaints occur frequently (on a weekly basis). The level of conflict can be a considerable issue for local government, can place increased costs on farming enterprises, and exert pressure on existing farmers to either relocate or leave the industry altogether. Those that do stay may have ongoing uncertainty and as a consequence may underinvest in the farm to reduce their future risks.

The Government supports primary producers in their right to farm. However, the right to farm only extends to what is lawful. This means compliance with the legislation and regulations that govern, for example, land uses, uses of chemicals, intensity and timing of lights and noise and management of odours. The suite of rules applies equally to all land users, including rural lifestyle land owners who, like farmers, have obligations in relation to management of weeds, pests and other biosecurity risks.





Principles

The NSW Government recognises the value of agriculture for growing food and fibre for domestic and international markets and is concerned about the potential loss or impaired use of agricultural land. Agriculture is important to local, regional, and state economies and communities.

Addressing land use conflicts that arise from lawful agricultural practices is an issue of shared obligations. Farmers, neighbours, land developers, new land buyers as well as local and state government all have a significant role to play.

The NSW Government will strive to increase certainty for existing agricultural use and promote innovation and investment in agriculture by:

- » identifying and facilitating access to resources on which agriculture depends
- » supporting the retention of critical industry mass and access to services, infrastructure, processing facilities and markets.

The NSW Government will plan for land use near agriculture that minimises conflicts and where possible enable future growth and adaption, while providing for other industries to co-exist where compatible.



Summary of actions

Reinforcing rights and responsibilities

- » The NSW Government will implement the Right to Farm policy to support farmers in exercising their right to farm.
- » The NSW Government will work with agricultural industries in NSW to support their efforts in establishing and maintaining best practice and minimising land use conflicts.
- » The NSW Government will encourage and support all participants in rural industry to promote good agricultural practice, technological and practical developments of modern farming equipment and techniques, and good neighbour practices.

Establishing a baseline and ongoing monitoring and evaluation

- » The NSW Government will work with local government and other stakeholders to identify and monitor nuisance complaints related to farming in relevant local government areas.

Strengthening land use planning

- » The NSW Government will develop a suite of Regional Plans that identify regional priorities for growth, including for primary industries, as well as providing direction on managing land use conflicts.
- » The NSW Government will work with local councils to identify any additional measures required to assist their efforts in best practice land use planning to address land use conflict issues.

Ensuring current reviews of environmental planning instruments include consideration of options to ensure best land use outcomes and to reduce conflicts

- » The NSW Government will review current land use planning mechanisms and instruments, with the aim of delivering a planning policy framework that supports the management of current and future farming practices.
- » The NSW Government will review the findings of the current Legislative Council Inquiry into regional planning processes in NSW, which is due to report in 2016 and consider the recommendations, including any recommendations regarding the Right to Farm policy.

Improving education and awareness

- » The NSW Government will enhance its current engagement with local government, and in consultation with other stakeholders, support councils' proactive management and education on land use conflict issues that arise from lawful farming practices.

Considering the need for legislative options, should additional Government intervention be required.

- » The NSW Government will maintain its links with other jurisdictions to exchange information about developments in right to farm policy and legislation.
- » The NSW Government will report on the implementation of this policy on an annual basis.
- » The NSW Government will undertake a review after a period of two years of data collection or earlier if the evidence demonstrates the need. This review of the policy will consider other jurisdictions and overseas experiences, as well as the outcomes of the Legislative Council Inquiry and determine if legislative options are necessary.



Reinforcing rights and responsibilities

The responsibility to address the question of right to farm is a shared one. There are many potential players including local government, state government, agriculturalists, community members, manufacturers of farming equipment, real estate agents and conveyancing professionals, and future land use purchasers.

The Government's objective is to reduce the number of complaints and legal claims made against farmers, while preserving the rights of legitimate complainants. This must be matched with farmers being fully compliant with the relevant environment and planning laws.

It must also be matched with individuals and communities recognising that we need agriculture to produce food and fibre. This recognition should be complemented by a better understanding and acceptance of what are lawful agricultural practices.

Through the Agricultural Industry Action Plan, Government has made commitments to industry in relation to reduction in red tape, best practice regulation and improved security for farming. In turn, industry is to develop and use 'best practice' guides that will demonstrate to community and government that there is scope to reduce the need for regulation in the future.

Also through the Agricultural Industry Action Plan, the agricultural industry has, with government support, committed to develop and enhance its 'social licence'. The development of social licence occurs outside formal permit or regulatory processes, and is used to describe if an industry is accepted and trusted by the community. Aspects of an industry's social licence include its environmental performance and community relationships.

The Department of Primary Industries (DPI) works closely with local government and agricultural industry advisory committees on land use issues. It also collaborates with other agencies in promoting sustainable growth of industries. Best practice education such as guidelines for controlled environment horticulture and environmental management guidelines for the dairy industry are available.

Actions

- » The NSW Government will implement the Right to Farm policy to support farmers in exercising their lawful right to farm.
- » The NSW Government will work with agricultural industries in NSW to support their efforts in establishing and maintaining best practice.
- » NSW Government will encourage and support all participants in rural industry to promote good agricultural practice, technological and practical development of modern farming equipment and techniques, and good neighbour practices.

Establishing a baseline and ongoing monitoring

Agriculture, which includes cropping, horticulture, livestock and viticulture sectors, supplies the food and fibre processing and manufacturing industry and is serviced and supported by agribusiness.

There are around 44,000 farms¹ in NSW and 39,000² agricultural businesses, which accounts for about 74% of the area of the state³ being managed by farmers.

While agriculture is the major land use in NSW, this land is predominately used for the grazing of native vegetation or improved pastures. Only 11 % of NSW is used for higher productivity agricultural uses such as cropping (dryland 9.6%, irrigated 1.3%) and horticulture (0.2%)⁴.

Australia's peri-urban regions are an important and contested area of agricultural production. Research has found that peri-urban areas in Australia comprise less than three per cent of land used for agriculture but account for more than 25 per cent of the gross value of agricultural production⁵.

However, the area of agricultural land in Australia is under continual pressure. The reasons for this are complex and varied. Anecdotal evidence suggests that one of the causes of decline in agricultural land relates to the conflicts that can occur between farmers and other land users.

There is limited information on the frequency of this issue. The informal information that has been collated from contacting individual councils suggests that many deal with significant numbers of complaints and threats of action on a weekly basis.

Action

- » The NSW Government will work with local government and other stakeholders to identify and monitor nuisance complaints related to farming in relevant local government areas.

1 http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0017/532322/Contribution-of-Primary-Industries-to-the-NSW-Economy.pdf

2 DPI (2014). Agricultural Industry Action Plan *Primed for Growth: Investing Locally Connecting Globally*.

3 http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0017/532322/Contribution-of-Primary-Industries-to-the-NSW-Economy.pdf

4 http://data.daff.gov.au/brs/landuse/docs/1_State_NSW.pdf

5 Houston, P (2005). Re-valuing the Fringe: Some Findings on the Value of Agricultural Production in Australia's Peri-Urban Regions. *Geographical Research* 43(2): 209-223



Strengthening land use planning

In NSW the *Environmental Planning and Assessment Act 1979* (the Act) is the major legislation governing land use and environmental assessment in NSW. The Department of Planning and Environment is the lead agency in implementing this Act. The Act establishes a framework for strategic and local plans, local zoning, development control plans, assessment requirements and development consent provisions.

DPI does not have a role under the Act in relation to the agriculture but works with councils at the strategic level to plan for agricultural industry development and to maintain access to agricultural resources including land. This includes recommending actions to reduce land use conflict.

The intended outcome is appropriate zoning and permissible uses that are compatible with agricultural activities, and local strategies that guide land uses and minimise conflict.

The NSW Government is currently strengthening its approach to strategic planning and the coordination of economic infrastructure, including in regional NSW, through the roll-out of state-wide Regional Plans.

Regional Plans identify the regions priorities that support economic growth and change within the context of ecological sustainable development. Regional Plans deliver these priorities by: directing housing and jobs growth preferred locations; identifying and protecting valuable environmental, agriculture and resources across the region; and setting the framework to balance competing uses.

DPI is contributing to the process by, for example, identifying important agricultural land and other resources and proposing mechanisms to manage and where appropriate, support the protection of those lands.

Recently in Victoria, a high profile Wagyu beef grower highlighted the issue of right to farm. This has resulted in the Ministers for Planning and for Regional Development appointing an advisory committee to examine how the planning system can better support Victorian farmers and agriculture. DPI has made contact with Victorian counterparts to discuss their recent experience and will use that experience to inform its input into the management of agricultural land use conflict.

Actions

- » The NSW Government will develop a suite of Regional Plans that identify regional priorities for growth, including for primary industries, as well as providing direction on managing land use conflicts.
- » The NSW Government will work with local councils to identify any additional measures required to assist their efforts in best practice land use planning to address land use conflict issues.



Ensuring ongoing reviews of relevant environmental planning instruments include consideration of options to ensure best land use outcomes and to minimise conflict

The EP&A Act provides for a hierarchy of environmental planning instruments, which include state environmental planning policies (SEPP) and local environmental plans (LEP).

Within the current planning system there is a range of instruments such as the Rural Land SEPP and the Intensive Agriculture SEPP, as well as a number of zoning controls within the Standard Instrument that informs local environmental plans.

The NSW Government is reviewing planning instruments that relate to rural lands, with the aim of strengthening the planning policy framework to better support current and future agricultural practices, which are important to underpin the concept of right to farm.

This review will investigate opportunities to strengthen current planning policy to support agriculture activity, consider the range of zonings needed to recognise the breadth of agricultural activities, and consider how best to deliver flexibility for agricultural practices to better adapt to changes in circumstances - such as climate change and drought, without triggering the need for development approval.

Concurrently, the NSW Legislative Council is undertaking an inquiry into regional planning to among other things, review the effectiveness of planning instruments to stimulate regional development and consider any constraints imposed to regional development by the planning frameworks.

Actions

- » The NSW Government will review current land use planning mechanisms and instruments, with the aim of delivering a planning policy framework that supports the management of current and future farming practices.
- » The NSW Government will review the findings of the current Legislative Council Inquiry into regional planning processes in NSW, which is due to report in 2016 and consider the recommendations, including any recommendations regarding the Right to Farm policy.





Improving education and awareness

In many cases land use conflicts arise because of a lack of awareness and understanding of the agricultural industries occurring in an area, the nature and purposes of activities associated with these industries, as well as the likely amenity impacts.

There are many individuals and professional groups that can assist in increasing awareness and reducing land use conflicts to maintain farmers' right to farm.

Adjoining landowners are encouraged to communicate with each other and develop an understanding of what it means to be a 'good neighbour', for example undertaking land ownership responsibilities; discussing major proposed changes in land use; informing neighbours about timing of occasional operations that could cause short-term amenity impacts.

DPI plays an important part in preparing and publishing material for stakeholders who may be involved in issues associated with land use conflicts arising from agricultural production. In addition to the development of agricultural industry best practice guidelines, a key publication is the *Living and Working in Rural Areas* handbook.

Potential purchasers in rural and agricultural areas are strongly encouraged to be fully informed about the current land uses within their location of interest to ensure that the reality of living in rural communities matches their personal dreams. They also need to be aware of responsibilities associated with owning rural land such as weed and pest animal control, bushfire management, and preventing animals from straying.

Professionals such as real estate agents and conveyancers can also help by fully informing potential land buyers of current land uses in the locality.

Councils can assist in this process by providing information to potential buyers and conveyancers at the time of purchase. For example, Wollondilly Shire Council has a 'Notices of Rural Land Use', which provides information about the impacts arising from agricultural activity to prospective purchasers of land surrounding existing agriculture in the area. These Notices accompany s149(2) planning certificates, which are issued under the EP&A Act, and contain information on how a property may be used and the restrictions on development.

The Greater Hume Shire Council has a right to farm policy that states it will not support any action to interfere with the legitimate rural and agricultural use of land where the activity is in accordance with relevant legislation. When an inquiry is made to the council by a prospective rural land purchaser or landholder, the person is advised about the legitimate rural and agricultural uses of land.

Action

- » The NSW Government will enhance its current engagement with local government, and in consultation with other stakeholders, support councils' proactive management and education around land use conflict issues that arise from lawful farming practices.

Considering the need for legislative options, should additional Government intervention be required

There are a range of legislative options that are available to NSW, should the experience and evidence informed by the implementation of this policy suggest that a legislated response is warranted.

Legislative options include:

- » Mandating the Notices of Rural Land Use
- » Protections for specific types of operations
- » Protections for pre-existent enterprises following 'normal farm practices'
- » Establishment of 'farm practices boards' that review individual cases in dispute resolution.

Legislation has been implemented in Australia with mixed results⁶. Western Australia previously had an *Agricultural Practices (Disputes) Act 1995*, which established the Agricultural Practices Board. This legislation was subsequently withdrawn because of very limited numbers of disputes to resolve (eight in total over the life of the legislation).

Following an amendment to the *Victorian Sale of Land Act 1962*, as of 1 October 2014 all sellers or estate agents must make sure that the due diligence check list is available to potential buyers of homes or residential properties. The purpose of the checklist is to make buyers aware, before purchase, of the range of issues that may affect the property including bushfire or flood risk, land contamination, rural land use; or impose planning controls or obligations, such as control of weeds and pest animals, on owners of the property.

Tasmania is the only Australian state to have in place right to farm legislation, the Primary Industries Activities Protection Act 1995. In June 2014 an issues paper on the Act review was released and recommendations from the review are currently being finalised for government endorsement.

Internationally, legislative approaches are also diverse but the common feature is to grant protection to farmers from nuisance claims. A major concern regarding the granting of this immunity is the concomitant reduction in private property rights of the complainant.

Actions

- » The NSW Government will maintain its links with other jurisdictions to exchange information about developments in right to farm policy and legislation.
- » The NSW Government will report on the implementation of the policy on an annual basis.
- » The NSW Government will undertake a review after a period of two years of data collection or earlier if the evidence demonstrates the need. This review of the policy will consider other jurisdictions and overseas experiences, as well as the outcomes of the Legislative Council Inquiry and determine if legislative options are necessary.

Additional reference material

- » *Living and Working in Rural Areas* handbook
- » Greater Hume Shire Right to Farm Policy
- » Agricultural Industry Action Plan
- » NSW Parliamentary Research Services e-brief Right to Farm Laws

⁶ A good summary can be found in the NSW Parliamentary Research Services e-brief 5/2015

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