

# **Crown Pastoral Land Reform Bill**

Government Bill

As reported from the Environment Committee

## **Commentary**

### **Recommendation**

The Environment Committee has examined the Crown Pastoral Land Reform Bill and recommends, by majority, that it be passed with the amendments shown.

### **Introduction**

The bill would amend the Crown Pastoral Land Act 1998 (the CPLA) and the Land Act 1948. It seeks to end tenure review, under which some land can be transferred into freehold ownership, and to improve the way Crown pastoral land is administered and regulated.

The Crown owns approximately 1.2 million hectares of Crown pastoral land: about 5 percent of New Zealand's total land area. This land is primarily in the South Island high country, and most of it is leased by the Crown to farmers for pastoral farming.

Crown pastoral leases have 33-year terms, and are perpetually renewable. Leaseholders<sup>1</sup> have a right to pasturage (the grazing of stock). However, unless they get the consent of the Commissioner of Crown Lands, leaseholders cannot disturb the soil, burn vegetation, or increase their stock numbers beyond set limits. Land Information New Zealand (the department) is responsible for administering the Crown pastoral land regime.

The bill aims to ensure that the department administers Crown pastoral land in a way that maintains or enhances the land's inherent values that arise from ecological, land-

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<sup>1</sup> In our commentary, our reference to "leaseholders" includes both holders of pastoral leases and holders of occupation licences.

scape, cultural, heritage, and scientific attributes or characteristics, while providing for ongoing pastoral farming.

The bill seeks to:

- end tenure review
- clarify the outcomes sought by the regulatory system
- reflect the Crown's obligations under te Tiriti o Waitangi/the Treaty of Waitangi
- clarify how the Commissioner should make decisions on applications for pastoral farming and other activities
- introduce a new monitoring and enforcement regime
- provide stronger and clearer accountability and transparency in the department's administration of Crown pastoral land, with more public involvement.

The bill does not seek to change leaseholders' tenure, right to pasturage, quiet enjoyment of their leasehold properties, their rights of renewal, or their responsibilities to the land such as weed and pest control.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We note that the Regulations Review Committee wrote to us to draw our attention to the proposed powers to make secondary legislation, and we discuss this in our commentary. The majority of us have no other matters regarding the legislation's design to bring to the attention of the House.

### **Proposed amendments**

This commentary covers the main amendments we recommend (by majority) to the bill as introduced. We do not discuss minor or technical amendments.

We note that the bill would amend both the CPLA and the Land Act. In our commentary, our references to new sections are references to new sections of the CPLA, unless stated otherwise. References to the Minister are to the Minister for Land Information who has responsibility for the CPLA, unless stated otherwise.

### **Commencement of the legislation**

As introduced, the new provisions under the bill would come into effect a day after the bill received Royal assent. The majority of us agree that the provisions relating to repealing tenure review should commence at that time. However, the majority of us think that the provisions relating to changes to the regulatory regime may need more time to implement. Therefore, we recommend amending the commencement provisions in clause 2 of the bill so that provisions relating to the regulatory regime would come into effect six months after the date of Royal assent.

## **The purpose of the CPLA, and the outcomes sought in carrying out the Crown's functions under it**

### **Clarifying the purpose of the CPLA**

Clause 5 of the bill would set out the purpose of the amended CPLA in new section 1A. As introduced, the purpose would be to:

- provide for the administration of pastoral land
- state the outcomes that persons must seek to achieve when making decisions under this Act and relevant provisions of the Land Act 1948.

Clause 8 of the bill would insert new section 4, which would list the outcomes that people carrying out the Crown's functions must seek to achieve. To reflect the importance of these outcomes, we propose replicating them in new section 1A which sets out the purpose of the CPLA.

Accordingly, the purpose of the CPLA would be to provide for the administration of pastoral land in a way that seeks to:

- maintain or enhance inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land
- support the Crown in its relations with Māori under te Tiriti o Waitangi/the Treaty of Waitangi
- enable the Crown to get a fair return on its ownership interest in pastoral land.

We recommend amending proposed section 1A accordingly.

### **Meaning of "inherent value"**

Clause 6(2) of the bill would revise the definition of "inherent value" in section 2 of the CPLA. Identifying and assessing things that give rise to inherent value is an important exercise for leaseholders and the Commissioner when considering applications for consents or permits.

The new definition would include as a value a characteristic or attribute arising from the landscape of a natural resource, and would remove values arising from recreational activities. Paragraph (b) of the definition would expressly exclude any value associated with farming activity.

The intent of paragraph (b) in the definition is to exclude a pastoral farming activity from being an inherent value of the land. For example, the fact that there had been farming on the land historically would not be an inherent value in and of itself. The majority of us do not think it was intended to exclude cultural and heritage values that might be associated with pastoral farming. For example, a historic shed might have an inherent value associated with heritage, but also be associated with farming activity. The majority of us suggest redrafting the definition of "inherent value" to better reflect the intent that cultural and heritage values (that may be associated with a farming activity) are included within the definition.

## **The Crown–Māori relationship**

The CPLA does not currently contain a reference to Māori or the Crown–Māori relationship. As introduced, the bill would specify the Crown’s duties to Māori when carrying out functions under the CPLA.

As introduced, clause 8 of the bill, new section 5(a), would require the Crown to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, mahinga kai, wāhi tapu, and other taonga, when decisions to consent to certain activities are being sought under the CPLA.

In addition, under new section 5(b) and other new sections as introduced, the setting of strategic intentions for Crown pastoral land (new section 22D), setting a monitoring framework (new section 22B), and setting standards and directives (new section 100O), and setting other regulations (new section 100N) would require consultation with Māori (as provided for in the new sections).

We propose some amendments to better reflect the Crown’s responsibilities under te Tiriti/the Treaty and its obligations to mana whenua whose takiwā (area) includes land under Crown pastoral leases. We discuss these amendments below.

### **The Crown’s responsibility to give effect to the principles of te Tiriti/the Treaty**

The majority of us think that the CPLA should refer to the Crown’s obligation to recognise and respect its responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. Such a change would bring the CPLA into line with provisions in other legislation. We recommend amending proposed new section 5 to reflect this.

We also recommend specifying, in the interpretation section, that references to te Tiriti o Waitangi/the Treaty of Waitangi mean the Treaty as defined in section 2 of the Treaty of Waitangi Act 1975.

### **Recognising mana whenua interests more specifically**

As mentioned, new section 5(b) would require the Crown to consult Māori in relation to any decisions made under the new sections referred to earlier. We recommend amending it (as renumbered new section 5(1)(b)) to clarify that the consultation must be with iwi whose takiwā includes pastoral land. We also recommend inserting subsection (2) to make clear which takiwā would be covered by such a requirement. The takiwā would include:

- the takiwā of Ngāi Tahu Whānui as defined in the Te Runanga o Ngai Tahu Act 1996
- the respective areas of interest described in deeds of settlement within the Ngāti Apa ki te Rā Tō, Ngāti Kuaia, and Rangitāne o Wairau Claims Settlement Act 2014, the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, and the Ngati Toa Rangatira Claims Settlement Act 2014.

Later in our commentary, we discuss new sections 100L and 100N, and proposed new section 100LA. For clarity, we recommend including these new sections in the list of sections to which new section 5(1)(b) would apply.

### **Classification of pastoral activities**

Under the CPLA, leaseholders have an exclusive right of occupation and right to pasturage, but must obtain consent from the Commissioner to do anything that involves disturbing the soil, clearing or burning vegetation, or increasing stock numbers.

Currently, all such activities are considered “discretionary”: leaseholders are required to obtain consent from the Commissioner of Crown Lands to carry them out. The bill would instead introduce three new classifications for activities that leaseholders may wish to take, according to the likely effects they have on the inherent values of the land. The classifications are:

- permitted activities: where the consent of the Commissioner is not required
- discretionary activities: where the Commissioner’s consent must be obtained
- prohibited activities: which cannot be undertaken at all.

Under new section 6, inserted by clause 8, the classifications of specific pastoral farming activities would be provided for in new Schedule 1AB. We recommend some refinements to the classifications of activities as introduced. The majority of us consider that these changes would help to clarify the scope of the activities, and address submitters’ concerns about how the classifications may apply in practice.

We note that new section 100L would enable the classifications in the Schedule to be amended by Order in Council. We discuss this later in our commentary.

### **Decision-making process for applications to undertake discretionary pastoral activities**

Clause 8 would insert new sections 11 to 13 into the CPLA. The new sections would specify the decision-making process to be followed when a leaseholder applies to the Commissioner to undertake a discretionary pastoral activity, or any person applies to the Commissioner for the grant of a commercial recreation permit. The majority of us note that the decision-making would be informed by the desired outcomes that the bill would specify, which we discussed earlier.

We recommend redrafting new sections 11 to 13. Our amendments are mainly intended to make clearer what the decision-making process involves, not to change the substance of the new sections as introduced. However, the majority of us do propose some substantive changes to the new sections, which we discuss below.

### **Commissioner’s considerations when deciding whether to grant an application for a consent or permit**

New section 11 would set out what matters the Commissioner must or may consider when deciding whether to accept an application. We discuss some of these below.

*Government policy*

As introduced, new section 11(3)(b) would require the Commissioner to consider current Government policy when deciding whether to grant an application. The majority of us think that the reference to “current Government policy” is too broad and could create too much uncertainty and disagreement about what is a relevant Government policy. Also, the provision may give too much power to the Minister to direct the Commissioner’s decision-making in line with the current Government’s policy. The majority of us think the provision could be more specific about what would be relevant policy considerations. Therefore, we recommend amending it to allow (rather than require) the Commissioner to consider relevant Government policy decided by Cabinet. In the redrafted provision, we also recommend specifically mentioning the relevance of national directions (such as national policy statements and national environmental standards). We recommend amending new section 11(3)(b) accordingly.

*Relevance of farm plans*

As introduced, new section 11(3)(c) would allow the Commissioner to consider any plan for the management of the land when deciding whether to grant an application. While not explicitly mentioned in the bill as introduced, in practice the plans referred to could include farm plans. Farm plans currently vary in content and form, but are often documents aligning on-farm activities with district and regional plans under resource management legislation. In many cases, farm plans are approved, audited, and enforced by regional councils or industry bodies. Under recent amendments to the Resource Management Act 1991, farm operators will soon be required to produce a farm plan for freshwater.

The majority of us note that this bill does not seek to make farm plans a compulsory requirement under the CPLA. However, the majority of us envisage that farm plans could prove to be useful in streamlining the process for consent applications under the CPLA. Farm plans will likely contain a lot of the information that the Commissioner would be seeking. For example, a farm plan could help to show how a consent fits into farm planning and how risks would be managed. Further, a farm plan could facilitate applications for multiple consents if several discretionary activities were related and needed to be approved at the same time.

While the majority of us see the benefits of farm plans, we do not propose that they become a compulsory requirement under the CPLA. However, as farm plans become more prevalent, the majority of us envisage that leaseholders may increasingly include these plans in their applications. Therefore, the majority of us think that regulations should be able to prescribe the form and content of farm plans that are submitted as part of an application. The majority of us think this would give applicants more certainty as to what would need to be included in a farm plan, if they are using it to support an application.

The majority of us think it is important that the requirements regarding form and content of farm plans be set by regulation, rather than in the primary legislation. This

would allow the requirements to be amended to take into account changing practices and policy settings over time. Therefore, we recommend including in the regulation-making powers in new section 100N the ability to set form and content requirements for farm plans that may be considered by the Commissioner when assessing an application. The majority of us note that the regulation-making powers under new section 100N—which we discuss later—would include a requirement for consultation before regulations were made.

The majority of us expect that the setting of form and content requirements for farm plans would help in streamlining the CPLA and resource management consenting systems at an operational level, so that information required under each regime could be provided for in one farm plan. We wish to avoid having parallel farm plans to meet different requirements.

### **Discretionary pastoral activities—when adverse effects are “more than minor”**

Under the proposed decision-making process in new section 12, if the Commissioner decided that the proposed pastoral activity would have more than minor adverse effects on the inherent values of the land, they would have to decline the application. One exception is if they were satisfied that the activity was necessary to enable the leaseholder to exercise their rights and obligations under the lease. To assess whether it was necessary, the Commissioner would need to take into account one or more criteria set out in new section 12(5).

#### *Criteria for considering whether an activity is necessary for the exercise of rights and obligations*

We recommend that the matters set out in new section 12(5) be moved to a new schedule in the CPLA, and that the criteria be able to be amended by Order in Council on the recommendation of the Minister. Accordingly, we recommend amending proposed section 12 and inserting new Schedule 1ABA in Schedule 2 of the bill, and new section 100LA into clause 14 of the bill.

The majority of us consider it appropriate in these circumstances to introduce a regulatory power to amend a Schedule in primary legislation. The majority of us think it is helpful to have more flexibility to keep the criteria adaptable and relevant than what a primary statute can allow. In our proposed new section 100LA, which contains the power to amend the new Schedule, we propose that the regulations could only be made after consultation. This would involve consultation with relevant iwi and representatives of pastoral leaseholders. There would also be a requirement to publish a notice of any proposed regulatory changes on the department’s website, and to invite written submissions from the general public on them.

#### *Factors that are not relevant in determining whether an activity is necessary for the exercise of rights and obligations*

As introduced, new section 12(6) would prevent the Commissioner from considering the financial viability of farming under the lease and the economic sustainability of

the pastoral farming activity. The economic benefits of a pastoral farming activity would also not be a relevant factor.

The majority of us think that there are situations where the ongoing financial viability of the pastoral farming enterprise could be a relevant factor that the Commissioner should take into account. For example, there may be situations where the leaseholder establishes that the lease would become financially unviable if the activity was not consented to. In turn, this could prevent the leaseholder from exercising their rights and obligations under the lease, such as the right to pasturage. Whether it did or not would be a matter for the Commissioner to determine.

The majority of us therefore propose inserting new section 12(3) so that the Commissioner could consider any economic benefits associated with undertaking the sought activity, but only to the extent that those benefits relate to the ongoing financial viability of the pastoral farming enterprise. The onus would be on the leaseholder to raise this matter and satisfy the Commissioner that it is a relevant factor. The Commissioner would not be required to consider this factor, unless they considered it relevant, nor approve the consent application because of the factor.

### **Grant of commercial recreation permits**

We propose renaming recreation permits as “commercial recreation permits” throughout the CPLA to better reflect their nature. These permits allow permit holders to undertake tourism or other recreation ventures on pastoral land. Applications for commercial recreation permits could be made under new section 10, and would follow a similar approval process to applications for discretionary activity consents. The Commissioner would decide whether to grant the permit in accordance with the considerations under new sections 11 and 13(1). The Commissioner must be satisfied that the adverse effects on the land are no more than minor. An exception to this is provided for in new section 13: the Commissioner could grant a permit even if the activity would have more than minor effects if the activity was previously allowed to be undertaken, and there were already existing buildings and infrastructure on the land that had been consented to by the Commissioner.

As introduced, the bill does not provide for two related scenarios involving applications for activities with more than minor effects:

- where existing buildings and infrastructure are proposed to be used for a different activity than one that was previously allowed under a permit
- where an activity is necessary to enable the continued use of existing buildings or infrastructure that were previously consented to by the Commissioner.

We recommend amending proposed section 13(2) so that the Commissioner could grant a commercial recreation permit in these scenarios. However, we note that our amendment would not allow the expansion or development of a business where there are more than minor adverse effects on inherent values of the land, unless it could be shown by the applicant that the proposed activity was justified under proposed new section 13(2).

### **Activities undertaken in emergency situations**

Earlier in our commentary, we proposed several amendments to new Schedule 1AB regarding the classifications of activities as permitted, discretionary, and prohibited. The Commissioner's consent would be required before discretionary activities were undertaken. We note that there may be emergency situations where it is necessary to carry out discretionary activities involving the burning of vegetation or disturbance of the soil, with no time to obtain this consent. For example, it may be necessary to clear a new firebreak to prevent the spread of fire in an emergency situation.

The bill as introduced does not contain an express provision for such a scenario. The majority of us consider that, in practice, the Commissioner would likely decide whether to grant retrospective consent and waive any penalty. However, to provide certainty and clarity, we think that express provision should be made for activities that need to be undertaken immediately in emergency situations. Our proposal would allow discretionary activities involving the burning of vegetation and disturbance of soil to be undertaken in emergency situations as long as the Commissioner was notified, and an application for consent made, as soon as practicable after the activity was undertaken. We recommend inserting new clause 3 into Part 2 of new Schedule 1AB accordingly.

### **Transitional arrangements for applications currently in progress**

New Schedule 1AA of the CPLA would set out the transitional provisions for various matters that could be awaiting decision by the Commissioner when the changes to the CPLA came into force. Some of the transitional provisions would have an element of retrospectivity, as some applications lodged prior to the enactment coming into force would be considered under the new law.

Clause 4 of Schedule 1AA provides that any application for consent to undertake pastoral activities, grants of commercial recreation permits, or easements that was lodged at the commencement of the amended CPLA would be dealt with by the Commissioner under the amended CPLA. The majority of us do not consider that this retrospectivity is necessary in these circumstances. In those cases, applications that were already lodged for those matters should be considered under the law prevailing when the applications were lodged. We recommend amending clause 4 of new Schedule 1AA to reflect this. We also recommend including lease transfer applications and stock limitation exemption applications within that clause.

As mentioned at the start of our commentary, the bill would end the tenure review process. Applications that are currently in progress would not proceed unless they were at a "substantive proposal" stage. The majority of us are of the view that this is a justified approach.

### **Lease transfers—considering increased public access to the land**

The bill would create a new duty for the Commissioner under the Land Act 1948. Clause 19 would insert new section 24(1)(ia), giving the Commissioner a new duty to support the New Zealand Walking Access Commission in meeting its public access

objective (where it relates to Crown pastoral land). The intention of the new provision is to allow the Commissioner to play a facilitative role in negotiations with the New Zealand Walking Access Commission and pastoral leaseholders.

We considered how public access should be taken into account under the regime without affecting leaseholders' rights to exclusive possession and enjoyment of the land. Under the Land Act 1948, leaseholders can seek to transfer their Crown pastoral leases to a new leaseholder. The majority of us think that if there is a lease transfer request, it would be an appropriate time to consider what level of public access is available. Therefore, we recommend inserting clause 21A(3), proposed new section 89(2A) of the Land Act, into the bill. This would amend the Land Act so that if a leaseholder applies to transfer their pastoral lease to a new leaseholder, the Commissioner must be satisfied that "reasonable endeavours" have been made to enhance public access to the land after the transfer.

We considered what our proposed new provision would mean in a scenario where there was already public access to the land. In such a scenario, the Commissioner could consider whether enhanced access would be reasonable in light of a range of considerations, including the amount of access already available, and the likely impact of further access on the value of the lease and the farming operation.

## **Powers to create secondary legislation under the bill**

### **Regulations under new section 100N**

New section 100N(1) would allow regulations to be made by Order in Council (on the recommendation of the Minister) for various specified purposes. These purposes are wide-ranging, and we considered whether they are appropriate matters for regulation. The majority of us are satisfied that the regulatory powers are the appropriate way to set out the prescriptive matters necessary for the administration of pastoral land, while allowing flexibility to amend them when appropriate.

However, we recommend deleting proposed new section 100N(1)(i) relating to regulations to set out decision-making processes for the administration of pastoral land. The majority of us consider that any regulation envisaged for that purpose could be addressed under new section 100N(1)(j) or by standards or directives under new section 100O.

### *Consultation requirements*

We note that proposed regulations under new section 100N would be subject to a consultation requirement in subsection (4). Before recommending a regulation, the Minister would need to be satisfied there had been consultation with iwi, leaseholders or licensees, and the public. We recommend also requiring the Minister to be satisfied that the Director-General of Conservation had been consulted. We recommend clarifying what public consultation should involve: the proposed regulation should be published on the department's website, and the public should have been invited to submit on the draft.

**Setting of standards and issuing of directives under new section 100O**

Clause 14, new section 100O(1), would give the Commissioner a power to set standards and issue directives in relation to:

- the administration of pastoral land and its inherent values, including the monitoring of the land
- compliance by holders of reviewable instruments with requirements under the Act.

New section 100O(2) would also enable the chief executive to set standards in relation to the framework for determining applications for discretionary pastoral consents and commercial recreation permits.

The Regulations Review Committee raised concerns that the purpose and scope of these proposed powers is too broad, and that it was not clear who would be subject to them. We were advised by the department that the power to set standards and issue directives would be for the purpose of enabling the Commissioner to make effective and transparent decisions, and that leaseholders would not be subject to them. The department noted that actions required of leaseholders, and matters that may affect them, must be set out in regulations under new section 100N.

The majority of us are satisfied that the powers contained in new section 100O are appropriate. However, we recommend deleting subsection (1)(b) in relation to standards and directives for compliance. The majority of us consider these matters can be sufficiently addressed by making regulations under new section 100N.

*Consultation requirements*

We note the consultation requirements set out in subsection (3), which we propose amending. As introduced, the chief executive or Commissioner would be required to consult with: iwi, holders of reviewable instruments, other persons who would be affected by the standard or directive, and the public. We recommend amending this to also require consultation with the Director-General of Conservation. We also recommend providing more clarity about what public consultation would involve: the proposed draft standard or directive should be published on the department's website, and the public invited to make written submissions.

**Orders in Council that could amend Schedule 1AB**

As discussed earlier, pastoral activities would be defined as prohibited, discretionary, or permitted. The classification of various activities would be set out in new Schedule 1AB of the CPLA. New section 100L would enable the classification of activities in Schedule 1AB to be amended by Order in Council on the recommendation of the Minister.

*Consultation requirements*

As introduced, the Minister would need to consult the Minister of Agriculture and the Minister of Conservation. We think more consultation should be required. We recommend requiring the Minister to be satisfied that there was consultation with iwi and

leaseholders; and that a notice of the proposed change was published on the department's website and the public were invited to make written submissions.

*Factors to consider when classifying an activity as prohibited*

We acknowledge concerns that the breadth of the discretion could allow activities to be classified (or reclassified) as prohibited that could materially change the terms of a pastoral lease. However, the majority of us consider that new section 100L(6) would set a high bar for the Minister to recommend an activity be classified as prohibited. They would have to be satisfied that the activity would be likely to cause significant loss of inherent values that cannot be avoided in all reasonably foreseeable circumstances.

We recommend amending new section 100L(6) so that, in addition to the above, the Minister would need to be satisfied that the classification of the activity would not impact unduly on the ability of leaseholder or licensee to exercise their rights and obligations in all reasonably foreseeable circumstances.

*Clarifying that classifications do not affect consents previously granted*

We recommend inserting new section 100L(8) to make it clear that any change to the classification of a pastoral activity would not affect the terms of a consent previously issued.

**Our proposal to allow amendments to new Schedule 1ABA by regulation**

For completeness, we note that the majority of us have proposed the inclusion of a new regulatory power (new section 100LA) to enable the amendment of the criteria that the Commissioner could consider when determining whether an activity is necessary to enable a leaseholder or licensee to exercise their rights and obligations. We discussed this earlier in our commentary.

**Enforcement powers created under the bill**

Under the CPLA, the Commissioner can apply to the District Court if they allege that there has been a breach of statutory or contractual provisions by a holder of a lease or pastoral occupation licence. The District Court makes decisions regarding any civil penalty that would apply if the Court found that there was a breach.

As introduced, the bill would retain the above option in the CPLA. However, it would also introduce additional enforcement powers for the Commissioner. These new powers include infringement offences, enforceable undertakings, and cost recovery powers.

**Infringement offences**

The bill would introduce a new regime for infringement offences. The actions that would become infringements would be set out in new section 100D. The majority of us are satisfied that these should be infringement offences, rather than administrative penalties. Infringement offences would allow appeals against any infringement notice given to a leaseholder.

As introduced, new section 100F would specify that the Commissioner may authorise an employee of the department to issue infringement notices under the CPLA. The majority of us think that infringement notices should only be able to be issued by warranted enforcement officers. The officers would need to receive a written warrant from the chief executive of the department.

We also recommend inserting new section 100GA to set out how infringement notices may be served on the person that the warranted officer considers has committed the infringement offence.

### **National Party differing view**

National opposes this bill in its entirety. It is our view that the provisions contained in this bill fundamentally change the relationship between the Crown pastoral leaseholder and the Crown through LINZ from one of partnership, to one with its basis on regulation and policing. As one lessee told us, a Crown pastoral lease is akin to a treaty between two partners which has now under these amendments, been dishonoured.

While the bill seeks to provide stronger and clearer accountability and transparency in the department's administration of Crown pastoral land, LINZ have been unable to satisfy National members on the committee just how their own performance as regulators is to be measured.

We do acknowledge that commencement provisions in clause 2 of the bill that relate to the regulatory regime being delayed to take effect 6 months after the date of Royal assent, will allow the Commissioner of Crown Lands to work with leaseholders on those regulations, and hope that engagement will be genuine and respectful. We also hope that the acknowledgement in the bill commentary of the usefulness of environmental farm plans provides potential in supporting future management regimes and consent applications.

We strongly oppose the introduction of a new infringement regime which confers to the Commissioner additional enforcement powers to those already existing. There have been few complaints made to LINZ on breaches of consented activities by lessees, 126 over the past 10 years. Some of those breaches were self-disclosed by leaseholders themselves, and information was not provided by officials on the number of complaints that were upheld. National members believe that this infringement regime is not only unnecessary, but will significantly erode the trust and good working relationship between the parties to the Crown pastoral lease.

National members attempted to at least re-order new section 100GA so that any infringement notice would in the first instance be emailed or posted, and if there was then no action or response from the lessee, move to delivering the infringement notice by hand. Our motion to establish a hierarchy of actions to deliver an infringement notice was voted down by the committee.

It is National's view that eroding the property rights of Crown pastoral lessees throughout many clauses in this bill will neither benefit environmental outcomes, or in any way enhance pastoral farming in the South Island's high country.

Further, we remain unconvinced that the former Minister for Land Information and sponsor of this bill, and now select committee chair does not have a conflict. We believe that the chair should have stepped aside for the consideration of this bill.

### **ACT Party differing view**

The ACT Party member would like to state their support for the National Party differing view.

## Appendix

### Committee process

The Crown Pastoral Land Reform Bill was referred to the Environment Committee of the 52nd Parliament on 22 July 2020. On 26 November 2020 the bill was reinstated with the Environment Committee of the 53rd Parliament.

The closing date for submissions on the bill was 22 February 2021. We received and considered 161 submissions from interested groups and individuals. We note that one of these submissions was a form submission lodged by 1,733 individuals. We heard oral evidence from 59 submitters at hearings in Christchurch, Queenstown, and Wellington.

We were hosted by the High Country Accord in the South Island high country. The Accord provided us with the opportunity to visit pastoral lease farms, Branch Creek Station and Minaret Station. We would like to thank the Accord for hosting us.

We received advice on the bill from Land Information New Zealand, including the Commissioner of Crown Lands. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

The Regulations Review Committee reported to us on the powers contained in clause 14.

### Committee membership for the consideration of this item of business

Hon Eugenie Sage (Chairperson)

Rachel Brooking

Tāmami Coffey

Simon Court

Hon Jacqui Dean

Anahila Kanongata'a-Suisuiki

Dr Deborah Russell

Hon Scott Simpson

Stuart Smith

Tangi Utikere

Angie Warren-Clark



**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon Damien O'Connor*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Crown Pastoral Land Reform Act **2020**.

**2 Commencement**

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent: 5
- (a) **section 9:**
- (b) **section 15 and Schedule 1** (so far as they relate to **clauses 1 to 3 of Schedule 1AA:**
- (c) **section 15 and Schedule 2** (so far as they relate to **Schedule 1AC:** 10
- (d) **section 16 and Schedule 3.**
- (2) ~~This~~ The rest of this Act comes into force on the day 6 months after the date on which it receives the Royal assent.

## Part 1

### Amendments to Crown Pastoral Land Act 1998

#### 3 Principal Act

This Part amends the Crown Pastoral Land Act 1998 (the **principal Act**).

#### 4 Long Title repealed

Repeal the Long Title.

#### 5 New section 1A inserted (Purpose)

After section 1, insert:

##### ~~1A~~ **Purpose**

~~The purpose of this Act is to—~~

- ~~(a) provide for the administration of pastoral land; and~~
- ~~(b) state the outcomes that persons who make decisions under this Act and relevant provisions of the Land Act 1948 are to seek to achieve.~~

##### 1A **Purpose**

The purpose of this Act is to provide for the administration of pastoral land in a way that seeks to achieve the following outcomes:

- (a) maintaining or enhancing inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land:
- (b) supporting the Crown in its relationships with Māori under te Tiriti o Waitangi/the Treaty of Waitangi:
- (c) enabling the Crown to get a fair return on its ownership interest in pastoral land.

#### 6 Section 2 amended (Interpretation)

(1) In section 2, insert in their appropriate alphabetical order:

**chief executive** means the chief executive of the department

**discretionary pastoral activity** means an activity by a lessee or licensee of pastoral land that requires the consent of the Commissioner under **section 11**

~~**effect** has the meaning given to it by section 3 of the Resource Management Act 1991~~

**effect**—

- (a) includes the following effects, regardless of the scale, intensity, duration, or frequency of the effect:
  - (i) any positive or adverse effect:

- (ii) any temporary or permanent effect:
- (iii) any past, present, or future effect:
- (iv) any cumulative effect which arises over time or in combination with other effects; and
- (b) includes any potential effect of high probability; and 5
- (c) includes any potential effect of low probability which has a high potential impact
- permitted pastoral activity** means an activity by a lessee or licensee of pastoral land that does not require the consent of the Commissioner under **section 11** 10
- prohibited pastoral activity** means an activity by a lessee or licensee of pastoral land that must not be undertaken on pastoral land
- te Tiriti o Waitangi/the Treaty of Waitangi** means the Treaty as defined in section 2 of the Treaty of Waitangi Act 1975
- (2) In section 2, replace the definition of **inherent value** with: 15
- inherent value**, in relation to any land,—
- (a) means a value that arises from an ecological, a landscape, a cultural, a heritage, or a scientific attribute or characteristic of a natural resource that—
- (i) is in or forms part of the land or exists by virtue of the ~~conformation~~ natural character of the land; or 20
- (ii) relates to a historic place on or forming part of the land; but
- (b) does not include ~~any value that relates to or is associated with farming activity~~ a pastoral farming activity
- 7 **New section 2A inserted (Transitional, savings, and related provisions)** 25
- After section 2, insert:
- 2A **Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 8 **Part 1 replaced** 30
- Replace Part 1 with:

<b>Part 1</b>	
<b>Pastoral leases and occupation licences</b>	
Subpart 1—Outcomes, activities on pastoral land, and decision-making process	
	<i>Outcomes</i> 5
<b>4</b>	<b>Outcomes for decision-makers</b>
(1)	All persons performing or exercising <u>the Crown's</u> functions, duties, or powers in relation to pastoral land under this Act or the Land Act 1948 must seek to achieve the following:
(a)	maintaining or enhancing inherent values across the Crown pastoral estate for present and future generations, while providing for ongoing pastoral farming of pastoral land; and 10
(b)	supporting the Crown in its relationships with Māori under te Tiriti o Waitangi/ <u>the Treaty of Waitangi</u> ; and
(c)	enabling the Crown to get a fair return on its ownership interest in pastoral land. 15
(2)	<b>Subsection (1)(c)</b> applies only to functions, duties, or powers that relate to rents, easements, or <u>commercial</u> recreation permits in respect of pastoral land.
<b>5</b>	<b>Māori interests</b>
(1)	<del>In achieving the purpose of this Act</del> <u>order to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, the Crown—</u> 20
(a)	must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, mahinga kai, wāhi tapu, and other taonga in any case where— 25
(i)	consent for a discretionary pastoral activity is sought; or
(ii)	a <u>commercial</u> recreation permit over pastoral land is sought; or
( <u>ia</u> )	<u>an easement over pastoral land is sought; or</u>
(iii)	a stock limitation exemption or a variation or revocation of a stock limitation exemption is sought <u>(except a grant, variation, or revocation made under <b>section 16(4)</b>); or</u> 30
(iv)	a protective mechanism is being considered; and
( <del>b</del> )	<del>must consult Māori in accordance with this Act (see <b>sections 22B</b> (monitoring framework), <b>22D</b> (strategic intentions document), and <b>4000</b> (standards and directives)).</del> 35

- (b) must consult, in accordance with this Act (see **sections 22B, 22D, 100L, 100LA, 100N, and 100O**), iwi whose takiwā include pastoral land.
- (2) In **subsection (1)(b)**, takiwā means—
- (a) the takiwā of Ngāi Tahu Whānui as defined in section 5 of the Te Runanga o Ngai Tahu Act 1996; and 5
- (b) the respective areas of interest described in the deeds of settlement within the meaning of section 20(2) of the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014, section 23(2) of the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, and section 14(2) of the Ngati Toa Rangatira Claims Settlement Act 2014. 10
- Classification of activities on pastoral land*
- 6 Classification of pastoral activities on pastoral land**
- (1) ~~Pastoral activities described in **sections 7 to 9**—~~ 15
- (a) ~~are classified as set out in **Schedule 1AB**;~~
- (b) ~~if neither permitted pastoral activities nor prohibited pastoral activities, may be undertaken on pastoral land only with the consent of the Commissioner under **section 11**.~~
- (1) Pastoral activities described in **section 7 or 8** of this Act, or in section 100 of the Land Act 1948, are classified as set out in **Schedule 1AB**. 20
- (1A) A lessee or licensee of pastoral land must obtain the Commissioner's consent to undertake a pastoral activity if required by **section 7 or 8**.
- (2) The following classifications apply to pastoral activities on pastoral land:
- (a) permitted pastoral activities that may be undertaken on pastoral land with any necessary permission under any other enactment (see **section 21** and **Part 1 of Schedule 1AB**): 25
- (b) discretionary pastoral activities that may be undertaken on pastoral land only with the consent of the Commissioner under **section 11** and with any necessary permission under any other enactment (see **sections 10 and 21** and **Part 2 of Schedule 1AB**): 30
- (c) prohibited activities that must not be undertaken on pastoral land and may not be applied for or consented to (see **Part 3 of Schedule 1AB**).
- (3) Any question arising as to the class within which any pastoral activity falls must be decided by the Commissioner, whose decision is final, and sections 17 and 18 of the Land Act 1948 do not apply to that decision. 35
- (4) **Schedule 1AB** may be amended by Order in Council (see **section 100L**).

*Provision relating to burning***7 Burning of vegetation**

(1) ~~A lessee or licensee of pastoral land must not undertake any pastoral activity that involves burning any vegetation on the land (whether felled or not), or cause or permit any vegetation on the land to be burned, except in accordance with **subsection (2)**.~~ 5

(2) ~~The lessee or licensee may undertake the pastoral activity if—~~

(a) ~~the pastoral activity is for the time being classified as a permitted pastoral activity in **Part 1 of Schedule 1AB**; or~~

(b) ~~the Commissioner has consented to the pastoral activity under **section 44**, and the lessee or licensee complies with the terms and conditions of the Commissioner's consent and obtains any necessary permission under any other enactment (see **section 24**).~~ 10

(3) ~~A lessee or licensee must not undertake any pastoral activity described in **subsection (1)** if that pastoral activity is for the time being classified as a prohibited pastoral activity, and may not apply for consent to do so under **section 44** while that classification applies.~~ 15

(4) ~~In this section, **vegetation** does not include timber.~~

**7 Burning of vegetation**

(1) This section applies to any pastoral activity that involves burning any vegetation on the land (whether felled or not). 20

(2) A lessee or licensee of pastoral land—

(a) may undertake the pastoral activity, or cause it to be undertaken, if the activity is classified as a permitted pastoral activity in **Part 1 of Schedule 1AB**; 25

(b) must not undertake the pastoral activity, or cause it to be undertaken, without the Commissioner's consent under **section 11** if the activity is classified in **Part 2 of Schedule 1AB** as a discretionary pastoral activity or is not classified anywhere in that schedule;

(c) must not undertake the pastoral activity, or cause it to be undertaken, if the activity is classified as a prohibited pastoral activity in **Part 3 of Schedule 1AB**. 30

(3) In this section, **vegetation** does not include timber.

*Provisions relating to disturbance of soil***8 Activities affecting or disturbing soil** 35

(1) ~~A lessee or licensee of pastoral land must not undertake any pastoral activity described in **subsection (2)** on the land, except in accordance with **subsection (3)**.~~

- ~~(2) The activities are—~~
- ~~(a) clearing or felling any vegetation;~~
  - ~~(b) cropping, cultivating, draining, or ploughing;~~
  - ~~(c) top dressing;~~
  - ~~(d) sowing with seed;~~ 5
  - ~~(e) planting any vegetation;~~
  - ~~(f) forming any path, road, or track;~~
  - ~~(g) undertaking any other activity that affects, involves, or causes disturbance to, the soil.~~
- ~~(3) The lessee or licensee may undertake the pastoral activity if—~~ 10
- ~~(a) the pastoral activity is for the time being classified as a permitted pastoral activity in **Part 1 of Schedule 1AB**; or~~
  - ~~(b) the Commissioner has consented to the pastoral activity under **section 44**, and the lessee or licensee complies with the terms and conditions of the Commissioner's consent and obtains any necessary permission under any other enactment (*see section 24*).~~ 15
- ~~(4) A lessee or licensee must not undertake any pastoral activity described in **subsection (2)** if that pastoral activity is for the time being classified as a prohibited pastoral activity, and may not apply for consent to do so under **section 44** while that classification applies.~~ 20
- 9 Further provisions relating to section 8**
- ~~(1) A consent under **section 14** to undertake an activity referred to in **section 8** may include provisions setting out the terms of any—~~
- ~~(a) ongoing maintenance of the works formed by the activity;~~
  - ~~(b) ongoing programme to maintain the pasture created or enhanced by the activity.~~ 25
- ~~(2) Anything done under the consent is subject to every condition, direction, and restriction that forms part of the Commissioner's consent.~~
- ~~(3) For the purposes of this section (but not **subsection (1)**), every consent given under section 106 or 108 of the Land Act 1948 has effect according to its tenor as if it were a discretionary pastoral activity consented to under **section 14**.~~ 30
- ~~(4) This section does not forbid or prevent the doing of anything authorised—~~
- ~~(a) by or under the Public Works Act 1981 or the Crown Minerals Act 1991; or~~
  - ~~(b) under the Mining Act 1971.~~ 35
- ~~(5) Nothing in this section limits or affects the application or effect of section 100 of the Land Act 1948 (which relates to the preservation of timber).~~

**8 Activities affecting or disturbing soil**

- (1) This section applies to any pastoral activity that affects or disturbs the soil of pastoral land.
- (2) A lessee or licensee of pastoral land—
- (a) may undertake the pastoral activity, or cause it to be undertaken, if the activity is classified as a permitted pastoral activity in **Part 1 of Schedule 1AB**; 5
- (b) must not undertake the pastoral activity, or cause it to be undertaken, without the Commissioner’s consent under **section 11** if the activity is classified in **Part 2 of Schedule 1AB** as a discretionary pastoral activity or is not classified anywhere in that schedule; 10
- (c) must not undertake the pastoral activity, or cause it to be undertaken, if the activity is classified as a prohibited pastoral activity in **Part 3 of Schedule 1AB**.
- (3) Any ongoing maintenance authorised by a consent under **section 11** may continue to be undertaken in accordance with the consent. 15
- (4) A consent under **section 11** to undertake an activity to which this section applies may include provisions setting out the terms of any—
- (a) ongoing maintenance of the works formed by the activity;
- (b) ongoing programme to maintain the pasture created or enhanced by the activity. 20
- (5) Anything done under the consent is subject to every condition, direction, and restriction that forms part of the Commissioner’s consent.
- (6) For the purposes of this section (but not **subsection (1)**), every consent given under section 106 or 108 of the Land Act 1948 has effect according to its tenor as if it were a discretionary pastoral activity consented to under **section 11**. 25
- (7) This section does not forbid or prevent the doing of anything authorised—
- (a) by or under the Public Works Act 1981 or the Crown Minerals Act 1991;  
or
- (b) under the Mining Act 1971. 30
- (8) Nothing in this section limits or affects the application or effect of section 100 of the Land Act 1948 (which relates to the preservation of timber).

*Process for applications to undertake activities on pastoral land***10 Application process**

- (1) ~~An applicant who wishes to undertake any activity on pastoral land must provide sufficient information to enable the Commissioner to assess the application under **section 12 or 13** (as the case may be).~~ 35

- (1) An applicant who applies for consent to undertake a discretionary pastoral activity or for the grant of a commercial recreation permit under section 66A of the Land Act 1948 must provide sufficient information to enable the Commissioner to assess the application under **sections 11 to 13 and Schedule 1ABA.** 5
- (2) The Commissioner may decline to accept an application if the Commissioner thinks that the information provided with the application is insufficient or, alternatively, may obtain further information that the Commissioner thinks necessary to ~~make a decision under **section 11**~~ assess the application under **sections 11 to 13 and Schedule 1ABA.** 10
- (3) When assessing an application, the Commissioner may obtain any advice the Commissioner thinks necessary in order to make a decision under **section 11.**

*Process for Commissioner's decision*

**11 Commissioner's decision**

- (1) This section applies if the Commissioner accepts an application under **section 10.** 15
- (2) The Commissioner must, in accordance with this section and (as applicable) **sections 12 and 13 and Schedule 1ABA.**—
- (a) either—
- (i) decline to grant the application; or 20
- (ii) grant the application wholly or in part, with or without any conditions, limitations, directions, or restrictions that the Commissioner thinks necessary, including for the purpose of reducing the adverse effects on inherent values; and
- (b) if they grant the application, specify the period within which the activity must be carried out. 25
- (2A) Before making a decision, the Commissioner must consult the Director-General of Conservation.
- (3) In deciding whether to grant an application, the Commissioner—
- (a) ~~must apply the discretionary decision making test in **section 12** (if the activity is a discretionary pastoral activity) or **section 13** (if the activity requires a recreation permit under section 66A of the Land Act 1948); and~~ 30
- (b) ~~must consider current Government policy, except where the policy is inconsistent with this Act; and~~ 35
- (a) must be satisfied that—
- (i) the inherent values likely to be affected by the proposed activity and the importance of those values have been identified; and

- (ii) the level of adverse effects of the proposed activity on those inherent values (with regard to the importance of those values) has been identified, including whether the effects could be avoided, remedied, or mitigated; and
- (iii) any reasonable alternative to the proposed activity that has lesser adverse effects on inherent values has been considered; and 5
- (aa) must not consider offsetting, including as a way of counterbalancing adverse effects on inherent values, when determining the level of adverse effects on inherent values; and
- (b) may consider relevant Government policy decided by Cabinet, in particular policy that relates to national directions (such as national policy statements and national environmental standards); and 10
- (c) may consider any plan for the management of part or all of the land subject to the reviewable lease or licence; and
- (d) may consider cross-boundary effects of the activity on neighbouring persons or on any neighbouring land (whether or not the land is subject to a pastoral lease or any other form of tenure); and 15
- (e) may consider New Zealand's commitment to reducing greenhouse gas emissions, where this is consistent with the outcomes stated in this Act; and 20
- ~~(f) must consider the level of adverse effects and the importance of the inherent values; and~~
- (g) may consider any other matter the Commissioner considers relevant to determine the application.
- (4) ~~Before taking any steps mentioned in **subsection (3)**, the Commissioner must consult the Director General of Conservation.~~ 25
- (5) Nothing in this section requires the Commissioner to consent to a proposed discretionary pastoral activity in any case.
- (6) In this section and **sections 12, 13, and 16**, **grant the application grant**,— 30
- (a) in relation to an application for a discretionary pastoral activity, means to consent to the activity;
- (b) in relation to an application for a commercial recreation permit, means to grant the permit;
- (c) in relation to an application for an exemption from a stock limitation or the variation or revocation of an exemption, means to grant, vary, or revoke the exemption (*see section 16*). 35
- 12 Discretionary decision-making test for discretionary pastoral activities**
- ~~(1) The Commissioner decides whether to consent to a discretionary pastoral activity on any pastoral land as follows:~~

- (a) ~~they may decline to consent to the pastoral activity if satisfied that there is a reasonable alternative to the activity that has lesser adverse effects on inherent values:~~
- (b) ~~they may consent to the pastoral activity if they decide under Step 1 (**subsections (3) and (4)**) that the activity has no more than minor adverse effects after actions have been taken to avoid, remedy, or mitigate the effects:~~ 5
- (c) ~~they must decline to consent to the pastoral activity if they decide that,~~
- (i) ~~in accordance with Step 1, the activity has more than minor adverse effects; and~~ 10
- (ii) ~~in accordance with Step 2 (**subsections (5) and (6)**), the activity is not necessary to enable the leaseholder or licensee to exercise their rights or obligations under their lease or licence:~~
- (d) ~~they may consent to the pastoral activity if they decide that,~~
- (i) ~~in accordance with Step 1, the activity has more than minor adverse effects; and~~ 15
- (ii) ~~in accordance with Step 2, the activity is necessary to enable the leaseholder or licensee to exercise their rights and obligations under their lease or licence.~~
- (2) ~~The Commissioner must consider all relevant matters under **section 11(3)** before deciding whether to consent to any discretionary pastoral activity.~~ 20
- ~~Step 1~~
- (3) ~~The Commissioner must decide if the adverse effects arising from the pastoral activity, after actions have been taken to avoid, remedy, or mitigate the effects, will be no more than minor.~~ 25
- (4) ~~For the purpose of **subsection (3)**,~~
- (a) ~~the Commissioner must be satisfied that~~
- (i) ~~the inherent values likely to be affected by the pastoral activity and the importance of those values have been identified; and~~
- (ii) ~~the level of adverse effects (including cumulative effects) of the pastoral activity on those inherent values (with regard to the importance of those values) has been identified, including whether the effects could be avoided, remedied, or mitigated; and~~ 30
- (iii) ~~any reasonable alternative to the pastoral activity that has lesser adverse effects has been considered:~~ 35
- (b) ~~offsetting, including as a way of counterbalancing adverse effects, is not a relevant consideration in deciding the adverse effects.~~

*Step 2*

- ~~(5) If the Commissioner decides that the pastoral activity has more than minor adverse effects in accordance with Step 1, they must not consent to the activity unless satisfied that the activity is necessary to enable the leaseholder or licensee to exercise their rights and obligations under their lease or licence, taking into account 1 or more of the following:~~ 5
- ~~(a) whether the pastoral activity forms part of the periodic clearance of vegetation as part of a regular cycle to maintain existing pasture created by oversowing, top dressing, or cultivation:~~
  - ~~(b) whether the pastoral activity is required to provide reasonable access by way of tracks to areas of the land that are currently subject to a programme of oversowing or top dressing for the grazing of livestock:~~ 10
  - ~~(c) whether the pastoral activity is required to use, maintain, or replace consented existing infrastructure or buildings:~~
  - ~~(d) whether the pastoral activity contributes to the leaseholder or licensee meeting their obligations under their lease or licence or other enactments:~~ 15
  - ~~(e) whether the pastoral activity is required to address an exceptional circumstance, for example, where there is a significant risk to the health or safety of the holder of the lease or licence or their stock:~~ 20
  - ~~(f) any other relevant considerations:~~
- ~~(6) For the purpose of deciding whether the activity is necessary to enable the leaseholder or licensee to exercise their rights and obligations under their lease or licence, the following are not relevant considerations:~~
- ~~(a) the financial viability of farming under that lease or licence, or the economic sustainability of the pastoral farming enterprise:~~ 25
  - ~~(b) any economic benefits associated with undertaking that activity.~~
- 13 Discretionary decision-making test for recreation permits**
- ~~(1) The Commissioner decides whether to grant a recreation permit over pastoral land under section 66A of the Land Act 1948 as follows:~~ 30
- ~~(a) they may decline to grant the permit if satisfied that there is a reasonable alternative to the proposed activity that has lesser adverse effects on inherent values:~~
  - ~~(b) they may grant the permit if they decide under Step 1 (**subsections (3) and (4)**) that the proposed activity has no more than minor adverse effects:~~ 35
  - ~~(c) they must decline to grant the permit if they decide that,—~~
    - ~~(i) in accordance with Step 1, the proposed activity has more than minor adverse effects; and~~

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(ii) <del>in accordance with Step 2 (<b>subsection (5)</b>), the proposed activity does not meet the requirements of that subsection:</del></li> <li style="margin-left: 20px;">(d) <del>they may grant the permit if they decide that,—</del> <ul style="list-style-type: none"> <li>(i) <del>in accordance with Step 1, the proposed activity has more than minor adverse effects; and</del></li> <li>(ii) <del>in accordance with Step 2, the proposed activity meets the requirements in <b>subsection (5)</b>.</del></li> </ul> </li> <li>(2) <del>The Commissioner must consider all relevant matters under <b>section 41(3)</b> before deciding whether to grant a recreation permit.</del></li> <li><i>Step 1</i></li> <li>(3) <del>The Commissioner must decide if the adverse effects arising from the proposed activity, after actions have been taken to avoid, remedy, or mitigate the effects, will be no more than minor.</del></li> <li>(4) <del>For the purpose of <b>subsection (3)</b>,</del> <ul style="list-style-type: none"> <li>(a) <del>the Commissioner must be satisfied that—</del> <ul style="list-style-type: none"> <li>(i) <del>the inherent values likely to be affected by the proposed activity and the importance of those values have been identified; and</del></li> <li>(ii) <del>the level of adverse effects (including cumulative effects) of the proposed activity on those inherent values (with regard to the importance of those values) has been identified, including whether the effects could be avoided, remedied, or mitigated; and</del></li> <li>(iii) <del>any reasonable alternative to the proposed activity that has lesser adverse effects has been considered:</del></li> </ul> </li> <li>(b) <del>offsetting, including as a way of counterbalancing adverse effects, is not a relevant consideration in determining the adverse effects.</del></li> </ul> </li> <li><i>Step 2</i></li> <li>(5) <del>If the Commissioner decides that the proposed activity has more than minor adverse effects in accordance with Step 1, they must not grant the permit unless satisfied that the activity—</del> <ul style="list-style-type: none"> <li>(a) <del>is an existing activity that previously has been allowed to be undertaken on the pastoral land under a recreation permit or other consent, right, or licence granted by the Commissioner; and</del></li> <li>(b) <del>if it is an activity that uses infrastructure or buildings, uses consented existing infrastructure or buildings.</del></li> </ul> </li> </ul>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
<p><b><u>12 Decision-making criteria: consent for discretionary pastoral activity</u></b></p> <p>(1) <u>The Commissioner decides whether to grant an application as follows:</u></p> <p>(a) <u>they may decline the application if satisfied that there is a reasonable alternative to the proposed activity that has lesser adverse effects on inherent values:</u></p>	<p>35</p>

- (b) they may grant the application if they decide that the proposed activity has no more than minor adverse effects on inherent values after actions have been taken to avoid, remedy, or mitigate the effects:
- (c) they must decline the application if they—
- (i) decide that the proposed activity has more than minor adverse effects on inherent values; and 5
- (ii) are not satisfied under **subsections (2) and (3)** that the application should be granted:
- (d) they may grant the application if they—
- (i) decide that the proposed activity has more than minor adverse effects on inherent values; and 10
- (ii) are satisfied under **subsections (2) and (3)** that the application should be granted.
- (2) Before granting an application for a proposed activity that has more than minor adverse effects on inherent values, the Commissioner must be satisfied that the activity is necessary to enable the lessee or licensee to exercise their rights and obligations under their lease or licence, taking into account 1 or more of the criteria set out in **Schedule 1ABA**. 15
- (3) For the purpose of deciding whether the activity is necessary to enable the lessee or licensee to exercise their rights and obligations under their lease or licence, the Commissioner may consider any economic benefits associated with undertaking that activity only to the extent that those benefits relate to the ongoing financial viability of the pastoral farming enterprise. 20
- 13 Decision-making criteria: grant of commercial recreation permit** 25
- (1) The Commissioner decides whether to grant an application for a commercial recreation permit as follows:
- (a) they may decline the application if satisfied that there is a reasonable alternative to the proposed activity that has lesser adverse effects on inherent values:
- (b) they may grant the application if they decide that the proposed activity has no more than minor adverse effects on inherent values after actions have been taken to avoid, remedy, or mitigate the effects: 30
- (c) they must decline the application if they—
- (i) decide that the proposed activity has more than minor adverse effects on inherent values; and 35
- (ii) are not satisfied under **subsection (2)** that the application should be granted:
- (d) they may grant the application if they—

- (i) decide that the proposed activity has more than minor adverse effects on inherent values; and
- (ii) are satisfied under **subsection (2)** that the application should be granted.
- (2) Before granting the application, the Commissioner must be satisfied that the proposed activity— 5
- (a) is an existing activity that—
- (i) previously has been allowed to be undertaken on the pastoral land under a commercial recreation permit or other consent, right, or licence granted by the Commissioner; and 10
- (ii) uses existing infrastructure or buildings previously consented to by the Commissioner; or
- (b) will use existing infrastructure or buildings previously consented to by the Commissioner, even though the proposed activity is different from the activity for which that previous consent was granted; or 15
- (c) is necessary in order to enable the continued use of existing infrastructure or buildings previously consented to by the Commissioner.

## Subpart 2—Tenure and related provisions

### *Pastoral leases*

- 14 Tenure** 20
- A pastoral lease gives the holder—
- (a) the exclusive right of pasturage over the land:
- (b) a perpetual right of renewal for terms of 33 years:
- (c) no right to the soil:
- (d) no right to acquire the fee simple of any of the land. 25
- 15 Term**
- The term of a pastoral lease expires on the expiration of 33 years from 1 January or 1 July (whichever is the sooner) next following its commencement.
- 16 Stock limitations**
- (1) The repeal of section 66 of the Land Act 1948 by this Act does not affect— 30
- (a) the validity or effect of any stock limitation:
- (b) the validity or effect of any power of the Commissioner contained in any pastoral lease to grant an exemption from a stock limitation:
- (c) the validity or effect of any such exemption:
- (d) the Commissioner’s power to vary or revoke such an exemption. 35

- (2) An exemption from a stock limitation—
- (a) is (and was) personal to the person who was the holder of the lease concerned at the time the exemption was granted; and
  - (b) if not earlier revoked, expires (or expired) when that person ceases (or ceased) to be the holder of the lease. 5
- (3) **Sections 10 to 12** apply to a decision by the Commissioner to grant, vary, or revoke an exemption from any stock limitation as if it were an application for a discretionary pastoral activity, except in the case of a lease transfer as provided for in **subsection (4)**.
- (4) The Commissioner may, at the time that or as soon as practicable after a lease is transferred under section 89 of the Land Act 1948, grant, vary, or revoke an exemption from a stock limitation that provides for stock numbers and types equal to, or lower than, the previous holder's exemption, after considering— 10
- (a) whether the ~~leaseholder~~ lessee is capable of managing the number of stock that the previous ~~leaseholder~~ lessee had on the lease; and 15
  - (b) whether the land in its current state is capable of sustaining the number and types of stock in the previous exemption; and
  - (c) other relevant matters.
- (5) **Subsection (2)** is for the avoidance of doubt.
- (6) **Subsections (1) to (4)** do not limit or affect the validity or effect of any condition subject to which a stock limitation, or an exemption from a stock limitation, may have been granted. 20
- 17 Renewal of lease after expiry**
- (1) **Subsection (2)** applies if, by the time a pastoral lease expired,—
- (a) the Commissioner and the holder had agreed that, subject to the fixing of the amount of the rent to be paid under it, it would be renewed; but 25
  - (b) that amount had not yet been fixed.
- (2) The Commissioner may grant a renewal of the lease to the same extent, and in the same manner, as if it had not expired, but the renewal takes effect from its expiry. 30
- 18 Belated exchange of pastoral leases for reviewable leases**
- (1) **Subsection (2)** applies if,—
- (a) before the commencement of this Act, any land comprised in a pastoral lease was vested in a State enterprise under the State-Owned Enterprises Act 1986; and 35
  - (b) before the land was vested,—
    - (i) all the land comprised in that lease had been reclassified as farm land; and

<ul style="list-style-type: none"> <li>(ii) the former Land Settlement Board, the Department of Lands, or the Commissioner had agreed to issue a reviewable lease to the holder under section 126A of the Land Act 1948, in exchange for the pastoral lease; and</li> <li>(iii) no reviewable lease had in fact been issued; and</li> <li>(c) since the land was vested, the holder has (or successive holders have) been paying rent as if the land were held on reviewable lease.</li> </ul>	5
<p>(2) The Commissioner may, under the Land Act 1948, with the consent of the State enterprise concerned, grant a reviewable lease to the holder (or the holder's successor) to the same extent, and in the same manner, as if the land had not been vested and that section 126A were still in force.</p>	10
<p>(3) If a reviewable lease is granted under <b>subsection (2)</b>,—</p> <ul style="list-style-type: none"> <li>(a) it is deemed to have been granted under section 126A of the Land Act 1948 immediately before the land comprised in it was vested in the State enterprise concerned; and</li> <li>(b) the Land Act 1948 is deemed to have applied, and continues to apply, to it accordingly; and</li> <li>(c) every transfer of or other dealing with or activity that affects the pastoral lease in exchange for which it has been granted, and that occurs after the agreement to grant a reviewable lease in exchange for it, is deemed to have had effect as a transfer of or other dealing with or activity that affects it.</li> </ul>	15
<p>(4) The granting of a reviewable lease under <b>subsection (2)</b> is a disposition for the purposes of section 24 of the Conservation Act 1987.</p>	20
<p><i>Occupation licences</i></p>	25
<p><b>19 Tenure</b></p> <p>An occupation licence gives the holder the exclusive right of pasturage over the land, but—</p> <ul style="list-style-type: none"> <li>(a) no right of renewal:</li> <li>(b) no right to the soil:</li> <li>(c) no right to acquire the fee simple of the land.</li> </ul>	30
<p><b>20 Term and expiry</b></p> <p>(1) The full term of an occupation licence granted under section 66AA of the Land Act 1948 commences on its commencement, and is the sum of—</p> <ul style="list-style-type: none"> <li>(a) the term specified in it; and</li> <li>(b) the period commencing on its commencement and ending on the next 1 January or 1 July (whichever is the sooner).</li> </ul>	35

- (2) Unless earlier forfeited or surrendered, an occupation licence expires on the expiration of its full term.

*Permission under other enactments*

**21 Permission under other enactments still needed**

- (1) This section applies if— 5
- (a) any other enactment provides that a person must obtain permission under that enactment before undertaking an activity that is contrary to that enactment; and
- (b) the activity concerned is a permitted pastoral activity or discretionary pastoral activity under this Act. 10
- (2) Nothing in this section prevents the Commissioner from consenting to a discretionary pastoral activity applied for under **section 10**.
- (3) However, the authority conferred by this Act to undertake a permitted pastoral activity or discretionary pastoral activity does not in itself allow the person to undertake the activity without the required permission under the other enactment. 15
- (4) In **subsection (1)**, **permission** includes agreement, authority, consent, licence, permit, and right.

*Provisions relating to boundaries and stock movement*

**22 Boundary disputes** 20

Every dispute between the holders of adjacent pastoral land as to the boundary between them must be determined by the Commissioner or a person appointed by the Commissioner for the purpose.

**22A Boundary adjustments**

For the purpose of securing more suitable boundaries of pastoral land held under lease or licence, the Commissioner may, as from a specified day, exclude part of it from the lease or licence and include it in some other lease or licence; and in that case the Commissioner may make any adjustments in rents payable that the Commissioner thinks just and equitable. 25

Subpart 3—Monitoring, strategic intentions, and reporting 30

*Monitoring*

**22B Chief executive to prepare monitoring framework**

- (1) The chief executive must—
- (a) prepare, regularly update, and make available to the public a framework (the **monitoring framework**) for the overall performance of the depart- 35

	ment in relation to the purpose of this Act and the exercise of the department's stewardship responsibilities (under section 32 of the State Sector Act 1988) in relation to this Act; and	
	(b) regularly report on performance against the monitoring framework in relation to the purpose of this Act and those stewardship responsibilities.	5
(2)	<del>In developing the monitoring framework, the chief executive—</del>	
	<del>(a) must consult relevant iwi and representatives of holders of leases or licences; and</del>	
	<del>(b) may consult other stakeholders and the public.</del>	
(2)	<u>In developing the monitoring framework, the chief executive must—</u>	10
	<u>(a) consult relevant iwi and representatives of lessees and licensees of pastoral land; and</u>	
	<u>(b) publish the draft monitoring framework on the department's Internet site and invite the public to give or send their written submissions on the draft document before it is finalised.</u>	15
(3)	The first monitoring framework must be prepared and made available to the public not later than 18 months after this section comes into force.	
<b>22C</b>	<b>Commissioner to monitor compliance by holders of reviewable leases or licences</b>	
	The Commissioner must monitor the compliance by—	20
	(a) holders of reviewable leases or licences of their obligations under their leases or licences, stock limitation exemptions under <b>section 16</b> , and any relevant decision under <b>section 11</b> ; and	
	(b) any person granted an easement (under section 60(1) of the Land Act 1948) or a <u>commercial</u> recreation permit (under section 66A of that Act) over pastoral land of their obligations under the easement or <u>commercial</u> recreation permit.	25
	<i>Crown's pastoral land strategic intentions document and reporting requirements</i>	
<b>22D</b>	<b>Strategic intentions document</b>	30
(1)	The chief executive and the Commissioner must prepare a document setting out the Crown's pastoral land strategic intentions (the <b>strategic intentions document</b> ).	
(2)	The strategic intentions document must set out—	
	(a) how the chief executive and the Commissioner propose to perform or exercise their relevant statutory functions, duties, and powers in relation to pastoral land; and	35

- (b) how Government policies and priorities will be reflected in the management of pastoral land (to the extent they are consistent with relevant legislation); and
- (c) relevant key performance indicators to demonstrate how the performance or exercise of the functions, duties, and powers is contributing to achieving the outcomes stated in **section 4**. 5
- (3) The strategic intentions document must be updated at least once every ~~3–5~~ years, or sooner at the request of the Minister.
- ~~(4) In developing the strategic intentions document, the chief executive and the Commissioner—~~ 10
- ~~(a) must consult relevant iwi and representatives of holders of reviewable leases or licences; and~~
- ~~(b) may consult other stakeholders and the public.~~
- (4) In developing the strategic intentions document, the chief executive or the Commissioner must— 15
- (a) consult relevant iwi and representatives of lessees and licensees of pastoral land; and
- (b) publish the draft strategic intentions document on the department’s Internet site and invite the public to give or send their written submissions on the draft document before it is finalised. 20
- (5) The chief executive and the Commissioner must report annually to the Minister on progress against the strategic intentions document and the chief executive must include that report into the department’s annual report.
- (6) The first strategic intentions document must be prepared and made available to the public not later than 18 months after this section comes into force. 25
- 22E Reporting requirements—Commissioner must report summary of certain decisions**
- (1) The Commissioner must publish on the department’s Internet site, as soon as practicable after it is made, a detailed summary of— 30
- (a) every decision of the Commissioner under this Act or the Land Act 1948 that relates to the use of pastoral land (including a decision that relates to a lease, a licence, a commercial recreation permit, an easement, or an exemption from a stock limitation), other than a decision subject to a rehearing under section 17 of the Land Act 1948; and
- (b) every decision of the Commissioner that determines an application for a rehearing under section 17 of the Land Act 1948 (including a decision not to grant a rehearing) of a decision on an application to undertake a discretionary pastoral activity, and the original decision to which the application for a rehearing relates. 35
- (2) The summary should set out details of— 40

<ul style="list-style-type: none"> <li>(a) what the decision relates to; and</li> <li>(b) what the decision enables or does not enable (including any conditions imposed by the decision); and</li> <li>(c) the reasons for the decision.</li> </ul>	5
<p>(3) The Commissioner must, as soon as practicable, publish on the department’s Internet site a summary of enforcement decisions that sets out the nature of the non-compliance and the reasons for taking enforcement action.</p>	5
<p>(4) The Commissioner may defer or dispense with publication of a matter under this section (in whole or in part) if satisfied on reasonable grounds that good reason for withholding the publication would exist under the Official Information Act 1982.</p>	10
<p>(5) For the purposes of <b>subsection (3)</b>, an <b>enforcement decision</b> is a decision under—</p> <ul style="list-style-type: none"> <li>(a) <b>section 100A</b> to recover the costs of remedial action:</li> <li>(b) <b>section 100B</b> to accept an enforceable undertaking:</li> <li>(c) <b>section 100G</b> to issue an infringement notice:</li> <li>(d) <b>section 100K</b> to enforce a breach of statutory or contractual provisions.</li> </ul>	15
<p>Subpart 4—Application of Land Act 1948</p>	
<p><b>23 Application of Land Act 1948 to this Part</b></p> <p>Except as provided in <b>this Part</b>, nothing in this Part limits or affects the continued application of the Land Act 1948 to any reviewable instrument or any land.</p>	20
<p><b>9 Part 2 repealed</b></p> <p>Repeal Part 2.</p>	25
<p><b>10 Section 83 amended (Objects of Part 3)</b></p> <p>In section 83(b), after “inherent values”, insert “, including recreational values,”.</p>	
<p><b>11 Section 84 amended (Matters to be taken into account by Commissioner)</b></p> <p>Replace section 84(a) with:</p> <ul style="list-style-type: none"> <li>(a) the outcomes stated in <b>section 4</b> and the objects of this Part; and</li> </ul>	30
<p><b>12 Section 86 amended (Commissioner to review certain Crown land)</b></p> <p>(1) Replace section 86(5) with:</p> <p>(5) The land (or various areas of it) must be designated as—</p> <ul style="list-style-type: none"> <li>(a) land to be retained in full Crown ownership and control—</li> </ul>	35

<ul style="list-style-type: none"> <li>(i) as a conservation area; or</li> <li>(ii) as a reserve, to be held for a purpose specified in the proposal; or</li> <li>(iii) for some specified Crown purpose; or</li> <li>(iv) as Crown land without classification; or</li> <li>(v) as a different classification of Crown land under section 51 of the Land Act 1948; or</li> </ul>	5
<ul style="list-style-type: none"> <li>(b) land that may be added to an existing pastoral lease or leased under a new pastoral lease, but only if the land is already classified as pastoral land; or</li> </ul>	
<ul style="list-style-type: none"> <li>(c) land that may be added to an existing special lease or leased under a new special lease; or</li> </ul>	10
<ul style="list-style-type: none"> <li>(d) land that may be disposed of in fee simple under the Land Act 1948 unencumbered or subject to any covenants or easements (or both) specified in the proposal.</li> </ul>	
<p>(2) After section 86(7), insert:</p>	15
<p>(8) If a preliminary proposal designates any land as land that may be leased under a new pastoral lease, the lease may be on any terms that the Commissioner thinks fit, except that—</p> <ul style="list-style-type: none"> <li>(a) <b>section 4</b> applies; and</li> <li>(b) the rental must be set in accordance with Part 1A.</li> </ul>	20
<p>(9) The ability to grant a new pastoral lease in accordance with this section applies despite anything to the contrary in the Land Act 1948.</p>	
<p><b>13 New section 87A inserted (Approval of Minister needed for some designations)</b></p>	
<p>After section 87, insert:</p>	25
<p><b>87A Approval of Minister needed for some designations</b></p>	
<p>(1) The Commissioner must obtain the written consent of the Minister before a preliminary proposal or substantive proposal designates pastoral land as land to be—</p> <ul style="list-style-type: none"> <li>(a) added to an existing pastoral lease or special lease; or</li> <li>(b) leased by a new pastoral lease or special lease; or</li> <li>(c) reclassified as another form of Crown land; or</li> <li>(d) disposed of in fee simple.</li> </ul>	30
<p>(2) The Minister must not consent provisionally to a designation described in <b>subsection (1)</b> in a preliminary proposal unless satisfied that it is reasonably likely that the Minister will consent to a substantive proposal containing the designation.</p>	35

**14 New Part 4A inserted**

After Part 4, insert:

<b>Part 4A</b>		
<b>Miscellaneous provisions</b>		
<i>Recovery of remedial costs</i>		5
<b>100A</b>	<b>Costs of remedial action</b>	
(1)	The Commissioner may recover as a debt due to the Crown the actual and reasonable costs of any remedial action taken to remedy or adequately mitigate a notified breach or alleged breach by the holder of—	
	(a) a reviewable instrument of their obligations under the instrument; or	10
	<del>(b) a consent granted in a decision under <b>section 44</b>.</del>	
	<u>(b) consent to undertake a discretionary pastoral activity, a commercial recreation permit, or a grant, variation, or revocation of an exemption from a stock limitation.</u>	
(2)	For the purposes of this section, a breach or an alleged breach is notified to a holder if the Commissioner gives the holder a written notice that states—	15
	(a) the breach or alleged breach; and	
	(b) the remedial action or mitigation that the Commissioner requires the holder to take; and	
	(c) the period within which the Commissioner requires that remedial action or mitigation to be undertaken.	20
(3)	Notice of a breach or an alleged breach must not be served on a holder unless the Commissioner has reasonable grounds for believing that the breach has occurred.	
(4)	For the purpose of carrying out any remedial action on any pastoral land held on lease or licence, the Commissioner or any person authorised by them in writing has, at all reasonable times, free rights of ingress, egress, and regress, in respect of that land <u>and all the powers necessary to take the remedial action.</u>	25
<i>Enforceable undertakings</i>		
<b>100B</b>	<b>Commissioner may accept enforceable undertakings</b>	30
(1)	The Commissioner may accept an enforceable written undertaking, in a form or <u>containing the information</u> prescribed by regulations made under this Act (if any), given by the holder of a reviewable <del>lease or licence</del> <u>instrument</u> in connection with a matter relating to a breach or an alleged breach by the holder of—	
	(a) their obligations under the <del>lease or licence</del> <u>instrument</u> ; or	35
	<del>(b) a decision under <b>section 44</b>.</del>	

<p>(b) <u>consent to undertake a discretionary pastoral activity, a commercial recreation permit, or a grant, variation, or revocation of an exemption from a stock limitation.</u></p> <p>(2) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the breach or alleged breach to which the undertaking relates.</p> <p>(3) The holder may withdraw or vary the undertaking with the consent of the Commissioner.</p> <p>(4) If the Commissioner considers that the holder is in breach of an undertaking, the Commissioner may apply to the court under <b>section 100K</b>, and <b>section 100K(2) to (6)</b> applies to a breach of undertaking as if it were a breach of a reviewable instrument.</p> <p><b>100C <del>Details of undertaking to be published</del> <u>Commissioner must give notice of decision and reasons</u></b></p> <p>The Commissioner must give the holder of a reviewable instrument who is seeking to make an enforceable undertaking written notice of—</p> <p>(a) their decision to accept or reject the undertaking; and</p> <p>(b) the reasons for the decision.</p> <p style="text-align: center;"><i>Infringement offences</i></p> <p><b>100D Infringement offences</b></p> <p>(1) A person commits an infringement offence against this Act if the person—</p> <p>(a) undertakes without a consent under <b>section 7</b> (burning of vegetation) an activity on pastoral land that requires a consent under that section; or</p> <p>(b) undertakes without a consent under <b>section 8-or-9</b> (activities affecting or disturbing soil) an activity on pastoral land that requires a consent under either of those sections; or</p> <p>(c) contravenes a stock limitation or an exemption from a stock limitation (<i>see sections 11 and 16</i>); or</p> <p>(d) undertakes without a <u>commercial</u> recreation permit under section 66A of the Land Act 1948 an activity on pastoral land that requires a <u>commercial</u> recreation permit under that section; or</p> <p>(e) undertakes without a consent under section 100 of the Land Act 1948 (preservation of timber) an activity on pastoral land that requires a consent under that section.</p> <p>(2) For the purposes of <b>subsection (1)(a), (b), (d), and (e)</b>, it is not an infringement offence to contravene the terms of a consent or permit.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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**100E Proceedings for infringement offences**

- (1) A person who is alleged to have committed an infringement offence against this Act or regulations made under this Act may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be served with an infringement notice under **section 100G**.

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~~(2) If an infringement notice has been issued under **section 100G**, proceedings for the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section apply with all necessary modifications.~~

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(2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

(3) See section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

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**100F Who may issue infringement notices**

~~The Commissioner may authorise an employee of the department or other person (an **issuer**), in writing, to issue infringement notices under this Act.~~

**100F Who may issue infringement notices**

(1) The chief executive may, by a written warrant evidencing the appointment, authorise an employee of the department (an **authorised person**) to issue infringement notices under this Act.

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(2) Production of the warrant is, in the absence of proof to the contrary, conclusive evidence of the appointment.

**100FA When infringement notice may be issued**

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An authorised person may issue an infringement notice to a person if the authorised person believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

**100FB Revocation of infringement notice before payment made**

- (1) An authorised person may revoke an infringement notice before—
- (a) the infringement fee is paid; or
  - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

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(2) The authorised person must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.

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- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 100E(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter.

#### **100G Infringement notices**

- (1) ~~An issuer may issue an infringement notice to a person if the issuer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.~~ 5
- (2) ~~The issuer may deliver the infringement notice (or a copy of it) in person to the person alleged to have committed an infringement offence or send the notice by post addressed to that person's last known place of residence or business.~~ 10
- (3) ~~An infringement notice (or a copy of it) sent by post to a person under **subsection (2)** is to be treated as having been served on that person when it was posted.~~
- (4) ~~An infringement notice must be in the prescribed form and must contain the following particulars:~~ 15
- (a) ~~sufficient details of the alleged infringement offence to fairly inform a person of the time, place, and nature of the alleged offence; and~~
  - (b) ~~the amount of the infringement fee; and~~
  - (c) ~~the address of the place at which the infringement fee may be paid; and~~
  - (d) ~~the time within which the infringement fee must be paid; and~~ 20
  - (e) ~~a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and~~
  - (f) ~~a statement that the person served with the notice has a right to request a hearing; and~~
  - (g) ~~a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and~~ 25
  - (h) ~~any other particulars that may be prescribed.~~

#### **100G What infringement notice must contain**

An infringement notice must be in the form prescribed in regulations made under **section 100N** and must contain the following particulars: 30

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence;
- (b) the amount of the infringement fee;
- (c) the address of the place at which the infringement fee may be paid;
- (d) how the infringement fee may be paid; 35
- (e) the time within which the infringement fee must be paid;
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;

- (g) a statement that the person served with the notice has a right to request a hearing;
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;
- (i) any other matters prescribed in regulations made under **section 100N**.

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#### **100GA How infringement notice may be served**

(1) An infringement notice may be served on the person who the authorised person believes is committing or has committed the infringement offence by—

- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
- (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
- (c) leaving it for the person at the person's place of business or work with another person; or
- (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
- (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.

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(2) Unless the contrary is shown,—

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- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
- (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the department.

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#### **100H Reminder notices**

A reminder notice must be in the prescribed form, and must include the same particulars, or substantially the same particulars, as the infringement notice.

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#### **100I Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

#### **100J Penalties for infringement offences**

A person who commits an infringement offence is liable to—

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- (a) the infringement fee prescribed in regulations for that offence; or

- (b) a fine imposed by a court not exceeding the maximum fine prescribed in regulations for that offence.

*Breaches relating to reviewable instruments*

**100K Breaches of statutory or contractual provisions**

- (1) The Commissioner may apply to the District Court for the examination of anything the Commissioner alleges to be a breach of a reviewable instrument committed after the commencement of this section. 5
- (2) If satisfied on application under **subsection (1)** that the holder of a reviewable instrument has after the commencement of this Act committed a breach, the District Court may— 10
- (a) order the holder—
- (i) to take actions (specified by the court) to remedy the breach; or
- (ii) in default of taking those actions, to pay to the Commissioner exemplary damages (not exceeding \$50,000) for the breach; or
- (b) (without declaring the instrument forfeit) order the holder to pay to the Commissioner exemplary damages (not exceeding \$50,000) for the breach if, and only if,— 15
- (i) it is impossible, impracticable, or otherwise inappropriate to remedy the breach; or
- (ii) the breach has already been remedied; or 20
- (c) declare the instrument forfeit to the Crown, and order the holder to pay to the Commissioner an amount being, as seems appropriate to the court,—
- (i) the lower of \$50,000 and the likely costs to the Crown of remedying the breach; or 25
- (ii) exemplary damages (not exceeding \$50,000) for the breach.
- (3) The District Court must not make an order under **subsection (2)(c)** unless satisfied that every person with an interest in the land concerned at the time the application under **subsection (1)** was made— 30
- (a) has been given notice of the application; and
- (b) has had an adequate opportunity to appear and be heard in relation to it.
- (4) Sections 244 to 257 of the Property Law Act 2007 are not available in respect of a forfeiture under **subsection (2)(c)** of this section.
- (5) Section 105 of the Land Act 1948 does not apply to a breach of a reviewable instrument committed after the commencement of this Act. 35
- (6) In this section, **breach**, in relation to a reviewable instrument, means an action (or a failure or refusal to act) by the holder that—

- (a) contravenes section 100 of the Land Act 1948 or **section 7, 8, or 9** of this Act, in its application to the land; or
- (b) contravenes any provision of or covenant contained in the instrument.

*Further provisions relating to activities and regulations*

**100L Power to amend Schedule 1AB**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend, replace, or delete any of the items or definitions in **Schedule 1AB** in accordance with this section. 5
- (2) The Minister may make a recommendation under **subsection (1)** in accordance with **subsections (3) to (7)**. 10
- (3) Only activities that are described in **sections 7 to 9** of this Act, or section 100 of the Land Act 1948, may be classified as permitted pastoral activities or prohibited pastoral activities.
- (4) Activities remain as discretionary pastoral activities unless they meet the criteria for permitted pastoral activities or prohibited pastoral activities. 15
- (5) An activity may be classified as a permitted pastoral activity only if the Minister is satisfied it meets the following criteria:
  - (a) the pastoral activity must have no more than minor effects on inherent values in all reasonably foreseeable circumstances, which include the possible effects of the activity in all possible locations across the Crown pastoral estate ~~(including short term, long term, and cumulative effects)~~; and 20
  - (b) the activity must—
    - (i) be required for pastoral farming; or
    - (ii) contribute to ~~good husbandry, pest plant or animal control~~ the lessee or licensee meeting their obligations under section 99 of the Land Act 1948, or the maintenance or enhancement of inherent values. 25
- ~~(6) An activity may be classified as a prohibited pastoral activity only if the Minister is satisfied that the activity would be likely to cause significant loss of inherent values that cannot be avoided in all foreseeable circumstances.~~ 30
- (6) An activity may be classified as a prohibited pastoral activity only if the Minister is satisfied that—
  - (a) the activity will not impact unduly on a lessee's or licensee's ability to exercise their rights and obligations under their lease or licence in any reasonably foreseeable circumstances; and 35
  - (b) the activity would be likely to cause significant loss of inherent values that cannot be avoided in all reasonably foreseeable circumstances.

- ~~(7) The Minister must consult the Minister of Agriculture and the Minister of Conservation before making a recommendation under this section.~~
- (7) The Minister must not recommend the making of an Order in Council under this section unless—
- (a) the Minister has consulted the Minister of Agriculture and the Minister of Conservation; and 5
  - (b) the Minister is satisfied that the chief executive or the Commissioner has—
    - (i) consulted relevant iwi and representatives of lessees and licensees of pastoral land; and 10
    - (ii) published a notice of the proposed recommendation on the department's Internet site and invited the public to give or send their written submissions on the proposed recommendation before it is finalised.
- (8) To avoid doubt, no change in the classification of a pastoral activity made by an Order in Council under this section affects the terms or conditions of any consent to undertake a discretionary pastoral activity or commercial recreation permit that has effect when the order takes effect. 15
- (9) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 20

#### **100LA Power to amend Schedule 1ABA**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend, replace, or revoke any provision in **Schedule 1ABA** in accordance with this section.
- (2) The Minister may make a recommendation under **subsection (1)** in accordance with **subsection (3)**. 25
- (3) The Minister must not recommend the making of an Order in Council under this section unless the Minister is satisfied that the chief executive or the Commissioner has—
- (a) consulted relevant iwi and representatives of lessees and licensees of pastoral land; and 30
  - (b) published a notice of the proposed recommendation on the department's Internet site and invited the public to give or send their written submissions on the proposed recommendation before it is finalised.
- (4) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 35

#### **100M Chief executive to review Schedule 1AB**

- (1) The chief executive must review **Schedule 1AB** every 5 years.

- (2) Following the review, the chief executive must advise the Minister on any recommended changes to **Schedule 1AB**.

### 100N Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for 1 or more of the following purposes: 5
- (a) prescribing the information required to be provided with an application for consent to undertake a discretionary pastoral activity or for the grant of a commercial recreation permit (for example, the description and location of the pastoral activity, the inherent values affected, and mitigation): 10
- (b) prescribing matters the Commissioner must take into account in deciding the level of adverse effects of a pastoral activity or commercial recreation permit activity on inherent values:
- (ba) prescribing the form and content of farm plans that may be considered under **section 11(3)(c)**: 15
- (c) prescribing fees or charges payable for applications for consent to undertake discretionary pastoral activities or applications for the grant of a commercial recreation permit:
- (d) prescribing the form of, or the information that must be contained in or accompany, an enforceable undertaking under **section 100B**: 20
- (e) prescribing infringement offences for the contravention of regulations made under this Act:
- (f) prescribing penalties for infringement offences against this Act or regulations made under this Act, which,— 25
- (i) in the case of infringement fees, must not be more than \$1,000; and
- (ii) in the case of maximum fines, must not be more than twice the amount of the infringement fee for the offence:
- (g) prescribing the form of infringement notices and infringement offence reminder notices: 30
- (h) requiring persons to collect information and supply the information to the chief executive or the Commissioner for the purpose of this Act:
- ~~(i) making provisions, not inconsistent with this Act, that set out decision-making processes or otherwise provide for the administration of pastoral land under this Act:~~ 35
- (j) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

- (2) The power to prescribe fees or charges includes the power to prescribe any of the following:
- (a) the method by which the fees or charges are to be assessed, which may (without limitation) include a general charge and actual and reasonable costs in respect of a discretionary pastoral activity: 5
  - (b) the persons liable to pay the fees or charges:
  - (c) when the fees or charges must be paid:
  - (d) the circumstances in which the fees or charges may be refunded, remitted, or waived (wholly or partly).
- (3) Fees and charges are a debt due to the Crown and may be recovered by the chief executive or the Commissioner (on behalf of the Crown) in any court of competent jurisdiction. 10
- ~~(4) The Minister must not recommend the making of regulations under this section unless satisfied that the chief executive or the Commissioner has consulted relevant iwi, leaseholders, licensees, and the public on the development of the regulations. 15~~
- (4) The Minister must not recommend the making of regulations under this section unless the Minister is satisfied that the chief executive or the Commissioner has—
- (a) consulted relevant iwi, representatives of lessees and licensees of pastoral land, and the Director-General of Conservation; and 20
  - (b) published a notice of the proposed recommendation on the department's Internet site and invited the public to give or send their written submissions on the proposed recommendation before it is finalised.
- (5) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 25
- 1000 Chief executive or Commissioner may set standards and issue directives**
- ~~(1) The Commissioner may set standards and issue directives in relation to—~~
- ~~(a) the administration of pastoral land and its inherent values, including monitoring the state of the land; 30~~
  - ~~(b) compliance by holders of reviewable instruments with requirements under this Act.~~
- (1) The Commissioner may set standards and issue directives in relation to the administration of pastoral land and its inherent values, including monitoring the state of the land. 35
- (2) The chief executive may set standards and issue directives in relation to the framework for determining applications for discretionary pastoral consents or commercial recreation permits.

- ~~(3) The chief executive or the Commissioner must not set a standard or issue a directive unless one of them has—~~
- ~~(a) consulted iwi, representatives of holders of reviewable instruments, representatives of other persons who will be affected by the standard or directive, and the public; and~~ 5
- ~~(b) given the iwi, representatives, and public an opportunity to comment on the proposed standard or directive; and~~
- ~~(c) considered any comments made by the iwi, representatives, and public.~~
- (3) The chief executive or the Commissioner must not set a standard or issue a directive unless one of them has— 10
- (a) consulted relevant iwi, representatives of lessees and licensees of pastoral land, and the Director-General of Conservation; and
- (b) published the draft standard or directive on the department’s Internet site and invited the public to give or send their written submissions on the draft document before it is finalised. 15
- ~~(4) The chief executive or the Commissioner must publish standards and directives on an Internet site maintained by the department.~~
- ~~(5) A standard or directive is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 20
- (4) A standard or directive is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

## 15 New Schedules 1AA, 1AB, 1ABA, and 1AC inserted

- (1) Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act. 25
- (2) After **Schedule 1AA**, insert the **Schedules 1AB, 1ABA, and 1AC** set out in **Schedule 2** of this Act.

## 16 Consequential amendments

Amend the principal Act as set out in **Schedule 3**.

## Part 2

### Amendments to Land Act 1948

## 17 Amendments to Land Act 1948

This Part amends the Land Act 1948.

## 18 Section 17 amended (Application for rehearing)

After section 17(2), insert:

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- (3) This section applies with the necessary modifications if a person is aggrieved by any decision of the Commissioner under the Crown Pastoral Land Act 1998.

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

- (1) After section 24(1)(i), insert:
- (ia) to support the New Zealand Walking Access Commission as far as practicable in meeting its public access objective where that relates to pastoral land: 5
- (2) After section 24(2), insert:
- (2A) The Commissioner may comment on, or provide input for, processes and decisions that may affect the Crown’s interest as landowner of ~~pastoral~~ Crown land (for example, district plan changes). 10
- (3) After section 24(4), insert:
- (5) *See* **section 4** of the Crown Pastoral Land Act 1998 for outcomes that persons performing or exercising functions, duties, or powers in relation to pastoral land must seek to achieve. 15

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

- (1) In section 60(1) and (3), replace “Board” with “Commissioner”.
- (2) After section 60(4), insert:
- (5) When determining whether to grant an easement over or under pastoral land, the Commissioner may consider— 20
- (a) whether the easement is reasonably necessary for achieving the objectives of the applicant; and
- (b) if the application satisfies **paragraph (a)**, the extent to which the application achieves the outcomes stated in **section 4** of the Crown Pastoral Land Act 1998; and 25
- (c) any other matters the Commissioner considers relevant.
- (6) Before granting an easement over or under pastoral land, the Commissioner must consult the Director-General of Conservation.

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

- (1AAA) In the heading to section 66A, replace “Recreation” with “Commercial recreation”. 30
- (1) In section 66A(1), (2), (2A), (3), (4), and (6), replace “Board” with “Commissioner” in each place.
- (1A) In section 66A(1) to (7), replace “recreation permit” with “commercial recreation permit” in each place. 35
- (2) After section 66A(7), insert:

- (8) If another enactment provides that a person must obtain permission under that enactment before undertaking an activity that is contrary to that enactment,—
- (a) the grant of a commercial recreation permit does not in itself allow the proposed activity to be carried out without the required permission under the other enactment; but
  - (b) nothing in this subsection prevents the granting of a commercial recreation permit before permission under the other enactment has been obtained.
- (9) Without limiting subsection (6), a commercial recreation permit may be granted wholly or in part, with or without any conditions, limitations, directions, or restrictions that the Commissioner thinks necessary, including for the purpose of reducing the adverse effects on inherent values.
- (10) The granting of a commercial recreation permit in respect of pastoral land is subject to **sections 10, 11, and 13** of the Crown Pastoral Land Act 1998.
- (11) Before granting a commercial recreation permit in respect of pastoral land, the Commissioner must consult the Director-General of Conservation.
- (12) Nothing in this section requires the Commissioner to grant a proposed commercial recreation permit in any case.

**21A Section 89 amended (Board to consent to dealings with leases or licences)**

- (1) In the heading to section 89, replace “Board” with “Commissioner”.
- (2) In section 89(1), (2), (3B), (4), and (4A), replace “Board” with “Commissioner” in each place.
- (3) After section 89(2), insert:
- (2A) If the land under the lease or licence is pastoral land, the Commissioner must not consent to the transfer, sublease, or other disposal unless satisfied that the applicant has made reasonable endeavours to enhance public access to the land.

**22 Section 100 amended (Preservation of timber)**

In section 100, insert as subsection (2):

- (2) **Sections 10 to 12** of the Crown Pastoral Land Act 1998 apply to a decision by the Commissioner to consent to any activity under this section that is for the time being classified as a discretionary pastoral activity under that Act.

**Schedule 1**  
**New Schedule 1AA inserted**

s 15(1)

**Schedule 1AA**  
**Transitional, savings, and related provisions**

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s 2A

**Part 1**  
**Provisions relating to Crown Pastoral Land Reform Act 2020**

*~~Provisions relating to end of tenure review~~*

- 1 Interpretation** 10
- In this Part,—
- amendment Act** means the **Crown Pastoral Land Reform Act 2020**
- ~~**commencement date** means the date on which **this Part** comes into force.~~
- commencement date**,—
- (a) in relation to the repeal of Part 2 (tenure review), means the day after the date on which the amendment Act receives the Royal assent; 15
- (b) in relation to any other purpose of the amendment Act, means the day that is 6 months after the date on which the amendment Act receives the Royal assent.
- 2 Pending substantive proposals** 20
- (1) This clause applies to the following substantive proposals relating to any pastoral land:
- (a) every substantive proposal that any holder of a reviewable instrument accepted under section 60 of this Act before the commencement date and that is still being processed by the Commissioner as at that date: 25
- (b) every substantive proposal that the Commissioner put to any holder of a reviewable instrument before the commencement date, where—
- (i) the holder has not accepted it before the commencement date; and
- (ii) the 3-month period in section 60(2) has not expired before the commencement date. 30
- (2) Part 2 of this Act, as it read immediately before the commencement date, continues to apply to the substantive proposal.
- (3) The Commissioner must take appropriate action in accordance with the applicable provisions of that Part.

<b>3</b>	<b>Tenure reviews discontinued if substantive proposal not put to holder</b>	
(1)	This clause applies to every—	
	(a) substantive proposal, other than one to which <b>clause 2</b> applies, in existence immediately before the commencement date; and	
	(b) <del>every</del> preliminary proposal in existence immediately before the commencement date.	5
(2)	Every proposal to which this clause applies ceases to have any effect.	
(3)	All related reviews under this Act in existence immediately before the commencement date are discontinued and the Commissioner must not take any action to progress any of the reviews.	10
(4)	<u>Nothing in this clause limits or affects a right of judicial review that a person may have in respect of the proposal or related review.</u>	
<b>4</b>	<b><u>Pending decisions relating to applications for consents, recreation permits, lease transfers, exemptions from stock limitation, or easements</u></b>	
(1)	This clause applies to every application to the Commissioner for the grant of any of the following <del>consents, permits, or easements</del> in respect of pastoral land or unused Crown land under this Act or the Land Act 1948 that <del>were</del> <u>was</u> lodged, but not finally dealt with, before the commencement date:	15
	(a) consents to <del>undertaken</del> <u>undertake</u> pastoral activities:	
	(aa) <u>consents to transfer leases:</u>	20
	(ab) <u>exemptions from stock limitations or their variation or revocation:</u>	
	(b) recreation permits <u>under section 66A of the Land Act 1948:</u>	
	(c) easements.	
(2)	The Commissioner must deal with the application in accordance with <del>Part 4 of this Act (as replaced by the amendment Act)</del> <u>the relevant Act as if the amendment Act had not been enacted.</u>	25
(3)	Any rehearing that was applied for under section 17 of the Land Act 1948 on or after the commencement date and that relates to a decision taken by the Commissioner under this Act before that date must be determined as if the amendment Act had not been enacted.	30
<b>4A</b>	<b><u>Activities authorised by letter to Crown pastoral lessees in 1999</u></b>	
(1)	<u>This clause applies to every lessee who commenced any activity authorised by a consent given by the Commissioner by letter in 1999 and has not completed the activity before the commencement date.</u>	
(2)	<u>The lessee may continue and complete the activity, as if it were a permitted pastoral activity under <b>Schedule 1AB</b>, if they satisfy the Commissioner that they have made substantial progress (for example, investing in necessary</u>	35

	<u>materials) towards completing the activity based on the consent requirements that existed at the time the activity commenced.</u>	
(3)	<u>The 1999 letters are revoked, and the consents given by the letters have effect only as provided by <b>subclause (2)</b>.</u>	
<b>4B</b>	<b><u>Activities authorised by former section 15 or 16</u></b>	5
(1)	<u>This clause applies to every consent given under section 15 or 16 (as they read immediately before their repeal by the amendment Act) and in force immediately before the commencement date.</u>	
(2)	<u>The consent continues in force according to its tenor, and section 15 or 16 is treated as remaining in force for the purpose of the consent.</u>	10
<b>5</b>	<b><u>Existing reviews of unrenovable occupation licences</u></b>	
(1)	This clause applies to every review under section 86 of this Act of an unrenovable occupation licence that commenced, but was not completed, before the commencement date.	
(2)	Nothing in the amendment Act affects the review and it must be dealt with as if the amendment Act had not been enacted.	15
<b>6</b>	<b><u>No compensation payable</u></b>	
(1)	No compensation is payable by the Crown for any loss or damage, or any adverse effect on or under any lease or other right or interest, arising from the enactment or operation of the amendment Act.	20
(2)	If there is any inconsistency between this clause and any other enactment or rule of law, this clause prevails over that enactment or rule of law.	
<b><u>Part 2</u></b>		
<b><u>Provisions relating to Legislation Act 2019</u></b>		
<b>7</b>	<b><u>Application of Part</u></b>	25
	<u>This Part applies until the main commencement date (as defined in clause 2 of Schedule 1 of the Legislation Act 2019).</u>	
<b>8</b>	<b><u>Standards and directives</u></b>	
(1)	<u>This clause applies to a standard set, or directive issued, under <b>section 1000</b>.</u>	
(2)	<u>A standard or directive must be published on an Internet site maintained by the department.</u>	30
(3)	<u>A standard or directive is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.</u>	

**Schedule 2**  
**New Schedules 1AB and to 1AC inserted**

s 15(2)

**Schedule 1AB**  
**Classification of pastoral activities on pastoral land**

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s 6

**Part 1**

**Permitted pastoral activities (consent not required under this Act,  
but permission may be required under other enactments)**

- |   |   |    |
|---|---|----|
| 1 | Controlling invasive exotic pest plants, where—   | 10 |
|   | (a) any associated <del>indigenous</del> by-kill does not exceed 200 m <sup>2</sup> /ha; and  |    |
|   | (b) the by-kill cannot reasonably be avoided in the course of the control work; and   |    |
|   | (c) the invasive exotic pest plants <del>are the dominant vegetation cover (comprising no less than 90% of vegetation cover)</del> <u>comprise no less than 90% of vegetation cover</u> ; and | 15 |
|   | (d) the area involved does not exceed 25 ha in any 5-year period.   |    |
| 2 | Any other invasive exotic pest plant control that does not involve associated <del>indigenous</del> by-kill.  |    |
| 3 | All earthworks, planting, gardening, tree felling, sowing of seed, or top-dressing within the existing curtilage of dwellings.  | 20 |
| 4 | Soil disturbance <del>(with an appropriate volume or area limitation)</del> <u>comprising as reasonably required for—</u>   |    |
|   | (a) digging in posts, anchors, piles, or supports (except for the purpose of constructing buildings):   | 25 |
|   | (b) laying electric fence cables:   |    |
|   | (c) burying dead animals, <u>or digging offal pits or holes for domestic rubbish</u> , as long as the activity is undertaken at least 50 m away from any <u>surface</u> water body:           |    |
|   | (d) clearing humps or filling hollows along existing fence lines:   | 30 |
|   | (e) digging rabbit warrens:   |    |
|   | (f) digging long drops, which must be at least 50 m away from any <u>surface</u> water body:  |    |
|   | (g) maintaining existing wild flood irrigation:   |    |
|   | (h) removing tree stumps:   | 35 |

	(i) controlling invasive exotic pest plants, but this does not include associated clearance of indigenous vegetation:	
	(j) preparing bait lines for animal pest control:	
	(k) maintaining existing stock water troughs.	
5	Fencing within existing cultivated paddocks.	5
6	Riparian planting using indigenous species sourced from local seeds.	
7	Clearing wind-felled trees, except where the timber is for sale or off-farm commercial use.	
8	Laying <del>of</del> water pipes <u>for the purpose of conveying irrigation and domestic stock water</u> underground within existing cultivated areas using a ripper and mounted cable layer, <u>and providing for associated water troughs.</u>	10
9	Laying cables, domestic water pipelines, and other infrastructure underground from the main source of supply to existing buildings, as long as the activity does not involve associated clearance of indigenous vegetation and any cables or pipelines do not traverse water bodies.	15
10	Burning slash, stumps, or dead vegetation within existing consented cultivated paddocks.	
11	Boom spraying of exotic vegetation within existing consented cultivated paddocks.	
12	Maintaining existing drains, water races or culverts.	20
13	Maintaining existing consented top-dressing.	
14	Maintaining existing consented seed sowing.	
15	Maintaining existing consented cultivation.	
16	Maintaining existing consented roads, paths, or tracks (including laying local gravel).	25
16A	<u>Maintaining existing consented fire breaks.</u>	
17	Maintaining any other existing consented activity as provided for in <b>section 8(3)</b> .	
18	Repairing and maintaining existing fencing within its existing footprint.	
19	<u>Lighting fires for the purpose of cooking or camping.</u>	30

## Part 2

### Discretionary pastoral activities (Commissioner may consent or decline)

1	Any activity described in <b>section 7(1)</b> (burning vegetation) or <b>8(2)</b> (affecting or disturbing soil) of this Act or section 100 of the Land Act 1948 (preservation of timber), other than an activity that is a permitted pastoral activity or prohibited pastoral activity, remains a discretionary pastoral activity.	35
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- 2 Pastoral activities that are discretionary pastoral activities include, but are not limited to,—
- (a) new or additional irrigation:
  - (b) burning vegetation:
  - (c) clearing indigenous vegetation: 5
  - (d) felling, selling, or removing any ~~exotic~~ timber, tree, or bush (not including invasive exotic pest plant species where the activity is a permitted pastoral activity) if the consent of the Commissioner is required under section 100 of the Land Act 1948:
  - (e) cropping, cultivating, draining, or ploughing: 10
  - (f) top-dressing:
  - (g) sowing seed:
  - (h) planting vegetation (other than riparian planting):
  - (i) forming new paths, roads, or tracks:
  - (ia) creating new fire breaks: 15
  - (ib) constructing buildings and infrastructure:
  - (j) soil disturbance for the construction of buildings and infrastructure:
  - (k) new fencing (other than an activity that is a permitted pastoral activity):
  - (l) clearing drains (other than an activity that is a permitted pastoral activity): 20
  - (m) constructing water storage infrastructure, including dams:
  - (n) ~~spray and pray.~~ spraying a slope to remove vegetation, and replanting the slope in stock or forage crops:
  - (o) any other activity that affects, involves, or causes soil disturbance (other than an activity classified as a permitted activity or prohibited activity). 25
- 3 Any activity necessary to deal with any earthquake, fire, flood, landslide, or other emergency requiring immediate action that necessarily involves burning of vegetation or disturbance to the soil may be undertaken without consent if—
- (a) the lessee, licensee, or other person who undertakes the activity notifies the Commissioner as soon as practicable that the activity has been undertaken; and 30
  - (b) the lessee, licensee, or other person applies to the Commissioner for consent for the activity as soon as practicable after undertaking the activity.

### Part 3

#### Prohibited pastoral activities (consent cannot be given or applied for under this Act)

- 1 Cropping, cultivating, draining or ploughing indigenous wetlands, except taking water for stock water troughs where this does not affect natural wetland water levels. 5
- 2 Digging a long drop within 20 m of any surface water body.
- 3 Burying a dead animal within 20 m of any surface water body.

### Part 4

#### Interpretation

In this schedule,—

**by-kill** means by-kill of indigenous vegetation

**clearing vegetation**—

- (a) means the removal, felling, mechanical or chemical topping, or modification of any vegetation; and 15
- (b) includes cutting, crushing, mulching, spraying with herbicide, or burning; but
- (c) does not include clearing by grazing

**cropping** means growing forage crops for animals ~~and or~~ producing vegetables, fruit, grain, ~~and or~~ similar products on a productive scale (excluding household use) 20

**cultivated paddock**—

- (a) means a paddock that is currently cultivated; but
- (b) does not include a paddock where cultivation was carried out historically, but was not maintained 25

~~**cultivation** means the mechanical tillage of soil to introduce seed or fertiliser, and includes activities such as ploughing, discing, and direct drilling~~

**cultivation** means the alteration or disturbance of land (or any matter constituting the land, including soil, clay, sand, and rock) for the purpose of sowing, growing, or harvesting pasture or crops 30

**curtilage** means the enclosed space of ground and buildings immediately surrounding a dwelling

**drain** means an artificial and constructed waterway or subsurface drainage structure that starts and drains water from predominantly flat land

**draining** means causing water to be drawn off land gradually or completely, where this is not part of ongoing maintenance of previously consented drainage works 35

**~~indigenous vegetation—~~**

- ~~(a) means vegetation or groundcover that contains any vascular plants, non-vascular plants, or lichens that are indigenous to any of the ecological regions of which the property forms part; but~~
- ~~(b) does not include plants within a domestic garden that are planted for the use of screening or shelter purposes (such as farm hedgerows)~~

5

**indigenous vegetation—**

- (a) means all species of plants or lichens that are naturally occurring in any of the ecological regions of which the property forms part; but
- (b) does not include plants within a domestic garden that are planted for screening or shelter purposes

10

~~**indigenous wetlands** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of predominantly indigenous plants and animals that are adapted to wet conditions~~

**indigenous wetland means a wetland that is not—**

15

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or a former natural wetland); or
- (b) a geothermal wetland; or
- (c) any area of improved pasture of which, at the commencement date, more than 50% is exotic pasture species and that is subject to temporary rain-derived water pooling

20

**invasive exotic pest plants** includes pests listed in the National Pest Plant Accord, pests listed in relevant regional pest management plans, and any other exotic pest plants

**ploughing** means turning over soil in preparation for cropping or cultivation

25

~~**spray and pray** means spraying a slope to remove vegetation, and replanting the slope in stock or forage crops.~~

**wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

30

**Schedule 1ABA**

**Criteria for considering whether activity necessary to enable lessee or licensee to exercise rights and obligations under lease or licence**

**ss 12(2), 100LA**

- |                   |  |    |
|-------------------|--|----|
| <b><u>1</u></b>   | <b><u>Criteria applicable for consent to discretionary pastoral activity</u></b>   | 5  |
| <b><u>(1)</u></b> | <b><u>To be satisfied under <b>section 12(2)</b>, the Commissioner must take into account 1 or more of the following:</u></b>  |    |
| <b><u>(a)</u></b> | <b><u>whether the pastoral activity forms part of the periodic clearance of vegetation as part of a regular cycle to maintain existing pasture created by oversowing, top-dressing, or cultivation:</u></b>                      | 10 |
| <b><u>(b)</u></b> | <b><u>whether the pastoral activity is required to provide reasonable access by way of tracks to areas of the land that are currently subject to a programme of oversowing or top-dressing for the grazing of livestock:</u></b> |    |
| <b><u>(c)</u></b> | <b><u>whether the pastoral activity is required to use, maintain, or replace consented existing infrastructure or buildings:</u></b>   | 15 |
| <b><u>(d)</u></b> | <b><u>whether the pastoral activity contributes to the lessee or licensee meeting their obligations under any other enactments:</u></b>  |    |
| <b><u>(e)</u></b> | <b><u>whether the pastoral activity is required to address an exceptional circumstance.</u></b>  |    |
| <b><u>(2)</u></b> | <b><u>In addition, the Commissioner may take into account any other relevant considerations.</u></b>   | 20 |

### Schedule 1AC

#### Provisions of former Part 2 referred to elsewhere in this Act

ss 88, 89, 90, 93

#### 40 Protective mechanisms

- (1) A preliminary proposal may designate land as— 5
- (a) land to be restored to or retained in Crown ownership subject to the granting of a special lease; or
  - (b) land to be disposed of to a specified person; or
  - (c) land that may be disposed of to any person,—
- subject (in addition to any other conditions) to the creation of 1 or more protective mechanisms, each relating to 1 or more of the matters specified in ~~sub-section (2)~~ subsection (2). 10
- (2) The matters are—
- (a) the protection of a significant inherent value of the land concerned;
  - (b) the management of the land concerned in a way that is ecologically sustainable; 15
  - (c) public access across or to the land concerned;
  - (d) public enjoyment of the land concerned.
- (3) A preliminary proposal may not designate land as land to be disposed of subject to the creation of a covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1977 without the prior written consent of the Queen Elizabeth the Second National Trust. 20
- (4) A preliminary proposal may not designate land as land to be disposed of subject to the creation of a covenant under section 77 of the Reserves Act 1977 if— 25
- (a) a local authority or other body approved by the Minister of Conservation is to be a party to the covenant; and
  - (b) the local authority or other body has not given its prior written consent to the designation.
- (5) A preliminary proposal may not designate land as land to be disposed of subject to the creation of a covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 without the prior written consent of Heritage New Zealand Pouhere Taonga. 30

#### 43 Commissioner to give notice of preliminary proposals

- (1) The Commissioner must give notice of every preliminary proposal put under section 34(1),— 35

- (a) specifying the land, a day (no sooner than 40 working days after the publication of the last of the notices to be published), and an address; and
- (b) describing the proposal in general terms; and
- (c) indicating that any person or organisation may (no later than the day specified) give or send to the Commissioner at the address specified a written submission on the proposal. 5
- (2) The notice must not disclose any financial information.
- (3) The Commissioner must have the notice published—
- (a) in some newspaper circulating in the area where the land is situated; and
- (b) at least once in a daily newspaper published in Christchurch; and 10
- (c) at least once in a daily newspaper published in Dunedin.
- 44 Consultation with iwi authority**
- The Commissioner must—
- (a) have a copy of every notice under section 43 given to the iwi authority (within the meaning of the Resource Management Act 1991) of the area where the land concerned is situated; and 15
- (b) consult the authority on the proposal.
- 45 Information to be given to Minister of Conservation**
- The Commissioner must—
- (a) prepare, and give the Minister of Conservation,— 20
- (i) a summary of all matters raised by an iwi authority during consultation on a preliminary proposal under section 44; and
- (ii) a statement as to the extent to which objections to and comments on the proposal raised during the consultation have been allowed or accepted, or disallowed or not accepted; and 25
- (iii) a statement as to the extent to which objections to and comments on the proposal contained in the written submissions relating to the proposal received by the Commissioner (from any person or organisation) on or before the day specified in the notice given under section 43 at the address specified in the notice have been allowed or accepted, or disallowed or not accepted; and 30
- (b) give the Minister of Conservation copies of all those submissions.
- 46 ~~Certain proposals require consent~~**
- (1) ~~A preliminary proposal may not designate land as land to be disposed of subject to the creation of a covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1977 without the prior written consent of the Queen Elizabeth the Second National Trust.~~ 35

- (2) ~~A preliminary proposal may not designate land as land to be disposed of subject to the creation of a covenant under section 7 of the Reserves Act 1977 if—~~
- (a) ~~a local authority or other body approved by the Minister of Conservation is to be a party to the covenant; and~~
  - (b) ~~the local authority or other body has not given its prior written consent to the designation.~~ 5
- (3) ~~A preliminary proposal may not designate land as land to be disposed of subject to the creation of a covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 without the prior written consent of Heritage New Zealand Pouhere Taonga.~~ 10
- 47 Commissioner to consider submissions**
- (1) The Commissioner must not put a substantive proposal to any holder of a reviewable instrument without having considered—
- (a) all matters raised by the iwi authority concerned during consultation on the preliminary proposal concerned under section 44; and 15
  - (b) all written submissions relating to that preliminary proposal received by the Commissioner (from any person or organisation) on or before the day specified in the notice given under section 43 at the address specified in that notice.
- (2) Nothing in ~~subsection (4)~~ subsection (1) prevents the Commissioner from considering any late or oral submission. 20
- 62 Final plan to be prepared**
- (1) Once the acceptance of a substantive proposal takes effect, the Commissioner must give the Chief Surveyor written notice of its acceptance, attaching a copy of the proposal. 25
- (2) As soon as is practicable after receiving the notice, the Chief Surveyor must—
- (a) determine whether any of the land needs to be surveyed before the proposal can be given effect to; and
  - (b) give the Commissioner written notice—
    - (i) of the land that needs to be surveyed; or 30
    - (ii) that none of the land needs to be surveyed.
- (3) If notified that any of the land needs to be surveyed, the Commissioner must have it surveyed, and have a plan or plans of it prepared and approved, under the Survey Act 1986.
- (4) Once the Commissioner— 35
- (a) has complied with ~~subsection (3)~~ subsection (3); or
  - (b) has been notified that none of the land needs to be surveyed,—  
the Commissioner must—

(c)	have prepared a final plan of all the land to which the proposal relates, showing the various areas to which it relates, and (in respect of each) giving—	
(i)	a legal description; and	
(ii)	its designation by the proposal; and	5
(iii)	if it is designated as land to be restored to Crown ownership as a reserve, the purpose of the reserve; and	
(d)	submit 2 copies of the plan to the Chief Surveyor.	
<b>63</b>	<b>Approval of plan</b>	
	If (and only if) satisfied that—	10
(a)	the boundaries of the various areas shown on a plan submitted under section 62(4)(d) are, in the light of any discovered imprecisions in the boundaries shown or described in the accepted substantive proposal concerned, as close as may reasonably practicably be achieved to the boundaries shown or described in the proposal; and	15
(b)	to the extent allowed by the position of the boundaries shown on the plan,—	
(i)	the areas they define; and	
(ii)	the designations of those areas,—	
	accurately reflect the proposal,—	20
	the Chief Surveyor must sign and date on both copies of the plan a written notice approving it for the purposes of this Act, and return 1 copy to the Commissioner.	
<b>64</b>	<b>Commissioner to register accepted proposals and approved plans</b>	
	On receiving an approved plan, the Commissioner must lodge it and a copy of the proposal to which it relates with the Registrar-General of Land, who must register them against every record of title to land to which they relate.	25
<b>80</b>	<b>Creation of protective mechanisms</b>	
(1)	When an approved plan designating any land as land over which an easement under section 12 of the Reserves Act 1977 is to be created has been registered,—	30
(a)	the Commissioner—	
(i)	is deemed for the purposes of that section to be the owner of the land; and	
(ii)	must promptly give the Minister of Conservation an easement (for a purpose specified in subsection (1) of that section) over it, on the terms and conditions specified in the substantive proposal concerned; and	35

- (b) the Minister must promptly do all acts necessary to enable the acceptance of the easement.
- (2) When an approved plan designating any land as land over which an easement under section 7(2) of the Conservation Act 1987 is to be created has been registered,— 5
- (a) the Commissioner—
- (i) is deemed for the purposes of that section to be the owner of the land; and
- (ii) must promptly agree with the Minister of Conservation that the Minister should acquire an easement for conservation purposes over it, on the terms and conditions specified in the substantive proposal concerned; and 10
- (b) the Minister must promptly do all acts necessary to acquire the easement.
- (3) When an approved plan designating any land as land over which an easement under sections 26 to 29 of the Walking Access Act 2008 is to be created has been registered,— 15
- (a) the Commissioner—
- (i) is deemed for the purposes of that section to be the owner of the land; and 20
- (ii) must promptly give the New Zealand Walking Access Commission (established by section 6 of that Act) an easement over it to enable it to be used for a walkway, on the terms and conditions specified in the substantive proposal concerned; and
- (b) the New Zealand Walking Access Commission must promptly do all acts necessary to enable the creation of the easement. 25
- (4) When an approved plan designating any land as land over which a covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1977 is to be created has been registered,— 30
- (a) the Commissioner is deemed for the purposes of this subsection to be the owner of the land; and
- (b) the Commissioner must promptly execute an open space covenant in favour of the trust over it, on the terms and conditions specified in the substantive proposal concerned; and
- (c) the board of directors of the Trust is deemed (by virtue of having given its consent under section 40) to have agreed those terms and conditions, and must promptly do everything necessary to enable the creation of the covenant. 35

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- (5) When an approved plan designating any land as land over which a covenant under section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987 is to be created has been registered, the Commissioner—
- (a) is deemed for the purposes of that section to be the owner of the land; and 5
  - (b) must promptly create the covenant over the land, on the terms and conditions specified in the substantive proposal concerned.
- (6) When an approved plan designating any land as land over which a covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 is to be created has been registered,— 10
- (a) the Commissioner is deemed for the purposes of that section to be the owner of the land; and
  - (b) the Commissioner must promptly execute a heritage covenant over the land in favour of Heritage New Zealand Pouhere Taonga, on the terms and conditions specified in the substantive proposal concerned; and 15
  - (c) the Board of Trustees of the Trust is deemed (by virtue of having given its consent under section 40) to have agreed those terms and conditions, and must promptly do everything necessary to enable the creation of the covenant.

## Schedule 3

### Consequential amendments to principal Act

s 16

**Section 2**

In section 2, definition of **approved plan**, replace “section 63 (whether directly, or by virtue of its application by section 90)” with “section 90 (by virtue of its application of former section 63)”. 5

**Section 88**

In section 88, replace “The following sections apply to a preliminary proposal under this Part as if it were a preliminary proposal under Part 2” with “The following former sections set out in **Schedule 1AC** apply with any necessary modifications to a preliminary proposal under this Part”. 10

**Section 89**

In section 89(1), replace “section 43” with “the former section 43 set out in **Schedule 1AC**”. 15

**Section 90**

In section 90(1), replace “Section 47” with “The former section 47 set out in **Schedule 1AC**”.

In section 90(1), replace “Part 2” with “the former Part 2”.

In section 90(2), replace “The following sections apply to a substantive proposal under this Part as if it were a substantive proposal under Part 2” with “The following former sections set out in **Schedule 1AC** apply to a substantive proposal under this Part as if it were a substantive proposal under the former Part 2”. 20

**Section 93**

In section 93, replace “Section 80 (which enables the creation of protective mechanisms provided for in an accepted substantive proposal under Part 2)” with “The former section 80 set out in **Schedule 1AC** (which enabled the creation of protective mechanisms provided for in an accepted substantive proposal under the former Part 2)”. 25

**Section 95**

In section 95(1), delete “Part 2 or”. 30

**Section 96**

In section 96(1), delete “Part 2 or”.

## **Crown Pastoral Land Reform Bill**

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### **Legislative history**

16 July 2020

22 July 2020

Introduction (Bill 307–1)

First reading and referral to Environment Committee