

To the Environment Committee

# Submission on the Crown Pastoral Land Reform Bill

4 February 2021

## Introduction

1. The Environment Committee of the New Zealand Parliament has called for submissions on the Crown Pastoral Land Reform Bill which amends the Crown Pastoral Land Act 1998 (Principal Act) and the Land Act 1948.
2. The amendments proposed in the Bill are of direct interest to the work of the New Zealand Walking Access Commission and to the public of New Zealand.
3. We do not object to our submission being published.
4. We would be happy to discuss any aspect of our submission.
5. Our contact is Ric Cullinane, Chief Executive | Tumuaki.
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## About the New Zealand Walking Access Commission Ara Hīkoi Aotearoa

6. The New Zealand Walking Access Commission Ara Hīkoi Aotearoa is the Crown agent responsible for providing leadership on outdoor access issues. We administer a national strategy on outdoor access, including tracks and trails. We map outdoor access, provide information to the public, oversee a code of responsible conduct in the outdoors, help to resolve access disputes and negotiate new access.
7. The Walking Access Act 2008 is our governing legislation. The Commission has an office in Wellington and a network of regional field advisors throughout New Zealand. An independent board governs our work.

## Access for a variety of modes

8. The Commission supports establishing, maintaining and enhancing a range of access opportunities, including walking, cycling and mountain biking, using motorised vehicles including bikes and scooters, on horseback, with firearms and accompanied by dogs.

## Value of outdoor access

9. Outdoor recreation provides a range of direct and indirect benefits to communities and the country.
10. Outdoor recreation is both a means to an end (health, fitness, therapy, regional development, pest control and tree planting), and an end in itself (fun, satisfaction, connection to nature). Participation in outdoor recreation occurs across our lifetime. It contributes to regional

economies, community wellbeing, social wellbeing, and understanding of conservation and biodiversity outcomes.

11. Research also shows positive links between mental health and outdoor recreation and access to green space. For instance, Sport NZ has linked outdoor physical activity to mental wellbeing (see for example Active NZ - Recreational Physical Activity and Mental Wellbeing, Sport NZ 2018).
12. Free, secure, and practical public access is crucial to enable outdoor recreation. Without legally secured, free and practical access to the outdoors, it is impossible for many people to recreate in it.
13. Recreational access across pastoral leases is part of the country's cultural identity and an attribute of social capital, being the norms and values that underpin society.

### Managing public access

14. In some cases, we need to manage public access to mitigate potential adverse impacts on the environment and other uses of that land. We can do this by regulating the types of activities, the time of year that people can access land, when they can access the land or the number of people who can access the land. For example, there may be a permit system to access forestry land or track closures on farms during lambing season.
15. Walkway easements under the Walking Access Act 2008 provide for connected and simplified management of access. They can mitigate the risk of adverse impacts from access, such as during lambing, at times of high fire danger, or excluding dogs.

### The Commission's engagement with the Crown Pastoral Land Act

16. The Commission's involvement in the administration of pastoral leases has primarily been through assessing and commenting on Preliminary Proposals for tenure review. One of the objects of tenure review (s24(b)(c)(i) Crown Pastoral Land Act 1998) is;  
*"The securing of public access to and enjoyment of reviewable land;"*
17. The Commission's key interest in pastoral leases is primarily, but not exclusively, public access through a lease to recreational opportunities beyond the lease.
18. The Commission has assessed, and made access recommendations, on 66 Preliminary Proposals for tenure review in the last 12 years. Additional public access or clarification of public access available has been sought in nearly all of our submissions.
19. The Commission recognises that public access is a secondary objective/outcome for tenure review. New or improved access from tenure review has provided substantial benefits to New Zealand, with minimal impact on farming operations.

### Structure of the Submission

20. The submission does not comment on each clause in the Bill. Rather, it comments on specific clauses, as indicated by the subheadings in each section.

## Part 1 Amendments to Crown Pastoral Land Act 1998

### Clause 6: Section 2 amended (Interpretation)

#### *Inherent value*

21. The Bill removes 'recreational value' from the meaning of inherent value. Inherent values have not changed since the introduction of the Crown Pastoral Land Act.
22. It is as important to maintain and enhance recreational access across the Crown pastoral estate for present and future generations, as it is for any other cultural or historic value.
23. Removing 'recreational value', as proposed in the Bill, could result in further loss of opportunities for public access through pastoral leases and would remove an opportunity to engage with lessees regarding recreational access.
24. Retaining 'recreational value' in the definition of 'Inherent value' would ensure the Commissioner of Crown Land was made aware of recreational access opportunities. It would provide an opportunity for consultation with a lessee in relation to any application made to the Commissioner that could affect recreational access. This may protect or enhance recreational access through a lease.
25. The Commission is not promoting the arbitrary imposition of public access. We are promoting that recreational access, and the societal benefits that it provides, should be valued and taken account of when a lessee seeks the Commissioner's written consent to undertake any activity that consent is required for.
26. The Commissioner should have the opportunity to encourage and facilitate recreational access through the high country, administered under the Crown Pastoral Land Act and Land Act

#### *Commission recommendation*

27. We recommend that 'recreational value' be retained/included in the definition of 'Inherent value'.

## Part 1 (replaced)

### Subpart 1 – Outcomes, activities on pastoral land, and decision-making process

#### Section 11: process for Commissioners' decision

28. If the Bill proceeds without 'recreational values' being included in the definition of 'Inherent values', it will be essential that the Commissioner still can consider matters affecting recreational access.
29. Such an ability may be achieved by specifically providing that the Commissioner may consider recreational access in the decision-making process.

#### *Commission recommendation*

30. We recommend that section 11(3) be amended by including a clause before (g);  
*may consider potential impacts on recreational access, including any enhancement that may be proposed.*
31. As identified in clause 6 above, the Commission is the Crown agent responsible for providing leadership on outdoor access issues. It administers a national strategy on outdoor access, oversees a code of responsible conduct in the outdoors, and helps to resolve access disputes and negotiate new access.

32. The Commission should be acknowledged as a stakeholder in the administration of pastoral leases and should be provided with the opportunity to comment on public access matters that may be affected by decisions that the Commissioner makes on pastoral leases and pastoral occupation licences.
33. The actual number of applications to the Commissioner that may be relevant to public access are likely to be limited, and the Commission is best placed to make that assessment.

*Commission recommendation*

34. We recommend that section 11(4) be amended to read;
- (4) *Before taking any steps mentioned in **subsection (3)**, the Commissioner:*
- (1) *Must consult the Director-General of Conservation; and*
- (2) *Must advise the Chief Executive of New Zealand Walking Access of the application.*

Subpart 3 – Monitoring, strategic intentions, and reporting  
Clause 22B: monitoring framework

35. The Commission supports including a requirement for the Chief Executive to prepare, regularly update and make public a framework to assess the overall performance of the department in relation to the purpose of the proposed Act, and the exercise of the department's stewardship responsibilities.
36. Public accountability is required to provide the public with a level of confidence in the department's administration of pastoral leases.

*Commission recommendation*

37. We recommend including/retaining clause 22B.

Clause 22C: monitoring compliance by holders

38. The Commission supports including a requirement for the Commissioner to monitor compliance of obligations under leases or licence, easements and recreation permits.
39. Public accountability is required to provide the public with a level of confidence in the administration of pastoral leases, and this requires compliance monitoring.

*Commission recommendation*

40. We recommend the including/retaining clause 22C.

Clause 22D: strategic intentions document

41. The Commission supports including a requirement for the Chief Executive and Commissioner to prepare, regularly update and make public a strategic intentions document.
42. The strategic intentions document will ensure that the Chief Executive and Commissioner give appropriate consideration to the Crown's pastoral land strategic direction. It will also provide an opportunity for consulting outside of the department and another level of public accountability.

*Commission recommendation*

43. We recommend including/retaining clause 22D.

## Clause 22E: decision reporting

44. The Commission supports including a requirement for the Commissioner to publish summaries of the Commissioner's decisions.
45. We believe constraining publication of decisions around rehearing applications is unnecessary and may lead to unacceptable delays.
46. The Commissioner makes a decision before anyone aggrieved by the decision may apply for a rehearing.
47. We believe the publishing of all decisions is required. Where cases are then subject to a rehearing application, this can be identified. This would ensure more rapid notice, and much greater transparency, of the Commissioner's decisions.

### *Commission recommendation*

48. We recommend including a clause requiring all the Commissioner's pastoral land decisions to be made public, without exception, with any application for a rehearing to be noted and then the rehearing decision separately published.

## Part 2 Amendments to Land Act 1948

### Clause 19: Section 24 amended (Powers and duties of Commissioners)

49. The Commission welcomes and supports the Commissioner having specific powers and duties to support the Walking Access Commission as far as practical in meeting its public access objective where that relates to pastoral lands.
50. While it is unclear exactly what this would mean in practice, it is a good first step and should provide the basis for closer co-operation and streamlining of processes where possible.

### *Commission recommendation*

51. We recommend including/retaining clause 19.

### Clause 20: Section 60 amended (Creation of easements)

52. If the Bill proceeds without including 'recreational values' in the definition of 'inherent values', it will be essential that the Commissioner still can consider recreational access in determining whether to grant an easement.
53. Such an ability would be achieved by specifically providing that the Commissioner may consider recreational access in the decision-making process.

### *Commission recommendation*

54. We recommend amending clause (5) to include a new clause after (b) and before the current (c);  
*(c) whether the easement enhances recreational access, and*

### Clause 21: Section 66A amended (Recreation permit)

55. Recreation permits on pastoral leases have the potential to impact significantly on public recreational access.

56. As identified in clause 6 above, the Commission is the Crown agent responsible for providing leadership on outdoor access issues. It administers a national strategy on outdoor access and oversees a code of responsible conduct in the outdoors.

57. The Commission would welcome the opportunity to assist the Commissioner in the consideration of recreation permits. It should be consulted on these matters.

*Commission recommendation*

58. We recommend that clause 66(A) (11) be amended to read;

*Before granting a recreation permit in respect of pastoral land, the Commissioner must consult with*

*(a) the Director-General of Conservation, and*

*(b) the Chief Executive of New Zealand Walking Access Commission*

Conclusion

Thank you for considering this submission from the New Zealand Walking Access Commission.