

## 7. Resolving disputes over access

### Frequently Asked Questions



#### How can the New Zealand Walking Access Commission assist with dispute resolution?

The Commission's staff and regional field advisors are available to provide independent and impartial advice on walking access and to help facilitate resolution of access disputes. Advice of this nature can help the parties involved to identify the core issues, who should be involved in resolving them and what process might be followed to reach a resolution.

In most cases, the Commission will become involved in facilitating resolution of a dispute only after enquirers have made reasonable attempts to resolve the issue directly with the parties involved, whether those parties be the people seeking access, private landholders or a local council or statutory authority.

Facilitation of dispute resolution is provided for in the *Walking Access Act 2008* (section 10 (1) (e)). The Act enables the Commission to facilitate the resolution of disputes about walking access, including initiating negotiations about disputed issues, mediating disputes, and referring disputes to a court, tribunal, or other dispute resolution body.

#### What is a "dispute"?

A dispute is a disagreement among parties concerning the right of a member of the public to recreational access over any particular route, path or road. For example, a landholder not agreeing to remove a locked gate on an unformed legal road (ULR), or a territorial authority not agreeing to insist the lock is removed.

#### What is facilitation?

Facilitation is a process whereby a neutral party (in this case the Commission) enables disputing parties to fully understand each other's position, consider options, and to resolve a problem together.

Facilitation is generally managed by the Commission, usually one of our impartial and experienced regional field advisors. The process begins with the Commission gathering information and consulting and then moving to "managing" or "supporting" negotiation and problem-solving by the parties.

The facilitator acts as an "interpreter" and guide, to enable good communication between the parties and ensure that they understand the process. Ultimately, both parties should understand one another better, have accurate information, and clearly understand the problem.

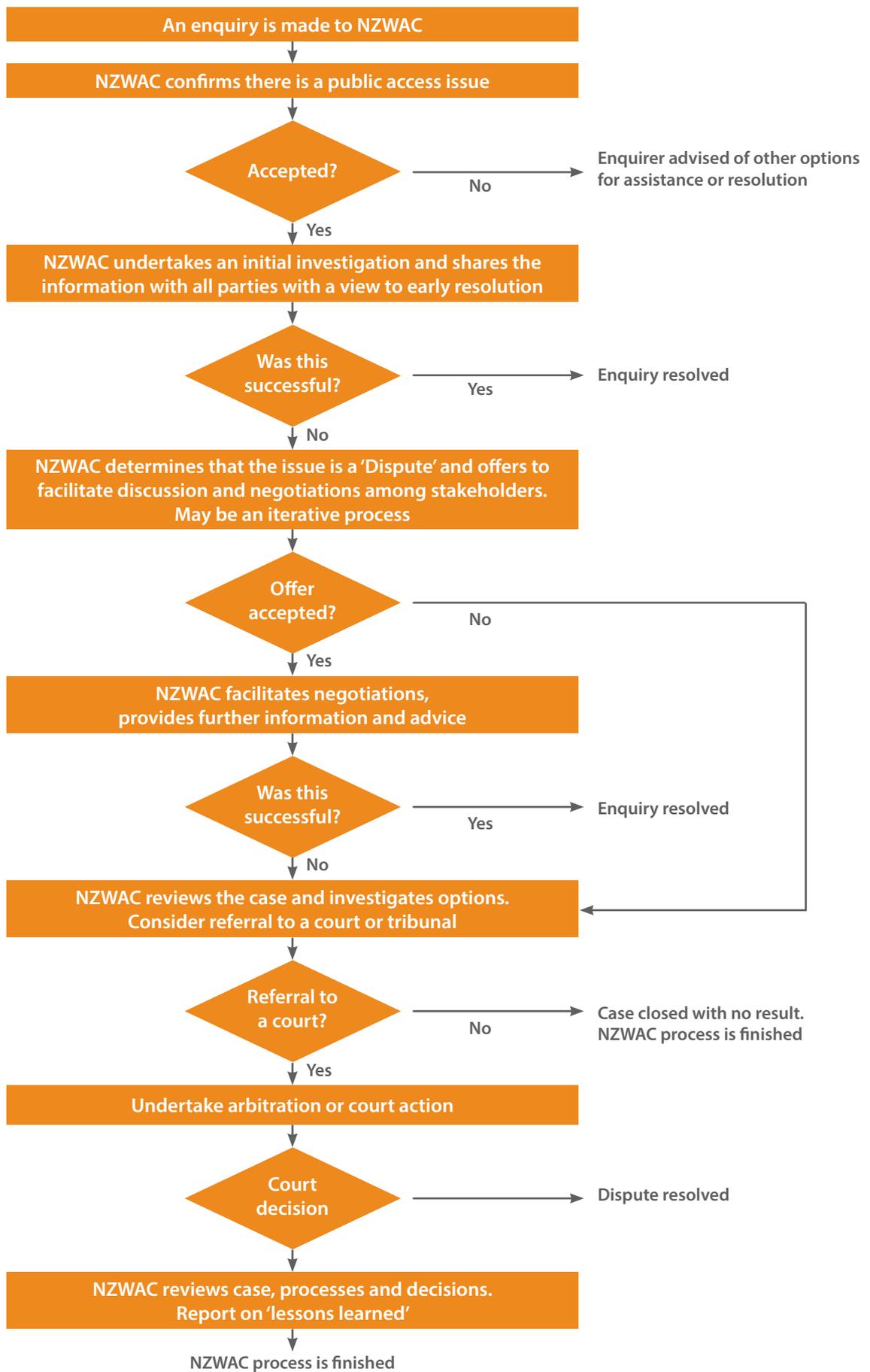
The facilitator may provide written or verbal recommendations or advice for resolving the dispute but does not make binding decisions. When the process has been completed, the facilitator will write to everyone involved with details of the outcome (recommendations, advice, and actions).

Facilitation is a flexible process — the exact process will depend on the nature of the case and the wishes of the parties.

#### Do I have to pay for the Commission to investigate my concern?

No, there is no charge.

## The dispute resolution process



## How long will it take?

The time needed to resolve a problem depends very much on the willingness of the parties to engage actively and be open to information, options and solutions. Many enquiries and cases are resolved in days or weeks; usually once the parties clearly understand their own, and others', rights, responsibilities and options.

The Commission may suggest approaches to minimise parties concerns such as signage, fencing, stiles and route markers.

Some cases with a long history may take longer to resolve as parties may have become locked in their views. In some cases, agencies with legal responsibilities and obligations to manage access may not have been able to resolve them. A small number of the Commission's cases have been active for many years.

## What happens when the Walking Access Commission looks into an access enquiry?

If you are not able to resolve your access concern with the relevant landowner, property manager or administering authority, you can ask the New Zealand Walking Access Commission to look into the case.

When looking into a case on your behalf, the Commission will follow the following process:

1. **Confirmation.** On receipt of your enquiry the Commission will confirm whether this is a public access case that we can investigate. For example, some access problems are between neighbouring landholders with no effect on public access. The Commission is not the appropriate organisation to manage these cases.
  2. **Investigation.** The Commission will gather information, investigate the access status of the land, examine parties' rights and responsibilities, and consider options. This information is shared with all parties. In many instances the case will be resolved by the Commission providing information or advice, and/or clarifying any misunderstandings of the law and people's rights.
  3. **Access dispute.** If the problem is not resolved during the initial investigation and sharing of information, and relevant parties are unable to agree on a possible solution, the case becomes an 'Access Dispute'. We will offer to facilitate negotiations, conduct further research as appropriate and if resources allow, suggest options or ways to mitigate parties' concerns.
  4. **Case management.** The Commission has no coercive powers and its involvement in facilitating a resolution depends on the parties agreeing to the Commission's assistance, remaining engaged in the process and discharging their legal and statutory responsibilities.
  5. **Referral to a dispute to mediation, tribunal or other authority.** In the event that parties are unable to agree, or reject the Commission's advice or involvement, it may suggest to the parties that the case is referred to a court, tribunal or other dispute resolution body.
  6. **Reporting.** At the end of the process the Commission will generally publish a short summary of the case on its website or in newsletters and reports. Personal details are not included.
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### **Who is involved?**

This will depend on the nature of the case or problem. The Commission is usually represented by a regional field advisor. Other parties may include landholders, the person initiating the enquiry and agencies and people who can provide expertise and information such as local government.

Everyone involved in a case may meet with the facilitator as a group, or separately. The process requires the engagement of all relevant parties and the absence of the person who initiates an enquiry nullifies this process and limits the Commission's ability to progress the case.

### **Can I change my mind about the Commission's involvement?**

Yes. The Commission wants to achieve practical outcomes with local interests and community support or consensus. If resolution is more likely without our involvement, the case may be best managed locally.

### **Will my name or other personal details be made available to others?**

The Commission will not release personal information to others without your permission, subject to the requirements the *Official Information Act 1982* and the *Privacy Act 1993*.