

# Rural eSpeaking

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**GAWITH BURRIDGE**  
LAWYERS

Welcome to the first edition of *Rural eSpeaking* for 2017. We hope you find the articles in this e-newsletter both interesting and useful to your farming operations.

If you would like to talk further on any of these topics, or indeed any legal matter, please contact us – our details are above.



## Clean Water Package 2017

### What does this mean for farmers?

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### Give it some thought when buying or selling

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# Clean Water Package 2017

## What does this mean for farmers?

The government recently announced its *Clean Water Package*. The release has caused considerable controversy, largely around the proposed target of 90% of rivers and lakes being 'swimmable' by 2040 and, in particular, the *E.coli* guidelines for swimmable rivers being 540 *E.coli* per 100mls.

The Green Party and Labour Party were vociferous in their criticism of the government's announcement largely because the amount of *E.coli* that can be present in swimmable water has doubled.

As well, Forest and Bird advised the Minister for the Environment, Dr Nick Smith and the Minister for Primary Industries, Nathan Guy that it was withdrawing from the Land and Water Forum. Forest and Bird is a very influential pressure group in this arena; it

took legal action in relation to the proposed Ruataniwha Dam and that matter is still being litigated.

The Land and Water Forum brings together groups of stakeholders such as industry groups, electricity generators, environmental and recreational bodies, iwi, scientists and other organisations with a stake in fresh water and land management. The purpose of the forum is to try to develop a common direction for fresh water management and provide advice to the government on this issue. There are 67 non-government participants, and 13 central and local government partners that include local authorities and various government departments.

The issue of fresh water standards for waterways is highly political and is likely to remain this way in the foreseeable future.

## Where to from here for farmers?

Where does this government announcement leave farmers? Is their position any different from that set out in our article in

the Autumn 2016 issue of *Rural eSpeaking* which covered the Resource Legislation Amendment Bill 2015 which, when (or if), enacted will give the government power to prescribe regulations to fence waterways?

In answer to the questions posed above, the release of the *Clean Water Package* doesn't change the position of farmers at all. Sheep and cattle have been identified as major contributors to the level of *E.coli* in rivers and streams, and any attempt to control levels of that bacteria will involve keeping animals out of those waterways as far as possible.

The government's tinkering with the definition of 'swimmable' will have little effect on the need to keep animals as far as possible away from our streams and rivers.

As much as anything, the current furore over the government's package shows that the issue remains highly political – particularly with 2017 being an election year. There are well-funded and high-powered pressure groups involved; farmers cannot expect any relaxation in the fencing proposals that are currently on the table.

Interestingly enough shortly after the *Clean Water Package* was announced, the Environmental Defence Society released a report entitled 'Last Line of Defence: Compliance, monitoring and enforcement of New Zealand's environmental law.'

## Local authority compliance

One of the areas that the report examined was resourcing, as well as the technical capacity, for local authorities' compliance functions. While the report noted that regional authorities have been demonstrating increasing technical capacity for their compliance function, there is still a concern that there is political influence on decision-making, including the allocation of resources.

Clearly, monitoring compliance with the fencing of rivers and streams is going to impose a considerable burden upon our regional and unitary authorities.

In the meantime, however, we will keep you informed on the debate around the *Clean Water Package*. ■



# Good Husbandry



## Give it some thought when buying or selling

Agreements for the sale and purchase of rural land generally contain a 'good husbandry' clause. This clause is often inserted into the agreement as a 'boiler plate' or standard clause by real estate agents when preparing contracts. We discuss why it's better to tailor-make this clause to suit each transaction.

The standard clause is often worded along these lines:

*From the date of this Agreement until settlement, the Vendor shall continue to farm the property in a good and husband-like manner and in accordance with approved good farming practice in the district and shall neither overstock nor*

*under-stock the property, nor do anything to impoverish the soil nor remove or damage any improvement or fixtures on the property.*

However, both a seller and a buyer should give careful thought to the wording of this clause and its implications; it should be tailored to suit the particulars of any given transaction. This is particularly so for transactions where settlement is some time out from when the agreement was signed. It also needs to relate to properties where specific types of farming are being carried out.

## For sellers

If you are the seller, you will have presented your farm for sale, found a buyer and signed the agreement. Do you, however, want to be held to some external standard in relation to your farming practice (particularly where there are no published 'good standards')? Wouldn't you be better off by simply promising to continue to farm the property in the same manner as you have been in the past? Details of your farming practice can be supplied prior to the agreement being signed.

## If you're buying

A buyer may want to be particular about certain things such as:

- » Do you expect an application of fertiliser between the date the agreement is

signed and settlement? If so, how much and what type?

- » Are you expecting some paddocks to be 'locked up' so that there is plenty of grass when you take possession? If there are winter crops to be grown (if you would ordinarily expect that to be done), it should be specified.
- » For horticultural properties growing crops such as kiwifruit and where there are spray programmes, it's essential to have records of these for export certification. (There should be an obligation to comply with Zespri-published spray programmes, etc.)
- » For orchard properties, spray programmes should be clearly recorded and should be available on settlement. If pruning usually takes place at the time that falls between the agreement being signed and the settlement date then this issue needs to be covered. It's possible you may want to do the pruning yourself to ensure that it's carried out the way you want it done.

## Individual variations of good husbandry

The issue of further defining what is meant by 'good husbandry' is particularly important because farmers and orchardists often have their own specific ways of doing things which has suited them and the way they farm or

grow crops or fruit. These practices vary not only from district-to-district, but also farm-to-farm.

What is 'good practice' to one farmer may not be regarded as good practice to another farmer. In some instances, the type of farming or horticultural activity that a buyer will carry out is different from what the seller carried out. What may be 'usual' for the seller may either not be necessary for the buyer, or may cause difficulties for the buyer if they are changing farming methods.

## Buyers and sellers should decide together

As with all contractual provisions, the response to the good husbandry clause shouldn't be taken as read. It's a matter that both parties to the agreement need to consider, discuss and agree as specifically as possible as to how the farm or orchard should be run and managed between the date the agreement is signed and the settlement date.

Rural legal and accounting advisors may be very experienced in dealing with rural transactions but their experience tends to be in relation to that particular field of expertise such as tax matters, ensuring the agreement is binding and clear, etc. Their expertise, however, doesn't usually run to knowing how their rural clients farm or crop on a day-to-day basis, so input is required from the actual farmers to agree on their particular expectations. ●

# Over the Fence



## Minimum wage review 2017

The government reviews the minimum wage each year. On 1 April 2017 the adult minimum wage will increase from \$15.25 per hour to \$15.75 per hour. The starting out and training minimum wage will increase from \$12.20 per hour to \$12.60 per hour.

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 is well known that work required on the farm 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 your employees' 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 and a legal requirement of employers. ●

## Further implementation of bobby calf regulations

Last year new regulations for young calves were introduced and took effect from 1 August 2016; we covered this in *Rural eSpeaking*, Winter/Spring 2016.

On 1 February, a new regulation came into force; bobby calves are to be fed at least once in the 24 hours before slaughter (a reduction from 30 hours).

Further regulations are to take effect this year including:

- » *Proposed 1 August 2017*: Suitable shelter will have to be provided for young calves before and during transportation, and at points of sale or slaughter, and
- » *Proposed 1 August 2017*: Loading and unloading facilities will have to be provided and used when young calves are transported for sale and slaughter. The facilities must be designed so that a calf is able to walk on or off the transport.

Infringement fees and fees of varying levels may apply to those who do not follow these regulations. ●

## Tenant damage ruling overturned in the District Court

Many rural employers provide accommodation to staff as part of an employment package.

Recently a controversial decision of the Tenancy Tribunal, where a tenant's dog ruined the carpets of a rental property, has been overturned on appeal to the District Court. This decision will be of interest to many in the rural sector.

The case involved a tenant's dog urinating on carpet in a rental property. The damage was such that the carpets throughout the house had to be replaced. The Tenancy Tribunal found the tenant wasn't liable for the damage caused as it wasn't intentional. The tenancy agreement stated no pets were allowed.

The decision was overturned on appeal in the District Court. The tenant was ordered to pay for carpet replacement costs, court costs and lost rent. The judge was of the view that the Tenancy Tribunal adjudicator was wrong for finding that the tenant wasn't responsible because the damage was unintentional. ●