



CRUICKSHANK PRYDE 42 Don Street, P.O. Box 857, Invercargill 9840 | T: 03-214 4069 | F: 03-214 4760 | office@cplaw.co.nz
Unit 23, Gorge Road Retail Centre, 159 Gorge Road, Queenstown 9300 | T: 03-441 2424 | F: 03-441 2426 | Also Main Street, Otautau

Welcome to the Winter–Spring 2014 edition of *Rural eSpeaking*. We hope you find the articles are both interesting and useful to you.

To talk further about any of the topics covered in this newsletter, please be in touch – our contact details are above.

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The next issue of Rural eSpeaking will be published in December.

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Copyright, NZ LAW Limited, 2014. Editor: Adrienne Olsen. E-mail: adrienne@adroite.co.nz. Ph: 04 496 5513.

Protecting Your Brand

Looking after the intellectual property

The issue of branding and marketing fruit has increased greatly in recent years as some of our horticultural industries have developed. As an example, the apple industry has come a long way in the last 20 years or so when the bulk of our apple exports were made up of two or three varieties, sold through one marketer (the old ENZA) and pretty much under one brand. The number and variety of apples now available, both in New Zealand and exported, has increased dramatically as are the countries into which those apples are now exported.

Branding and marketing is all about control of the intellectual property and how that intellectual property is used. There are often different parties who have an interest in the intellectual property of a particular idea or item.

Using the apple example above, typically, the owner of the plant variety rights might sub-licence those rights to another person or entity who will bring the apples to market. That person might have trademarked a name and/or logo under which the apples are to be marketed and will want to ensure that their rights to do that are protected, so that they can maximise the revenue stream from their marketing.

Therefore the contractual arrangements around the various aspects of intellectual property that go into introducing new varieties, propagating and ultimately selling the apples become critical. This is particularly so, as the fruit will almost certainly be propagated and grown on a number of different orchards, and these orchards may be leased by the fruit company doing the marketing and selling of the apples, or the apples may be grown by orchard owners who enter into contracts or licences with the owner of the brand. A number of factors need to be taken into account in these contractual arrangements. These arrangements will include:

- » An acknowledgement of the respective ownership/licensed rights to the intellectual property and the fruit (and any improvements or developments to the fruit)
- » Provision for the payment of royalties
- » A measure of control over the horticultural practices involved in propagating and growing the fruit prior to picking to ensure that standards are maintained
- » Control over the packing process, and
- » In the lease situation, dealing with ownership of the trees and the fruit produced from those trees, and the ability of the tenant to remove the trees at the end of the term.

The different entities that will be involved in this contractual scenario might include:

- » The owner of the Plant Variety Rights – the developer of the fruit
- » The nursery that propagates the plant material
- » The landowner who may not be the grower
- » The grower/packhouse
- » The owner of the brand – the marketer
- » The exporter, and
- » The overseas agent or distributor.

Ensuring your intellectual property rights are protected is crucial. Working out your priorities and working with your professional advisers will help ensure the best results for your crop. ■

Health and Safety Reforms

Who will be responsible on the farm?

Last year we wrote an article that summarised the Report of the Independent Task Force on workplace health and safety. Since that time the Health and Safety Reform Bill has been introduced to Parliament. The current Parliamentary term has now finished and the Bill has not been enacted. Whatever the shape of the next government, this legislation is likely to be a priority. The Bill contains 312 sections and represents significant reform to New Zealand health and safety laws as they relate to the workplace.

One of the areas that the Bill seeks to address is accountability. The Task Force had as an objective:

“that the law makes is clear to duty holders (those who create and/or are in the best position to manage risks to workplace health and safety) what their legal duties are and holds them to account for undertaking those duties.”

Responsibility in the rural sector

One of the issues that the rural sector faces is clarity as to whose responsibility health and safety might be given the way that many rural businesses are structured and the number of activities carried on by different entities on the same farm. Two examples of this would be:

1. Ownership structures. It's very common for farming operation ownership to be split between different entities. For example a common structure for a pastoral or dairy farm might be that land and buildings are owned by a trust but the farming activity is carried out by a company. The company would own the stock and machinery and pay rent to the trust who is a passive landowner.
2. Leasing. It's quite common for the farm or orchard to be leased by the landowner to an unrelated entity such as one of the large fruit growing or cropping companies. This can be an attractive lifestyle option for those who want to live in rural areas on the edge of town. In these situations, the landowner may know little if anything about the orchard or cropping businesses.

Because one of the aims of the Bill is to drive home responsibility to where it should rest, it becomes critical when structuring your farming business or dealing with the contractual arrangements that everyone is absolutely clear as to who is responsible for what. For example, in the lease situation, most leases will have a clause in them requiring the tenant to comply with *“all relevant statutory of regulatory rules and regulations”* and will often list particular statutes – Health and Safety in Employment Act 1992, Employment Relations Act 2000, Biosecurity Act 1993, Forest and Rural Fires Act 1977 and so on. To what extent does it actually protect you as the landowner if there is an accident on your property? Can you simply say, “The property is leased, the lease confers exclusive possession on the tenant, the tenant contracted to me that they would comply with all health and safety legislation therefore, I am not responsible in any way for what happens on my land?”

The Bill makes it clear:

- » At clause 26, that more than one person can have the same duty, and
- » The definition of ‘PCBU’ in clause 13, makes it clear that a ‘person conducting a business or undertaking’ includes a person conducting a business or undertaking **alone or with others**.

This means that each entity involved in the farming business, the landowner, the farmer and the contractors can have concurrent responsibilities which cannot simply be passed off from one to the other.

This level of responsibility can be particularly difficult where the landowner is passive and doesn't have any knowledge or experience in the particular farming activity or, the independent trustee of a landowning farming trust who meets his other trustees once a year in the accountant's office. From a legal (and moral) point of view, it will now be critical for any entity involved in a farming operation to:

- » Be very clear about who is in control in the work place and who is responsible for what, and
- » Make sure that your insurance follows where the risk lies. Where you are operating different entities, it does require you to sit down with your broker to ensure that the appropriate entity is properly insured for the appropriate risk.

If you're not directly in control of the workplace, such as in the landlord or trustee examples above, you'll need to show you have been involved in the process of identifying risk and ensuring that the workplace that you own or have some control over, is safe.

This proposed legislation makes some significant changes from the current situation. Health and safety on your farm is not something to be trifled with. If you're unsure about the new proposed provisions, please be in touch. ■

Over the Fence

Minimum wage order change

The minimum wage order has been changed to include a fortnightly minimum wage rate; it became effective on 26 June 2014. This change affects salaried employees on fortnightly rosters.

As we head into busy times on the farm with calving and lambing, it's essential that you ensure your employees are paid at least the minimum wage of \$14.25 for every hour worked.

It may be helpful for you to perform a calculation whereby you divide your employees' weekly or fortnightly gross salary by \$14.25 so you have a guide as to the number of hours each of your employees may work in each week or fortnight before falling below the minimum wage rate. Any hours worked over the calculated hours will need to be paid to your employee as a top up of at least the minimum wage of \$14.25 per hour.

Remember there is no ability to 'seasonally average' your employees' hours. This means if your employees have worked reduced hours during the winter these cannot be offset against the increased hours working during spring. You cannot avoid having to top up the wage/salary.

Animal Welfare (Dairy Cattle) Code of Welfare 2010 has been revoked

The Animal Welfare (Dairy Cattle) Code of Welfare 2010 has been revoked and replaced by a new Code which came into force on 13 June 2014. The amended code addresses the use of manually applied blunt force trauma (a blow to the head) for killing calves on the farm.

The amendment to the code of welfare applies to all people responsible for the welfare of dairy cattle and provides a minimum standard for emergency humane destruction:

- » Dairy cattle must be rendered immediately insensible and remain in that state, until death is confirmed, and
- » People undertaking emergency humane destruction must be suitably trained and competent in the procedures for handling and killing of dairy cattle.

Recommended best practice includes:

- » Free bullet firearms shot between 5–25 cm from the head
- » Shot guns should not be used to destroy adult animals
- » The use of suitable captive bolt firearms, and
- » The bleeding out of cattle as soon as possible after they have been rendered insensible

We suggest you review your on-farm practice for the destruction of calves in light of these amendments and also ensure any staff receive appropriate training in this area. It may also be important to check with your collector of destroyed animals as to what requirements they may have.

Farm buildings to be exempt from assessments

In July the government announced farm buildings are to be exempt from the requirements for assessments under its earthquake-prone buildings policy

The Building (Earthquake-Prone Buildings) Amendment Bill currently requires all buildings to be assessed within the next five years and for those under 34% of the building standard to be upgraded within a period of 15 years.

Farmers will be relieved the earthquake assessments are not required for their hay sheds, shearing sheds, milking sheds and implement sheds. ■