

Rural eSpeaking

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Welcome to the Autumn issue of *Rural eSpeaking*, our first edition for 2024.

We hope you enjoy reading this e-newsletter, 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.

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Significant Natural Areas

Suspended while government overhauls RMA

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It comes as a timely announcement after unsuccessful prosecutions of two rural landowners due to a council having wrongly identified wetlands on private farmland.

So what are SNAs, how do they currently affect our rural landowners and how will they be addressed in the future?

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Live animal exports

Government intends to lift the ban

In April 2023, following intense pressure from animal welfare organisations, the Labour government banned live animal exports. An independent review had stated that New Zealand's international reputation was being damaged by its live animal export programme because of animal welfare standards being breached.

The current government has, however, confirmed it intends to lift the ban on live animal exports but with 'gold standard' rules to protect animal welfare and safety.

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Over the fence

Contract grazing

Contract grazing is one of the ways you can farm that does not require land ownership. It is an arrangement where land ownership, livestock ownership and organising the grazing can all be managed separately.

90-day trial periods available again for all employers

As indicated pre-election, the government reinstated the 90-day trial periods for all employers.

Minimising phosphorus in waterways

Dairy farm fertiliser effluent contains phosphorus that may enter freshwater from runoff or leaching from paddocks. The NPS-FM 2020 provides guidelines for phosphorus management.

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Significant Natural Areas

Suspended while government overhauls RMA

Associate Minister for the Environment, Andrew Hoggard, announced on 14 March 2024 that the government will suspend the Significant Natural Areas (SNAs) requirements while it overhauls the Resource Management Act 1991 (RMA). It comes as a timely announcement after the Greater Wellington Regional Council's (GWRC) unsuccessful prosecutions¹ of two rural landowners due to the council having wrongly identified wetlands on private farmland.

So what are SNAs, how do they currently affect our rural landowners and how will they be addressed in the future?

Defining an SNA

SNAs are areas containing 'significant indigenous vegetation' and 'significant habitats of indigenous fauna' that must be protected to ensure ongoing biodiversity. The basis for defining and identifying SNAs is in section 6 of the RMA:

'6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall *recognise and provide* [our emphasis] for the following matters of national importance:

...

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna: ...'

While the RMA is nearly 33 years old, it was only in August 2023, when the National Policy Statement for Indigenous Biodiversity came into force, that a mandatory standardised approach and criteria were introduced to protect SNAs under s6. In practical terms, the Policy Statement required regional councils to identify and map SNAs within their territory (including on private land) and include them in their district plans by August 2028.

Implications for rural landowners

Once an SNA has been identified, it means that the area is noted on the council's records. The use to which that land can then be put is more controlled. That doesn't necessarily mean that existing uses of that land will be stopped – although it could. It does mean, however, that generally speaking existing activities are unlikely to be able to be intensified and new activities are likely to be subject to tighter controls – if permitted at all.

There is no direct government compensation for a landowner who has an SNA identified on their land. The SNA identification process has been somewhat controversial. This is partly because the RMA does not define 'significant' and, as a result, it has been left to each council to interpret this, largely using case law and ecological guidance.

Regional councils' interpretation and identification of areas to protect under the RMA has recently been highlighted by the GWRC's two unsuccessful prosecutions of rural landowners, one of which has



been labeled by the Court of Appeal as a 'miscarriage of justice.'

In both cases, the GWRC was found to have incorrectly identified wetlands on private farmland. Although the GWRC's prosecutions were unsuccessful in both cases, they illustrate how severe the penalties can be under the RMA. In one case, Mrs Crosbie was fined \$118,742 as the owner of the property, and Mr Page was sentenced to three months' imprisonment (which he had already served prior to the Court of Appeal hearing).

The future of SNAs

The message from this government has been very clear – stop mapping and imposing SNAs for three years while it reviews the RMA. Mr Hoggard has said that quickly suspending the SNA requirements

was to ensure councils did not waste resources and efforts on requirements that were likely to change. He has also asked officials to review existing SNAs.

The suspension, however, will not change the need for councils to protect areas of national importance under s6 of the RMA. Arguably, regional councils could still identify areas on private land to protect, and they may impose restrictions on private landowners on the use of such land. Nevertheless, with the clear message from the government to not waste resources in this area, it is unlikely that we will see regional councils identifying new areas to protect until the government provides further guidance to those councils or new resource management laws are passed. +

¹ Page v Greater Wellington Regional Council [2024] NZCA 51 and Greater Wellington Regional Council v Adams [2022] NZEnvc 025.

Live animal exports

Government intends to lift the ban

In April 2023, following intense pressure from animal welfare organisations, the Labour government banned live animal exports. The basis of the ban was centred on an independent review that New Zealand's international reputation was being damaged by its live animal export programme because of animal welfare standards being breached.

The government's plan

With the ongoing pressure from SAFE (Save Animals From Exploitation) and other animal welfare organisations, the government is proceeding with caution. It intends to introduce amendments to the Animal Welfare Act 1999 that will impose strict regulations and ensure a 'gold standard' of care. This includes fit-for-purpose live export ships and certification regimes for the livestock and their destination country. The government believes these regulations will protect animal welfare and safety.

The government has not indicated the timing for these proposed legislative changes.

The good ...

The answer is obvious – revenue. In 2022, before the ban on live animal exports, revenue of \$524 million was generated for the farming sector. Reports say the ban resulted in a loss of between \$50,000–\$116,000/year per farm² that, in the current economic climate, is significant to those who have lost this source of revenue.

The return of live animal exports may bring some financial relief to farmers. With the level of red tape involved, the actual benefit of live animal exports is unclear.

The bad ...

No animal, except of course those of the aquatic variety, is designed to sustain long journeys by sea. Exporting live animals to China, for example, can take anywhere between 15–40 days and, during that time, the animals have endured rough seas, long periods of standing in their own excrement, heat stress and injuries. The conditions during the journey are aggravated further because once the ship docks, there are no assurances of continuing animal welfare and safety on land. Many importing countries lack the minimum welfare standards that New Zealand enforces.

And the ugly

While petitions have been submitted and lobbyists are in full force in New Zealand, elsewhere in the world live animal exporting continues to be practised. Earlier this year, 2,000 cattle and 14,000 sheep spent two weeks enroute from Perth to the Middle East, only to be turned around and returned to port at Fremantle where they remained on the ship for almost six weeks while the exporter attempted to obtain a new export permit. The Australian government is now under immense pressure to follow through with its own election promise to ban live animal exports.

² Livestock Export New Zealand.

³ Ibid.

Will our government follow through on lifting the ban?

That remains unknown. Each side of the argument will continue to pressure the government to make what that side believes is the right decision.

There remains a strong belief that live animal export represents such a small share of agricultural revenue (0.2%)³ since 2015 that the damage to

New Zealand's 'clean' reputation is far worse than the benefit of the export receipts.

What farmers can certainly expect is that if the live animal export ban is overturned, there will be stricter regulation and more red tape, and the costs associated with those increased regulations may be onerous. Farmers can expect an update to this process this year. +



Over the fence



Contract grazing

Contract grazing is one of the ways you can farm that does not require land ownership. It is an arrangement where land ownership, livestock ownership and organising the grazing can all be managed separately.

Any species of livestock that are bred for meat or dairy (for example: cattle, sheep, goats or deer) can be the subject of contract grazing arrangements.

When involved in contract grazing, it's imperative that you have a written contract that ensures a mutual understanding and definition of the obligations and responsibilities amongst the parties.

It is also important to include an animal health programme ensuring the animals' welfare is protected and maintained, including the day-to-day management, health management, animal arrival

obligations and reproduction requirements. The contract should include how and when payments should be made, and how any conflicts could be resolved.

The arrangement can involve up to a maximum of three separate entities each carrying out a specific role – the landowner, the livestock owner and the grazier (grazing manager). The grazier oversees the grazing activities and provides management expertise to the land and livestock owners.

If you are involved in contract grazing, don't hesitate to contact us when you need to organise the contract.

90-day trial periods available again for all employers

As it had indicated pre-election, the government reinstated the 90-day trial periods for *all* employers. The 90-day trial period has had something of a flip-flop history.

First introduced in 2008, trial periods were initially applicable for employers with 19 or fewer employees; the overarching idea was that it would reduce the risks that employers face when hiring a potential employee. In 2010, the 90-day trial period was extended to all organisations – whatever their size. In 2018, the Labour coalition amended the law back to being applicable to only employers who had fewer than 20 employees. However, since December 2023, the 90-day trial periods have been reinstated for organisations of all sizes. There is ongoing debate that the 90-day trials diminish the risks for

employers and increases the uncertainty for employees.

A 90-day trial period can be used for your employees if they have not previously worked for you. For you to include a trial period when hiring a new employee, you and your prospective employee must agree to the trial period *before* they start work. The trial provision must be included in their employment agreement to be able to terminate within that trial period. If you want to dismiss your 'trialled' employee, it's essential the correct steps are taken during the process.

You should note that your dismissed employee is not entitled to bring a personal grievance in respect of the dismissal if it is within the trial period. It's important to be aware, however, this does not prevent your employee raising a personal grievance on other potential qualifying grounds such as discrimination or bullying.

We strongly recommend you talk with us early if you intend including a trial period or using a trial period to dismiss your employee. Getting it wrong can cause much distress for them, and a great deal of money and time for you.

Minimising phosphorus in waterways

Most farmers work hard to manage the water quality on their properties. They change grazing arrangements, manage their fertiliser applications, fence riverbanks and wetlands, plant trees and place sediment traps.

Dairy farm fertiliser effluent contains phosphorus that may enter freshwater from run off or leaching from paddocks. Although phosphorus is essential for plant growth and crucial for food security, it leaves a devastating footprint on the environment. A key ingredient in synthetic fertilisers, the damaging impacts are seen when phosphorus contaminates lakes, rivers and (ultimately) the ocean. Phosphorus can encourage the growth of algae in fresh water that pollute and degrade the health, mauri and wairau of our water. It means our waters may not be suitable for swimming, fishing and drinking, and affects its biodiversity.

The good news is, however, that in many areas the amount of phosphorus in our waterways is declining. All farmers should minimise the impact of phosphorous leaching by stock exclusion, creating riparian buffers, undertaking planting and preventing runoff from critical source areas.

The National Policy Statement for Freshwater Management (NPS-FM 2020) provides guidelines for monitoring and managing dissolved reactive phosphorus in rivers and how freshwater should be managed. Farmers are recommended to apply phosphorus to paddocks only if necessary. An increase in plant productivity could lead to a decrease in run off and less erosion. Using a phosphorus index ensures you can find paddocks that have high potential for phosphorus loss and therefore avoid using that fertiliser. +