

With the recent slight morning chill in the air, autumn is now upon us. We hope you enjoy reading this Autumn edition of *Rural eSpeaking*.

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

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The next issue of Rural eSpeaking will be published in late Winter.

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Health and Safety at Work

A new era begins

The Health and Safety at Work Act 2015 comes into force on Monday, 4 April this year. Since the Pike River tragedy thrust workplace health and safety firmly into the limelight we have published several articles outlining the likely changes to health and safety law.

We thought it would be a useful exercise to summarise the main changes that have been made and how they will affect the rural community.

Being accountable

One of the major issues that arose out of Pike River was that of accountability. The general public seemed confused that after such a terrible disaster no one seemed to be held accountable. The Act addresses this by the creation of the 'PCBU' (a person conducting a business or undertaking). A PCBU can be a person or business and there may be more than one PCBU for the same workplace. It's the PCBU that has the 'primary duty of care' (and therefore liability under the Act) in a workplace. Officers of PCBUs (directors, partners or senior management) also face significant penalties under the Act for failing to exercise due diligence in ensuring the PCBU carries out its duties.

A farm is a typical example of one or more PCBUs operating at the same time. It's therefore critical for farmers to identify who is responsible for what. The Act also addresses accountability by:

- » Prohibiting the transfer of health and safety duties to others, and
- » Prohibiting insuring against health and safety risk.

Risks and hazards

If you operate a farming enterprise it's your responsibility to ensure that risks and hazards on that farm are identified. You must also ensure that procedures are in place to eliminate risks to health and safety, so far as reasonably practical.

It's not good enough to simply prepare (or purchase) a health and safety policy, put it in a drawer and think that you have fulfilled your duties under the legislation. You must ensure that your employees or contractors are aware of the policy and follow it. You need to provide adequate training to ensure that the policy is a 'living' thing rather than just a box to be ticked.

If you have contractors or other entities on your property then you must ensure that they have proper health and safety procedures in place and provide you with a copy of those procedures. Once again this shouldn't simply be a box to be ticked but be looked at properly to ensure that the procedures are appropriate. Even in these instances a farmer can't turn a blind eye if he or she sees a contractor doing things that would constitute a risk to health and safety.

Defining the workplace

Recognition of the farm as a unique work environment was acknowledged at the Select Committee stage. The farm 'workplace' is now defined as the place where 'farm work is actually being carried out at the time', and the farmhouse and related buildings are excluded from the definition of 'workplace'.

Under the Act no duty is owed to a person who is in a workplace for an unlawful purpose, such as trespassers or poachers. However as we have mentioned in previous editions of *Rural eSpeaking*, farms are often used for community purposes such as orienteering, tramping, school sports days, promotional events and so on. Often these uses are customary in as much a farmer may or may not be aware who is on the farm at any particular time. This is particularly so with farms that are used for hunting and tramping access. It may be that farmers will require some more formality around these activities. What part of the farm is a workplace is a movable feast, often with little time to give notice as to what is being carried out where and when.

Being practical

The other difficulty for the rural community is that farm jobs often tend to cover many disciplines – workers may operate heavy machinery, handle stock, work in potentially dangerous physical locations, during weather events and often for long hours all in the same day. The reality is the PCBU needs to assess all of the situations that those workers might be in and, as far as is practical, identify health and safety risks and ways to manage them. The days are gone where you can ask an employee without proper training to 'learn on the job'.

The 'she'll be right' attitude is no longer acceptable. There's no doubt that Worksafe New Zealand will be looking to put stakes into the ground as far as what is expected of employers in the new environment. ■

Time to Fence Those Waterways!

Resource Legislation Amendment Bill 2015

The Resource Legislation Amendment Bill was introduced to Parliament on 26 November 2015. The submission process is well underway with the Select Committee receiving submissions until Monday, 14 March 2016.

The Bill's main purpose is 'to create a Resource Management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way.' In the last election the current government was very clear in its desire to make changes to the Resource Management Act, and related legislation, to try to speed up and simplify Resource Management Act processes.

While much of the Bill is focused on trying to take out some of the uncertainty, time and cost of the Resource Management Act process, included with these broader aims is the following section 103(7):

"(hn) prescribing measures for the purposes of excluding stock from water bodies, estuaries and coastal lakes and lagoons, including regulations that –

- (i) apply generally in relation to stock or to specified kinds of stock (for example, dairy cattle);*
- (ii) apply generally in relation to water bodies, estuaries and coastal lakes and lagoons or to specified kinds of water bodies, estuaries and coastal lakes and lagoons:-*
- (iii) apply different measures to different kinds of stock or to different kinds of water bodies, estuaries, and coastal lakes and lagoons;*
- (iv) prescribe technical requirements for the purposes of the regulations, (for example, the minimum height and specifications with which any required means of exclusion must comply, such as requirements for fencing or riparian planting);*

(ho) Prescribing infringement offences for the contravention of, or non-compliance with, any regulations made under the preceding paragraph."

Sub sections (hn) and (ho) are additions to the regulation making a power of s360 of the Resource Management Act 1991. They give the government specific authority to make regulations that exclude stock from water bodies and also to prescribe offences for the contravention of those regulations.

Excluding dairy cattle

The government has publicly signalled its intention to introduce a national regulation to exclude dairy cattle from waterways by July 2017. If the Bill is enacted, the regulations above would give the government the power to do that. The regulations give the power to make different regulations in relation to different kinds of stock, or types of water bodies. They also go so far as giving the government the power to prescribe technical requirements of any means of exclusion such as fencing.

Interestingly enough, the Land and Water Forum produced its fourth report also in November last year. This report includes paragraph 197 which contains the following statement:

"The Forum view is that stock exclusion requirements should vary according to the type of livestock being farmed and the terrain. This balances environmental imperatives with the costs and impracticalities of excluding stock from waterways in different farming contexts."

The days of voluntary accords and different approaches from different local authorities may well be over. The government's intention is clear and it is giving itself the power to make rules to enforce its intention.

However the good news is the acceptance by both the government and the Land and Water Forum that different types of farming, terrain, and stock will mean different rules for specific situations. It seems the costs and practicality of exclusion are factors that will be taken into account when making regulations. ■

Over the Fence

Paid parental leave changes ahead

The government has made some changes to paid parental leave, with others to follow. It's important you know how this will affect your staff and business.

From 1 April 2016, staff who have worked for you for six months or more will be entitled to 18 weeks of government-paid parental leave, an increase from 16 weeks. For help with staff entitlements click [here](#). The calculation is based on:-

- » The baby's due date
- » How long you have employed the staff member
- » Their average pay, and
- » How many hours they work.

Parents of premature babies will also receive longer parental leave payments.

If you are self-employed, you can use the calculator to work out your own entitlements.

Upcoming employment law changes

More employment law changes are proposed this year. Last year the government announced a number of other measures designed to strengthen the enforcement of minimum employment standards. The Employment Standards Legislation Bill is yet to be passed. We will update you on the Bill's progress in the next edition of *Rural eSpeaking*.

Minimum Wage Review 2016

This year's minimum wage review has seen the adult minimum wage increase from \$14.75/hour to \$15.25/hour. The starting out and training minimum wage will increase from \$11.80/hour to \$12.20/hour. All these new rates come into effect on 1 April 2016.

We recommend you review all wage and salary structures to ensure your employees are paid at least the minimum wage at all times for hours worked.

It's well known that farm work fluctuates throughout the year. You must ensure that your employees are receiving at least the applicable minimum wage rate for any hours worked at all times. This is the case even when your employees are paid a salary. This may mean an employee's pay needs to be topped up at certain times of the year to ensure they are paid at least the applicable minimum wage for the hours worked. Keeping and maintaining accurate time and wage records is vitally important.

New property taxation legislation

Since 1 October 2015 transferors and transferees of property have been required to complete a Land Transfer Tax Statement in order to complete settlement. These provisions don't apply to Agreements for Sale and Purchase that were entered into before 1 October 2015 as long as the transfer is registered prior to 1 April 2016. From 1 April 2016 these provisions will apply to all transactions.

The only exception to completing a Land Transfer Tax Statement is if the transfer relates to Māori land as defined by Te Ture Whenua Maori Act 1993, or if the transfer is part of the Treaty of Waitangi settlement process. Overseas transferors and transferees must provide their IRD number equivalent for that country (eg: Australian Tax File Number) as well as their New Zealand IRD number.

There is an exemption for the 'main home', if the following criteria are met:

- » Transfer involves the main home
- » Main home exemption has not been used more than twice in the last two years
- » Party to the transaction is a natural person, and
- » Party to the transaction is not an offshore person.

All trusts must have their own IRD numbers whether they are a transferor or transferee. That includes non-income generating 'passive trusts' that own the main home, regardless of who is in occupation. Inland Revenue has advised that its processing time for IRD number applications is 8–10 working days. Please note that this does not include postage times. ■