

Rural eSpeaking

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L A W Y E R S

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Welcome to the Autumn edition of *Rural eSpeaking*.

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 do not hesitate to contact us. Our details are on the top right.



Emissions Trading Scheme

A change in approach?

The Emissions Trading Scheme (ETS) will turn 17 years old in September.

Lately, there has been concern about the conversion of productive farmland into forestry in order to gain emissions units.

The government has recently announced changes to the ETS; its aim is to strike a balance between achieving New Zealand's climate goals, and protecting the longevity and profitability of our most profitable farmland.

PAGE 2 ►



Firearms reform 2025

Government considers current legislation to be outdated and overly complicated

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Public consultation on the proposed changes was conducted earlier this year.

PAGE 3 ►



Over the fence

Employer obligations: mental health

As an employer, you have a duty of care for both the physical and mental health of your employees.

Consumer Guarantees Act vs Fair Trading Act

The purpose of these two laws are often confused: the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 both provide legislative protection for consumers. However, they both address different aspects of consumer rights and business conduct.

America's threats of tariffs

Since the election of President Donald Trump, tariffs have remained a central focus of America's trade policy.

PAGE 4 ►

Emissions Trading Scheme

A change in approach?

The Emissions Trading Scheme (ETS) will turn 17 years old in September. An integral part of the Climate Change Response (Emissions Trading) Amendment Act 2008, the ETS has undergone significant change throughout its existence.

What is the ETS?

The ETS is New Zealand's main tool for reducing greenhouse gas emissions. It essentially works by requiring participating businesses to measure and report on their greenhouse gas emissions. Businesses that participate in the scheme must surrender what is known as an 'emissions unit' for each tonne of carbon dioxide that they emit. One tonne of CO₂ will cost you one emissions unit.

Over time, the government will reduce the number of units that are supplied into the ETS. The effect of this is that emissions units increase in demand as participating businesses buy and sell emissions units from each other. The price of emissions units in the ETS will (in theory) trend upwards, helping New Zealand to steadily move towards the goal of being a net zero emitter of greenhouse gas by 2050.

Recent developments in the ETS

There has been some concern regarding the conversion of productive farmland into forestry in order to gain emissions units. The government has announced changes to the ETS; its aim is to strike a balance between achieving New Zealand's climate

goals, and protecting the longevity of our most profitable farmland.

The government has signalled that the proposed changes to the ETS will be formally introduced to the House this year, with the new rules expected to come into force by October 2025.

All trees created equal?

The most significant proposed change to the ETS is the temporary prohibition of the registration of exotic forestry (non-native) for emissions units on Land Use Capability



The proposed changes will also require ETS participants to exercise greater discretion in choosing which areas of farmland to plant on; should you wish to plant an exotic species, you must do so on your less productive land.

A flexible approach

The proposed rules are not entirely hard and fast as there is some wriggle room for ETS participants. Up to 25% of LUC Class 1–6 land on a farm can be used to plant exotic forestry for the purpose of registering it under the ETS.

The proposed new rules have also scrapped plans to include agricultural processors (meat processors, dairy processors, nitrogen fertiliser manufacturers and importers, live animal exporters) in the ETS. Agricultural processors had been due to enter the ETS from 1 January 2025, but the passing of the Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill on 26 November 2024 has stopped this.

Why the changes?

The proposed changes clearly signal the government's desire to promote the planting of native species. It appears, however, that consideration has been given to the idea that ETS participants have benefitted from the planting of exotic species that can be planted en masse and grow quickly. This practice will remain, with the caveat being that it will need to take place on less productive farmland. +

Firearms reform 2025

Government considers current legislation to be outdated and overly complicated

The government is currently undertaking a comprehensive reform of our firearms laws; it aims to modernise the Arms Act 1983 which it considers to be outdated and overly complicated. The overhaul is the fourth phase of a commitment to reform the firearms regulatory system following on from three previous phases implemented after the 2019 Christchurch mosque shooting.

Public consultation on the proposed changes took place earlier this year.

Proposed changes

Key proposals include:

- + Rewriting the Arms Act 1983 entirely to create a more coherent and effective legislative framework that balances public safety with the rights of lawful firearms users
- + Strengthening Firearms Prohibition Orders, expanding the criteria and allowing the courts to impose Orders on gang members and associates convicted of drug, firearms or violent offences
- + Reviewing the Firearms Registry to assess its effectiveness and identify areas for improvement. The government aims to ensure it is promoting public safety without imposing unnecessary burdens on lawful firearms owners

- + Transferring the Firearms Safety Authority (to be renamed the Firearms Licensing Authority) from the responsibility of New Zealand Police to the oversight of another government entity. The government believes this will enhance independence and effectiveness of firearms administration, and
- + Amending the regulations of shooting clubs and ranges to ensure their facilities are operating safely and compliantly while supporting legitimate activities of firearms enthusiasts.

Potential benefits

The proposed reforms have several potential benefits, including:

- + Improved public safety with stricter controls and strengthened Firearms Prohibition Orders
- + Better regulation and oversight to modernise outdated laws
- + More effective firearms licensing through an independent Firearms Licensing Authority, allowing police to focus their resources more on illegal firearms and gang-related gun violence rather than administrative licensing work
- + Enhanced gun owner responsibilities through increased requirements for safe storage, record-keeping and reporting, and
- + Stronger measures against gun trafficking through stricter background checks, licensing and a well-regulated system.

With each benefit, however, shortcomings follow. Potential drawbacks include:

- + Possible overreach and bureaucracy leading to inefficiencies, delays and higher administrative costs
- + Limited impact on criminals and gangs given most gun crimes involve illegally obtained firearms, unaffected by strict laws. Police unions have expressed concerns that moving licensing away from the police could weaken police ability to monitor gun-related crime
- + Compliance challenges, with some gun owners struggling to comply with new laws due to lack of awareness or financial barriers, such as affording secure storage or meeting new licensing requirements
- + Potential for unintended consequences, such as over-regulation leading to more non-compliance or a larger black market, and

- + Farmers and pest controllers who rely on firearms for work may face unnecessary restrictions affecting their business operations.

Federated Farmers has been particularly vocal about the rewrite, noting that the changes over the previous government's term were 'a whole lot of really silly, impractical amendments' that have made it harder for people to access firearms.

Farmers have noticed how those changes have made it harder but cannot identify anything that has made it easier. Farmers have a genuine need for firearms and gun laws need to be more straightforward for those who need reasonable access to firearms.

The government has now completed public consultation; it aims to pass the new firearms legislation before the end of its current term in 2026. +

[RETURN TO FRONT PAGE](#)

Over the fence

Employer obligations: mental health

As an employer, you have a duty of care for both the physical and mental health of your employees' health.

Health and Safety at Work Act 2015 (HSWA):

Under the HSWA, you have an obligation to minimise the stress and mental health impacts that arise from within your workplace. This includes monitoring increased workloads to ensure your employees are not overexerted and stressed, investigating any bullying claims and ensuring a safe working environment.

Employees' rights: Your employees are not obliged to disclose a mental health condition unless it will directly impact their ability to safely perform their role. If you ask about a mental illness that directly impacts their ability to perform their role safely, they must tell the truth. There is a risk of disciplinary action if they do not provide you with the correct information.

You cannot discriminate against any employee (or potential employee) if they have a mental illness. These discriminations could be:

- + Not offering a job due to their disclosed mental illness
- + Not promoting as a consequence of their mental illness, or
- + Providing less favourable terms of employment as a result of their mental illness.

Employee action for perceived discrimination:

If your employee believes they are being discriminated against, they may wish to discuss this with you to try and resolve the matter. If this is not successful or not appropriate, they can seek support from the Employment Mediation Services, raise a personal grievance or make a complaint to the Human Rights Commission.

What can employers do? You can help to facilitate a positive working environment and take steps to protect your employees by:

- + Providing support if a traumatic work event occurs
- + Offering flexible working environments including hours/days worked and the location for work to be completed by, for example, using other machines
- + Allowing time off to attend appointments
- + Providing resources such as counselling, work mentoring or stress management courses, and
- + Changing your employee's duties.

It is important that you talk with your employees and take necessary steps to support them the same way you should protect their physical wellbeing.

Consumer Guarantees Act vs Fair Trading Act

The purpose of these two laws are often confused: the Consumer Guarantees Act 1993 (CGA) and the Fair Trading Act 1986 (FTA) both provide legislative protection for consumers. However, they both address different aspects of consumer rights and business conduct.

The Consumer Guarantees Act 1993:

The CGA only applies to goods and services bought for personal, domestic or household use, and not to those purchased for business purposes. The CGA states that goods must be of acceptable quality, fit for purpose and match the description provided by the seller. You cannot contract out of the CGA, even if you want to do so.

The CGA is important in that it ensures that goods and services bought for domestic use meet certain standards following their sale.

The Fair Trading Act 1986: In contrast, the FTA provides protection for consumers from misleading and deceptive conduct of sellers in trade. The FTA cannot be contracted out of, except where both parties are in trade.

The FTA also promotes fair practice and conduct in relation to the supply of goods and services, meaning businesses must compete effectively and fairly. The CGA ensures all businesses operate on a level playing field, particularly for smaller



CONTINUED
FROM PAGE 4RETURN TO
FRONT PAGE

Over the fence (continued)

businesses that could be taken advantage of by larger corporations.

If you find yourself in a position where false claims have been made in respect of machinery, livestock or equipment, you may have a claim under the FTA.

In addition, there may be other forms of redress ensuring fair treatment of consumers and business owners.

America's threats of tariffs

Since the election of President Donald Trump, tariffs have remained a central focus of America's trade policy.

What are tariffs? Tariffs impose a duty tax on imported goods from other countries. If you export goods to America you must pay the tax to the US government. This is typically a percentage of the value of the product.

The main purpose of a tariff is usually to shift the demand away from imported goods to domestically produced goods.

Countries facing American tariffs:

The threat of tariffs against Mexico, Canada and China came as a response to halt illegal immigration and stop illegal drugs flowing into America.

Now, more than 125 countries are facing tariffs imposed by the Trump administration. New Zealand currently faces a recently announced 10% tariff on goods exported to America. This will have an impact on all New Zealand's exports to America. In particular, it will affect our agricultural sector, including food and fibre, that accounts for around 81% of New Zealand's total goods exports.¹

How will the tariffs affect us? America is one of New Zealand's key markets. The new 10% tariff means that kiwi businesses could choose to either lower their prices to entice importers to keep buying their goods or sell their goods elsewhere.

New Zealand could feel the impact of tariffs on other countries as they will be less likely to import goods from New Zealand because of their reduced revenue. Other impacts New Zealand could potentially face include fluctuations of KiwiSaver, investments, our currency, shares and general uncertainty as the markets react to these tariffs.

Given that New Zealand is a small nation and we rely on trade, there are potential silver linings. We may see products from other countries being sold at a lower cost as manufacturers look beyond the American market and its tariffs.

There is a great deal of global volatility caused by the tariffs imposed by America. Given that these tariffs are continually changing, this is creating a huge amount of uncertainty about the future of world trade. +



¹ Ministry for Primary Industries, *Situation and Outlook for Primary Industries*, December 2024.