

NEW SOUTH WALES

Introduced by Mr Gareth Ward, MP

DRAFT NON-GOVERNMENT BILL

To be introduced by: Mr Gareth Ward, MP

New South Wales

Environmental Planning and Assessment Legislation Amendment (Agritourism) Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to reverse certain changes made by the *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022*,
- (b) to introduce a new proposed land use, Agritourism premises, and set out the development standards that will apply to the proposed use,
- (c) to make consequential amendments to certain environmental planning instruments.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 amends the *Standard Instrument (Local Environmental Plans) Order 2006* to reverse certain changes made by the *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022*. The schedule also amends the *Standard Instrument (Local Environmental Plans) Order 2006* to introduce a new proposed land use, Agritourism premises, and sets out the development standards that apply to this proposed use.

Schedule 2 makes consequential amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Schedule 3 makes a consequential amendment to *State Environmental Planning Policy (Housing) 2021*.

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Environmental Planning and Assessment Legislation Amendment (Agritourism) Bill 2023 [NSW]
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Schedule 4 makes consequential amendments to *State Environmental Planning Policy (Primary Production) 2021*.

Schedule 5 makes consequential amendments to *State Environmental Planning Policy (Precincts—Regional) 2021*.

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New South Wales

**Environmental Planning and Assessment
Legislation Amendment (Agritourism) Bill
2023**

No. , 2023

A Bill for

An Act to amend certain environmental planning instruments in order to reverse changes relating to agritourism made by the *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022* and other instruments; and for related purposes.

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Environmental Planning and Assessment Legislation Amendment (Agritourism) Bill 2023 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Environmental Planning and Assessment Legislation Amendment (Agritourism) Act 2023*.

2 Commencement

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

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Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

[1] Land Use Table

Omit the following from Direction 5—

- Agritourism;
- Farm experience premises;
- Farm gate premises;
- Primitive camping grounds;

[2] Land Use Table, Direction 5

Insert “Agritourism premises;” in alphabetical order.

[3] Clause 5.4 Controls relating to miscellaneous permissible uses [compulsory]

Omit “in buildings” from clause 5.4(5).

[4] Clause 5.4(8)

Omit “*not less than 9*”. Insert instead “*not less than 8*”.

[5] Clause 5.4

Insert at the end of the clause, with appropriate subclause numbering—

Agritourism premises If development for the purposes of agritourism premises is permitted under this plan, the gross floor area of the development, including verandahs, must not exceed 100m².

[6] Clause 5.18 Intensive livestock agriculture [compulsory if intensive livestock agriculture permitted with consent]

Omit clause 5.18(4)(b)(v)–(vii). Insert instead—

- (v) for a poultry farm—within 500m of another poultry farm.

[7] Clause 5.24

Omit clauses 5.24 and 5.25, including the directions. Insert instead—

5.24 Agritourism premises [optional]

- (1) The objectives of this clause are as follows—
 - (a) to allow agritourism on land used principally for primary production at a scale that does not adversely affect the principal use of the land for primary production,
 - (b) to balance the impacts of agritourism with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.
- (2) Development consent must not be granted to development for the purposes of agritourism premises on land unless the consent authority is satisfied that—
 - (a) the development will not result in noise or pollution that has a material adverse impact on the following on or near the land—
 - (i) residential accommodation,

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Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

- (ii) primary production operations,
- (iii) other land uses, and
- (b) the development will not have a material adverse impact on the following on or near the land—
 - (i) the visual amenity or heritage or scenic values,
 - (ii) native or significant flora or fauna,
 - (iii) water quality,
 - (iv) traffic,
 - (v) the safety of persons, and
- (c) the development is not on bush fire prone land or flood prone land, and
- (d) the land is suitable for the proposed development, and
- (e) the development is compatible with nearby land uses.

[8] Dictionary

Omit the definition of *agriculture*, paragraph (aaa).

[9] Dictionary

Omit the definitions of *agritourism*, *camping ground*, *caravan park*, *commercial farm*, *farm experience premises*, *farm gate premises*, *farm stay accommodation*, *landholding*, *manufactured home* and *primitive camping ground*.

Insert in alphabetical order—

Agritourism premises means a building or place—

- (a) on a commercial farm, and
- (b) ancillary to the farm, and
- (c) used to provide visitors to the farm, on a commercial basis, with the following—
 - (i) small-scale and low-impact tourist or recreational activities related to the agricultural use of the land, including the following, but not including motor sports, functions or conferences—
 - (A) farm field days,
 - (B) farm tours,
 - (C) horse riding,
 - (ii) agricultural products predominantly from the farm, supplemented by products from other farms in the region, or with services or activities related to the products, including the following—
 - (A) the processing, packaging and sale of the products, but not the processing of animals,
 - (B) the preparation and serving, on a retail basis, of agricultural products from the farm to people for consumption on the premises or as take away meals,
 - (C) tastings, cooking classes or workshops,
 - (D) the provision of information or education related to the products,
 - (iii) agricultural products sourced from farms in the local area.

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Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

camping ground means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short-term use, but does not include a caravan park.

caravan park means land, including a camping ground) on which caravans (or caravans and other moveable dwellings, are, or are to be, installed or placed.

commercial farm means a farm on which agriculture is undertaken that is a primary production business within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth, or part of a primary production business, including a business that—

- (a) was a primary production business, and
- (b) has temporarily ceased to be a primary production business because of a natural disaster, including a drought, flood or bush fire.

farm stay accommodation means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

Note— Farm stay accommodation is a type of **tourist and visitor accommodation**— see the definition of that term in this Dictionary.

[10] Dictionary, definition of “artisan food and drink industry”, paragraph (b)

Omit the paragraph. Insert instead—

- (b) a restaurant or cafe,

[11] Dictionary, definition of “cellar door premises”

Omit “*farm gate premises*” from the note. Insert instead “*retail premises*”.

[12] Dictionary, definition of “restaurant or cafe”

Omit the following—

also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

Insert instead “also provided.”.

[13] Dictionary, definition of “retail premises”, paragraph (b)

Insert before paragraph (c)—

- (b) cellar door premises,

[14] Dictionary, definition of “retail premises”

Omit “farm gate premises.”.

Schedule 2 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

[1] Clause 1.5 Interpretation—general

Omit the definitions of *Agritourism and Farm Stay Accommodation Exempt and Complying Development Map, annexe, campervan, caravan, human waste storage facility* and *significantly contaminated land* from clause 1.5(1).

[2] Clause 1.13 Savings provisions

Insert after clause 1.13(7)—

- (8) A development application or an application for a complying development certificate submitted but not finally determined before the commencement of the *Environmental Planning and Assessment Legislation Amendment (Agritourism) Act 2023* must be determined as if the Act had not commenced.

[3] Clause 1.19 Land on which complying development may not be carried out

Omit “, **Agritourism and Farm Stay Accommodation Code**” from clause 1.19(1).

[4] Clause 1.19(1)

Omit “, the Agritourism and Farm Stay Accommodation Code”.

[5] Clause 1.19(1)(c1)

Omit the paragraph. Insert instead—

- (c1) land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*, or

[6] Clause 1.19(5)(d)

Omit the paragraph. Insert instead—

- (d) land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*, or

[7] Clause 2.12 Development standards

Omit clause 2.12(1)(e). Insert instead—

- (e) be located behind the building line of a road frontage, and

[8] Clause 2.12(1)(o)

Insert after clause 2.12(1)(e)—

- (o) if it is constructed or installed in a heritage conservation area or a draft heritage conservation area—be located behind the building line of a road frontage.

[9] Clause 2.12(3)

Omit the subclause.

[10] Part 2, Division 1, Subdivisions 16C–16E

Omit the subdivisions.

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Environmental Planning and Assessment Legislation Amendment (Agritourism) Bill 2023 [NSW]
Schedule 2 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

[11] Part 2, Division 1, Subdivision 33AA

Omit the subdivision.

[12] Part 2, Division 2, Subdivision 14

Omit the subdivision.

[13] Part 9 Agritourism and Farm Stay Accommodation Code

Omit the part.

[14] Schedule 11 Conditions applying to complying development certificates under the Agritourism and Farm Stay Accommodation Code

Omit the schedule.

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Schedule 3 Amendment of State Environmental Planning Policy (Housing) 2021

Section 129 Definition

Omit “, but does not include farm stay accommodation” from the definition of *caravan park*.

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Schedule 4 Amendment of State Environmental Planning Policy (Primary Production) 2021

[1] Section 2.6 Savings provision relating to development applications

Insert after section 2.6(2)—

- (3) A development application or an application for a complying development certificate submitted but not finally determined before the commencement of the *Environmental Planning and Assessment Legislation Amendment (Agritourism) Act 2023* must be determined as if the Act had not commenced.

[2] Section 2.16 Certain development to temporarily contain livestock permissible without consent

Omit section 2.16(2) and (3). Insert instead—

- (2) Development for the purpose of keeping or breeding livestock for commercial purposes may be carried out on land to which this section applies without development consent if—
 - (a) the development is for a stock containment area, or other feeding or housing arrangements, during or immediately following a drought, flood, fire or similar emergency, and
 - (b) there is currently an agricultural land use lawfully occurring on the land.
- (3) Development for the purpose of keeping or breeding livestock for commercial purposes may be carried out on land to which this section applies without development consent if the development—
 - (a) is for either or both of the following—
 - (i) temporary agistment or housing,
 - (ii) weaning, dipping, tagging or similar husbandry purposes, and
 - (b) is not carried out in an environmentally sensitive area, and
 - (c) is not carried out within 100m of a natural watercourse, and
 - (d) is not carried out within 500m of a residential zone or an adjoining dwelling that is not associated with the development.
- (4) Development for the purpose of a goat depot may be carried out without development consent on land to which this section applies if the development—
 - (a) is not carried out in an environmentally sensitive area, and
 - (b) is not carried out within 100m of a natural watercourse, and
 - (c) is not carried out within 500m of a residential zone or an adjoining dwelling that is not associated with the development.

[3] Section 2.16(6), definition of “stock containment area”

Omit “a feedlot or a hardstand area”.

Insert instead “restriction facilities, a feedlot or other permanent works or structures”.

[4] Schedule 4 Application of certain standard provisions relating to primary production and rural development to non-standard local environmental plans and other instruments

Omit section 4(5)(b)(v)–(vii). Insert instead—

- (v) for a poultry farm—within 500m of another poultry farm.

Schedule 5 Amendment of State Environmental Planning Policy (Precincts—Regional) 2021

[1] Schedule 1D Snowy Mountains Activation Precinct

Omit definitions of *agritourism*, *farm experience premises*, *farm gate premises*, *primary production business* and *working farm* from section 3.

[2] Schedule 1D, Land Use Table, Zone SP3 Tourist, item 3

Omit “Agritourism;”.

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