

Rural eSpeaking

ISSUE 21
Winter/Spring 2016

RSM LAW

17 Strathallan Street,
PO Box 557, Timaru 7910
Ph: 03 687 9777
Fax: 03 687 9797
info@rsm.co.nz
www.rsm.co.nz



We hope you are all weathering the winter well, and that spring will soon be in the air. Enjoy reading this new-look *Rural eSpeaking*; there should be something of interest in here for you all.

To talk further about any of the topics in this edition, please be in touch – our contact details are above.



Obligations of working dog owners

Most farmers will agree that working dogs play a crucial part in the day-to-day running of a successful farm. So it's important that you're fully aware of your legal obligations and responsibilities associated with owning working dogs. If you don't, there's a risk of substantial fines and possibly a conviction.

PAGE 2 >>

Providing accommodation to your farm staff?

It's not unknown for us to receive a shocked look from farmer clients when we advise them that they are subject to the Residential Tenancies Act 1986 regarding the accommodation they are providing to their staff.

PAGE 3 >>

Over the Fence

New regulations for bobby calves

As the dairy industry enters the calving season it's important to be familiar with the new regulations announced in June.

Employment: staff must be paid the minimum wage

As we head into busy times on the farm with lambing and calving now mostly underway, it's important to remember that all staff must be paid the minimum wage for all hours worked.

Rural fires and insurance

In a recent High Court case the New Zealand Fire Service Commission sued landowners for the cost of extinguishing a fire.

PAGE 4 >>



DISCLAIMER: All the information published in *Rural eSpeaking* is true and accurate to the best of the authors' knowledge. It should not be a substitute for legal advice. No liability is assumed by the authors or publisher for losses suffered by any person or organisation relying directly or indirectly on this newsletter. Views expressed are those of individual authors, and do not necessarily reflect the view of this firm. Articles appearing in *Rural eSpeaking* may be reproduced with prior approval from the editor and credit given to the source.

Copyright, NZ LAW Limited, 2016. Editor: Adrienne Olsen. E-mail: adrienne@adroite.co.nz. Ph: 029 286 3650 or 04 496 5513.

The next issue of *Rural eSpeaking* will be published in Summer 2016.

If you do not want to receive this newsletter anymore, please

unsubscribe

Obligations of working dog owners

Most farmers will agree that working dogs play a crucial part in the day-to-day running of a successful farm. So it's important that you're fully aware of your legal obligations and responsibilities associated with owning working dogs. If you don't, there's a risk of substantial fines and possibly a conviction.

Registration and micro-chipping

All dogs over the age of three months must be registered with their local council. It's an owner's responsibility to register each of their dogs and to renew registrations by 31 July each year. Local councils update the National Dog Database annually which enables them to monitor lost or dangerous dogs.

Since 1 July 2006 dogs in New Zealand have had to be micro-chipped. Working dogs, however, are excluded from this requirement. Working dogs are specifically defined under the Dog Control Act 1996 as dogs used solely or principally for the purpose of herding or driving stock. Dogs of this description are not required to be micro-chipped as provided for by s36A of this legislation. Having said that, working

dogs must be registered and wear a collar with the council-provided disc or label.

We stress that this exemption applies to working dogs only; any dogs kept on farms as family pets or used for recreational hunting must be micro-chipped. If you fail to register or micro-chip these dogs, you can be fined up to \$300.

Dangerous dogs

Dog owners are often distracted by their pet's loyalty and personality, and forget that their dog may not greet strangers in the same loving manner as they greet them. Unfortunately, dog attacks are becoming more frequent and often make news headlines. The Dog Control Act was established to ensure owners are aware of their responsibilities and to ensure that their dogs are controlled at all times.

Many people come on to farms including family, friends, posties, vets and contractors. It's not safe to presume that because your dog is on your property that it will not be bound by the provisions in the legislation. If your dog attacks a person, another animal or protected wildlife, you may be fined up to \$3,000 and your dog may be destroyed. If your dog causes serious injury (or death) to a person, animal or to protected wildlife you may be imprisoned for up to three years or fined up to \$20,000.

If your dog attacks a person or animal and no destruction order is made, your local

council can classify your dog as dangerous, meaning it must be kept within a fenced area, neutered, muzzled and kept on a leash in public places.

Protection of working dogs

It's difficult to hear about the mistreatment of working dogs, however it's a reality that is around us. If someone abuses or neglects a dog *which leads to that animal's death*, they can be banned from owning dogs in the future. In the worst case scenario, they could receive a fine of up to \$100,000 and be sentenced to up to five years in prison. If an individual receives multiple fines or is found guilty of a serious offence, councils may ban that person from owning a dog for up to five years. Furthermore, councils have the right to seize any dog from an owner if they consider the animal to be at risk or if that owner has been previously banned.

Look after your dogs

It's important to understand the obligations associated with owning working dogs. It's your responsibility to ensure that each of your dogs is properly registered, adequately cared for and controlled within their environment. Failure to do this can be devastating (on many fronts) and may possibly result in fines or conviction which impact not only on your dog but also you as the owner. ●



Providing accommodation to your farm staff?

It's not unknown for us to receive a shocked look from farmer clients when we advise them that they are subject to the Residential Tenancies Act 1986 regarding the accommodation they are providing to their staff.

These types of accommodation provisions are classed as 'service tenancies'. They are largely subject to the same rules as any other residential tenancy with a few minor exceptions such as rent in advance and termination notices.

As an employer or farm owner, you must comply with the same standards as any other landlord and you can be subject to a Tenancy Tribunal hearing if you fail to comply.

What must you do?

The *tenancy agreement* must be in writing and there are compulsory clauses that need to be included.

For many of you this will form a part of the employment agreement you have in place, *but* it is important that you are not using an outdated agreement that doesn't comply with the requirements of the Residential Tenancies Act 1986. As well, the Tenancy Tribunal has been vocal about its preference that the tenancy agreement is contained in a separate document, not as part of an employment or any other agreement.

There are many things that **MUST** be included in the tenancy agreement and we strongly advise you get us to review your draft agreement before presenting it to your staff.

New requirements for rental properties

As of 1 July 2016 there have been stricter standards imposed on landlords to ensure their rental properties are safer and warmer. There must now be smoke alarms installed that are regularly maintained and adequate in number. The property needs to be maintained to a safe and reasonable standard. This means that electrical outlets need to be working, broken windows must be repaired and plumbing systems must be in working order.

As well, there are new insulation requirements that take effect from 1 July 2019. These requirements differ throughout New Zealand; they are designed to help combat health issues associated with the cold, damp and mould commonly found in tenanted accommodation.

P-contamination

A significant area of concern we are seeing amongst farmer landlords relates to chemical contamination of their tenanted properties.

As a landlord you're responsible to your tenant for any effect of methamphetamine



(P) contamination in your property. You should actively monitor your property and test if required.

A recent Tenancy Tribunal decision¹ noted that simply not knowing whether or not a property was contaminated is not enough to absolve you of liability to any future tenants. It can be a costly mistake to plead ignorance and the decision really places an onus on landlords to test between tenants and advise new tenants of the results.

We recommend that you test your property between tenants. You should also update the provisions in the tenancy agreement to enable you to recoup costs if you can show that through regular testing on the balance of probabilities, the contamination was caused by a particular tenant.

Insurance

We also recommend contacting your insurer to establish what steps are required for your landlord's insurance to be effective. Some insurers will have requirements as to the frequency and form of property inspections before they will honour your policy. It pays to check that the steps you are taking will be sufficient should you ever need to make a claim.

The days of a farm assistant being placed into sub-standard accommodation are now over. The Tenancy Tribunal does not look favourably on farmers who plead ignorance to the requirements.

If you're unsure about your obligations and responsibilities to your farm staff, or need guidance on tenancy agreements, do talk with us before you offer accommodation to your staff. ●

¹ *Visagie v Harper Property Management* 15/06955/MK
16 March 2016

Over the Fence

New regulations for bobby calves

As the dairy industry enters the calving season it's important to be familiar with the new regulations² announced in June this year around the management and treatment of bobby calves.

Only calves fit for transport are to present for collection. There are criteria to be measured including:

- » Being at least 4 days old (96 hours)
- » Be free from signs of any injury, disease, disability or impairment that could compromise the calf's welfare (upright ears and bright eyes are signs for good health) during the journey
- » A dry navel
- » Worn hooves, and

- » The ability to stand and move freely and protect itself from being trampled and injured by other calves.

A maximum duration of 12 hours' journey time for young calves is prescribed.

The new regulations also prohibit the killing of any calves by use of blunt force to the head unless there's an emergency situation.

Three further regulations will be introduced in 2017. These include:

- » Young calves must be fed at least once in the 24 hours prior to slaughter
- » Suitable shelter for the calves is to be provided before and during transportation, and at points of sale or slaughter, and
- » Loading and unloading facilities are to be provided and used when young calves are transported for sale and slaughter.

The regulations provide that in a prosecution for an offence against these regulations

it's not necessary for the prosecutor to prove that the defendant intended to commit an offence.

Penalties range from \$500 to \$25,000.

Farmers need to ensure they and their staff comply with the regulations. ●

Employment

As we head into busy times on the farm with lambing and calving now mostly underway, it's important to remember that all staff must be paid the minimum wage for all hours worked. This is a requirement not only of staff paid hourly rates for hours worked, but also for salaried staff.

Salaried staff salaries may be divided by the hours worked in each pay period to calculate an average hourly rate. This rate must not fall below \$15.25 per hour (the current adult minimum wage rate). No averaging of hours over the farming season is permitted. ●

Rural fires and insurance

In a recent High Court case³ the New Zealand Fire Service Commission sued landowners for the cost of extinguishing a fire that spread from their property through a number of other properties in Canterbury. The High Court found in favour of the New Zealand Fire Service Commission for the total cost of \$217,118.

At issue in the case was also whether any of the insurance policies held by Mr & Mrs Legg or their company included an obligation to indemnify Mr & Mrs Legg against the (successful) claim made by the fire service. The court found the Leggs (and their company) were entitled to be indemnified by their respective insurance companies for the amount which they were required to pay.

It is important that not only you manage the risks associated with fires, but also that you examine your insurance policies carefully. ●

³ *New Zealand Fire Service Commission v Legg* [2016] NZHC1492