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Welcome to the early Spring edition of *Rural eSpeaking*. We hope you enjoy reading this e-newsletter and that you find the articles both interesting and useful.

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 December.

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The Health and Safety Reform Bill: Select Committee reports back

On 24 July, the Transport and Industrial Relations Select Committee reported back to Parliament on the Health and Safety Reform Bill. There are some modifications to the Bill that will be welcomed by farmers; we outline the significant changes below.

Of particular concern to the farming community was that the Bill, as originally introduced to Parliament, defined the whole of the farm as a workplace and, at s32, imposed on the person conducting a business or undertaking (PCBU), that is the farmer, a duty of ensuring so far as reasonably practical, that *“the workplace, the means of entering and exiting the workplace, and anything arising from the workplace, are without risk to the health and safety of any person”*.

Federated Farmers' Submission

In its submission on the Bill, Federated Farmers made the point that it wasn't reasonable or practicable to make a farmer who is a PCBU responsible for the health and safety of all people entering and exiting the farm. They noted that farms can span thousands of hectares, people often trespass on farms, farms are often alongside conservation areas and the public are often accustomed to access for recreational purposes, and that farms often host events such as school sports days, A & P Show events, field days and other community and recreational events.

If the Bill was enacted in its original form, in order to protect themselves, farmers might have had no option but to deny access to the public.

Select Committee's response

The Select Committee took account of those submissions in two ways:

1. By amending s15, which is the main definition of workplace so that the definition is now *a place where work is **being** carried out or is **customarily carried out** for a business or undertaking*. The bolded words were added by the Select Committee to make it clear that a workplace could be temporary.
2. The second and probably more important change for the farmer is the change to s32, which is the section that imposes the duties on the PCBU. A new subsection 1(B) has been added that says:
 - (a) *“For the purposes of s(1) if the workplace is a farm the duty owed by the PCBU under that subsection*
(a) applies only in relation to the farm buildings and any structure or part of the farm immediately surrounding the farm buildings as are necessary for the operation of the business or undertaking;
 - (b) *Does not apply in relation to any other part of the farm unless work is being carried out in that part at that time.”*

One further change that would no doubt give some comfort to the farming community is an amendment to the following section, (s33), which makes it clear that a PCBU who manages or controls fixtures, fittings or plant in a workplace does not owe a duty under that subsection to any person who is at the workplace for an unlawful purpose, such as a trespasser.

Domestic farm buildings not included

The main thrust of the changes are that farm buildings that are customarily used for the farming business, for example milking or woolsheds, yards and on-farm processing facilities will have the duties under the Act attached to them. The farm house and other domestic buildings, however, are now not included and the farmer's duties as a PCBU only arise in other areas of the farm where farm work is actually being carried out at the time.

So, the good news is that the Select Committee has acknowledged the uniqueness of the farm as both a workplace and a home and, also, that in many cases farms are used for recreational, sporting and community uses.

However, you still must be aware of the major implications of this health and safety legislation on your farm business. Care will need to be taken to ensure that the working part of areas of the farm are kept well separate from some of the other uses to which farms may be put. ■

Section 21 Agreements and Trusts

– Are they a good mix in organising relationship property in the rural sector?

Marriage, in the eyes of the law, is a largely – although not entirely – outdated institution; it's now 'relationships' that are important. When a relationship comes to an end, dividing up the assets can be a challenging task. For rural families, in particular, it pays to plan well ahead to protect the assets you own outright, as well as those in which you have an interest.

In organising your affairs to protect your property against unintended consequences if your relationship ends, what is known as the 's21' Agreement is an important tool. Section 21 Agreements (made under the Property (Relationships) Act 1976 (known as the PRA)) are what used to be called 'Matrimonial Property Agreements' or 'pre-Nups'. The s21 Agreement is the main method where parties to a relationship can agree which of their property is their *separate* property and which is *relationship* property that is to be shared.

Dealing with the family farm

Whilst the s21 Agreement is made between the parties to the relationship, the Agreement is commonly used when trying to deal with succession issues, particularly in the farming context. Therefore the Agreement is often trying to address the concerns of others as well as the two parties to the relationship. If the farm has been in the family for some time, there's often a desire by the wider family for it to stay that way. We should also remember that relationships don't only end when couples split up – accidental death can also end a relationship.

How do s21 Agreements work in the rural sector when farming families use a trust as an entity to own the main property? Can a s21 Agreement deal with property that is owned by a trust?

The short answer is 'No'. The PRA applies only to property actually owned by the parties. It does not apply to property held in a discretionary trust, where all beneficiaries have is a 'hope' or 'expectation'.

Dealing with property owned by a trust

Trust property is legally owned by the trustees. One or other of the parties to a s21 Agreement may be a beneficiary of the trust, but that does not automatically give them the right to direct trustees to deal with trust property as they want. There may well be other beneficiaries who have an expectation of sharing in the family capital at some point. One of the parties to the s21 Agreement may not even be a beneficiary, so in that event, they would have no right to trust property.

This means the ability to deal with trust property in a s21 Agreement is limited simply because the property is not owned by either party and, therefore, they have no legal right to control its disposition. As a result of this, we are now seeing the growth of the 'hybrid' Agreement which effectively means two agreements are made simultaneously. These are:

- » A s21 Agreement which deals with property actually owned by the parties personally, and
- » An agreement made with the trustees of the trust where the trustees agree to deal with trust property in a certain way.

Whether the proposed agreement is at the beginning of a relationship, or during a relationship, or at the end of the relationship, the trustees of the trust may well have to take into account different considerations than the couple trying to order their affairs. Trustees have a duty to act fairly between *all the beneficiaries* of a trust and simply may not be able to agree to what a couple wants.

Therefore, whilst the s21 Agreement is a useful tool in ordering a couple's affairs, it's only one of a number of agreements that may need to be entered into (which could well involve other, third parties) to ensure that the parties to it (and often the wider family) achieve the desired result. ■

Over the Fence

Revised Federated Farmers' contract for contract milking

Federated Farmers now has a revised Contract Milking Agreement available for purchase. While most contract milking positions will have been filled and contractual arrangements entered into for the current dairy season, it's helpful to know there is an updated Agreement available for the 2016–17 season.

Minimum Wage (Contractor Remuneration) Amendment Bill

Introduced to Parliament in June as a private members' bill, the purpose of this Bill is to amend the Minimum Wage Act 1983 to extend its provisions to apply to payments under a contract for services that are remunerated at below the minimum wage. Currently certain types of work, such as pamphlet deliveries, are not subject to any minimum wage requirements because remuneration is paid under a contract for services. The Bill provides for this type of contractor to be paid not less than a minimum rate, that is equivalent to the minimum wage. At this time the Bill doesn't include agricultural services such as contract milkers.

Employment Standards Bill – minimum employment standards

In March 2015, the government announced a package of measures designed to strengthen the enforcement of minimum employment standards. These will be reflected in the Employment Standards Bill that will be introduced into Parliament later this year. Its indicated measures will include: tougher sanctions, clearer record keeping requirements, increased tools for labour inspectors, and changes to the Employment Relations Authority's approach to employment standards cases.

In July the government announced additional measures to be included in the Bill, in particular guidelines will be set around zero hours employment agreements.

Currently there's no legal definition or prohibition on entering into a zero hours employment agreement. However, in general, a zero hours employment agreement has no guarantee of work and no minimum hours of work. In contrast to a casual employment agreement, under a zero hours employment agreement an employee agrees to be available to work when required by their employer.

The Bill proposes to retain the flexibility of a zero hours employment agreement (where desired by both employer and employee) but increase certainty so that both parties are aware of the commitments they have made when the employment relationship begins.

Specifically, the Bill proposes to prohibit employers:

- » Not committing any hours of work, but expecting their employee to be available at all times
- » Cancelling a shift without reasonable notice or compensation to their employee
- » Putting unreasonable restrictions on secondary employment, and
- » Making unreasonable deductions from an employee's wages.

Changes proposed to the Residential Tenancies Act 1986

Most staff employed on farms are also supplied with accommodation on the farm. With that comes rights and obligations as a landlord and employer. Changes are proposed to our tenancy laws and are expected to take effect from 1 July 2016. Proposed changes include landlords' compulsory installation and maintenance of smoke detectors, and compulsory insulation measures. It may be worthwhile keeping this in mind when setting and reviewing next year's budget to allow for compliance with the proposed changes.

Farmstrong: looking after yourself

There is no denying this is a challenging time of year on farms with lambing and calving underway. It's also a challenging season for many with climatic and financial factors impacting on your farming businesses. Farming is a career and business with a unique set of challenges. Many are hard to predict or control. Farmstrong is a recent initiative developed to help promote farmer wellbeing in New Zealand. While you are busy looking after your livestock, machinery and businesses don't forget the importance of looking after yourself and those around you. To find out more, visit **Farmstrong**. ■