Right to Farm Legislation passes the SA Legislative Council

Corporate Partner and Agribusiness Practice Group head, Simon Venus, considers Environment Protection (Right To Farm) Amendment Bill 2009 SA.

Data from the Population Reference Bureau puts a figure of around 80 million new mouths to feed each year around the world. Coupled with that increase is a scarcity of rural land as urbanisation increases. For the first time, the world population is evenly divided between urban and rural areas. By 2050, urban residents are likely to make up 70 percent of the world's population (*UN Population Division, World Urbanization Prospects*).

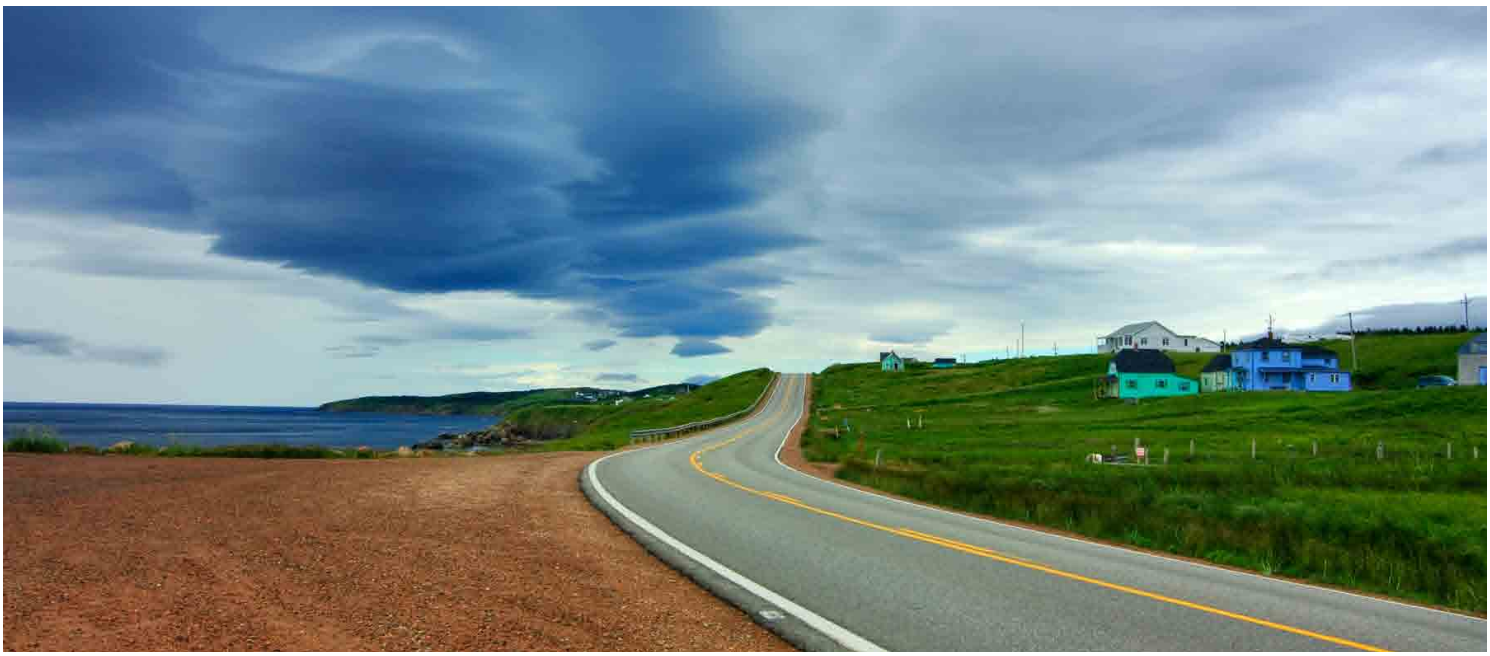
One of inevitable consequences of this macro trend in population development is that pressure is being exerted on arable farming land as expanding cities sees fertile soils being utilised for construction and housing.

While those statistics make agriculture a compelling investment proposition, the worldwide trend of urban sprawl has had other important implications when the interests of agriculture clash with the expectations of lifestyle and semi-rural property owners on the fringes of Australia's urban areas.

Complaints directed at long existing farming activity from those living on the urban fringes, lifestyle property owners and so-called tree-changers have been directed at some of the inevitable incidents of farming activities, including smell, noise, heavy vehicle and tractor traffic and so on.

In South Australia, the clash of interests has led to the Environment Protection (Right To Farm) Amendment Bill 2009, a private members bill which passed the South Australian Legislative Council on 18 November 2009 and was introduced to the House of Assembly a day later.

The Hon Robert Brokenshire, who moved the bill's introduction, based the draft legislation in part on models adopted in northern America. Those models generally exclude common law actions for nuisance, provided a farmer is compliant with public health and environmental laws.



The bill makes amendments to the *Environment Protection Act 1993* and the *Land and Business (Sale and Conveyancing) Act 1994*.

In relation to the former Act, it will be a defence to an EPA complaint if a farmer is conducting a "protected farming activity", namely, an activity condoned by a code of practice or by generally accepted standards and practices in the farming industry. The obligation will be on the EPA, not the farmer, to establish the defence. The relevant codes of practice will be prescribed by regulation.

A proposed amendment to section 130 of the *Environment Protection Act* provides that if the EPA is satisfied that an allegation relates to a "protected farming activity" then it should advise the complainant of that opinion and decline to take further action in relation to the allegation.

In relation to *Land and Business (Sale and Conveyancing) Act,* the draft legislation provides that a person who buys land in farming areas will be notified that there are farming enterprises operating in the area. The second reading speech states that *"this will serve as notice to purchasers to prevent nuisance complaints in the future should they decide they are unhappy with the noise, sight or smell of farming machinery rolling past their home."*

During debate on the bill, both the Greens and Labor expressed general sympathy for its objectives, namely that farmers have a right to conduct their farming activities, but fell short of supporting the drafting, saying that it was the wrong instrument for the job and would diminish the EPA's capacity to prosecute for non-complying activities. Criticism was also levelled at the broad scope of what might constitute "generally accepted standards and practices" in a given farming industry for the purposes of defining what is a protected farming activity.

This is not the first time right to farm legislation of this sort has found its way onto a parliamentary agenda in Australia. In New South Wales in 2004, the Protection of Agricultural Production (Right to Farm) Bill was introduced as a private members bill. However, that bill did not garner sufficient parliamentary support and was later negatived in the House of Assembly. Whether the South Australian legislation is destined for a similar fate remains to be seen, but its progress is likely to be followed closely by farmer advocate groups other jurisdictions.