

Rural eSpeaking

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M A C T O D D

L A W Y E R S

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Welcome to the Summer, and final, edition of *Rural eSpeaking* for 2018. We hope you have had a successful farming year and that the upcoming summer (when it arrives) is not too hot, too wet, nor too dry. Enjoy the articles in this issue of *Rural eSpeaking*. If you would like to talk further with us on any of the topics covered, please contact us – our details are above.

We would like to thank you for your support this year. We all wish you a very Merry Christmas, and a safe and happy 2019.



Agri-tourism and food

The legal implications of diversifying your farming operation

Agri-tourism and food are growing sectors in New Zealand. We have farm tourism where tourists are shown working farms with activities such as sheep dog and shearing exhibitions. Artisan producers are growing their own products and then processing them into, say, cheese, and free-range pigs are becoming salami, bacon and ham.

We look at some of the legal implications to consider when you diversify your farming operation in these ways, particularly with regard to health and safety in the workplace and food safety.

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Wandering stock

The right to impound and to claim for damages

One of the perennial problems that farmers face is that of stock wandering or stock getting out and interfering with, or causing damage to, neighbouring properties. Generally speaking, the issue of having a small number of stock grazing on your land for a short time until they are put back in the neighbour's property may not be too great a concern.

There are, however, some fairly serious issues that can arise, particularly where stock from a pastoral farm, for example, gets into cropping or orchard land where the damage could not only relate to the crops that are eaten or destroyed but also could cause issues with export or organic certification.

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Agri-tourism and food

The legal implications of diversifying your farming operation

Agri-tourism and food are growing sectors in New Zealand. We have farm tourism where tourists are shown working farms with activities such as sheep dog and shearing exhibitions. Artisan producers are growing their own products and then processing them into, say, cheese, and free-range pigs are becoming salami, bacon and ham.

Often farm and food tourism begins as a way of diversifying a farm's income stream. Sometimes it starts off as a relatively small hobby or sideline activity but then grows into something much larger in scale.

There are legal implications to consider when you diversify your farming operation in these ways, particularly with regard to health and safety in the workplace and food safety.

Health and safety

One of the main issues with health and safety is that diversification brings a change in type of visitor to your farm. A regular farming operation has contractors or workers regularly coming onto your farm, whether they are employees, shearers, fencers and, in the case of horticultural enterprises, there are pickers. As well, you will have as other people such as engineers and electricians all working on your farm.

As they come from a work environment contractors, in particular, will have their own health and safety plans, and will be used to and understand the risks inherent in the farming environment.

However, if you are opening up your farm to tourists, whether you're operating a homestay or you have groups such as tours from cruise ships, there are other factors to consider. The tourists may be:

- » Children
- » Disabled, physically or intellectually
- » Elderly
- » Not native English speakers, and/or
- » Visiting in large groups.

All of these factors produce a different health and safety scenario than in the normal farming operation. In addition, as the farming operation diversifies it may change from a straight farming business to also having a production component with the establishment of facilities for processing its produce to a higher level.

What this means is that your farming operation's health and safety profile changes considerably and, therefore, the health and safety policies and procedures for the farm will need to be modified.

Food safety

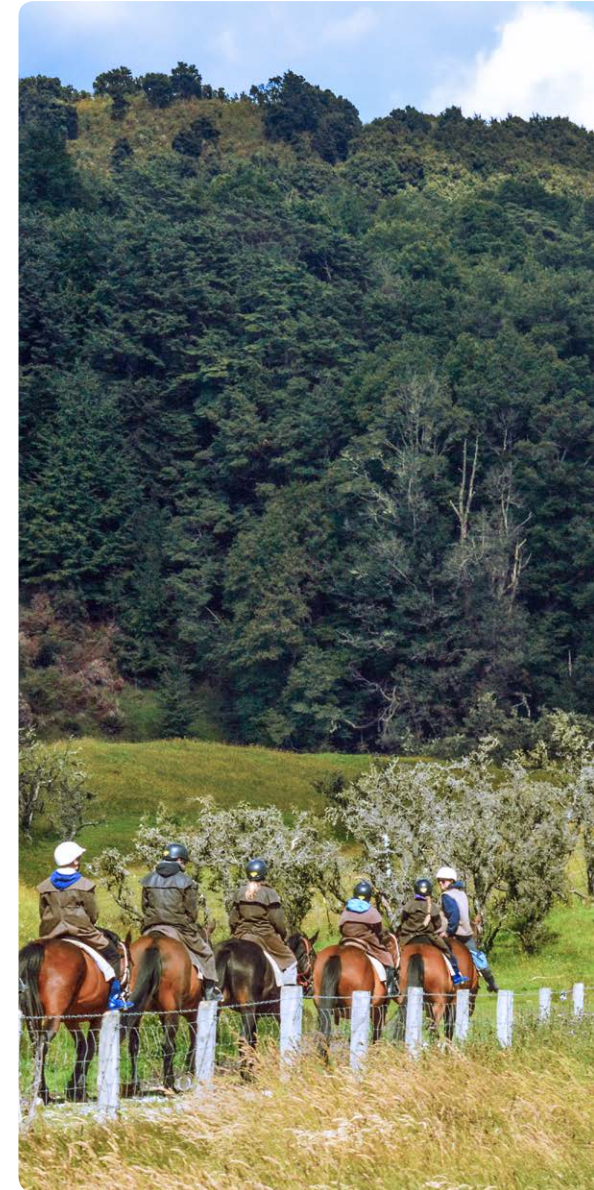
The main consideration where a farm is considering developing a production process such as cheese making, craft beer brewing from hops grown on the farm, processing meat raised on the farm, are the food safety aspects.

Generally food safety is overseen by the Ministry for Primary Industries (**MPI**) that 'aims to ensure that the health and safety risks from food are negligible and that consumer health and wellbeing are protected'. MPI does this by:

- » Developing and regulating food standards
- » Providing official assurances and other certification for wine, animal and plant food products for exporters to overseas markets
- » Tightly controlling the products that can be used in agriculture, and
- » Responding to food safety incidences and suspected breaches of legislation.

There are a number of pieces of legislation that seek to regulate the above matters. Of particular importance is the Food Act 2014.

The Food Act 2014, which came into force in 2016, was somewhat controversial at first. The legislation changed the emphasis from regulating premises *where* food was produced for sale to *how* that food was produced for sale (our emphasis). There were



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Generally speaking, the issue of having a small number of stock grazing on your land for a short time until they are put back in the neighbour's property may not be too great a concern.

There are, however, some fairly serious issues that can arise, particularly where stock from a pastoral farm, for example, gets into cropping or orchard land where the damage could not only relate to the crops that are eaten or destroyed but also could cause issues with export or organic certification. As a result, losses caused by wandering or trespassing stock could be significantly in excess of the value of the lost crops.

What can be done about this?

The right to impound

The Impounding Act 1955 gives landowners the right to 'impound' wandering stock and, in the case of pigs or goats (except for branded angora, saanen or toggenburg goats), destroy them. A landowner can

use the provisions of the Impounding Act to impound stock and claim damages for trespassing and/or destroy stock.

The occupier of land trespassed on by stock is only entitled to demand, or recover, damages:

- » If the land trespassed on is fenced, or
- » If he or she proves that the trespass onto the land was not wholly or partly due to the fact that the land or the portion trespassed on was not fenced, or
- » In any case where stock trespassing on any land adjoining the farmer's land was not fenced and has trespassed onto their land from that adjoining land, they can prove that trespass onto the adjoining land was not wholly or partly due to the fact that the adjoining land was not fenced, or
- » The land (whether fenced or unfenced) is situated in a city or part of a district that was formerly a city or a borough.

Generally, any fencing would need to comply with the requirements of an 'adequate fence' as defined in the Fencing Act 1978.

The damages for trespass are governed by s26 of the Act and are recoverable from the owner of the stock. Under this legislation,

the quantum of damages is 'Any damages whatsoever on account of the trespass thereon of any stock'.

The landowner can choose to seek 'trespass rates' instead of damages (s27). Trespass rates are fairly low and a landowner would usually only elect to do those where stock was simply grazing, as opposed to damaging any crops. Having said that, the trespass rates for stock trespassing growing crops is higher than the trespass rates for animals trespassing on 'any paddock of grass or stubble'.

Impounding

If a landowner wants to impound trespassing stock, they have the right to impound the stock in the 'nearest accessible pound to the place where the stock was found trespassing' and the stock may be 'led, driven or conveyed to the pound by the occupier of the land trespassed upon'.

An occupier of land also has the option to impound the stock on their own land or the land that they are occupying 'in any convenient place'. However, stock cannot be impounded for any longer than two whole days of 24 hours each, after which the stock needs to be either released or conveyed to the nearest pound.

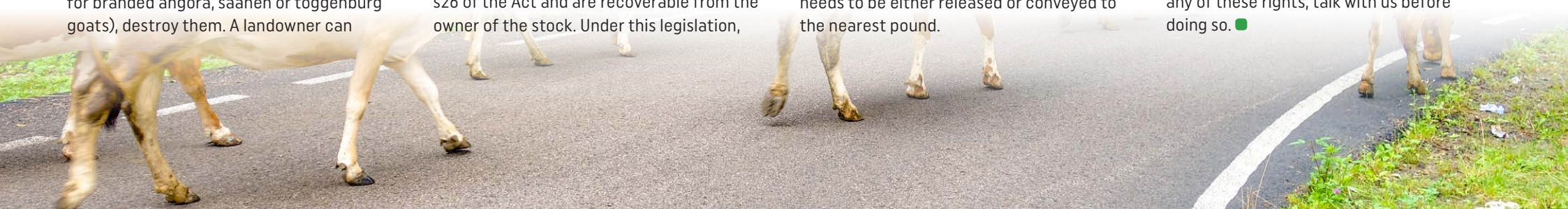
Destroying pigs, goats and chickens

Section 31 of the Act gives the occupier of any fenced land sown in grass, or under cultivation, the right to destroy any poultry, pigs or goats (except for branded angora, saanen or toggenburg goats) found trespassing. Within 24 hours of destroying any such animal or bird, the occupier must send, in writing, a description of the animal or bird destroyed and the place where it was destroyed to the owner if they are known and if not known, to their nearest police station.

Be mindful of the legislation before acting

The rights of occupiers of land trespassed on by stock from neighbouring properties is fairly clear. However, as is often the case, in exercising these rights, any occupier must be mindful of the Act and of the obligations that legislation places upon them.

Stock is an expensive commodity and if the occupier does not follow the rules when impounding or destroying stock, then they could themselves face liability. We recommend that if you wish to exercise any of these rights, talk with us before doing so. ●



Over the fence

Mycoplasma bovis and land transactions

Mycoplasma bovis (*M. bovis*) continues to be a real concern for the farming industry in New Zealand.

If you are thinking of entering into legal arrangements for the sale and purchase of rural land, it's important that you consider including specific provisions that address *M. bovis*. There will be the possibility that livestock on the subject property may test positive for *M. bovis* between the date of the signed agreement for sale and purchase and the date for settlement.

There are a number of issues that should be addressed. One major issue is whether settlement should still take place as initially intended, as well as what arrangements should be made for livestock grazing, should the property be required to be free of all livestock for 60 days.

Please do be in touch to discuss these issues before entering into any contractual arrangements for the sale and purchase of rural land. ●

NAIT consultation underway

In October, the Ministry for Primary Industries (MPI) launched regulatory consultation in order to hear from anyone who has an interest in NAIT.

Have your say on ways to tighten rules around handling untagged animals, improve the use of data and align penalties with other legislation for non-compliance with NAIT. For more details on the consultation, please click [here](#). ●

Dairy transactions and Fonterra

If you are thinking about selling your dairy farm and you are a Fonterra supplier, we remind you of the requirement to notify Fonterra and file a cessation of supply by 28 February 2019.

Fonterra may charge a penalty to a vendor supplier if they do not file a cessation of supply by 28 February – if the purchaser does not continue to supply Fonterra. If you supply milk to Fonterra under a Fonterra supply contract or winter milk contract you also need to be mindful of your obligations in respect of these arrangements.

Consideration should also be given to whether the farm is compliant with milk cooling obligations, farm dairy and environmental assessments, and tanker access assessments.

Please be in touch to discuss these, and other relevant matters, before entering into any contractual arrangements for the sale or purchase of dairy farms (and other rural properties!). ●



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Agri-tourism and food

concerns when the Act was introduced that it would create an increased level of compliance that would make it difficult for smaller, artisan-type producers to continue to operate.

Essentially, the Food Act required businesses that make or sell food to register with MPI by 30 November 2018. The legislation manages the risks involved in making and selling food, and does that by requiring businesses to adopt a 'food control plan'. A food control plan provides a tool for identifying risks and shows how they are being managed. Generally (but not always) those food control plans must be registered with the local authority.

It was these food control plans that food-producing businesses were concerned about. There were news stories about restaurants being unable to cook rare hamburgers. Artisan cheesemakers in particular, given the nature of their product, were said to be unable to produce compliant food plans. However, the Act has been in force for two years or so now and that initial controversy seems to have died down.

Your farming operation must be compliant in all its activities

If you are a farmer or food producer wishing to diversify or changing the activities on your farm, the main issue is for you to be aware of the implications of making those changes. This is particularly so if you are inviting tourists or visitors to your farm or you are establishing a food producing operation which processes and sells food to the public.

It's important that your farming operation is compliant in all its activities, as the penalties for getting it wrong can be significant.

If you need any guidance on any aspect of diversifying your farming operation, we're here to help you – please don't hesitate to contact us. ●

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Over the fence

Forest Practice Guides launched

The Forest Owners Association has launched a series of 28 Forest Practice Guides which contain a set of nationally-applied rules and conditions for plantation forestry. A joint venture between the forestry sector and the MPI, the guides were initiated as part of the implementation of the National Environmental Standards for Plantation Forestry which came into force on 1 May 2018.

The guides are not statutory documents, however, so care must be taken. For more details on the Forest Practice Guides, click [here](#). ●

Dairy Industry Awards

Entries for the New Zealand Dairy Industry Awards have now closed. We wish all entrants the very best with their preparation and judging in the New Year. ●

Oops

In the Spring edition (No 27) of *Rural eSpeaking* we published a very well-received article – 'Private land with public access: how is access granted?'

However, the fourth paragraph under the sub-heading 'Recent example at Lake Hawea' should have read:

"Therefore, under the legislation, in terms of improving public access, the only 'public benefit' factor that is taken into account is walking access, presumably by way of an agreement reached under the Walking Access Act 2008. That Act established the New Zealand Walking Access Commission. The purpose of that Act is to 'to provide the New Zealand public with free, certain, enduring and practical walking [*our underline*] access to the outdoors ..."

As well, since we published the Spring edition, it has been reported that in the Hunter Valley Station situation, the landowner has signed an agreement with the Department of Conservation granting more public access. ●

