

Rural eSpeaking

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LAWYERS

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Welcome to the Summer edition of *Rural eSpeaking*, our final issue for 2023.

As we are publishing soon after the National-ACT-New Zealand First coalition was formed, we focus on the proposed changes from the new government in the farming sector.

We hope you enjoy reading this content, and find these articles are both interesting and useful.

If you would like to talk further about any of the topics we have covered in *Rural eSpeaking*, or indeed on any other legal matter, please don't hesitate to contact us. Our details are at the top right.



National, ACT and New Zealand First coalition

What can agriculture expect?

All three political parties that make up the governing coalition campaigned on the premise that agriculture is the backbone of New Zealand's economy.

Each party stated that the rural sector should be supported, rather than what they saw as being hindered by government, particularly in the areas of regulation, red tape and climate policy.

We describe the issues the three parties agree on, as well as noting some differences in approach.

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Three Waters and Resource Management Act 1991 replacement legislation

To be repealed

The election has resulted in a National Party-led coalition that campaigned its commitment to repeal the Labour government's Three Waters legislation.

Three Waters is to be replaced by a Local Water Done Well plan. As for the two replacement RMA statutes, the government has labelled these as too complex.

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Over the fence

Family home v homestead: implications for relationship property

When a relationship breaks down, it is always difficult dividing up your joint assets. In a rural context, under the Property (Relationships) Act 1976, it is particularly important to classify where you live as your 'family home' or a 'homestead.'

Road user charges: when to pay them?

Currently the road user charges are paid separately if you own a very heavy vehicle or lighter vehicle that runs on untaxed fuel, eg: diesel.

Casual employees v seasonal workers

Heading into the summer, it is very important to get the distinction correct – both for you and your employees.

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All three political parties that make up the governing coalition campaigned on the premise that agriculture is the backbone of New Zealand's economy. Each party stated that the rural sector should be supported, rather than what they saw as being hindered by government, particularly in the areas of regulation, red tape and climate policy.

In this edition, we cover the proposed repeal of the Three Waters and resource management replacement legislation on [page 3](#), but what else are we likely to see from this government?

The parties' agreements

There are two separate agreements between the coalition partners – the National-ACT Coalition Agreement and the National-New Zealand First Coalition Agreement. Both agreements should be read in conjunction with the other and, in the agriculture area, are quite similar in their aims. Both agreements contain commitments to:

- + Reduce red tape and regulatory blocks
- + Reverse the ban on live animal exports while still ensuring high standards of animal welfare
- + Reform the National Animal Welfare Advisory Committee
- + Improve farm environment plans so they are more cost-effective and pragmatic for farmers, and to be administered by regional councils and targeted at a catchment level
- + Replace the National Policy Statement for Freshwater Management to better reflect the interests of all water users, and
- + Liberalise genetic engineering laws.

Some differences in approach

There are some areas, however, where the coalition agreements aren't exactly the same, but look to achieve similar outcomes. For example, in the National-ACT agreement, the parties agree to maintain a split-gas approach to methane and carbon-dioxide through to 2050, and to review the methane science and targets in 2024 for consistency, with no additional warming from agricultural methane emissions.

The National-ACT coalition agreement also contains a commitment to amend the Overseas Investment Act 2005 to limit ministerial decisions to national security concerns (to keep politics out of it as much as possible) and to make decision making more timely.

The National-New Zealand First agreement commits to incentivise the uptake of emissions reduction mitigations such as low methane genetics and low methane producing animal feed.

In addition, that document also contains an agreement to amend the National Environmental Standards for Commercial Forestry regulations to place a duty upon harvesters to contain and remove post-harvest slash.

Grappling with red tape

Much of the regulation and red tape that has been criticised by the three coalition parties comes from a need to comply with international obligations. A change of government does not mean a change of those obligations and, for example, just in the last week or so the New Zealand government has signed up to the COP28

Declaration on Food Production and Sustainable Agricultural Adaptations. The Declaration seeks to protect the livelihoods of farmers while, at the same time, recognises that agriculture and food production has to 'urgently adapt to respond to climate change.'

The UAE Climate Change and Environment Minister, Mariam Almheiri, said, "Countries must put food systems and agriculture at the heart of their climate ambitions, addressing both global emissions and protecting the lives and livelihoods of farmers living on the front line of climate change."

Somewhat predictably, Greenpeace New Zealand responded by saying that this country needs to transition to a more organic farming system and that the New Zealand government should introduce policies that bring us into line with global commitments.

While the three coalition partners are indicating a new support for agriculture, and with the two associate Ministers of Agriculture both being farmers, a more practical approach to deal with climate and water issues is being signalled. New Zealand has international commitments that it must fulfil, as well as already recognised issues of water quality. These issues will not go away.

Looking ahead

It will be interesting to see, in practical terms, what is likely to happen in the agriculture sector over the course of this administration.

In terms of the immediate changes or focus on specific issues that are likely to arise, the government's 49-point 100-day plan



includes the repeal of the Water Services Entities Act 2022, the Spatial Planning Act 2023 and Natural and Built Environment Act 2023. The only other items that directly relate to agriculture are the government's commitment to improve the quality of regulation, to cease implementation of new Significant Natural Areas and to seek advice on the operation of the existing areas.

Apart from those issues, there is a commitment to meet with councils and communities to establish reasonable requirements for the recovery from Cyclone Gabrielle and other major recent flooding events that have had a severe impact on some rural communities, particularly on the East Coast, Hawke's Bay and the greater Auckland area.

As much as anything, we can expect to see a more collaborative approach to issues such as climate change and protecting the natural environment that, in the eyes of many in the agricultural sector, gives the sector (as one of the main drivers of our economy) the respect it deserves. +

Three Waters and Resource Management Act 1991 replacement legislation

To be repealed by new government

The 2023 election has resulted in a National Party-led coalition, that campaigned on a commitment to repeal the Labour government's Three Waters legislation and the Resource Management Act 1991 (RMA) replacement legislation. It has confirmed these these statutes will be repealed within its first 100 days in office.

Three Waters to be Local Water Done Well

The previous government introduced Three Waters to reform water management by shifting it away from New Zealand's 67 councils, and handing it to four large co-governed regional entities. It was entitled 'Three Waters' as the legislation related to three main types of water infrastructure: storm water, drinking water and wastewater. In April this year, after much criticism, Three Waters was renamed Affordable Water with 10 publicly owned water services entities to be established.

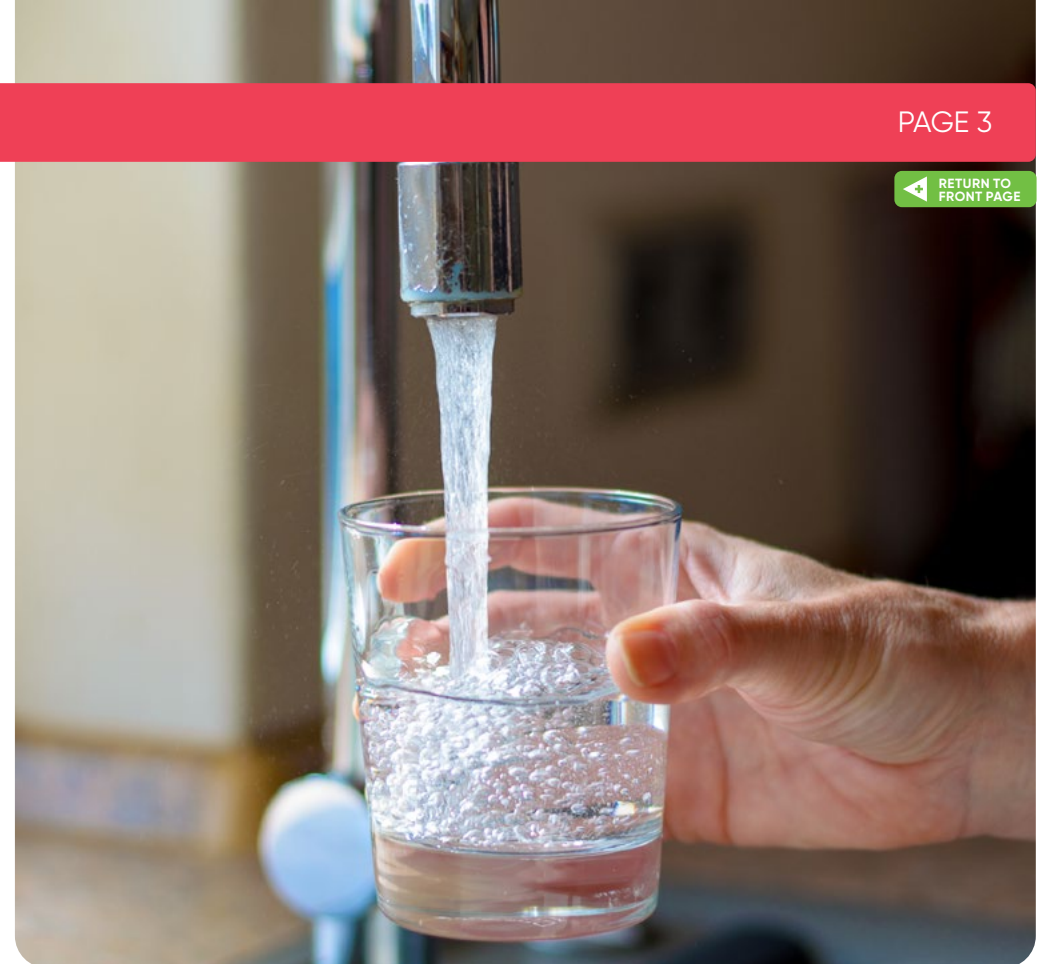
The new government intends to introduce its Local Water Done Well plan that will:

- + Repeal Three Waters and scrap the co-governed mega-entities
- + Restore council ownership and control
- + Set water quality and infrastructure investment rules, and
- + Ensure water services are financially sustainable.

Within one year of repealing Three Waters, councils will be required to deliver a plan detailing how they will transition their water services to the new model that meets water quality and infrastructure investments rules, while being financially sustainable in the long-term. Communities, via their local council, will retain ownership of their assets.

Under Local Water Done Well, a Water Services Regulator will be introduced; its role will be to set and enforce water quality standards across New Zealand. It will also be responsible for developing and enforcing rules around the management of stormwater and wastewater that will include setting standards for acceptable discharge and mitigating environmental risks to rivers and beaches.

Local councils will have to present a model for the delivery of water services that is financially sustainable and meets the strict rules for water quality and water infrastructure. If a council cannot achieve financial sustainability by, for example, gaining access to long-term borrowing, the government will provide limited one-off funding to bridge the gap. Support will be decided on a case-by-case basis; Crown funding can only be used for projects needed to transition to a sustainable footing, not for day-to-day delivery of water services.

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Resource Management Act 1991

In February 2021, the Labour government announced that the RMA would be repealed and replaced with three new statutes: the Spatial Planning Act, the Natural and Built Environment Act and the Climate Adaption Act. The first two statutes were passed in August; the Climate Adaption Bill did not pass before October's general election. Early in its election campaign, the National Party labelled the RMA-replacement legislation as complex and pledged to repeal them within its first 100 days of office.

The National Party had agreed that the RMA needed fixing but instead campaigned on its own changes.

The National Party's coalition agreement with ACT and New Zealand First reflects all parties' commitment to reduce red tape. In particular, the government wants to make it easier to obtain consents for infrastructure (including renewable energy), building houses, and aquaculture and other primary industries. The coalition agreement also presents a desire for 'allowing farmers to farm' which suggests the red tape cut from the RMA will lead to a reduction in bureaucracy and more time spent actually farming.

The new government has stated that it will begin to work on a longer-term programme to repeal the RMA, however the detail of this plan is yet to be announced. We will keep you informed during that process. +

Over the fence



Family home v homestead: implications for relationship property

When a relationship breaks down, it is always difficult dividing up your joint assets.

It is important when deciding the division of relationship property under the Property (Relationships) Act 1976 (PRA) following a separation, or when forming a contracting out agreement, to accurately classify the home in which you and your partner/spouse live. The overall structure of the property will define whether your home is classified as the 'family home' or a 'homestead.'

Family home: The PRA defines the family home as a property, including all land, buildings and improvements, which a couple generally, or primarily, reside in as their family residence. The property within the whole title must be used for the

benefit of the relationship to be classified as the family home. In this case, all land under that title must be shared equally in a separation situation unless you as a couple have a contracting out agreement specifying the division of the property.

Homestead: Where only part of the property within the whole title is used for the benefit of the relationship, the portion attributable to the relationship may be considered the 'homestead' instead of the 'family home.' In this case, the remainder of the property may not be subject to the PRA principles of equal sharing, particularly if it is owned by a third party such as parents of one of the parties.

A family home will be considered a homestead if a portion of the property within the title is used by a couple as their general, or primary, family residence but the remainder of the title is used for the overall economic gain of another entity. This is more common in the rural context where couples reside on the farm but only a portion of the overall title contains the family home and the remainder is used for the economic gain of their rural business.

In this case, only the portion of the title considered to be the homestead would be considered in the division of relationship property, with the remaining property possibly not subject to the equal sharing principles of the PRA.

Road user charges and when to pay them?

The government imposes taxes on fuel through a road user charge (RUC) to collect funds for the maintenance and development of our roads. For most people, this tax is included in the petrol price.

Some vehicle owners, however, must pay the RUC and their fuel separately. If you own a vehicle weighing more than 3.5 tonnes, or a vehicle weighing less than 3.5 tonnes that runs on untaxed diesel, you must pay the RUC.

Your RUC licence is paid in advance to allow you to travel the distance purchased – usually in blocks of 1,000 kilometres.

You must always display the appropriate RUC licence on the inside of the passenger's side of the front windscreen of your vehicle. Once your vehicle has travelled the distance covered by the RUC licence, you must renew your licence.

Owners must keep records of their vehicle use and have a hub odometer installed to accurately measure the distance it travels. Most vehicles that are subject to RUCs are sold with a hub odometer pre-installed.

Electric cars (EVs) do not currently incur RUCs. The new government, however, has indicated that EVs will pay the RUC from 1 April 2024 onwards.

Casual employees v seasonal workers

Seasonal workers are employed in certain sectors (particularly agricultural and horticultural areas) with the exclusive purpose of doing seasonal work, usually to assist with an increase in seasonal production requirements. Although seasonal work is temporary by nature, employers must be aware of the minimum entitlements for seasonal workers. There is a distinction between 'casual' workers and 'seasonal workers' in general. The Employment Relations Act 2000 requires specific clauses in employment agreements for these workers.

Casual employment: a casual worker is employed to work on shifts that are offered and accepted. There is no requirement for them to accept work you offer. In between periods of work, this worker is not considered to be employed by you.

Seasonal work: generally speaking, a seasonal worker is employed to work the entire season. These people are permanent employees on a fixed-term basis who are likely to be employed under a fixed-term agreement¹. It is important that your seasonal worker's employment agreement is drafted according to the specifics of the job.

If you need help with employing this summer's casual and seasonal workers, please don't hesitate to contact us. It's vital to get these employment agreements correct – both for you and your employees. +

¹ Section 66, Employment Relations Act 2000.