

Rural eSpeaking

ISSUE 46 | Summer 2024

Welcome to the Summer (and final) edition of *Rural eSpeaking* for 2024.

We hope you enjoy reading this e-newsletter, and find these articles 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.



The moral dilemma of virtual fencing

The popularity of virtual fencing is increasing quickly amongst dairy farmers, as an efficient method to contain and move stock.

The technology works through a collar around, say, a cow's neck that moves it by sounds and guides it from left to right. If the cow steps over the virtual boundary, it is first guided back by sound and, if that cue is ignored, it is given a low energy shock (significantly weaker than an electric fence).

There has been, however, concern that the technology is cruel to animals.

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Overturning the foreshore and seabed decision

Changes for CMT applicants

The government proposes to overturn a 2023 Court of Appeal decision covering Māori customary rights to the foreshore and seabed. It is of the view that the court's decision gives too much power to iwi and hapū over what happens on 'too much' of New Zealand's coastal areas.

The Marine and Coastal Areas (Takutai Moana) (Customary Marine Title) Amendment Bill will result in only a small fraction of the coastline (about 10%) being available for customary marine title (CMT).

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Over the fence

Requirements when transporting livestock

The Animal Welfare Act 1999 outlines the standards and guidelines when transporting all live animals. We outline some of the major transport regulations.

Recent NZ-UAE free trade agreement

Negotiations for the Comprehensive Economic Partnership Agreement between New Zealand and UAE concluded on 26 September 2024. This is a major boost for the rural sector.

Employment contracts for seasonal workers

In September, important changes were announced to the Recognised Seasonal Employer Scheme to support the growth of New Zealand horticulture and viticulture.

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It's not difficult to see why farmers around the country are inspired by this technology. It potentially removes the need for human labour which is not only in short supply, but is also accompanied by overwhelming regulation (think Health and Safety at Work Act 2015, Employment Relations Act 2000, Immigration Act 2009 – to name a few).

No brainer. . . why the opposition?

On 17 October 2024, submissions were heard before Parliament's petitions committee from industry leaders (Ministry for Primary Industries (MPI), New Zealand Veterinary Association (NZVA) and the SPCA) after a Golden Bay dairy farmer lodged a petition due to the impacts of virtual fencing on animal welfare. The petition received 414 signatures, with concerns that the technology was cruel and could have a long term 'brainwashing' effect on stock. The petitioners want cows to be left to be cows, and not made to behave like robots.



One of the companies that provides virtual fencing (Halter), has said in its own submissions that there are safeguards in place to protect animal welfare and, that when cows learn the system (estimated to be within a week), they only experience the cues for 96 seconds of the day. Compared with the conventional methods of herding cattle with quad bikes or dogs, virtual technology arguably induces less stress. Cows can walk at their own pace and experience less lameness.

Efficient and ethical farming or dystopian nightmare?

Neither MPI nor the NZVA have identified any evidence that virtual fencing is a risk to animal welfare.

MPI has only received one complaint and on investigation found no concerns for the safety of animals. That being said, the industry leaders are still seeking regulations for the technology to mitigate welfare risks from any new agri-technologies, as that industry develops fast.

At this stage, there is no suggestion that virtual fencing systems do not already meet the requirements of the Animal Welfare Act 1999, Regulations or Codes of Welfare. There is already a legal requirement that wearable collars, such as those used for virtual fencing, do not cause injury to animals and are handled in a way that minimises risk of pain, injury or distress.

However, a draft code specific to virtual fencing and best farming practice has been prepared by the National Animal Welfare Advisory Committee that will amend minimum standards to safeguard cattle welfare even further in respect to emerging technologies.

Following the hearing of submissions, recommendations will be decided by the petitions committee and presented to Parliament. The government will then decide what action, if any, will be taken within 90 days. Ultimately, though, the risk of harm seems extremely low, with changes unlikely to impact those already using the technology. +

Overturning the foreshore and seabed decision

Changes for CMT applicants

The government proposes to overturn a 2023 Court of Appeal decision covering Māori customary rights to the foreshore and seabed. It is of the view that the court's decision gives too much power to iwi and hapū over what happens on 'too much' of New Zealand's coastal areas.

The Marine and Coastal Areas (Takutai Moana) (Customary Marine Title) Amendment Bill will result in only a small fraction of the coastline (about 10%) being available for customary marine title (CMT) which the government alleges was the intention of the 2011 legislation on which the Court of Appeal ruled.

Defining the foreshore and seabed

The seabed is the land that is completely submerged underwater (the sea around the coast).¹

The foreshore is the land that is regularly covered by the tide (the wet part of the beach).² It includes land covered by high tides in spring, the space occupied by the air and water above the land, and the soil and rock under it.

Marine and Coastal Area (Takutai Moana) Act 2011

In 2011, the National-led government replaced the Foreshore and Seabed Act 2004 with the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA). Crown ownership of the foreshore and seabed was replaced with a 'no ownership' regime.

Under MACA, iwi could apply to the court or negotiate with the Crown for CMT over a particular area. However, these interests could not prevent existing rights and uses such as fishing, aquaculture and public access. Iwi or hapū applicants are required to meet two conditions under MACA to apply for CMT:

1. It must hold the area in accordance with tikanga, and
2. It must have exclusively used and occupied the area from 1840 to the present day without substantial interruption.³

In establishing CMT, matters to be considered include whether the applicant group or its members exercise non-commercial customary fishing rights in the specified area, and have done so from 1840 to the present day.

2023 Court of Appeal decision

In the 2023 case of *Re Edwards*,⁴ the Court of Appeal judgment eased the test for CMT. Minister for Treaty of Waitangi Negotiations, Paul Goldsmith said that the court's decision effectively meant that exclusive use no longer had to be demonstrated, opening up much more of the country's coastline to CMT than what was intended when the MACA was passed.

1 s 5, Foreshore and Seabed Act 2004.

2 s 5, Foreshore and Seabed Act 2004.

3 s 58, Marine and Coastal Area (Takutai Moana) Act 2011.



Amendment Bill

Mr Goldsmith said the Amendment Bill would ensure the tests were interpreted and applied as originally intended when MACA was introduced by increasing the threshold of the test.

However, the Attorney-General appealed the Court of Appeal's decision in *Re Edwards* and, on 2 December 2024, the Supreme Court unanimously granted the appeal, stating that the Court of Appeal majority erred by taking an unduly narrow approach.⁵

A consequence of the Supreme Court's judgment is that the Amendment Bill may no longer be necessary, because the Supreme Court has already reversed the Court of Appeal's interpretation of MACA.

4 *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252.

5 *Whakatōhea Kotahitanga Waka (Edwards) v Attorney-General* [2024] NZSC 164 (2 December 2024).

Aquaculture implications

The real impact of CMT's on farmers is on the aquacultural farming communities.

Resource consent is required to occupy the seabed for aquaculture. While a CMT holder does not have ownership rights over public access, a holder does have veto rights on any resource consents required for activity by others or for the development of the area in question.

However, given the Supreme Court's decision, irrespective of the Amendment Bill, we may see fewer resource consents being vetoed by CMT holders.

If you are a CMT holder and have any queries around your access, please don't hesitate to contact us. +

Over the fence

Requirements when transporting livestock

The Animal Welfare Act 1999 outlines the standards and guidelines when transporting all live animals.

All animals must be provided with reasonably comfortable and secure accommodation when being transported. Animals must not be transported in a manner that causes unnecessary pain or distress, and regular welfare checks must be completed.

The legislation is supported by the Animal Welfare Regulations 2018 that outline the regulations that must be followed at each stage of transporting an animal, including but not limited to:

- + Requirements for a transportation vehicle
- + Preparing animals for transport
- + Loading and unloading
- + The journey
- + Special requirements depending on the mode of transportation, and
- + Documentation required.

Animals must not be transported where they are unfit for travel unless a veterinary certificate is obtained. This includes where the animal has:

- + Ingrown horns + Bleeding horns or antlers
- + Lameness + Late-term pregnancy
- + Injured or diseased udders, or + Eye cancer.

In such cases, a veterinarian should be consulted. The veterinarian, at their discretion, may certify in writing that they consider the animal to be fit for transportation. The certification is only valid for seven days from the date of examination.

It is important to understand the requirements, as transportation of an unfit animal will constitute an infringement offence to the owner of the animal.

Recent NZ-UAE free trade agreement

The United Arab Emirates (UAE) is one of New Zealand's largest markets in the Middle East, with goods and services exports totaling NZ\$1.1 billion for the year ended 30 June 2024. Negotiations for a trade agreement, to be known as the Comprehensive Economic Partnership Agreement (CEPA), between New Zealand and the UAE concluded in Wellington on 26 September 2024.

The agreement will now undergo legal verification to prepare it for signature and public release. Once signed, both New Zealand and UAE will still need to take further steps before it becomes enforceable.

The key outcomes of the CEPA include:

- + A significant expansion of New Zealand's free trade
- + New Zealand will have the best available access to the UAE market, with New Zealand goods exporters able to access the market duty-free. The CEPA will eliminate tariffs on 98.5% of exports to the UAE. This is planned to increase to 99% after three years. The initial access includes all New Zealand

dairy, meat, horticulture and industrial products, and

- + The UAE is a key export destination and hub in the Gulf region. It offers significant opportunities to enhance cooperation across many areas, including agriculture and sustainable energy.

The UAE's high-value market offers export growth for New Zealand companies, aligning with the government's ambitious goal of doubling export value to the region within the next decade. Importantly, this also benefits our rural sectors, driving economic benefits across the country.

Employment contracts for seasonal workers

In September, important changes were announced to the Recognised Seasonal Employee Scheme (RSE) to support the growth of New Zealand horticulture and viticulture.

A notable change is the increase for the 2024-25 season RSE cap where 1,250 more workers can obtain an RSE Visa, thus increasing the cap to 20,750 workers.

Changes for employers

Employers are no longer required to offer their employees an average of 30 hours per week. Instead, they must offer a 30-hour minimum week calculated over a four-week period, for example: 120 hours within a four-week period. This is to account for fluctuation of working hours for weather-dependent roles and to minimise the number of hours having to be paid for unworked hours.

Previously all workers had to be paid at least 10% above the minimum wage.

This is now only applicable where the worker is returning for their third or subsequent season, otherwise RSE workers only need to be paid at least minimum wage.

Employers may now impose a temporary increase on accommodation costs of 15% or \$15.00, whichever is lesser of the two, for a 12-month period. If, however, the RSE employee was offered an accommodation cost agreement before 2 September 2024, then an increase cannot be imposed.

An employee's ability to move between employers/regions has now increased from 14 to 21 days either side of the worker's current move date where it is approved by the Agreement to Recruit (ATR). This is beneficial for employers with multiple worksites.

Changes for employees

RSE employees are now eligible for multi-entry visas, allowing them to return home for important events without needing to apply for another visa.

RSE employees may also be able to train, study or develop their skills while living in New Zealand, even if it does not directly relate to their role. They will, however, need to ensure they still meet their employment agreement requirements.

There is also no longer a requirement to be screened for HIV.

In response to these changes, RSE employer/employee actions may differ, depending on where you are in the ATR process.

If you are unsure of your obligations, don't hesitate to contact us. +