

# CORRECTED VERSION

## STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

### Subcommittee

### Inquiry into the Planning and Environment Amendment (Recognising Objectors) Bill 2015

Melbourne — 10 July 2015

#### Members

Mr David Davis — Chair

Mr Simon Ramsay

Ms Colleen Hartland

#### Staff

Secretary: Mr Keir Delaney

Research officer: Mr Anthony Walsh

#### Witnesses

Mr Gerald Leach (sworn), chair, land management committee,

Ms Emily Waters (affirmed), senior policy adviser, land management, and

Mr Michael Shaw (sworn), life member and past president, chicken meat group, Victorian Farmers Federation.

**The CHAIR** — I welcome Emily Waters, Gerald Leach and Mike Shaw. I ask you to make an opening submission, and then we will ask some questions. Gerald is the chair of the VFF land management committee.

**Mr LEACH** — Thank you, Chair, and committee members. I am a sheep and grains farmer from Walpeup in the Mallee. I am here today to make a submission on behalf of the VFF regarding the Planning and Environment Amendment (Recognising Objectors) Bill. I am joined by Mike Shaw, past president of the VFF chicken meat group and a chicken farmer, and also by Emily Waters, policy adviser for land management. I am going to present the VFF's submission, and Mike is here today if the committee wishes him to give evidence about how a chicken farmer deals with local planning issues when there are objections.

The first we knew of this bill was when it was introduced to the Legislative Assembly, so we appreciate the opportunity to comment further. I am the chairman of the land management committee of the VFF, which tackles a range of natural resource management issues from bushfire, invasive species management, mining and land use conflicts. Our committee is presented with a number of cases where farmers wishing to improve their productivity are subject to the stress and delays associated with planning. This is often despite compliance with the farming zone and relevant industry codes. The VFF represents a range of state commodity interests covering dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg production.

While the state's population grows our agriculture sector is under increasing pressure to remain viable. Victoria contributes close to 30 per cent of the nation's agricultural exports and about 3 per cent of Australia's farming land. Farmers need to innovate, expand or intensify to remain competitive and meet the needs of both international and domestic markets. Victoria's agricultural sector depends on the availability of farming zoned land and a fair regulatory system to compete in a global market. There is increasing competition from sensitive non-agricultural uses for farming land, such as residential subdivision and tourism. Residential uses can be incompatible with agriculture when there is a lack of understanding of rural life and primary production.

The farming zone includes a purpose to ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. However, from a free-range pig farm near Shepparton to a dairy farm near Foster significant hardship can be caused when an existing farm is subject to harsh community campaigning and opposition. Most activities in the farming zone do not require planning permission, as they are longstanding farms with existing use rights. However, intensive animal husbandry uses, such as new broiler farms and cattle feedlots, do require a planning permit.

The proposed bill will hurt agriculture. Uncertainty will be added to an already complicated planning system. It will increase the burden on rural councils and VCAT in assessing what is an appropriate objection to a farming operation. The proposal to consider the number of objections to measure social impact will undermine existing planning provisions. The purpose of the farming zone is to encourage the retention of agricultural land. Therefore farming practices should be supported, subject to compliance with well-established industry codes.

A planning permit for intensive agriculture is assessed against a relevant industry code, and adjoining landowners are consulted prior to a permit being issued. Economic and environmental considerations are made and are normally more relevant to farming than social impacts. These industry codes set standards that allow for the operation of an intensive farm or protecting the environment and amenity for people who live nearby. They set standards that cover odour, dust, noise and visual impacts. These codes are developed by government in consultation with industry and are consulted on with the community before forming part of planning schemes across the state. The local planning provisions reflect social issues relevant to a piece of land. That is the role of local planning schemes, zoning and overlay controls.

It would be unfair to rely on a farmer requiring a permit to assess the sentiment of the community towards farming. The VFF submits that the proposed bill will place a disproportionate regulatory burden on agriculture and will result in unintended consequences. The proposed bill will give more weight to ideological protest groups who can build numbers of objections in pro forma letters. The VFF believes it should not be the number of signatures on a petition that is important; instead the proponents and council should focus on the legitimate amenity concerns of adjoining landowners. Farming applicants have been subject to large numbers of objections despite being in relatively remote locations. These campaigns are often formed on ideological grounds rather than individual amenity concerns.

Public notification and providing opportunities to comment are important to fair decision-making. Planning should consider potential amenity impacts on adjoining landowners; however, there are opportunities to

improve the current public notice and third-party review system before this bill can be contemplated further. It is important that the community is educated on what activities are allowed to occur in a farming zone, as well as on the importance of maintaining the rural landscape and agricultural production.

Another reason we oppose the bill is that it will create uncertainty. The bill does not require decision-makers to consider the content of the objections, which may be resolvable or irrelevant. It relies on decision-makers to use their discretion in deciding what is appropriate. This discretion will add to the potential for dispute in the planning process. If this bill is entertained any further, please exempt agriculture — that is, the bill should exempt the planning zones that are designed to encourage agriculture, being the farming, rural activity and in some cases the green wedge zone. The Victorian planning provisions provide a degree of consistency in terms of what is required to operate a business in Victoria. Certainty is important for farmers when undertaking due diligence prior to expanding or upgrading business practices.

The VFF believes that local differences, such as different social considerations, should be reflected in planning policy and local planning provisions so that they are known up-front before proponents invest. The VFF calls on the government to consider alternatives to the proposed legislation. There are opportunities to improve the way local councils undertake public notification. Currently notification is at the discretion of council, resulting in differences in the extent of objections received. Some councils notify landowners 20 kilometres away who will not be directly affected by a proposal, and this can lead to irrelevant objections. Also, objectors could be better guided on what are relevant planning grounds. Affected parties should be encouraged to make recommendations if they want to suggest changes. Objections should be called ‘submissions’ to encourage participation rather than just opposition.

The VFF wants a comprehensive review before such a bill can be considered. The government needs to look at the existing planning system, in particular how public notification is given and how authorities decide what is an appropriate objection. We have zones and codes in place to regulate and facilitate our industry. If government wishes to improve the fairness of its planning framework, it needs to do this through public consultation. It needs to allow business and the community more time to consider such a significant change to the planning act.

The VFF has called on upper house MPs to oppose this bill in a letter dated 19 June. I have copies of this letter with me today. Thank you very much for your time, Chair, and we welcome any questions to us on this issue.

**The CHAIR** — Can I thank you, Gerald, for that submission? I think that is very enlightening. Essentially what I think you are calling for is a fairer regulatory system — and I am picking up some words you used. You do not believe this will be a fairer system. You believe there is a lack of understanding of agriculture in some quarters that means that objections are often not — I am paraphrasing here, in a sense. A lack of understanding of agriculture means that in a number of cases the objections are not relevant on planning grounds. You are very much saying that in certain areas of country Victoria there is increasing competition with other land uses and that this bill will impact negatively in those cases of increased competition?

**Mr LEACH** — Mr Chairman, I am delighted to note that you have picked up very well what we are saying, and I am encouraged by that.

**The CHAIR** — Let me just also understand the matters around the objection you have to the bill. Do you think that on some occasions it would give communities a greater say?

**Mr LEACH** — It depends. It might give communities a greater say, but whether or not the greater say is relevant is the issue. The issue is at what cost to productivity and agricultural business does that greater say occur, and is the greater say to the benefit of Victoria as a state. Obviously I am referring here to the impact on agriculture.

**The CHAIR** — The net benefit?

**Mr LEACH** — The net benefit. We already believe that Victorian agriculture is severely disadvantaged through some aspects of the planning process. I would very much like Mike to come in here and give us the example of what has happened to the broiler industry in Victoria relative to the nation and an example of the difference between Victorian planning laws and other states — with your permission, Chair.

**Mr SHAW** — Thanks for your time, Chair. Gerry asked me to come along and talk about some of the experiences that the broiler chicken industry has had in the past in relation to planning matters in Victoria. I guess it is fair to say that the chicken industry in Victoria has been under real pressure in terms of being able to expand the business and the contribution to the Victorian economy.

It currently provides about \$700 million worth of farm gate produce to the Victorian economy and employs about 10 000 people. If we go back 15 years, it was contributing about 28 per cent of the national production for chicken meat. Currently that has slipped to 20 per cent of the national production for chicken meat, so you can see that there has been a huge opportunity for economic growth lost to Victoria and jobs that have been lost to Victoria. A lot of that production has been taken up by South Australia and Queensland.

From a planning perspective, if I am a chicken farmer looking to start a new farm in South Australia, I can go through a planning process that would give me a planning approval in about a three-month time frame, and I can start establishing a chicken farm after that process. If I am in Victoria, I am looking regularly at a one-and-a-half to two-year time frame at best under the current arrangements. Clearly the bill, as it is envisaged, would necessarily add significantly to both the time frames and the level of uncertainty that is created around a proposal for a new farm.

The process for a new entrant into the broiler chicken industry at the moment, looking to establish a new or expand an existing farm, is that, firstly, you have to go and find a suitable block of land, which has suitable infrastructure available to it in terms of water and power and those types of things. Once you have found that block of land, you have to assess it against the relevant code, which is the broiler code, which is part of the planning scheme.

**The CHAIR** — On that, can I ask — and this is a point that has been, as it were, in my mind since I first read this bill — are there areas of inconsistency? For example, the broiler code has standing. There are established processes around the broiler code. Does this bill introduce an inconsistency with that current broiler code?

**Mr SHAW** — It does in that the broiler code deals with the issue of amenity and a number of other things that may have an impact on neighbours or the local community. Those things have all been dealt with exhaustively under the process that developed the broiler code in the first place. This adds an element of not necessarily getting to the merit of objection; it just gets to how many numbers — —

**The CHAIR** — It kind of adds a grenade almost in the middle of the broiler code.

**Mr SHAW** — It does. As a chicken farmer, I have been through the process a number of times where our family has established new farms. Before you start, you have to say, ‘Okay, I’m going to find a block of land. I’m going to put up a couple of million dollars to purchase that block of land and commit to a few hundred thousand dollars worth of planning process up-front’. I know that under the broiler code that — —

**The CHAIR** — Just on the cost, how does a small farmer deal with those planning costs?

**Mr SHAW** — It has got terribly difficult, to the point where small farmers cannot really justify that cost. The industry is being pushed more and more into the larger corporate type of farmers, because that sunk cost of planning is just enormous. The broiler code was put there for the whole purpose of giving the industry certainty. Basically if you comply with the broiler code, you should get your permit. But that has been overtaken by the fact that — in the 40 years I have been in the business, we have established six new broiler farms, starting from a 15 000-bird farm on 10 acres at Red Hill on the Mornington Peninsula to a 300 000-bird farm at Labertouche on 686 acres. But every time we have been to VCAT, and once you are in VCAT you are in the realms of significant cost implications, which are ongoing.

Part of my concern about this is that you are actually giving the community false hope so that, despite the fact that they may have no objections with any planning merit, they feel, ‘Okay, now we’ve got hope that we can take this to VCAT on the basis of the number of objections’, and create a huge amount of angst for the farmer, themselves and the community generally without any real hope that it is actually going to proceed in their favour, because they do not actually have any planning merit. I would have thought that the time, effort and money would be much better spent in sitting down and having a sensible dialogue, not necessarily about

whether this proposal proceeds or not but about what changes could be made to the proposal that would satisfy some of the concerns about what the objectors are feeling may impact on them.

**The CHAIR** — I am going to be very quick and finish with two very quick things. Do you think that this approach in the bill will lead to a decline in the activity in a number of areas, like the broiler industry?

**Mr SHAW** — Absolutely, necessarily. I get back to the uncertainty point that I got diverted from — the uncertainty of that. Not only do I have to go through that assessment, find a block of land, assess its merits, see that it meets all the requirements of the broiler code; I have now somehow got to try to assess what will be the level of public opposition to this particular proposal and what the merit of the public opposition is. That is another huge level of uncertainty that has been added to the process before I make the economic decision, ‘Yes, I want to invest’. As I said, if you are looking at these sort of semi-corporate farms, they will just not invest in Victoria. They would say, ‘It’s already too hard; you are just making it harder’.

**The CHAIR** — I have one further short question to Gerald, and that is — and I did not hear this clearly — you were arguing that instead of these being called ‘objections’ they should be called ‘considerations’ — —

**Mr LEACH** — ‘Submissions’ was the term I used.

**The CHAIR** — ‘Submissions’ was the word, and that would apply more generally under your proposal; is that what you are saying?

**Mr LEACH** — Yes, that is correct, Mr Chairman.

**Ms HARTLAND** — Thanks. That was a really good submission. I think you have clarified exactly how you feel about the bill. If I could take it, I suppose, a little outside of this bill and look at some of the things you might actually want to see in planning, having been on previous parliamentary committees where we looked at the right to farm and farming in the peri-urban areas, it has always been my contention that one of the things we actually need is proper buffer zones so that people who move into the country who do not know they are going to be living next to an active farm and do not know what that actually means will have that information before they purchase, whether it comes in a pack with their title or — are any of those the kinds of things you have actually considered? I suppose I am also asking: what are the things that government should look at about planning for farms rather than this?

**Mr LEACH** — Thank you. I think Emily is in a very good position to answer that question.

**Ms HARTLAND** — Fantastic.

**Ms WATERS** — Thank you. I think that it is a very good question, because we have to think strategically about how we can address some of these issues that the bill is trying to address. When we look at our planning system we see that there are opportunities in a strategic planning sense to ensure that we have those buffers and that we have, say, the higher density or the typical residential area or suburb filtering to the farming zone. Where we have the residential zone right up against the farming zone, that is often where we are getting reports from our members that there is that potential for the land use conflict. Also where we have legacy residential subdivisions that have created smaller lots in and around Port Fairy we have a lot of issues with managing the concerns of people who have bought a property that has existed for a very long time but it is a smaller subdivision, and it cannot be used for farming, or it is not used for farming.

Strategic planning is very important, as is giving councils the tools to manage these issues and educate residential areas about the importance of agricultural production and ensuring that strategic planning gets it right and creates those buffers so you do not have the residential, Fitzroy suburb right up against farming outside of Hamilton.

**Ms HARTLAND** — Yes, because I know from other parliamentary committees that people have moved to the country not aware of things like gas guns and netting of orchards and the fact that farms start very, very early in the morning, so I think it is a really important one. If we want good local food supply, we have to be able to manage that well.

**Mr LEACH** — If I could just add, through you, Mr Chairman, to Emily’s response, my recollection is that there used to be a section 32 certificate — I will stand corrected if I am wrong — that was required when people

moved into farming or rural activity zones. I am not sure exactly what the requirement was, but if they moved near farming areas, it was a requirement, as I understand it, that they be issued with this section 32 certificate or notice, which advised them of the sorts of issues that they would be confronted with in living next to farms so at least there was some preparedness for that. My recollection is that the requirement for that is now not there — that it has been withdrawn — so we do get that scenario where people move into a farming area for lifestyle purposes and find it is not quite the lifestyle that they had in mind. Some of us love the smell of animal manure, I might say. It smells like profit to me when I smell animal manure, but some people have a totally different attitude to it, sadly.

**Ms WATERS** — In section 32 statements, in the vendor statements, you do get the zone and the overlay, so you know that you are buying in a farming zone or a rural activity zone. What that actually means is that there is still a role for local council in educating their community on what that means.

**Mr RAMSAY** — Good to see you again, Gerry and Michael, and welcome, Emily. Thank you for your contribution. I thought David summed up your response well.

I just want to make a couple of comments in relation to the planning zones. To my mind this amendment would not be good for agriculture; in fact it would create a disincentive for further investment. I think Michael has already illustrated the difficulty that new investors wanting to invest in intensive farming would have if this amendment were passed. You are opening it up for a whole range of potential problems — objectors, minority groups, others who do not like the smell and farming generally. It might be in the face of a growth corridor. Farmers and agriculture do not need legislation that will encourage those to object in relation to the right-to-farm issues and the normal status of farming. I am pleased to see that you have been very forthright in your evidence this afternoon in suggesting that this bill would be a disincentive for further investment in agriculture, particularly intensive, and that it would have some detrimental effects on the current planning zones in the state of Victoria.

The issues I want to raise with you are in relation to councils, VCAT and the costs. I think Michael said that for a small business person or a farmer who has potential objectors to a planning permit, to go through local council, which is always very quick to handball to VCAT, it means that on many occasions that small business person or farmer will not want to pursue the legal recourse through VCAT, merely because of the costs associated with going to VCAT. I always remember some good advice to me was, 'If you can settle before going to VCAT, do it', because invariably the costs run so high through the process of VCAT that there are no winners. My concern would be that this particular amendment would almost force farmers and potential investors in farming to have to go through the VCAT process, which would come at a significant cost to them and agriculture generally.

So I see a whole lot of disincentives, with this amendment, to agriculture. There are enough problems associated with planning at the moment in Victoria. I remember that we had the flying squads, which tried to alleviate some of the timeliness issues in relation to planning decisions in applications put through council and VCAT. I am not sure if they are still going. As to the section 32 you referred to, if you remember, the previous minister for agriculture was trying to include in the section 32 issues around farming smells and other things that people might want to live next to. It never got there actually, so the section 32 does not include that, but it does give a background about, I guess, the geography and the enterprise itself.

Turning to the question, I know you have given some options in relation to submissions instead of objections, and I am not sure how that would travel in the Legislative Council. But other than allowing an amendment for objectors to be able to object to a planning permit or decision, how would you suggest that VCAT weigh community opinion or allow community opinion some engagement, which this bill is trying to do, towards proposed developments, without it compromising right-to-farm issues and investment in intensive farming and agriculture generally — to try to safeguard agriculture and its potential investments but also provide some community opinion in the decision-making process?

**Mr LEACH** — Thank you, Simon. I think the issue is not so much a matter of how would VCAT weigh that in relation to agriculture; the issue is should agriculture be placed in that position in the first place? I assume that the thought processes behind this proposed amendment are not related to planning issues in agricultural areas. If they are relevant and required in urban planning, then the obvious thing, as we propose, is that the zones that we mentioned that are agriculture related be excluded from it. The problem we have is that if this proceeded and VCAT or the local council had to consider the number of objections, or whatever else we might

want to call them, to it, then it would create that awful uncertainty that Mike spoke about, and we are already seeing a situation where Victorian agriculture in some respects, because of those planning requirements, is uncompetitive with agriculture in other states.

So there are two aspects to our competitiveness. There is the competitiveness of agriculture in Victoria. As a part of Australia as a nation, are we competitive with other states? If we are not, then we are going to be losing business, as we are in the broiler industry, to other states. Also, if we are imposing regulatory burdens — and when I say ‘regulatory burden’, just to have this extra process, if you like, in that planning requirement is a cost that is therefore a burden and it will make our agriculture less competitive with the nations that we compete with. We become less internationally competitive as well, which harms our exports. So it does not matter what process you put in place; it is the mere fact that it is there. If you look at the broiler and feedlot industries, they have already been through a community consultation process in developing the codes of practice.

Those codes of practice are developed with industry and the community. Government oversees those codes of practice, government can enforce them, so the consultation has already occurred. Do we want to then put another consultation process with the community into it? When we are saying ‘the community’, we spoke in our submission about ideological factors. We have seen where a proposed broiler farm was opposed on purely ideological grounds, simply because a number of objections were on the basis of the fact that they thought the chicken industry was cruel. Surely the fact that there is the code of practice there, which has gone through a community consultation stage, is all that is required in that instance.

**Mr RAMSAY** — Mike, why has the industry not tried to harmonise the buffer zones in relation to the broiler code between states?

**Mr SHAW** — Why aren’t they or why are they?

**Mr RAMSAY** — Why don’t they? In South Australia, as I understand it, they have smaller buffer zone requirements. The point being that a number of constituents have suggested to me that they are caught in the buffer zone trap, so you have five or six adjoining landholders and you have an intensive industry and the buffer zone actually includes those adjoining properties, where in South Australia it is less of a buffer zone. That is one of the planning issues, of adjoining land use.

**Mr SHAW** — I think the industry would love to, but that is a very difficult thing to achieve, to get all of the state governments to agree about anything really, but planning controls on — —

**The CHAIR** — And why should we on lots of issues? I am not sure we would want everything that South Australia or Queensland or New South Wales or Western Australia have on lots of areas. That is why we have our states.

**Mr SHAW** — Quite possibly. There has been quite a bit of discussion from the industry trying to get the relevant EPAs around the country to actually agree about how some of these things are determined and measured and what is appropriate, and they have not even been able to agree themselves as to what the best approach is, so I think harmonisation, whilst it would be in some ways aspirationally a good thing, is a very difficult thing to achieve.

**The CHAIR** — I think these things are case by case rather than always wanting to have the same system as another state. I thank the VFF for its submission, Mike, Gerald and Emily. I really appreciate the material that has been presented. The transcript will come back to you in the next period. Thank you indeed.

**Witnesses withdrew.**

