

Newsletter

December 2005



Climate Control and the Kyoto Protocol

Climate change is a normal global process that occurs naturally, for example, when sea level and air temperature vary. This otherwise normal process is gradually being affected by the increase in greenhouse gases ("GHG") being stored and released into the earth's atmosphere as a result of human activity. Within New Zealand ("NZ") and internationally, climate change has been affected by considerable increases of omissions of GHG resulting from fossil fuels burning, deforestation, livestock farming and other human activities. International concern led to the formulation of the Kyoto Protocol ("KP") that New Zealand ratified in 2002.

Many have criticised the NZ government for choosing to ratify the KP. This criticism has increased in view of recent statistics revealed in the government's annual report on climate change policy implementation 2004/2005 ("the annual report").

What is the Kyoto Protocol?

The KP legally came into force on 16 February 2005. It sets binding targets for signatory countries to the KP ("Parties") by setting absolute national emission caps on GHG emissions as well as providing means for Parties to meet their commitments. Specifically, Parties are to ensure that their GHG emissions do not exceed an assigned amount, being 5 times 1990 GHG levels, during 2008 to 2012 ("the first commitment period"). The KP also sets a combined target for Parties to reduce overall emissions of GHG by at least 5% below 1990 levels in the first commitment period. Parties are to have made demonstrable progress towards achieving their commitments under the KP by 2005.

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How does it affect us?

Under the KP, New Zealand is obligated to meet its commitments in the first commitment period or the government must take responsibility for the excess. This means obtaining additional emission units through the use of any of the KP mechanisms and/or emission units resulting from qualifying land use, land use change and forestry activities. The government may choose what proportion of its obligations will be met through domestic emission reductions and the proportion for which it will obtain emission units.

Government policy

The central elements of NZ government policy on implementation of the KP as confirmed in October 2002 include:

- the introduction of the carbon tax as from 2007;
- retention of ownership of emission units resulting from qualifying land use, land use change and forestry activities and assumption of (capped) liabilities arising from deforestation;
- negotiated Green House agreements for firms and industries considered at risk;
- projects to reduce emissions; and
- measures such as research into reducing agricultural emissions, initiatives in the forestry, local government and business sectors.

Recent government statistics reveal that for the first commitment period, New Zealand may have a net deficit of 36 million tonnes of CO₂ equivalent. The

government would need to offset this deficit by purchasing emission units from the international market. It is estimated that this could cost the government between \$375 million to \$2 billion. The main reasons for the deficit is an increase in emissions from the energy and industrial processes sectors, and a decrease in removals of GHG through land use, land use change and forestry activities.

Carbon tax

The proposed carbon tax will be applied to production and importation of products known to result in GHG emissions, and also to human induced emissions of the same. Specifically excluded from the carbon tax, for at least the first commitment period, are agricultural emissions and products made from bio-mass including wood. The carbon tax is intended to be a transitional measure for exposing the New Zealand economy to the price of carbon. For the average household, the proposed tax will be reflected in an increase in the cost of energy and some products.

In view of the recent statistics, there is to be a revision of objectives and the government's policy approach which may result in changes to the government policy. It appears there is considerable opposition to the carbon tax and the recently established labour-led coalition government may not have the required support to bring it into effect.

Significant uncertainty remains as to whether NZ will be in a position to meet its obligations under the KP in the first commitment period.

Caring for Animals

Are you too busy caring for your children to properly care for your animals? Too busy making arrangements shifting house to make arrangements for the cat? Are you unsure what to do about neighbours who go away on holiday leaving their animal tied up without water or food?

Being unaware of your obligations as an owner or a person in charge of an animal, or failing to meet your obligations under the Animal Welfare Act 1999 ("Act") can have dire consequences.

Among other things, the Act:

1. sets out the obligations of owners (or persons in charge) in respect of caring for their animals;

2. creates offences for failing to meet these obligations; and



3. sets out the maximum penalties for those who are convicted of failing to meet their obligations.

It also creates offences and imposes penalties for any person who wilfully ill-treats animals.

Statutory obligation

Under the Act, owners or persons in charge of animals have a statutory obligation to ensure the physical, health and behavioural needs of animals

are met in a manner that is in accordance with good practice and scientific knowledge.

Owners and those in charge of ill or injured animals must, where practicable, ensure that animals receive treatment that eases unnecessary or unreasonable pain or distress. This obligation, however, does not require a person to keep an animal alive when it is suffering unreasonable or unnecessary pain.

Failing to care appropriately

It is an offence under the Act for owners or persons in charge of animals to fail to meet these standards of care. It is also an offence to kill an animal in a manner that causes the animal to suffer unreasonable or unnecessary pain or distress.

Further offences include abandoning an animal in circumstances where no provision has been made to meet the animal's physical, health, and behavioural needs.

In order to be found guilty of failing to care for animals appropriately, it is not necessary for someone to actually intend to commit the offence. Individuals who are found to have committed an offence under the Act face maximum penalties of a 6 month prison sentence, a fine of \$25,000, or both.



Wilful ill-treatment of animals

It is an offence under the Act for any person (owner or otherwise) to wilfully ill-treat an animal in a way that causes the animal permanent disability, death, or pain or distress to such an extent that it is necessary to destroy the animal to end its suffering. Individuals convicted of wilfully ill-treating animals face maximum penalties of 3 years imprisonment, a fine of \$50,000.00, or both.

SPCA Bay of Islands v Jonson & Jonson

In April 2005, the Jonson's were convicted of failing to properly care for their cattle. The conviction arose from their failure to move the cattle from a low lying flood-prone run-off before a predictable flood left the cattle (including a number of calves) swimming for their lives. The couple were fined a total of \$4,000.00 and costs of \$1,915.00 for SPCA's expenses for what the Judge considered an entirely foreseeable event.

When you know an animal is being neglected and/or ill-treated

When you know an animal is being neglected or ill-treated you have a number of options depending on how serious the case is. Contact the Police in serious cases that involve danger or damage to persons or property. For less serious cases, contact your local SPCA or your local City Council Dog Rangers who together are responsible for laying prosecutions against offenders.

Access onto Private Property – Your rights and obligations

The new Government has indicated it may not proceed with a proposal to provide public access over farms and instead may look at alternatives including negotiation with land owners to improve access.

The news has been welcomed by Federated Farmers who say they will be taking a keen interest in the framework for negotiating rights of access.

Rights of access

So what are some of the issues surrounding your rights and liabilities with visitors on your land?

Network Utility Operators can request access to private land. They are usually involved in providing services such as gas distribution, telecommunications, electricity distribution, water supply and drainage or sewage systems.

Before entering onto land, a Network Utility Operator should provide information in writing to the owner. This information should include:

- the reason entry is required
- any rights the land owner may have to object to the entry
- a description of the work to be done on the land
- who will be undertaking the work
- confirmation that any damage caused will be remedied or paid for
- a complaints referral procedure

You do have the right to refuse entry to some operators but you must allow others access in certain circumstances. If you are unsure as to which situation applies, seek advice from your lawyer.

Health and safety

The Health, Safety and Employment Act 1992 ("Act") imposes obligations on land owners regarding access by third parties onto their land.

The focus of the Act is on identification of hazards in the work place. Residential premises are excluded from the definition of workplace so the Act's provisions do not apply to most urban residential properties nor does it apply to those parts of a farm which are used for domestic accommodation.

The purpose of the Act is to ensure that all practical steps are taken to ensure the health and safety for all persons on the property.

Land owners whose properties are a place of work are therefore obliged to take steps to ensure the following people are not harmed by hazards:

- people in the vicinity of the place of work
- employees, contractors and subcontractors
- people who are on the land with the owner's consent and who have paid to be there
- customers

There are circumstances where a duty of care is not owed to visitors. This includes people visiting for the purposes of leisure, recreation and also includes trespassers.

Have a plan

As the issues of both access and health and safety are closely linked, it is worthwhile for land owners to have a policy in place to deal with them. In particular, it would be wise to ensure that practical steps are taken to manage any existing or potential hazards on the property.

Problem Neighbours What to do?

Problems with neighbouring trees can be a common source of tension between neighbours. Have you ever purchased a property and later discovered that your neighbour's trees will eventually block your view or prevent your property from having the benefit of sunlight?

Obstructing trees can be a major cause of property disputes between neighbours. It is a good idea to talk to your neighbour first to see if you can come to some arrangement that is suitable to both parties, such as, agreeing to have the trees trimmed or reduced in height.

However, if that doesn't work you can apply to the District Court under the Property Law Act 1952 ("Act"). Section 129C of the Act gives the Court the power to order removal or trimming of trees injuriously affecting neighbour's land. Specifically, section 129C(6) includes factors that the Court may take into consideration in determining whether a tree is obstructing the applicant's view or is otherwise causing injury or loss to the applicant. These factors include the:

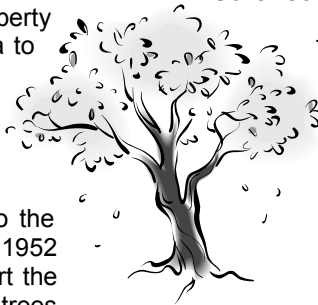
- Interests of the public in the maintenance of an aesthetically pleasing environment;
- Desirability of protecting public reserves containing trees;
- Value of the tree as a public amenity;

- Historical, cultural or scientific significance (if any) of the tree; and
- Likely effect (if any) of the removal or trimming of the tree on ground stability, the water table or run-off.

Other considerations

The Court will not make an order under this section unless it is satisfied that:

- The tree is causing or is likely to cause loss, injury or damage to the applicant's life, health or property (section 129C(8)(a)); or
- The tree is obstructing any view that an occupier of the applicant's land would otherwise be able to enjoy, or is otherwise causing injury or loss by diminishing the values of the property or reducing the enjoyment of it for residential purposes (section 129C(8)(b)).



The Court will balance these considerations between the hardship that would be caused to the applicant by the refusal to make the order and the hardship that would be caused to the defendant by the making of the order.

News in Brief

Update on the Charities Act

You will recall that in the June newsletter, we featured an article about the new Charities Act.

The Act has been in force since April this year. The establishment of the charities commission was completed in July and a chief executive has been appointed.

Charities wishing to claim a tax exempt status will need to be registered with the commission and will have until April 2007 to do this. The commission anticipates having the registration forms available by the end of March 2006.

The commission is keen to establish a relationship with the charitable sector and if you need further information, this can be obtained from the commission's website – www.charities.govt.nz.

Making a Will and Relationship Property

The Relationship Property Act 1976 ("Act") was amended in 2002 to include provisions that may apply when a relationship ends on the death of one of the parties. If they do, then the surviving partner can elect whether to claim against the estate of the deceased or receive under the deceased's Will.

If the first option is chosen then the Act provides that the surviving partner will receive half of the relationship property unless there is evidence to the contrary.

In choosing to make a claim under the Act, the surviving spouse's entitlement effectively overrides the wishes of the deceased person. The claim under the Act also takes priority over other claims against the estate, for example those made under the Family Protection Act 1955.

Any person making a Will therefore needs to be aware of the options which their surviving partner has under the Act and to plan accordingly.

Govett Quilliam News

Continuing Education



The following seminars have recently been attended by members of our firm. It is a requirement that all solicitors attend seminars to keep up with legal developments in their fields of expertise. If you would like information on any of the following topics please contact us:

- ❖ *Breath Blood Alcohol Law Update – David Anderson*
- ❖ *Obtaining Pre-Trial Information – Turitea Bolstad*
- ❖ *Evidence in Practice Skills Accelerator – Turitea Bolstad*
- ❖ *How to Run a District Court Jury Trial – Turitea Bolstad*
- ❖ *Costs and Cashflow – Paul Anderson*
- ❖ *Tax Efficient Business Structures – Kirsty Rowe*
- ❖ *Essential Guide to Trust and Estate Administration – Rich Flitcroft and John Ruyters*

John Eagles presented a paper on Legal Structure at the New Zealand Law Society Rural Transactions seminar held at Hamilton and Christchurch.



Trio of summer exhibitions opening at the Govett-Brewster Art Gallery

This weekend the Gallery opens its doors to the first exhibitions generated by the newly established curatorial team. The trio of shows including *Len Lye: Individual Happiness Now!*, *From mini-FM to hacktivists: a guide to art and activism* and *Linked: connectivity and exchange* continues the Gallery's Break/Connect summer series. This year's programme falls under the *Connect* heading and all three exhibitions share a common emphasis on art's active participation in social and political life.

Len Lye: Individual Happiness Now! curated by Tyler Cann features the full range of Lye's writings, drawings, painting, photography, film and kinetic sculpture and forms new connections between works which may already be familiar.

From mini-FM to hacktivists: a guide to art and activism, curated by Mercedes Vicente examines strategies artists and activists working with broadcast media have recently taken to draw attention to social and political issues. This exploration of alternative media provides the historical grounding for today's internet art collaborations.

Linked: connectivity and exchange curated by Charlotte Huddleston brings together artists who work with a variety of media to explore the web of complex social networks that people experience on a daily basis.

The Gallery is presenting a range of public programmes in conjunction with its summer exhibitions. Collect a copy of Hothouse from the Gallery to find out more about its programme of leading national and international speakers and events, or visit www.govettbrewster.com for additional information.



Merry Christmas
and Happy New Year



Govett Quilliam will be open during the Christmas and New Year period.

We wish all our clients and friends a very Merry Christmas and thank you for your association during 2005.
We look forward to continuing our association in 2006

*Please note that all the Govett Quilliam Guides to many interesting
Legal topics and opportunities are available on line on www.thelawyers.co.nz.
Please download them at your leisure*

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