Rural eSpeaking

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BARRISTERS, SOLICITORS & NOTARY PUBLIC

Welcome to the Spring 2019 edition of *Rural eSpeaking*. We hope you find the articles both interesting and useful.

If you would like to talk further about any of the topics in this edition, or indeed any other legal matter, please contact us. Our details are to the right.

NAIT review

Significant changes post-*M.bovis*

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PAGE 2 »

Resource management system review

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PAGE 3 »

Over the fence

Firearms law reform

The law surrounding the ownership and possession of firearms has been reformed following the Christchurch mosque massacre.

Cattle rustling now a crime

As noted in the Autumn edition, the newly minted Crimes Amendment Act has introduced two new offences aimed at addressing cattle rustling. The legislation came into force on 12 March 2019.

Farm Debt Mediation Bill – a welcome relief for farmers

The government has acknowledged that farmers face many risks outside their control such as climate change, biosecurity threats and international market changes that can affect their ability to pay debt on time. We look at the newly-introduced Farm Debt Mediation Bill that is expected to become law by the end of 2019.

PAGE 4 »

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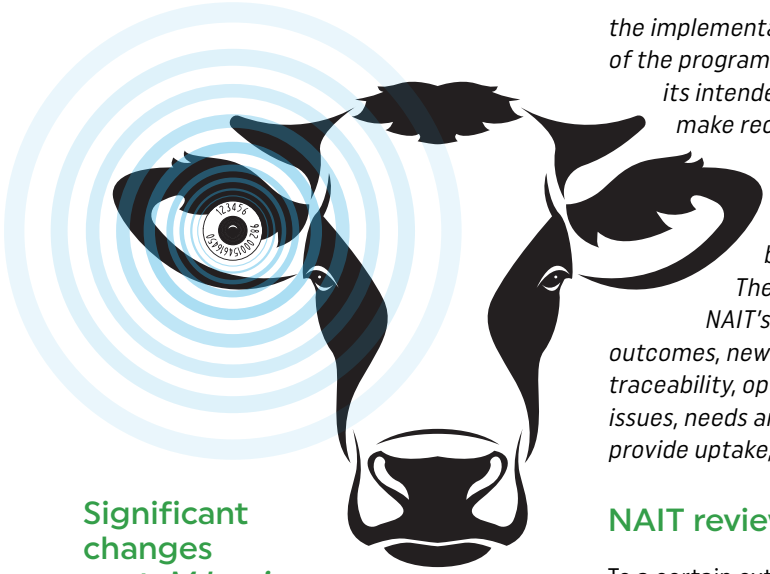
return to front page

NAIT review



Significant changes post-*M.bovis*

The NAIT (National Animal Identification and Tracing) system was first introduced in 2012 and came into effect progressively until it was fully implemented on 29 February 2016.

Any completely new system is likely to need a review after being in operation for a period of time. Within 18 months of NAIT's final implementation date, the outbreak of *Mycoplasma bovis* in this country gave the regime a real test and, not surprisingly, the system was found wanting in some respects.

Operational Solutions for Primary Industries (OSPRI) manages the NAIT system. OSPRI began its review of NAIT in early 2016, the purpose of the review being *"to evaluate the implementation and performance of the programme since 2012 against its intended objectives and to make recommendations on any enhancements, changes and improvements that will ensure the intended benefits can be realised. The review sought to examine NAIT's performance, uptake and outcomes, new and emerging drivers for traceability, operational and legislative issues, needs and priorities, and options to provide uptake, compliance and awareness."*

NAIT review recommendations

To a certain extent, the *M.bovis* outbreak, which has been devastating for many farmers, overtook the OSPRI review, as the response to the outbreak showed some inadequacies in the NAIT system. OSPRI's NAIT review was released in March 2018 and the Minister for Primary Industries, Damien O'Connor, recently announced that the government intends to accept many of OSPRI's recommendations, and it will make other changes as a result of the *M.bovis* outbreak. At the same time, the Minister will conduct a full review of the Biosecurity Act 1993 which is now 26 years old.

The NAIT review recommendations are grouped into five areas:

1. How NAIT location information is registered and maintained
2. Tag readability, visual coding, retention and replacement
3. The roles and responsibilities associated with the various user roles
4. The integrity of information recorded in NAIT focusing on compliance and ensuring that participants fulfil their legal obligations, and
5. How NAIT is used for traceability purposes and how improvements can be made that will enable NAIT users, particularly farmers in remote locations, to more easily access the system and record information.

Proposed law changes

The review recommended a mix of operational and legislative change. Some of the proposed legislative changes are:

- A strict prohibition transporting untagged animals that don't have an exemption. This means that transport operators will now have to satisfy themselves that animals they move are tagged or have exemption for the works
- Renaming the 'impracticable to tag' exemption to 'unsafe to tag' with that exemption expiring in five years. Also proposed is changing the timeframe for a PICA to declare the movement of those animals from '48 hours prior' to 'before sending' and to ensure that such animals are visibly identifiable
- Enabling a seller to make the location history of a NAIT animal available to a purchaser of that animal
- NAIT tags can only be used on livestock for the NAIT location they are issued for. After a transition period it will become an offence to apply the tags issued for a particular NAIT location on animals that reside in a different NAIT location
- Align penalty limits and infringement fees in the NAIT Act with those in the Biosecurity Act 1993 and Animal Products Act 1999; this will increase the range of penalties the courts can impose. The review notes that initially compliance with NAIT was predicated on commercial incentives to comply rather than enforcement, that is, commercial drivers would make participants want to properly use the NAIT scheme. This didn't happen and the government has realised that penalties and fines are needed to ensure compliance
- Clarify the use of, and access to, NAIT data to include responding to stock rustling and wandering stock. It will also enable all public sector organisations to apply for access to NAIT data. Confirmation is required that the Crown owns the NAIT data, and

>> continues on page 5

return to front page

Resource management system review

Complex task ahead

In contrast to the review of the NAIT system that we discuss on page 2, it will be challenging for the government to get a consensus on the recently announced review of the resource management system. The four leading political parties have differing views on how to manage resource management issues. In particular, the Coalition government has three partners – all of which have somewhat contrasting policy positions.

The review will be undertaken by a resource management review panel made up of people with skills in relevant areas. The panel is chaired by Tony Randerson QC, a retired Judge of the Court of Appeal. Additional members will be appointed in the coming months.

Review structure

The review is divided into two parts:

1. A set of amendments to the Resource Management Act 1991 (RMA) is proposed. These will, largely, reverse changes made by the previous National government in the Resource Legislation Amendment Act 2017.
2. The second part is a wide-ranging review which is, according to the Cabinet paper released by the Minister:

> *"a review of the resource management system, building on current work across urban development, climate change, and fresh water as well as inputs from the Productivity Commission, Local Government New Zealand, and the Environmental Defence Society, New Zealand Law Foundation, Property Council New Zealand, Infrastructure New Zealand, The Employers and Manufacturers Association, and Watercare."*

Paragraph 2 of the executive summary of the Minister's Cabinet paper stated that, *"The current resource management and planning system is underperforming in its management of key environmental issues such as fresh water quality, climate change adaptation, and meeting people's needs for affordable housing and thriving urban communities".*

Three key issues

There are three key issues in that statement, all of which have an impact on the rural sector:

1. *"Affordable housing and thriving urban communities".* There is already tension in many areas of New Zealand between the need for land for housing and the current use of that land, particularly for horticultural purposes. Obvious examples are the market gardening areas on the outskirts of Auckland, particularly around the Pukekohe area, and in Hawke's Bay where Hastings is situated on some of the most productive fruit growing land in the country. The productive land is used to feed us, to provide export receipts and to support the jobs and infrastructure that go with that
2. *"Fresh water quality".* This is an issue that was a focus at the last election and is one area where political consensus may be easier to achieve than in others. The proposed amendments to the Act, for example, increase the maximum infringement fee for stock exclusion offences, together with an increase in the time period for councils to collect and prepare evidence before filing charges for prosecutions. Currently there is a six month time period within which a council must file a charge after an alleged offence becomes known; the proposal is to increase that to 12 months, and

>> continues on page 5

return to front page

Over the fence

Firearms law reform

The law surrounding the ownership and possession of firearms has been reformed following the Christchurch mosque massacre. The Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 has introduced changes to ban the ownership and possession of most semi-automatic firearms and pump-action shotguns (known as 'prohibited firearms'), some large capacity magazines ('prohibited magazines'), and parts ('prohibited parts'). New offences have also been created, such as importing a prohibited item, unlawful possession of a prohibited firearm and supplying or selling a prohibited firearm or magazine.

If you own any of these newly-prohibited items, they should be surrendered to police by completing a notification form and attending one of the scheduled **collection events**. Another option is to hand over the prohibited items to approved gun dealers or at your nearest police station. A buy-back scheme is in place which aims to compensate owners of prohibited firearms and prohibited parts. To receive compensation, people surrendering a prohibited firearm must hold a valid firearms licence. A valid firearms licence is not required when handing in prohibited parts and compensation will still be provided. The buy-back scheme runs from **20 June – 20 December 2019**. An amnesty is in place throughout the collection period.

Additional reforms are likely and further proposed amendments include establishing a firearms register, increasing police powers to seize firearms, reducing the 10-year licence expiry period, requiring a licence to buy ammunition and parts, requiring gun clubs to be registered and banning any overseas visitor to New Zealand from purchasing firearms.

To read more about the changes to firearms laws, please click **here**.

Cattle rustling now a crime

As noted in the Autumn edition of *Rural eSpeaking*, the newly minted Crimes Amendment Act has introduced two new offences aimed at addressing cattle rustling. The legislation came into force on 12 March 2019.

Federated Farmers has estimated that livestock thefts cost the farming community more than $120 million every year. Cattle rustling also causes biosecurity concerns associated with the movement of stock as well as the safety of farmers as firearms and other weapons are often involved with this kind of offending.

It is now a crime, punishable by up to seven years in prison, to steal livestock or any other animal (such as beehives and farm dogs). As well as theft, the unlawful entry onto land that is farmed – with the intention to steal livestock or to commit any other crime – is

now an offence liable for up to 10 years' imprisonment.

It is hoped that making the punishment more severe for these offences will deter prospective offenders and give a greater incentive for both farmers and police to pursue prosecution. It will now be important for the authorities to have the resources available to detect and respond to cattle rustling activities.

Farm Debt Mediation Bill – a welcome relief for farmers

The government has acknowledged that farmers face many risks outside their control such as climate change, biosecurity threats and international market changes that can affect their ability to pay debt on time.

The newly-introduced Farm Debt Mediation Bill aims to help farmers struggling with debt. It aims to provide fair, timely resolution of issues around farm debt between creditors and debtors.

The objectives of the Bill are to:

- Support farmers in financial distress in their involvement with secured creditors
- Make it possible to explore options for turning around a failing farm business, and
- Allow farmers with an unviable business to 'exit with dignity'.

>> *continues on page 5*

return to front page

>> continued from page 2

NAIT review

» Amend the definition of a PICA to include body corporates; currently a PICA must be natural person. This change is intended to address systemic non-compliance by corporate bodies.

Making NAIT apps more user-friendly

One recommendation that doesn't require a legislative response is the recommendation that NAIT be required to develop mobile applications and lightweight NAIT web applications for improved access by end users. The current NAIT application was designed for use on a large screen such as a PC or laptop, however on smaller devices such as a smartphones or tablets the app is difficult to use. Technology has moved on since 2012 and this recommendation is based on ensuring greater ease of use and thus greater NAIT compliance.

The review is comprehensive, as is the Minister's response. Given the damage that *M.bovis* has caused, and that the NAIT system was found seriously deficient in its first real test, it is probable that these changes will be met with general support.

>> continued from page 3

Resource management system review

3. The third issue mentioned in the summary is *"climate change adaptation"*. Currently the RMA does not directly manage the effects of greenhouse gas emissions. Part of the review will reconsider the role of the RMA in relation to climate change with the intention of elevating the importance of climate change within the RMA framework.

Clearly from the above there are likely to be significant issues facing the rural sector; input from the various advocacy groups and stakeholders in the rural community will be important.

Also to be considered

Other areas that might be included in the amending bill are:

» Whether to amend the RMA to enable the regulation of *"high risk land use activities"* to achieve water quality outcomes. What those activities might be are not clear but one would think that intensive farming, such as feedlots, could fit into this category.

» A proposal that the Environmental Protection Agency (EPA) could take direct enforcement action. Currently the RMA is enforced by local authorities, the Department of Conservation and Maritime New Zealand. These agencies have specific power under the legislation to, for example, enter onto private property to collect evidence.

  The proposal is to establish a division of the EPA to take direct enforcement action – in the same manner as councils. This proposal has come about as enforcement is currently carried out across New Zealand in variable ways by the different bodies that currently hold that responsibility.

As you can see, the review will be wide-ranging and will have significant effects on the rural sector. With the review to be reported back in May 2020, no legislation is likely to be introduced during the current parliamentary term. Therefore, even if the current government can reach a consensus, it will be for the next government to pass any legislation.

>> continued from page 4

Over the fence

The proposed legislation will require creditors with security interests in farm property (land, livestock, plant and harvested goods) to offer farmers who default on payments, mediation services before they take enforcement action. It will also allow farmers to initiate mediation before default occurs.

There will be no obligation on either a farmer or a creditor to participate in the mediation. However, there are mechanisms for both parties if mediation is declined. For example, if a farmer declines mediation when defaulting, the creditor may apply for an Enforcement Certificate that will allow enforcement action to be taken pursuant to the loan agreement. Conversely, if the creditor declines mediation upon request by the farmer, the farmer can apply for a Prohibition Certificate, which will prevent the creditor from taking any enforcement action for that debt for a period of six months.

The Bill is currently expected to become law before the end of 2019, with farmers having access to the Mediation Scheme from 1 October 2020.