

# Legal Insight

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Interest has been highest in Southland, where up to 60 farmers are likely to switch to dairying in the next year.

Reserve Bank Governor Alan Bollard warned last year it was increasingly hard to justify prices paid for rural land based on estimates of the future income from the land.”

New Zealand Herald.

It is amazing how quickly people jump when the payout increases.

Many of you who have been in dairying for some time will know time and time again that the minute there is an increase in payout dairy farm prices also start to increase.

There are many people hoping that this will not happen with the new round of increases in payout.

For many of my farming clients, it will certainly be a few catch up years as many of them have certainly not been getting a return on their investment.

Most farmers however choose farming as a way of life and do not do it totally for the dollars of return.

As I write this, I look out of my window at home and notice the rain pouring, the cows looking a bit sad with the pugging up of the grass, it is freezing cold outside and I have to wonder why we do it!

This year was my busiest farming year that I have had to date. I am noticing however that there is a lot more farm succession with farms being transferred during the lifetime of the farm owners to family members.

This is usually in consultation with other family members who do not intend to farm in the future.

After a busy May, I ventured across the Tasman to Australia with all four kids in tow and my husband for a week's holiday in Surfers Paradise. I have to admit there was quite a contrast to the weather in Taranaki at the time and I gather I missed some of the strong winds.

One thing I have discovered with the weather in Taranaki is that it can be a little unpredictable at times. This year we lost one of our farm bridges

## Dairying's Bonanza Triggers Gold Rush

I found the following article in the New Zealand Herald recently and thought it was rather interesting and that I would share it with you:-

“The prospect of bumper payouts is luring farmers in other agricultural areas to convert to dairying.

Despite rural lenders saying forecasts of increasing dairy income are starting to justify the rising cost of farm land, they are warning against making decisions based on the short-term outlook.

Banks say the number of farmers seeking finance to buy dairy farms or convert their own operation increased when Fonterra raised its forecast milk solids payment, and leaped again when the \$5.53 forecast for the 2007/08 season was announced in May.

that we thought would never be washed away but in the recent flooding in the Oakura area the bridge went. However, we discovered that our bridge was not insured despite the fact that I thought it was perhaps covered under the general farm policy. It is important to check your insurances to see if structures such as bridges are covered as these items are expensive and necessary to replace especially if it is crucial for stock movement to and from the cowshed. We certainly have learned that in future we will make sure that structures like this are insured and that we understand what is in our insurance policy. It is really important to check your insurance policies annually and go over them with your advisors to make sure that you understand what you are covered for and what is excluded so there are no surprises.

Although some people might disagree with me, in past experience I do not believe it is the farmers that push up inflation when they have a higher payout year. This seems to happen more in the cities. The last high payout year we had, we had unprecedented low interest rates. This time however we are hit with much higher interest rates than five or six years ago and a lot of people are coming off some long term fixed rates and having to re-fix at a much higher rate. Thankfully the payout will off-set this and hopefully give farmers a bit more in their pockets.

I wish all farmers in Taranaki a prosperous 07/08 dairy season.

I thought in this edition I would talk to you a little bit about the health and safety in employment.

## Health and Safety

Most farmers these days employ staff and it is important to know your obligations under the Health and Safety Act. I do not begin to cover all aspects of health and safety in this article and I would encourage those of you who do have queries to contact us at Govett Quilliam. There are some Government websites that can give you further information - [www.workinfo.govt.nz](http://www.workinfo.govt.nz) and [www.osh.dol.govt.nz](http://www.osh.dol.govt.nz).

The main principles of the Health and Safety in Employment Act 1992 impose duties on a wide range of working relationships in nearly all places of work. The Act applies to:-

1. Employers i.e. farm owners
2. Persons who control places of work
3. Persons who sell or supply plant for use in places of work

4. Self-employed people
5. Principals to contracts
6. Employees
7. Volunteers
8. People receiving on the job training or gaining work experience

## Who is Responsible for Health and Safety?

The primary duty is on the person in control of a place of work including:-

- The farm owner
- Managers
- Contractors
- Sub-Contractors

There is a general duty to take all practical steps to ensure the safety of employees while at work.

## What is the Meaning of all Practical Steps?

All practical steps is a key concept in the Act and describes the standard a person must meet when carrying out duties under the Act. A step is practicable if it is reasonably capable of being done. Reasonably means that you do not have to do everything humanly possible, you only have to do what a reasonable person would do in this situation.

## Stress and Fatigue

What is Stress? OSH defines stress as the result of the interaction between a person and their working environment. It is the awareness of not being able to cope with the demands of work with an associated negative emotional stress.

An employer is required to take all practical steps to identify and manage work related stress. Stress can be caused, for example by unrealistic deadlines, long work hours, onerous work conditions or poor interpersonal relationships at the place of work.

Employers and farm owners can only combat stress if the employer is reasonably aware of it. Employees need to have the opportunity to report stresses, and an employer should respond if they find that an employee is suffering from stress. There are a wide range of steps that can be taken by an employer in this instance.

## Employee's Responsibility

Employees can expect their employer to provide a healthy and safe work place but they also have to play a part in making sure they stay healthy and safe.

Employees have a duty to:-

- (a) Not endanger themselves or others
- (b) Not to interfere with an accident scene
- (c) To comply with notices
- (d) To report stress

## Enforcement Against You

The enforcement of the Act is usually by OSH. Generally speaking OSH will not prosecute unless an injury or damage has resulted from a breach of the Act, or if you have ignored warnings and or notices issued by OSH.

It has recently become possible for a person to privately prosecute for a breach of the Act. It is expected claims by employees may rise under this heading, where there is a breakdown in the employment relationship.

## Legal Warrant of Fitness

Would you pass a legal warrant of fitness? The theme of many of my legal insights are obligations that you have as dairy farmers to employees, Fonterra, your bank, your family, your neighbours and Dr Cullen.

Have you structured the ownership and operation of your dairy farm in such a way as you minimise the cost of your obligations and maximise your return?

Differential tax rates now mean that the entity which generates the farm income needs to be the most tax efficient one possible. At Govett Quilliam we have developed a legal warrant of fitness for dairy farmers. For a total all up cost of \$1,000.00 plus GST we can review:-

1. Your succession planning documents (Wills, Enduring Powers of Attorney, Incapacity and Life Insurance)
2. Your ownership structures (Trust, Company, Partnership, or Joint Venture)
3. Your Financing (fixed rate, revolving credit, security provided) and
4. Your wealth creation programme (expansion, off farm investments, subdivision and sale).

We will provide you with a report which will make recommendations on the most effective and efficient structure and operation for you in today's legal environment. Call me to discuss the process.

I can post out to you the preparatory questionnaire and discuss with you if the warrant of fitness is likely to provide value to your operation.

## Jokes of the Day

I recently found this joke that appeared in the Farm News which I thought was rather funny.

Materialistic - A dairy farmer pulls up in his brand new V8 Ford Fairmont outside his local RD1 store. He should have bought his late model Hi Lux Ute, but secretly wanted to show the car off to the staff.

As he opened the owner's door a truck went past and tore it off. He was furious and immediately called 111 on his car phone. When the police arrived he was ranting to the concerned looking staff at RD1.

His brand new car would never be the same again, he was yelling.

"You dairy farmers are so materialistic", the policeman said.

"How can you say that?" the angry farmer replied.

"Don't you realise that your arm is missing from the elbow down? It must have been ripped off when the truck hit your car".

"My God" screamed the dairy farmer. "Where's my Rolex?".

## Fairest Tax

An Inland Revenue Department staff member was travelling the country meeting farmers to answer any questions they had about their tax liability.

Speaking in a Country Hall, he asked the gathered farmers what they thought was the fairest tax.

“The Fart Tax,” replied one, referring to the Government proposal of a few years ago to tax farmers on the methane emissions of their animals.

“But that never went ahead,” the Inland Revenue Department staff member replied.

“Exactly,” the farmer replied.

### **SALLY LUNN**

From the kitchen of: St Mary’s Church, Hawera

- 1 cup cold mashed potato
- 1 small cup sugar
- 1 cup sultanas or currants
- salt
- 2 cups flour
- 2 tsp baking powder
- 1 egg
- 1 cup milk



Cream sugar and potatoes. Add other ingredients. Pile onto a tray like pavlova. Bake 30 minutes in moderate oven. Ice when cold. (Works well in a large quiche dish or rectangle lasagne dish).