Rural.

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Inside this issue:

Kia ora, Hello. Welcome to our winter edition of Rural 2025

It has been some time since our last newsletter, and there have been a lot of challenges and changes that we are seeing affecting our rural clients and communities.

The recent Budget 2025 announcement saw the Government announce a path to sharpen its focus and support for the agriculture industry and provide funding to help lift on-farm productivity and profitability. The introduction of the Investment Boot tax incentive aims to improve cash flow and make on-farm and forest investments more affordable. This allows farmers and growers to immediately deduct 20% of the cost of new machinery or farm equipment, on top of existing depreciation rates.

There have been a number of other reviews and initiatives that have been recently undertaken affecting a wide variety of legislation, and in this newsletter we break down some of these recent reviews and proposed changes.

We look at the Government's changes to the Emissions Trading Scheme which aims to curb excessive conversions of farmland to forestry land while still allowing forestry to play an important role in New Zealand's climate strategy. These changes are on track to be introduced during the second part of 2025.

We also look at the key changes in the review of freshwater rules and the Resource Management Act which have been delivered by the Government as we go to print. The proposals seek to revise several national policy statements and national environmental standards with a focus on easing regulatory burdens, improving clarity, and enabling more flexibility in land and water use.

The amendment to the Dairy Industry Restructuring (Export Licences Allocation) Amendment Bill amends how New Zealand administered dairy export quotas are allocated. We look at the proposed amendments which are intended to reflect the changing dairy industry by introducing a volume-based allocation to export licences, creating regulation-making power, and including non-bovine dairy in quota allocation.

We have included an article on a recent trust law case from the Supreme Court. The decision Cooper v Pinney looks at whether trust property can be included in relationship property proceedings. This case involved farmland and will be especially of interest if you are a power holder under a trust, or even if you are a trustee or beneficiary of a trust.

Earlier in the year Associate Finance Minister David Seymour announced changes to the Overseas Investment Act regime which we review and highlight the key changes. While significant change is not proposed in respect of farmland, it will be interesting to see if the Government relaxes its rules requiring farmland to be advertised on the open market before an overseas purchaser can enter into a contract to buy the land, as this requirement can slowdown transactions in the industry.

We highlight the Government's initiative to amend the Public Works Act 1981. The amendments are driven by the need to address the nation's infrastructure deficit, enhance economic productivity, and streamline the land acquisition process. The key changes are to expedite the acquisition of land for critical infrastructure projects.

With the increase in development of wind farms in New Zealand, we look at the stages and key points to consider if farmers and rural landowners are approached by wind farm developments to enter negotiations concerning the possibility of a wind farm on their property.

We seek to provide our readers with a wide range of topics that you may find interesting, and we hope you enjoy reading the latest edition of our newsletter.

Vanessa Robb, Partner
Property and Private Client

Cultivating change: navigating the new land use limits in the Emissions Trading Scheme

The Government has signalled changes to the Emissions Trading Scheme which aim to curb excessive conversions of farmland to forestry land while still allowing forestry (on less productive land) to play an important role in New Zealand's climate strategy. These policy changes are to be adopted in 2025.

The Government has announced significant changes to the Emissions Trading Scheme (ETS), aimed at curbing the rapid conversion of productive farmland into forestry for the purpose of earning New Zealand Units (NZUs). These changes, notified in a press release on 4 December 2024 by Agriculture and Forestry Minister Todd McClay and Climate Change Minister Simon Watts, come in response to growing concerns over the impact of large-scale land conversions of farmland into exotic forestry land. The new regulations are designed to strike a balance between achieving climate goals and protecting the agricultural sector's interests, ensuring that farmers retain the ability and some flexibility to make informed land-use decisions.

Overview of the key policy changes

Moratorium on exotic forestry for productive farmland

The most significant change in the new rules is the imposition of a moratorium on the registration of exotic forestry for carbon credits on Land Use Classification

(LUC) 1-5 farmland. The LUC system classifies land into eight categories based on such land's ability to support productive uses, considering factors like soil quality, climate, erosion risk, and susceptibility to flooding or drought. The system is intended to identify land limitations that affect productivity.

LUC 1-5 areas represent the most productive and accessible agricultural land in New Zealand. Under the new regulations, farmers in these zones will no longer be able to freely plant exotic forests and register them in the ETS.

Annual cap on exotic forestry registrations for LUC 6 farmland

In addition to the general moratorium on the registration of exotic forestry in the ETS planted on LUC 1-5 land, the Government has also introduced a cap on the registration of exotic forestry in the ETS for LUC 6 farmland. This land class represents areas of medium agricultural versatility. Under the new policy, only up to 15,000 hectares of LUC 6 farmland per calendar year can be converted to exotic forestry for carbon credit registration – the utilisation of this ETS registration cap is available to everyone on a first in, first served basis.

This cap seeks to limit the overall extent of land converted to forestry that can be registered in the ETS, while still allowing for a level of exotic forestry planted on less productive land to be registered in the ETS.

Maintaining flexibility for farmers

Despite the above restrictions, the new rules still allow farmers some degree of flexibility in their land use. Under the new policy, up to 25% of LUC 1-6 land on a farm can be planted in exotic forestry for the purposes of ETS registration. This ensures that farmers still have the option to plant a limited number of trees for carbon credits if they wish.

Landowners will also be able to request a reassessment of their property's LUC categorisation, which could open up further opportunities for forestry development in some areas.

Transitional provisions and exemptions

The Government will introduce transitional measures for landowners who were already in the process of afforestation before 4 December 2024. These landowners will be allowed to continue with their afforestation plans and register their exotic forests in the ETS, as long as they can demonstrate a commitment to afforestation before the announcement date, such as through a land purchase agreement or a seedling order.

In addition to these transitional provisions, the new rules will include exemptions for certain types of Māori land, as required by Treaty obligations. These exemptions include land governed by the Te Ture Whenua Māori Act 1993, land that was changed to general land under the Māori Affairs Amendment Act 1967, and land that was part of a Treaty settlement. These provisions ensure that Māori landowners can continue to pursue economic opportunities through forestry.

No restrictions on ETS registrations for certain farmland to forestry conversions

For clarity, the Government has confirmed that there are to be no limits on ETS registrations in respect of:

- LUC class 7 to 8 farmland;
- forest land already registered in the ETS; and
- native (indigenous) forest registrations in the ETS.

Incentivising forestry on low-value crown land

The Government is also pursuing a separate policy to work with the private sector in planting trees on Crown land with low farming or environmental value. These lands, which are not ideal for farming, could be utilised for afforestation projects that support New Zealand's climate targets without displacing productive agricultural land. The Government released a Request for Information (RFI) on 18 December 2024 about these potential public-private partnerships – submissions in respect of the RFI closed on 28 February 2025.

The path forward: legislation and implementation

A press release dated 2 May 2025 has confirmed that the related legislation formalising the policy changes is on track to be introduced during the second quarter of 2025.

As the legislation is finalised, it will be important to assess how these changes are implemented and whether they strike the right balance between environmental, economic, and social considerations - farmers, foresters, and investors will be keeping a close eye on the developments and will need to adjust their plans to ensure they are in compliance with the new regulations.

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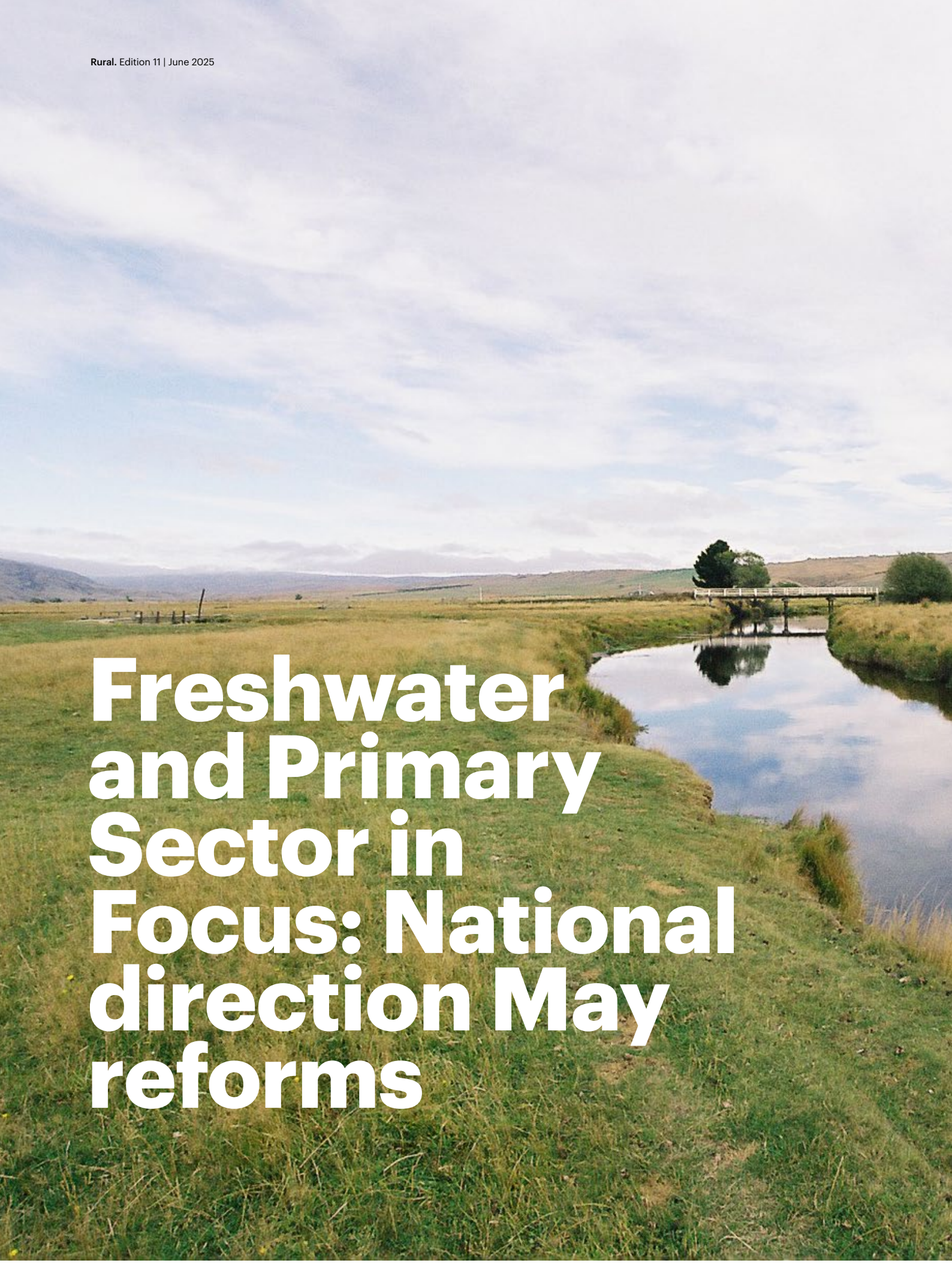

Freshwater and Primary Sector in Focus: National direction May reforms

Late May the Government released two detailed discussion documents for consultation outlining proposed changes to national direction instruments under the Resource Management Act (RMA). These changes form *Package 2: Primary Sector*[1] and *Package 3: Freshwater*[2] as part of the government's broader environmental reform programme, which the government has referred to as "the biggest package of changes to national direction under the RMA in New Zealand history"[3].

The May 2025 proposals seek to revise several national policy statements (NPSs) and national environmental standards (NESs), with a focus on easing regulatory burdens, improving clarity, and enabling more flexibility in land and water use.

[1] https://environment.govt.nz/assets/publications/RMA/package-2-primary-sector-discussion-document.pdf

[2] https://environment.govt.nz/publications/package-3-freshwater-discussion-document/

[3] https://www.beehive.govt.nz/release/consultation-opens-sweeping-overhaul-primary-sector-regulations.

Continued >

Consultation on both packages closes on **27 July 2025**, with decisions expected later in the year. The proposed changes to the national direction instruments are comprehensive and detailed, and each primary sector industry group will need to use the next two months well to get on top of and respond to the many changes proposed.

This article provides a high-level overview of the key changes.

Package 2:

National Direction Changes for the Primary Sector

The proposals in Package 2 are intended to better support the agricultural, forestry, and aquaculture sectors by amending national direction instruments that currently restrict or delay development.

Forestry and Aquaculture Adjustments Include:

- Reversing 2023 regulations that expanded council discretion over when councils can impose stricter rules than the National Environmental Standards for Commercial Forestry;
- Requiring a slash mobilisation risk assessment (SMRA) rather than the current requirement to remove large defined slash from the cutover unless it is unsafe to do so. The intent is to triage the forest harvest site during harvest planning to determine areas where risk is low, and exempt them from removing slash;
- Removing the requirement of afforestation and replanting plans for permitted activities;
- Supporting marine aquaculture growth by amending the National Environmental Standards for Marine Aquaculture that regulates the reconsenting and changing of conditions for existing farms. Proposed changes include changing consent conditions for adding new species, changing structures and monitoring a Controlled activity to streamline that part of the consenting process;
- Proposed new permitted and streamlined consent pathways for activities related to aquaculture research and trials; and
- Changing the New Zealand Coastal Policy Statement to direct decision-makers to provide for aquaculture activities within aquaculture settlement areas to support Māori to realise the potential of aquaculture settlement areas and give more recognition to the cultural and environmental benefits of aquaculture.

Quarrying and Aggregate Supply Changes Include:

- Numerous technical amendments to terminology used in various national instruments to better align; and
- Alignment of gateway tests where a quarrying proposal triggers consent requirements in respect of wetlands, indigenous biodiversity or highly productive land.

Changes to the National Policy Statement for Highly Productive Land (NPS-HPL) include:

- A review of how LUC Class 3 land is treated. LUC 3, which comprises large portions of versatile land used for grazing and mixed cropping, has caused concern due to blanket restrictions on development. Officials are seeking feedback on whether LUC 3 land should be excluded from the HPL definition completely, or just in respect of urban development plan changes;
- New Special Agricultural Areas (SAA) are proposed as a new category of HPL, to protect key food-growing areas like Pukekohe and Horowhenua; and
- The timeframe for regional councils to map HPL may be extended beyond the current deadline of October 2025.

These changes could have a significant impact on future urban development and rural diversification, especially in peri-urban regions.

Package 3:

Freshwater National Direction Reforms

The freshwater reforms aim to simplify compliance and implementation while ensuring freshwater ecosystems continue to be protected. These reforms affect the National Policy Statement for Freshwater Management 2020 (NPS-FM), the National Environmental Standards for Freshwater (NES-F), and associated regulations. Key proposals include:

Replacing the NPS-FM

The government is considering replacing the current NPS-FM with what is intended to be a more practical and balanced framework. The Government is seeking feedback on whether the freshwater changes should be implemented through amending the current national direction under the RMA or whether it would be better to wait and implement changes under the new resource management legislation.

Revising Te Mana o te Wai

One of the most contentious aspects of the reforms is the proposed change to the definition and application of Te Mana o te Wai. Under the 2020 NPS-FM, Te Mana o te Wai established a hierarchy of obligations:

1. Health and well-being of water bodies and ecosystems;
2. Health needs of people (e.g., drinking water); and
3. Social, economic, and cultural well-being.

The May 2025 proposal includes:

- Introducing a new objective that would require councils to safeguard life supporting capacity and the health of people and communities, while enabling communities to provide for their social, cultural and economic wellbeing - so effectively a "balancing of values" rather than prioritising environmental outcomes above all else. In addition to the primary proposal to achieve this rebalancing, the consultation document includes 3 additional options to consider;
- Introducing a new objective to require councils to consider the pace and cost of change when setting targets for freshwater;
- Introducing a new objective requiring that freshwater quality be maintained or improved;
- Reviewing the National Objectives Framework process that requires councils to follow a set process in setting limits, targets and timeframes in water plans, to potentially narrow which values need to be provided for, and which national bottom lines need to be applied;
- Introducing a new objective to enable continued domestic supply of fresh vegetables and developing new national standards that permit commercial vegetable growing; and
- Introducing a new objective or policy to address the issue of water security as part of climate change resistance and developing new national standards that permit the construction of off-stream water storage. However, the consultation document does not propose introducing new permitted provisions in respect of actual allocation of water relating to off-stream storage – water allocation per se is not within scope of this round of consultation and reform.

Stock Exclusion and Grazing Regulations Changes Include:

- Amending the Stock Exclusion Regulations so that there is not a blanket ban on any stock accessing wetlands that support threatened species, so that it would not apply to non-intensively grazed beef cattle and deer; and
- Creating a new permitted activity standard and consenting pathway for farming activities that are unlikely to have an adverse effect on a wetland – such as fencing and irrigation.

Other Changes in respect of Wetlands Include:

- Reviewing the definition of 'natural inland wetland' to reduce the complexity of the ecological assessment necessary to determine whether the regulations apply;
- The preferred option being consulted on is to remove the 'pasture exclusion' part of the definition of 'natural inland wetland';
- Amendments that will make it easier to permit construction of wetlands; and
- Removing the requirement that councils map wetlands within 10 years.

Other topics and matters being consulted on include:

- Simplifying the fish passage regulations as it relates to constructing and using culverts;
- Three options to improve the rules for use and reporting in respect of synthetic nitrogen fertiliser; and
- Whether to introduce a new requirement for drinking water source risk management areas to be mapped.

There are no specific changes to the Freshwater farm plans framework in the consultation document, but it does note that the Freshwater farm plan system is currently being reviewed, and improvements will be finalised by the end of 2025.

The Ministry for the Environment has stated that implementation support will be developed alongside any new national direction, including updated guidance, templates, and technical assistance for councils and landowners.

Stakeholder submissions in the coming weeks will be critical in shaping the final form of these national direction instruments—and whether they can truly strike a balance between economic growth, environmental integrity, and cultural values.

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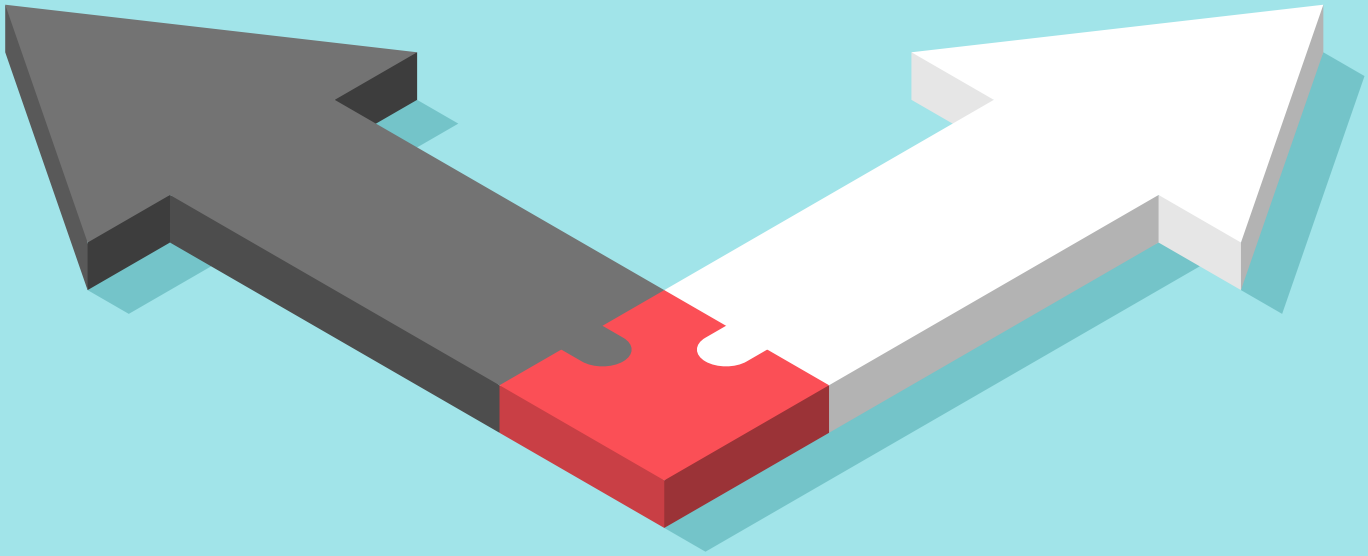
Resource Management

Trust-Busting following the end of a relationship: a case law update



The Supreme Court has clarified the boundaries of its landmark decision in *Clayton v Clayton* by issuing its decision in *Cooper v Pinney*, which relates to the classification of rights and powers in relation to a family trust on the break down of a relationship.

Introduction

The Courts of New Zealand have long had to make decisions on claims against trust property at the end of a relationship. In particular when a spouse is not able to bring a claim for division of trust assets under the Property (Relationship) Act 1976 (**PRA**) due to the assets being owned by the trust, not the individual.

There has been a recent spate of "trust-busting" cases following the significant decision issued by the Supreme Court in *Clayton v Clayton*[1] in 2016 under which the Court found Mr Clayton had effectively unrestricted rights and powers in relation to a trust he had settled assets on during his marriage. As a result, the Court found that Mr Clayton had such a degree of control over the assets of the trust that it classified the powers as 'right or interests' in relation to the PRA. This meant the trust assets were brought into the pool for division under the PRA.

Since the decision in Clayton practitioners have been waiting for a less extreme trust deed to be analysed by the Court in light of Clayton. This was until the Court issued its decision in *Cooper v Pinney*[2].

[1] Clayton v Clayton [2016] NZSC 29
[2] Cooper v Pinney [2024] NZSC 181

The decision in *Clayton*

Mr and Mrs Clayton were married in 1989 and separated in 2006 after a 17-year marriage. Following their separation, Mr Clayton claimed Mrs Clayton was only entitled to share in the family home, and was not entitled to any property or interest in any trusts or business. In particular, a trust which was settled during the parties' marriage in 1999 which held significant assets.

The Supreme Court considered whether Mr Clayton had such a degree of control over the assets of the trust that certain rights and powers in relation to his family trust gave him powers that were tantamount to ownership. These powers included unconstrained discretion to be the sole trustee, distribute the trust fund to himself, and make himself the sole beneficiary without breaching any fidicuary duties which had been excluded by the terms of the Trust Deed.

The Court found these powers were considered "property" under the PRA. The Court also found that as the trust was established during the relationship and the powers acquired at that point, the property was relationship property, and therefore divisible between Mr and Mrs Clayton. The value of the property was calculated by reference to the value of the net assets of the trust.

The Court commented they leave open for another case to determine what would be the position under *Clayton* if the powers were less extensive, both as to whether they would amount to property and if so, how they would value them.

Facts of Cooper v Pinney

Mr Pinney and Ms Cooper had been in a de facto relationship for ten years from 2004 to 2014. After the breakdown in the relationship, Ms Cooper made a claim in relation to Mr Pinney's interest in a family trust he had settled and whether this should be treated as 'property' to be divided between the parties in accordance with the PRA.

Mr Pinney settled a trust in 2005 to receive assets from a trust established by his father, including a farm.

The trust had a number of beneficiaries including Mr Pinney who was also an original trustee (however he was not a trustee at the time of the hearing). Mr Pinney also held the power to appoint and remove trustees.

The claim from Ms Pinney

Ms Pinney relied on *Clayton* to argue that Mr Pinney's rights and powers under the Trust Deed gave him effective control over trust assets. They should therefore be treated as relationship property for the purposes of the PRA. If the Supreme Court agreed with Ms Pinney, the trust assets may be available for division.

Supreme Court decision – emphasis on fiduciary duties

The Court examined the powers held by Mr Clayton, and Mr Pinney. The Court distinguished the case from Clayton by noting two key differences:

- *Trustee structure:* the Trust Deed required a minimum of two trustees who must act unanimously, preventing sole control by any single trustee; and
- *Fiduciary duties:* The Court emphasised that the trustees, including any appointed by Mr Pinney, were bound by fiduciary obligations to act in the best interests of all beneficiaries.

These key differences meant the Court found that unlike in *Clayton*, where Mr Clayton had near unrestricted control over the trust assets, the constraints in the Trust Deed and the fiduciary duties imposed on the trustees meant that Mr Pinney did not hold rights or powers amounting to ownership of trust assets.

Therefore, the powers did not constitute property under the PRA and were not subject to division as relationship property.

Key take away

While the powers in Mr Cooper's situation were not analagous to ownership (and therefore not trust property available to Ms Pinney), the case illustrates the importance of obtaining legal advice early in any relationship, and the importance of carrying out an analysis of the powers and rights held by someone under a trust.

In this case an agreement contracting out of the PRA under which the parties set out their expectations and rights, may have avoided this lengthy and costly dispute.

Whether you are looking to protect your assets or understand potential claims at the start of a relationship, expert advice is essential to navigate potential issues.

It is important to review the terms of your trust deed, review and update any relationship property agreement in place, and discuss any concerns you have regarding farm ownership structures with a legal advisor.

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Update on changes to the Overseas Investment Act

On 23 February 2025, Associate Finance Minister David Seymour announced further details of the Government's proposed changes to the Overseas Investment Act regime. These changes were first announced by the Minister in October 2024.

The Government has a clear agenda for growth and believes that New Zealand's current foreign direct investment regime is overly restrictive and hinders economic development. These changes seek to address this issue head on.

The Government wants to give more confidence to overseas investors, while at the same time protecting New Zealand's key national interests.

The details announced on 23 February 2025 include:

- shifting the overarching purpose of the Act to emphasize the economic benefits that overseas investment can bring to New Zealand, rather than the current focus, which frames foreign ownership or control of sensitive assets as a 'privilege'. In other words, the plan is to introduce a starting assumption that an investment can proceed (unless there is good reason to block it), rather than the other way around;
- for all investments (except for residential land, farmland and fishing quota) making decisions in just 15 days, unless the application could be contrary to New Zealand's national interest. This will be welcomed by overseas investors – from both a speed and certainty perspective. These changes will build upon the actions already taken by the current Government to accelerate processing times. Following a Ministerial directive in June 2024, application processing times have already seen significant improvement;
- except for residential land, farmland and fishing quota investments, replacing the investor and benefit tests with a new modified national interest test. This will simplify the application process;
- providing more detail about what the responsible Minister must (and may) have regard to in determining whether a transaction is contrary to the national interest. So an overseas investor will have greater certainty regarding the likelihood of their transaction being pulled out of the new 15-day processing timeframe;
- strengthening the Government's ability to intervene on rare occasions that a transaction is not in the national interest; and
- a likely new fee regime for the OIO to process applications.

The Government is now drafting the legislation for these changes and aims to have it in place by early 2026.

Farmland

For overseas investments in farmland, the existing and more onerous investor and benefit to New Zealand tests will continue to apply. These tests can be costly and expensive to satisfy as an overseas investor needs to show their investment will result in benefits to New Zealand.

It will be interesting to see if the Government relaxes the current rules requiring farmland to be advertised on the open market before an overseas purchaser can enter into a contract to buy the land (even though the seller of the land is not obliged to accept any offer made to it). As this requirement can further slowdown transactions in the agricultural, horticultural and viticulture industry.

Residential land

It does not appear that the Government will change the ban on overseas investment in residential land. This is noting on 1 April 2025 the Government made changes to the Active Investor Plus (AIP) visa to try to make it more attractive for new migrants to invest in New Zealand. The current overseas investment restrictions for residential land may need to be more aligned with the new AIP rules if the Government wants to encourage high net worth individuals to invest in New Zealand, as often those investors will want an easier pathway to buy a house once they have their AIP visa.

These proposed changes to the Overseas Investment Act will be one of the most significant suite of changes since the Act came in law in 2005. We will continue to provide updates.

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Wind farm investigation licence

With the development of wind farms in New Zealand, it is increasingly common for farmers and rural landowners (Landowners) to be approached by wind farm developers (Developers) to enter into negotiations concerning the possibility of a wind farm on their property (Property).

There are a number of stages in this process, with the first being the Developer seeking the right to investigate the feasibility of a wind farm on the Landowner's Property. This typically culminates in the Landowner entering into a wind farm investigation license (**Licence**).

While there is no doubt that a wind farm can represent a significant opportunity for the Landowner in terms of passive income and adding value to the Property, care needs to be taken even with the initial License documentation in relation to the level of commitment going forward. It should also be noted that the form of the License can vary considerably between different Developers. The purpose of this article is to summarise key terms that the Landowner should consider, together with some of the commercial aspects.

What is a wind farm investigation License?

Typically, the License grants the Developer an exclusive right to enter upon the Land and investigate the feasibility of a wind farm on the Property. This usually involves locating wind monitoring equipment on the Property to allow the Developers to collect data and determine the feasibility of a wind farm on the Property.

Term

The term of license is usually two years, granting an exclusive right during that term. The Landowner is locked in during that time without a right of termination. It may be appropriate for the Landowner to have the right to terminate in certain circumstances such as a material breach by the Developer.

License fee

The license fee paid by Developers can vary and is negotiable. The range is considerable, depending on the size of the land and opportunity for the Developer. Typically, the fee can range from a few thousand dollars to as high as $50,000. If the wind farm proceeds then there will be significant ongoing royalty payments.

Farming operations

The License should contain obligations on the Developer to minimise the impact on farming operations and to provide for compensation if farming operations are disrupted causing loss. In addition, there should be an obligation to reinstate the Property at the end of the term of the License.

Typically, reinstatement might include removal of the Developer's infrastructure and reinstating any damaged pasture or fences.

Location of wind monitoring equipment

Ideally, the wind monitoring equipment's location should be subject to agreement between the parties. The degree of Developer discretion in this regard varies from Licence to Licence and is a point that needs to be checked carefully.

Option

Typically, the License will refer to the next agreement being an option on the part of the Developer to take an easement over the Property to construct a wind farm and operate it on the Property for up to 50 years. The degree of commitment to enter into and negotiate this option varies from Licence to Licence, and the Landowner needs to take care not to commit to entering into a document that the Landowner has not seen or does not enable reasonable scope or negotiation. Ideally, from the Landowner's point of view, it should be a general good faith obligation allowing the Landowner to avoid the option agreement if he or she is not happy with the terms of the option agreement. The option should have a finite term.

Reporting

It is also worthwhile considering whether the Licence should include quarterly or six-monthly reporting on the wind feasibility (with data sharing with the Landowner) and progress of the development activities. Even if the development does not proceed (which it may not for a variety of reasons) it is useful for the Landowner to be aware whether a wind farm is feasible on the Property, or not.

Other issues to consider

Other issues the Landowner may wish to consider in the general commercial sense are the wind farm's likely impact on:

- visual and amenity value of the Property;
- noise and impact on staff and stock; and
- ongoing disruption to farming operations through the installation and ongoing maintenance of the wind turbines.

Legal advice and cost

It will be important to obtain legal advice from a practitioner who understands Licenses. Typically, a Licence will allow for the Landowner to obtain legal advice and the Developer to pay those costs up to an agreed limit.

While the Licence is a preliminary document, it should not be treated lightly for the reasons noted above.

It will be important to get proper legal and accounting advice in relation to the form of the License and also in relation to understanding pros and cons of the wind farm on the land.

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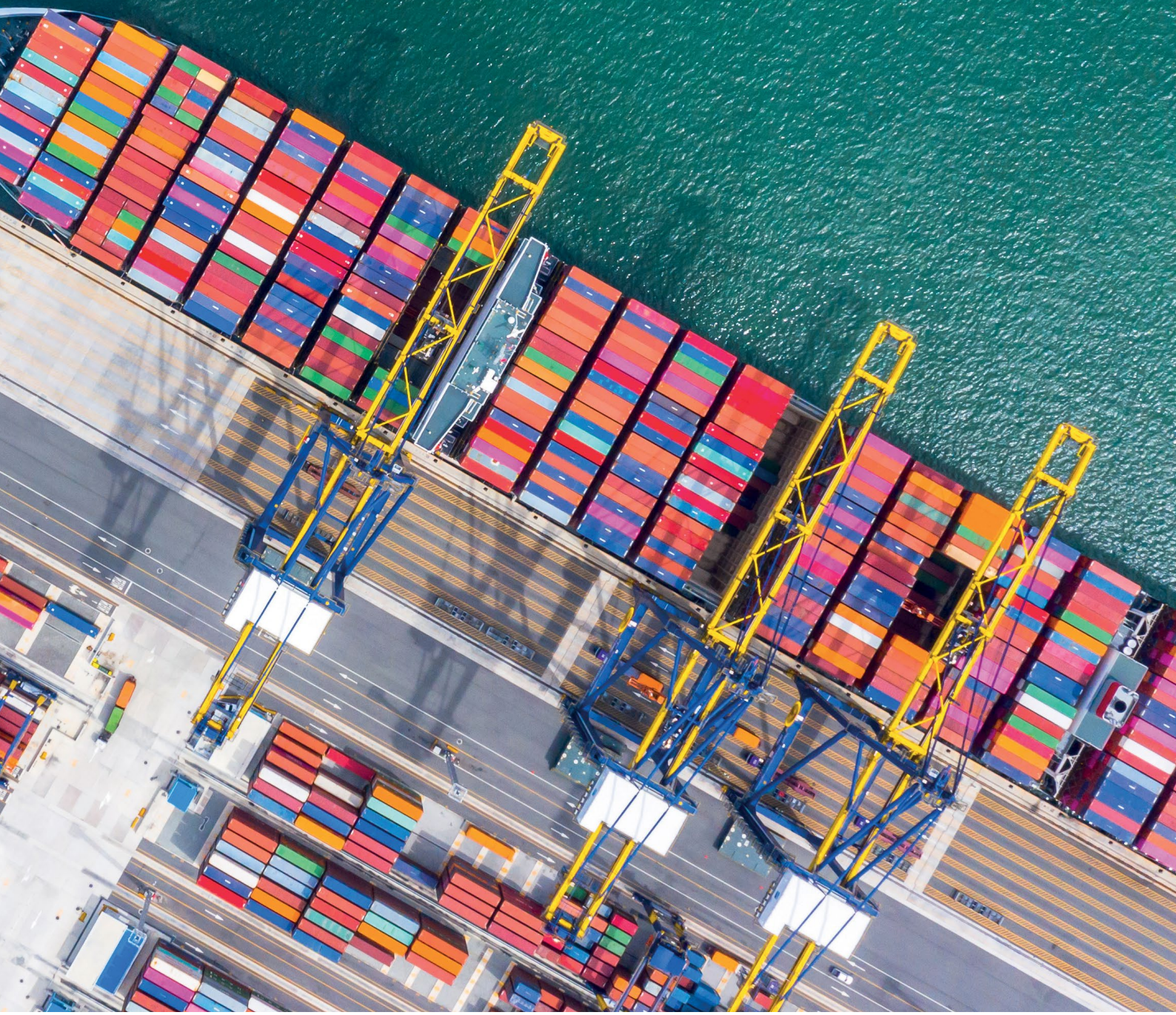
Dairy Industry Restructuring (Export Licences Allocation) Amendment Act 2025



The Dairy Industry Restructuring (Export Licences Allocation) Amendment Act 2025 amends how New Zealand administered dairy export quotas are allocated.

This article sets out why the changes were introduced, and the key effects that the Act has for dairy export quotas.

The Dairy Industry Restructuring (Export Licences Allocation) Amendment Act 2025 (Act) which came into effect on 1 May 2025 reflects the coalition Government's policy objectives for the dairy industry. These objectives aim to recognise the growing diversity of business models and sizes, to ensure that the quota allocations are commercially viable and supports companies to scale up, to maximise the value of dairy export quotas, and to enhance New Zealand's reputation and relationships in the international market.

Why has the Act been introduced?

Dairy export quotas enable prescribed amounts of dairy products to receive beneficial tariff rates in specific markets. New Zealand currently has the right to administer dairy export quotas for the USA, the UK, the EU, Japan, and the Dominican Republic. Under the current regime, export quotas are allocated based on the proportion of bovine milk solids collected by participants from dairy farmers in New Zealand. The Act recognises that the dairy market has changed since the establishment of the quota system in 2007.

There has also been low utilisation of the diary export quota over the past decade. However, with recent interest from the dairy sector in new Fair-Trade Agreements with the UK and EU that contain quota allocations, the Act seeks to better align how quota is allocated and to encourage its use.

What has the Act changed?

The Act contains three significant changes to the dairy export quota.

1 The Act allocates export licences based on export volume history. This history is made up of the volume of products exported under a tariff heading to all export markets over the previous three consecutive seasons. Allocating licences in this way hopes to widen the export quota to more diverse business models, support smaller companies to scale up, ensure that participants have demonstrated an ability to export their product, and increase the utilisation of the quota.

2 The Act also creates a regulation-making power. This power enables 10 per cent of export licences for a designated market listed in Schedule 5A of the Dairy Industry Restructuring Act 2001 to be reserved for exporters who would otherwise be ineligible and for exporters who are eligible for fewer than 200 tonnes of product. These regulations could enable participants, who would originally be ineligible due to their export history, to apply for annual licences for exports up to 200 tonnes of product. Similarly, participants who are only eligible for fewer than 200 tonnes of product based on their export history could apply for a top-up from the reserve portion, so their total allocation would be up to 200 tonnes. These changes allow for new participants to enter the market and helps develop their export history as they scale up.

3 The Act seeks to include non-bovine dairy in quota allocation. This change aims to future-proof the quota allocation to accommodate longer-term growth in the non-bovine sector.

Summary

The Act changes the dairy export quota allocation intending to reflect the changing dairy industry by introducing a volume-based allocation to export licences, creating regulation-making power, and including non-bovine dairy in quota allocation.

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Government's Proposal to Amend the Public Works Act 1981: A Strategic Move to Address Infrastructure Challenges

The New Zealand Government has proposed a suite of amendments to the Public Works Act 1981 to expedite the acquisition of land for critical infrastructure projects.

This initiative is stated to be driven by the need to address the nation's infrastructure deficit, enhance economic productivity, and streamline the land acquisition process.

What is the Public Works Act 1981?

The Public Works Act 1981 (**PWA**) provides powers to the Crown and local authorities (acquiring authorities) to acquire land for delivering public works, such as roads, schools, and water services. It sets out a process that must be followed to ensure the rights of private landowners are considered and protected, including the payment of compensation for any land acquired.

Rationale Behind the Proposed Amendments

The PWA has not undergone substantial amendments since 1988, leading to inefficiencies and delays in acquiring land for public works. Currently, the acquisition process can take up to a year on average, and if compulsory acquisition is required, the process generally extends up to two years. Objections to the Environment Court can further prolong development timelines. These delays contribute to increased costs and hinder the timely delivery of essential infrastructure projects. Uncertainty for landowners who are potentially subject to the PWA is also an important consideration.

A targeted review by the New Zealand government identified unnecessary duplication in the system, outdated negotiation processes, and disjointed government agency practices. To address these issues, the government aims to modernise the PWA, making it more fit-for-purpose and capable of supporting critical infrastructure development.

Proposed Amendments to the PWA

The government has proposed a two-stage process to amend the PWA.

Stage 1:

Public Works Act (Critical Infrastructure) Bill 2025

The Public Works Act (Critical Infrastructure) Bill 2025 (**Critical Infrastructure Bill**) was publicly released on 13 May 2025, had its first reading in Parliament on 15 May 2025, and represents stage one of a two-stage process to amend the PWA.

The Critical Infrastructure Bill represents a targeted amendment to the PWA and is intended to accelerate the acquisition of land needed for the public projects listed in Schedule 2 of the Fast-track Approvals Act 2024 and the Roads of National Significance identified in the 2024 Government Policy Statement on Land Transport.

The proposed amendments focus on several key areas to achieve this goal, while also focusing on improved fairness for landowners. The Critical Infrastructure Bill, if passed would introduce the following amendments:

(a) Incentive and Recognition Payments: Landowners who voluntarily agree to sell their land before receiving a formal notice of intention under section 23 of the PWA (the first step towards a compulsory acquisition) will receive an upfront incentive payment of 15% of the land's value, capped at $150,000. Additionally, all affected landowners will receive a recognition payment of up to $92,000 to acknowledge their contribution to public infrastructure development.

(b) Streamlined Objection Process: The Critical Infrastructure Bill proposes removing the Environment Court's involvement in land acquisition objections. Instead, disputes will be addressed by the original decision-making authority (i.e the Crown agency or local authority seeking to acquire the land for public works), with the option for landowners to seek judicial review in court.

(c) Targeted Application: The amendments in the Critical Infrastructure Bill apply solely to projects listed in Schedule 2 of the Fast-track Approvals Act and the Roads of National Significance identified in the 2024 Government Policy Statement on Land Transport.

(d) Exlusions for Māori land: protected Māori land will be excluded from the accelerated process under the Critical Infrastructure Bill. However, owners of protected Māori land that is acquired for critical infrastructure projects through the standard PWA process will be eligible for the incentive and recognition payments.

Stage 2:

General PWA Amendments

A second Bill is expected to be introduced into Parliament later this year, and will deal with general amendments such as:

(a) Streamlining land acquisition for public infrastructure by empowering the NZ Transport Agency Waka Kotahi (**NZTA**) to enter into land acquisitions agreements with owners direct. Currently, while NZTA and its advisors lead negotiations with landowners, agreements are entered into with the Crown (via Land Information New Zealand).

(b) Enhancing inter-agency collaboration by encouraging government agencies to work together under the PWA. One means of achieving this is by encouraging agencies to act in a coordinated manner to acquire land together, rather than separately.

(c) Requiring mandatory mediation for compensation disputes.

(d) Introducing new incentive payments and increasing existing home-loss and land-loss compensation payments.

(e) Establishing new emergency powers to allow faster land acquisition following natural disasters to support recovery.

Implementation Timeline

The Critical Infrastructure Bill is expected to come into force six months prior to the stage 2 PWA amendments, with Cabinet briefing papers proposing implementation of the Bill in late 2025. If passed, the Critical Infrastructure Bill will retrospectively apply to land acquisitions for critical infrastructure projects where a section 18 notice of desire has been served and negotiations have started before the enactment of the Bill.

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Our Rural and Agribusiness Team

If you have any questions about the topics raised in this newsletter please contact one of our rural and agribusiness specialists:

Anderson Lloyd is a trusted legal advisor to the businesses that support New Zealand's primary sector – from the family farm, through to co-operatives, large corporate farms, and rural service providers.

Our nationally recognised team of rural and agribusiness experts are able to advise you on a variety of legal matters. We form solid partnerships with our clients and are focused on achieving the best possible outcomes. Across our full service firm we also bring together the right people when it comes to banking, construction, litigation, employment, overseas investment and resource management legal advice.

Our lawyers advise on:

- due diligence for acquisition and disposal of farming properties and rural businesses
- finance and ownership structures of farming businesses
- succession and inheritance issues
- agreements for joint venture farming entities
- co-operative company shareholdings
- overseas investment requirements
- industry specific advice for example, dairy, sheep and beef, orchardists, winemakers and grape growers
- resource management including consents for irrigation and effluent discharge
- water rights and irrigation schemes
- submissions on plans and policy reform
- environmental compliance and prosecutions

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