



**PRIMARY INDUSTRY ACTIVITIES PROTECTION ACT
1995**

No. 102 of 1995

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**PRIMARY INDUSTRY ACTIVITIES PROTECTION ACT
1995**

No. 102 of 1995

AN ACT 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

[Royal Assent 24 November 1995]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Primary Industry Activities Protection Act 1995*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Interpretation

3—(1) In this Act—

“**nuisance**” means a public or private nuisance actionable at common law;

“**primary industry**” includes the following:—

- (a) planting, growing or harvesting crops;
- (b) breeding, rearing or managing livestock;
- (c) agisting livestock;
- (d) obtaining dairy, wool, eggs or other produce from livestock;
- (e) obtaining juice, seeds or other produce from crops;

“**primary industry activity**” means an activity which—

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

(2) For the purposes of this Act—

- (a) an area of land is in use for primary industry if—
 - (i) it is zoned by a council for primary industry use; and
 - (ii) it is being regularly used, or prepared for regular use, for primary industry; and
 - (iii) its owner or occupier derives the principal means of his or her livelihood from primary industry; and

- (b) a primary industry activity is carried out on an area of land even if the activity was carried out in, immediately over or under that area of land.

Primary industry activity does not constitute a nuisance in certain circumstances

4—A primary industry activity that is carried out on an area of land does not constitute a nuisance if—

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

Limitation on power of courts in respect of findings of nuisance

5—(1) If in any proceedings a court finds that a primary industry activity carried out by one party to the proceedings constitutes a nuisance, the court must not order the complete cessation of that activity if the court is satisfied that, by making some other order for the management, modification or diminution of the activity reasonably consistent with efficient and commercially viable primary production, the court could reasonably ensure that any continuation of the activity would be unlikely to significantly disturb the other party to the proceedings.

(2) Subsection (1) 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 any order as to damages or costs.

Act does not derogate from other Acts

6—Nothing in this Act derogates from the operation or effect of any other Act.

Administration of Act

7—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Primary Industry and Fisheries; and
- (b) the Department responsible to the Minister for Primary Industry and Fisheries in relation to the administration of this Act is the Department of Primary Industry and Fisheries.

*[Second reading presentation speech made in:—
House of Assembly on 25 October 1995
Legislative Council on 7 November 1995]*