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## Crown Pastoral Land Act 1998

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by Land Information New Zealand.**

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#### Schedule 1

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#### Schedule 2

#### Consequential repeals

### An Act—

- (a) to establish a system for reviewing the tenure of Crown land held under certain perpetually renewable leases; and
- (b) to establish a system for determining how Crown land formerly held under pastoral occupation licence, and certain other Crown land, should be dealt with; and
- (c) otherwise to provide for the administration of Crown pastoral land

### 1 Short Title

This Act may be cited as the Crown Pastoral Land Act 1998.

### 2 Interpretation

Unless the context requires otherwise, in this Act,—

**approved plan** means a plan returned to the Commissioner under section 63 (whether directly, or by virtue of its application by section 90)

**base carrying capacity**, in relation to a pastoral lease, means the base carrying capacity of land as assessed or determined under Part 1A and under any regulations or rules made under Part 1A and that is expressed in stock units

#### Chief Surveyor—

- (a) means a person for the time being appointed under section 9 of the Survey Act 1986; and includes the deputy of a Chief Surveyor; and
- (b) in relation to any land, or any subject matter affecting any land, means the Chief Surveyor of the land district (constituted under section 22 of the Land Act 1948) in which the land is situated

**commencement**, in relation to a reviewable instrument,—

- (a) means the day on which it was granted, if the land was not held under some other reviewable instrument on that day;
- (b) means the day on which the other reviewable instrument was determined, if the land was held under some other reviewable instrument on the day on which it was granted

**Commissioner** means the Commissioner of Crown Lands appointed under section 24AA of the Land Act 1948

**concession** means—

- (a) concession granted directly under Part 3B of the Conservation Act 1987; or
- (b) concession granted under Part 3B of the Conservation Act 1987 by virtue of section 59A of the Reserves Act 1977; or
- (c) lease under section 73 of the Reserves Act 1977 granted, by virtue of subsection (3A)(b) of that section, under Part 3B of the Conservation Act 1987

**concession designation** means an element of a substantive proposal—

- (a) designating any land as land to be restored to or retained in Crown control as conservation area or reserve, subject to the granting of a concession; or
- (b) designating any conservation area or reserve as land to remain conservation area or reserve subject to the granting of a concession

**conservation area** has the meaning given to that term by section 2(1) of the Conservation Act 1987

**Crown assessor** means an assessor appointed by the Commissioner under section 23C

**Crown land** has the meaning given to that term by section 2 of the Land Act 1948

**Crown ownership** includes Crown control and full Crown ownership and control

**cultivation** includes drainage, felling bush, clearing land for cropping, and clearing and ploughing land for and laying it down for or with pasture

**current carrying capacity**, in relation to a pastoral lease, means the current carrying capacity of land as assessed or determined under Part 1A and under any regulations or rules made under Part 1A and that is expressed in stock units

**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**ecosystem** means a system of interacting living organisms and their environment

**expert determiner** means a person appointed as an expert determiner under section 23F(1)(a)(i)

**grazing permit** means permit under section 68A of the Land Act 1948

**historic place**—

(a) means—

- (i) any land (including an archaeological site); or
- (ii) any building or structure (including part of a building or structure); or
- (iii) any combination of land and a building or structure,—  
that forms part of the historical and cultural heritage of New Zealand;  
and

(b) includes anything that is in or fixed to any such land

**holder**, in relation to a reviewable instrument, means lessee or licensee under it

**holder's improvement**, in relation to an occupation licence,—

- (a) subject to paragraph (b), means improvement on the land effected, erected, made, or paid for by the holder or any predecessor of the holder; but
- (b) does not include improvement effected by doing (before or after the commencement of this Act) any thing specified in section 16(1)

**improvement**—

- (a) means substantial improvement of a permanent character; and
- (b) includes bridging; clearing of broom, bush, gorse, scrub, or sweetbriar; constructing border dykes, head races, irrigation works, sheep dips, water races, water supplies, or water tanks; cultivation; draining; erecting any building; fencing (including rabbit-proof fencing); improving in any way the character or fertility of the soil; installing any electric lighting, electric power plant, or telephone; laying out and cultivating gardens; making embankments or protective works of any kind; planting with trees or live hedges; reclamation from swamps; roading; and sinking wells or bores

**inherent value**, in relation to any land, means a value arising from—

- (a) a cultural, ecological, historical, recreational, or scientific attribute or characteristic of a natural resource in, on, forming part of, or existing by virtue of the conformation of, the land; or
- (b) a cultural, historical, recreational, or scientific attribute or characteristic of a historic place on or forming part of the land

**land** means land that is subject to a pastoral lease



**the land**, in relation to a reviewable instrument, means all land held under it

**lessee's assessor** means an assessor appointed by the lessee under section 23F(1)(b)

**marginal strip** means any strip of land reserved or deemed to be reserved under section 24 or section 24E(3) or section 24G of the Conservation Act 1987 for the purposes specified in section 24C of that Act; and includes part of a marginal strip

**Minister** means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**natural resources** means—

- (a) plants and animals of all kinds; and
- (b) the air, water, and soil in or on which any plant or animal lives or may live; and
- (c) landscape and landform; and
- (d) geological features; and
- (e) ecosystems;—

and **natural resource** has a corresponding meaning

**neighbouring** includes adjacent

**occupation licence** means licence granted under section 66AA of the Land Act 1948 or section 14(7) of this Act

**pastoral land** means Crown land for the time being so classified under section 51 of the Land Act 1948

**pastoral lease** means a pastoral lease granted under section 66 of the Land Act 1948, and includes any renewal of that lease

**proposed activity**, in relation to a proposed concession, means activity proposed to be carried out under the concession

**proposed facility**, in relation to a proposed concession, means structure or facility proposed for or in relation to the concession

**protective mechanism** means—

- (a) easement under section 12 of the Reserves Act 1977, section 7(2) of the Conservation Act 1987, or sections 26 to 29 of the Walking Access Act 2008; or
- (b) covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1977, section 77 of the Reserves Act 1977, section 27 of the Conservation Act 1987, or section 39 of the Heritage New Zealand Pouhere Taonga Act 2014; or
- (c) sustainable management covenant

**renewable lease** means renewable lease as defined in—

- (a) section 63 of the Land Act 1948; or
- (b) the corresponding provisions of any Act repealed by that Act; or
- (c) the corresponding provisions of any Act relating to the disposal of Crown land repealed before 1 April 1949

**rent review date**, in relation to a pastoral lease, means—

- (a) the day immediately after the first period of 11 years from the commencement date of the pastoral lease:
- (b) the day immediately after the second period of 11 years from the commencement date of the pastoral lease:
- (c) the day immediately before the expiry of the pastoral lease if the pastoral lease is to be renewed

**reserve** means land vested in the Crown that is or is part of a reserve within the meaning of section 2(1) of the Reserves Act 1977

**reviewable instrument** means instrument that is a reviewable lease or an occupation licence

**reviewable land** means land that—

- (a) is held under a reviewable instrument; or
- (b) is pastoral land not for the time being held under a reviewable instrument

**reviewable lease** means lease under section 66(1) or section 67 of the Land Act 1948; but does not include—

- (a) a lease over land all of which has been vested in a State enterprise under the State-Owned Enterprises Act 1986; or
- (b) a lease under section 67 of the Land Act 1948 over land all of which is conservation area or reserve

**significant inherent value**, in relation to any land, means inherent value of such importance, nature, quality, or rarity that the land deserves the protection of management under the Reserves Act 1977 or the Conservation Act 1987

**sowing** includes oversowing, and direct-drilling; and **sow** has a corresponding meaning

**special lease** means lease under section 67(2) of the Land Act 1948

**specified**, in relation to a concession, lease, or permit referred to in a proposal, means on terms specified in the proposal

**specified person**, in relation to a proposal, means person specified in the proposal

**stock limitation** means—

- (a) restriction under section 66(2) of the Land Act 1948 subject to which a pastoral lease was granted before 30 November 1979; or

- (b) restriction under section 66(3) of the Land Act 1948 subject to which a pastoral lease was granted after 29 November 1979

**stock unit** means the standard stock unit for the purposes of Part 1A defined by the Valuer-General under section 23O(1)(a)(iii)

**sustainable management covenant** means a covenant reserved under section 97(1)

**undertake** includes cause to be undertaken

**unrenewable occupation licence** means occupation licence that is—

- (a) an occupation licence granted under section 66AA of the Land Act 1948 in respect of which the Commissioner has decided, under section 14(4) of this Act, that the Commissioner is not satisfied that the land should continue to be held under occupation licence for any period after the expiry of the existing licence; or
- (b) an occupation licence granted under section 66AA of the Land Act 1948 to the holder of which the Commissioner has made an offer, of a further occupation licence of the land under section 14(5) of this Act, that was not accepted before the day specified in it; or
- (c) an occupation licence granted under section 14(7)

**unused Crown land** means Crown land not held under a lease, licence, or permit

**Valuer-General** has the same meaning as in section 2 of the Valuers Act 1948

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing on 25 December in any year and ending with 15 January in the following year.

Section 2 **base carrying capacity**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **Commissioner**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **Crown assessor**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **current carrying capacity**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **department**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **expert determiner**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **land**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **lessee's assessor**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **Minister**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **pastoral lease**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **protective mechanism** paragraph (a): amended, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

Section 2 **protective mechanism** paragraph (b): amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

Section 2 **rent review date**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **rental value**: repealed, on 6 July 2012, by section 4(2) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **stock unit**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **Valuer-General**: inserted, on 6 July 2012, by section 4(1) of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 2 **working day**: replaced, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

### 3 Act binds the Crown

This Act binds the Crown.

## Part 1

### Pastoral leases and occupation licences

#### *Pastoral leases*

### 4 Tenure

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.

Compare: 1948 No 64 s 66(2)

### 5 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.

Compare: 1948 No 64 s 66(4)

**6 Special provisions relating to calculation of rent payable for first 11 years of first renewal of pastoral lease granted before 30 November 1979**

*[Repealed]*

Section 6: repealed, on 6 July 2012, by section 5 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**7 Special provisions relating to calculation of rent payable for first 11 years of pastoral lease granted after 29 November 1979**

*[Repealed]*

Section 7: repealed, on 6 July 2012, by section 5 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**8 Calculation of rent payable under pastoral leases after first 11 years**

*[Repealed]*

Section 8: repealed, on 6 July 2012, by section 5 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**9 Stock limitations**

- (1) The repeal of section 66 of the Land Act 1948 by this Act does not affect—
  - (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.
- (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.
- (3) Subsection (2) is for the avoidance of doubt.
- (4) Subsections (1) to (3) 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.

**10 Renewal of lease after expiry**

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
- (b) that amount had not yet been fixed,—

the Commissioner may grant a renewal of it to the same extent, and in the same manner, as if it had not expired; but the renewal takes effect from its expiry.

**11 Belated exchange of pastoral leases for renewable leases**

- (1) 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
  - (b) before it was vested,—
    - (i) all the land comprised in that lease had been reclassified as farm land; and
    - (ii) the former Land Settlement Board, the Department of Lands, or the Commissioner had agreed to issue a renewable lease to the holder under section 126A of the Land Act 1948, in exchange for the pastoral lease; and
    - (iii) no renewable lease had in fact been issued; and
  - (c) since it was vested the holder has (or successive holders have) been paying rent as if the land were held on renewable lease,—
- the Commissioner may under the Land Act 1948, with the consent of the State enterprise concerned, grant a renewable 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 section 126A were still in force.
- (2) If a renewable lease is granted under subsection (1),—
- (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
  - (b) the Land Act 1948 is deemed to have applied, and continues to apply, to it accordingly; and
  - (c) every transfer of or other dealing with or action affecting the pastoral lease in exchange for which it has been granted occurring after the agreement to grant a renewable lease in exchange for it is deemed to have had effect as a transfer of or other dealing with or action affecting it.
- (3) The granting of a renewable lease under subsection (1) is a disposition for the purposes of section 24 of the Conservation Act 1987.

*Occupation licences***12 Tenure**

An occupation licence gives the holder the exclusive right of pasturage over the land; but—

- (a) no right of renewal:
- (b) no right to the soil:

(c) no right to acquire the fee simple of the land.

Compare: 1948 No 64 s 66AA(2)

### **13 Term and expiry**

(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—

(a) the term specified in it; and

(b) the period commencing on its commencement and ending on the next 1 January or 1 July (whichever is the sooner).

(2) The full term of an occupation licence granted under section 14 of this Act commences on the expiry of the preceding licence of the land; and is the term specified in it.

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

Compare: 1948 No 64 s 66AA(4)

### **14 Limited grant of further occupation licence**

(1) The Commissioner must consult the holder of each occupation licence granted under section 66AA of the Land Act 1948 as to whether the holder should be offered a further licence.

(2) If the licence is not due to expire within 18 months of the commencement of this Act, the Commissioner must consult the holder not later than 15 months before the licence is due to expire.

(3) If the licence is due to expire within 18 months of the commencement of this Act, the Commissioner must consult the holder as soon as is practicable after the commencement of this Act.

(4) As soon as is practicable after consulting the holder, the Commissioner must decide whether the Commissioner is satisfied that the land should continue to be held under occupation licence for any period after the expiry of the existing licence.

(5) If satisfied that the land should continue to be held under licence for any period (not exceeding 5 years) after the expiry of the existing licence, the Commissioner must offer the holder a further occupation licence of the land—

(a) for the period; but

(b) otherwise on the terms and conditions of the existing licence.

(6) If not so satisfied, the Commissioner must not offer (or grant) any further occupation licence of the land to any person.

(7) The offer must specify a day before which the holder must accept it; and if the holder accepts it before that day, the Commissioner must grant the licence offered.

*Pastoral land generally***15 Burning of vegetation**

- (1) A lessee or licensee of pastoral land must not burn any vegetation on the land (whether felled or not), or cause or permit any such vegetation to be burned,—
  - (a) without the Commissioner's prior written consent; or
  - (b) otherwise than in accordance with any condition, direction, or restriction subject to which the Commissioner gave prior written consent.
- (2) Notwithstanding subsection (1), the Commissioner may for the purposes of this section enter into any agreement under section 14(2) of the Forest and Rural Fires Act 1977.
- (3) In this section, **vegetation** does not include timber.

Compare: 1948 No 64 s 106

**16 Activities affecting or disturbing soil**

- (1) Except as provided in subsection (2), a lessee or licensee of pastoral land must not—
  - (a) clear or fell any bush or scrub on the land:
  - (b) crop, cultivate, drain, or plough any part of the land:
  - (c) top-dress any part of the land:
  - (d) sow any part of the land with seed:
  - (e) plant any tree or trees on the land:
  - (f) form any path, road, or track on the land:
  - (g) undertake any other activity affecting, or involving or causing disturbance to, the soil.
- (2) A lessee or licensee of pastoral land may do any thing affecting, involving, or causing disturbance to, the soil if—
  - (a) the Commissioner has first given the lessee or licensee written consent to the doing of it; and
  - (b) it is done in accordance with every condition, direction, and restriction, subject to which the Commissioner gave the consent.
- (3) Except to the extent that it expresses a contrary intention,—
  - (a) a consent under subsection (2) to drain any land includes a consent to undertake ongoing maintenance of any drainage works formed pursuant to the consent and in accordance with every condition, direction, and restriction subject to which the Commissioner gave it:
  - (b) a consent under subsection (2) to top-dress any land includes a consent to undertake an ongoing programme of top-dressing on the land or any part of it,—



- (i) in accordance with every condition, direction, and restriction subject to which the Commissioner gave it; and
    - (ii) using the fertiliser or mixture of fertilisers consented to,—  
to maintain the pasture created or enhanced by the top-dressing consented to:
  - (c) a consent under subsection (2) to sow any land with seed includes a consent to undertake an ongoing programme of sowing on the land or any part of it,—
    - (i) in accordance with every condition, direction, and restriction subject to which the Commissioner gave it; and
    - (ii) using the species or mixture of species consented to,—  
to maintain the pasture created or enhanced by the sowing consented to:
  - (d) a consent under subsection (2) to form a road, path, or track on any land includes a consent to undertake ongoing maintenance of any road, path, or track formed pursuant to the consent and in accordance with every condition, direction, and restriction subject to which the Commissioner gave it:
  - (e) a consent under subsection (2) to do a thing not specified in paragraphs (a) to (f) of subsection (1) includes a consent to undertake ongoing maintenance of any thing constructed or formed pursuant to the consent and in accordance with every condition, direction, and restriction subject to which the Commissioner gave it.
- (4) Unless the Commissioner determines otherwise, every consent under subsection (2) to crop, cultivate, or plough any land is deemed to be given subject to the condition that the lessee or licensee concerned must, on the termination of the lease or licence concerned, leave all land that has been cropped, cultivated, or ploughed, properly laid down in good permanent pasture to the Commissioner's satisfaction.
- (5) For the purposes of subsection (1) (but not subsection (3)),—
- (a) every consent given under section 106 or section 108 of the Land Act 1948 has effect according to its tenor as if it were consent given under this section; and
  - (b) in the case of a consent given under section 108 of the Land Act 1948, subsection (4) has effect accordingly.
- (6) Subsection (1) does not forbid or prevent the doing of any thing authorised—
- (a) by or under the Public Works Act 1981 or the Crown Minerals Act 1991; or
  - (b) under the Mining Act 1971.

- (7) Nothing in this section limits or affects the application or effect of section 100 of the Land Act 1948.

Compare: 1948 No 64 s 108

### **17 Permission under other enactments still needed**

- (1) Before a person has obtained permission to do a thing that is contrary to any enactment unless permission has been obtained under that enactment, the Commissioner may for the purposes of this Act give the person consent to do the thing under section 15 or section 16; but the consent does not authorise the person to do the thing without the required permission.
- (2) In subsection (1), **permission** includes agreement, authority, consent, licence, permit, and right.

### **18 Discretionary actions**

- (1) Before taking any action described in subsection (3), the Commissioner must consult the Director-General of Conservation.
- (2) In taking any action described in subsection (3), the Commissioner must take into account—
- (a) the desirability of protecting the inherent values of the land concerned (other than attributes and characteristics of a recreational value only), and in particular the inherent values of indigenous plants and animals, and natural ecosystems and landscapes; and
  - (b) the desirability of making it easier to use the land concerned for farming purposes.
- (3) The actions are—
- (a) determining whether to act under section 60(1), section 66A(1), or section 100 of the Land Act 1948 in relation to any pastoral land; and
  - (b) exercising any discretion under section 66A of that Act, or section 15 or section 16 of this Act, in relation to any pastoral land; and
  - (c) considering whether to grant, vary, or revoke an exemption from any stock limitation.

### **19 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 Act.
- (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—
- (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) if, and only if,—
  - (i) it is impossible, impracticable, or otherwise inappropriate to remedy the breach; or
  - (ii) the breach has already been remedied,—  
(without declaring the instrument forfeit) order the holder to pay to the Commissioner exemplary damages (not exceeding \$50,000) for the breach; or
- (c) declare the instrument forfeit to Her Majesty, 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
  - (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—
  - (a) has been given notice of the application; and
  - (b) has 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.
- (6) In this section, **breach**, in relation to a reviewable instrument, means an action (or failure or refusal to act) by the holder that is—
  - (a) in contravention of section 100 of the Land Act 1948 or section 15(1) or section 16(1) of this Act, in its application to the land; or
  - (b) in contravention of any provision of or covenant contained in the instrument.

Section 19(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 19(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 19(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**20 Boundary disputes**

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.

Compare: 1948 No 64 s 107(1)

**21 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.

Compare: 1948 No 64 s 107(2)

**22 Travelling stock**

Any person travelling with cattle or sheep that are not affected with any contagious or infectious disease may depasture them for any period not exceeding 24 hours—

- (a) within 500 metres on either side of any road or track commonly used as a thoroughfare; but
  - (b) not within 2 kilometres of a homestead,—
- on any unfenced and uncultivated pastoral land (whether let on licence or not).

Compare: 1948 No 64 s 110

*Application of Land Act 1948***23 Application of Land Act 1948**

Except as provided in sections 4 to 22, nothing in this Part limits or affects the continued application of the Land Act 1948 to any reviewable instrument or any land.

**Part 1A****Setting rents for pastoral leases**

Part 1A: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**23A Purpose of this Part**

- (1) The purpose of this Part is to establish a framework for specifying an efficient, predictable, and objective process to set rents for pastoral leases based on—
  - (a) the productive capacity of the land when used for pastoral farming; and
  - (b) the earnings available from that productive capacity.
- (2) To help to achieve the purpose of this Part, the framework set out in this Part—

- (a) includes a formula with the following elements:
  - (i) the base carrying capacity of a pastoral lease as an easily calculated proxy for the stock the land would carry in an unimproved state; and
  - (ii) the current carrying capacity of a pastoral lease as an approximate measure of the stock the land would carry when developed and farmed efficiently, which allows the element in subparagraph (iii) to be calculated; and
  - (iii) a factor to incorporate 0.15 of the difference between the current carrying capacity and the base carrying capacity into the formula; and
  - (iv) a dollar-per-stock-unit rate that incorporates a proportion of net earnings per stock unit into the formula; and
- (b) fixes the values of some elements of the formula and prescribes or constrains inquiry into the values for other elements of the formula, namely,—
  - (i) the dollar-per-stock-unit rate is calculated according to a method prescribed in regulations using available data about net farm incomes on farms comparable to those on pastoral leases; and
  - (ii) the base carrying capacity is to be agreed or determined once according to rules made by the Valuer-General, including rules about using scientific evidence that is predictive of the base carrying capacity and information about the land; and
  - (iii) the current carrying capacity is to be agreed or determined at each review according to rules made by the Valuer-General, including rules about using information about efficient farming practices and information about the land; and
- (c) provides for a dispute resolution system to facilitate early agreement between the Crown and lessees on the base carrying capacity and the current carrying capacity.

Section 23A: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23B Formula for calculating annual rents for pastoral leases**

- (1) Despite anything in any other enactment or in any instrument, the annual rent for a pastoral lease that has a rent review date on or after the date on which this section comes into force must be calculated in accordance with the formula set out in subsection (2) and the formula set out in subsection (3), and the annual rent payable is the greater of the 2 amounts so calculated.
- (2) The following formula must be used to calculate the annual rent for any pastoral lease to which subsection (1) applies:

$$a = b \times (c + ((d - c) \times 0.15))$$

where—

- a is the annual rent for the pastoral lease
  - b is the dollar-per-stock-unit rate published by the Valuer-General in the *Gazette* that applies to the rent review date
  - c is the base carrying capacity of the pastoral lease as determined under this Part and any regulations or rules made under this Part
  - d is the current carrying capacity of the pastoral lease as determined under this Part and any regulations or rules made under this Part.
- (3) The following formula must also be used to calculate the annual rent for any pastoral lease to which subsection (1) applies:

$$b \times c$$

where—

- b is the dollar-per-stock-unit rate published by the Valuer-General in the *Gazette* that applies to the rent review date
- c is the base carrying capacity of the pastoral lease as determined under this Part and any regulations or rules made under this Part.

Section 23B: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23C Commissioner to appoint Crown assessors to determine carrying capacities of pastoral leases**

- (1) The Commissioner must appoint a Crown assessor to make an initial assessment of the base carrying capacity of a pastoral lease that has a rent review date during the period—
  - (a) beginning on the date that this section commences; and
  - (b) ending on the close of the day that is 90 days before the next rent review date.
- (2) However, subsection (1) does not apply if the base carrying capacity of the pastoral lease has been determined previously under this Part.
- (3) The Commissioner must appoint a Crown assessor to make an initial assessment of the current carrying capacity of a pastoral lease during the period—
  - (a) beginning on the date that is 120 days before the rent review date; and
  - (b) ending on the close of the day that is 90 days before the rent review date.
- (4) The Commissioner must, as soon as practicable after appointing a Crown assessor under this section, provide that Crown assessor with, or refer that Crown assessor to, any information prescribed in any rules made under section 23O.
- (5) Despite anything in this section, the periods specified in subsections (1) and (3) may be varied by written agreement between the Commissioner and the lessee.

Section 23C: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**23D Initial assessment of carrying capacity by Crown assessors**

- (1) A Crown assessor must, in accordance with the terms of the Crown assessor's appointment under section 23C, inspect the land and formulate an initial assessment of—
  - (a) the base carrying capacity of the pastoral lease; or
  - (b) the current carrying capacity of the pastoral lease; or
  - (c) the base carrying capacity and the current carrying capacity of the pastoral lease.
- (2) The Crown assessor must allow the lessee or a representative of the lessee to be present when the Crown assessor is inspecting the land for the purposes of subsection (1).
- (3) The Commissioner must, within 15 working days after the completion of the Crown assessor's inspection of the land, give the lessee the Crown assessor's initial assessment, which must—
  - (a) be in writing; and
  - (b) include—
    - (i) the information provided or referred to the Crown assessor under section 23C(4); and
    - (ii) any other information that contributed materially to the assessment; and
  - (c) explain which elements of the information referred to in paragraph (b) contributed materially to the assessment; and
  - (d) specify the regulations or rules that permit or require the use of the information referred to in paragraph (c); and
  - (e) if the Crown assessor's initial assessment allows a rent to be calculated, specify the rent that the lessee must pay if the lessee accepts the Crown assessor's initial assessment; and
  - (f) give notice of the period for response, and the consequences of failure to respond within that period, in the form prescribed by the Valuer-General for that purpose.
- (4) The lessee must, within 15 working days after the date on which the notice is received by the lessee, respond to the Crown assessor's initial assessment, in writing to the Commissioner, by—
  - (a) accepting the Crown assessor's initial assessment; or
  - (b) rejecting the Crown assessor's initial assessment.

Section 23D: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**23E Process if lessee accepts, or fails to respond to, initial assessment**

If the lessee accepts, or fails to respond to, an initial assessment under section 23D(4), the Crown assessor's initial assessment,—

- (a) in the case of the base carrying capacity of a pastoral lease,—
  - (i) becomes the base carrying capacity for that pastoral lease; and
  - (ii) must be used to calculate the rent for that pastoral lease under section 23B;
- (b) in the case of the current carrying capacity of a pastoral lease,—
  - (i) becomes the current carrying capacity for that pastoral lease; and
  - (ii) must be used to calculate the rent for that pastoral lease under section 23B.

Section 23E: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

**23F Framework for dispute resolution if lessee rejects initial assessment**

- (1) If the lessee rejects the initial assessment of a Crown assessor, then, within 10 working days after the 15-working-day period specified in section 23D(4),—
  - (a) the Commissioner must—
    - (i) appoint an expert determiner in accordance with subsection (2); and
    - (ii) submit a copy of the assessment given under section 23D(3) to the expert determiner; and
  - (b) the lessee must appoint an assessor.
- (2) The Commissioner—
  - (a) must, in good faith, try to agree with the lessee on the person to be appointed as the expert determiner; and
  - (b) must, if the Commissioner and the lessee are unable to agree, appoint a person who is nominated by the Valuer-General.
- (3) Within 10 working days after the 10-working-day period specified in subsection (1), the lessee's assessor, the Crown assessor, and the expert determiner must meet on the land for the purpose of reaching an agreement on the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be).
- (4) If, after 10 working days after the meeting referred to in subsection (3), the lessee's assessor and the Crown assessor have not agreed on the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be) and communicated that agreement to the expert determiner, the expert determiner must, as soon as practicable,—
  - (a) fix a date for a resolution hearing, which must be no later than 30 working days after the meeting specified in subsection (3); and



- (b) give written notice of the resolution hearing to the lessee, the lessee's assessor, and the Crown assessor as soon as practicable but at least 10 working days before the date of the resolution hearing.

Section 23F: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23G Duties of parties during dispute resolution before resolution hearing**

- (1) During the period starting at the beginning of the meeting referred to in section 23F(3) and ending at the commencement of the resolution hearing referred to in section 23H, the lessee's assessor, the Crown assessor, and the expert determiner have the following duties:
  - (a) the lessee's assessor and the Crown assessor must try in good faith to reach agreement on the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be); and
  - (b) the lessee's assessor, the Crown assessor, and the expert determiner must, at the meeting on the land referred to in section 23F(3), inspect the land with a view to gathering information to assist them to perform their duties under this section; and
  - (c) the Crown assessor must—
    - (i) explain to the lessee's assessor and the expert determiner the method that the Crown assessor used to arrive at the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be) in the initial assessment by isolating, as far as possible, the material elements of the method that the Crown assessor used; and
    - (ii) specify the regulations or rules that permit or require the use of the method referred to in subparagraph (i); and
  - (d) the lessee's assessor must formulate, and provide to the Crown assessor and the expert determiner, an assessment of the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be) that—
    - (i) explains the method that the lessee's assessor used to arrive at the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be); and
    - (ii) takes into account any explanation provided by the Crown assessor under paragraph (c); and
    - (iii) includes any information that contributes materially to the lessee's assessor's assessment; and
    - (iv) specifies the regulations or rules that permit or require the method referred to in subparagraph (i) and information referred to in subparagraph (iii); and

- (e) the expert determiner must analyse and evaluate how the lessee's assessor and the Crown assessor have applied the requirements of this Part and any regulations or rules made under this Part; and
  - (f) the expert determiner may provide guidance or assistance to the lessee's assessor and the Crown assessor in their efforts to agree on the base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be).
- (2) If the expert determiner provides guidance or assistance after the conclusion of the meeting referred to in section 23F(3)—
- (a) to the lessee's assessor, the expert determiner must provide the Crown assessor with a written summary of the guidance or assistance;
  - (b) to the Crown assessor, the expert determiner must provide the lessee's assessor with a written summary of the guidance or assistance.
- (3) The information required to be given by a Crown assessor under subsection (1)(c) or by a lessee's assessor under subsection (1)(d) need not be in writing or, if in writing, need not be in any particular form.
- (4) Despite subsection (3), the information required to be given by a Crown assessor under subsection (1)(c) and by a lessee's assessor under subsection (1)(d) must be provided in writing in accordance with any regulations or rules made under this Part by the date that is 5 working days after the meeting referred to in section 23F(3).

Section 23G: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23H Resolution hearing**

- (1) If an agreement is not reached between the lessee's assessor and the Crown assessor under section 23G before the date fixed under section 23F(4)(a), the expert determiner must chair a resolution hearing with the lessee's assessor and the Crown assessor on the date fixed under section 23F(4)(a) to—
- (a) facilitate agreement between the lessee's assessor and the Crown assessor; or
  - (b) if the expert determiner considers that an agreement is unlikely during the resolution hearing, determine the base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be).
- (2) A determination made under subsection (1)(b) must—
- (a) be in writing and in the form specified by the Valuer-General; and
  - (b) be given to the lessee and the Commissioner within 5 working days of the date of the resolution hearing.
- (3) The expert determiner may establish any procedures for the resolution hearing, but the procedures must be consistent with any regulations or rules made under this Part.

- (4) The Arbitration Act 1996 does not apply to the resolution hearing, but the expert determiner may apply any provision of that Act to a resolution hearing in any procedures that the expert determiner may establish.
- (5) The expert determiner may make an award of costs that complies with subsection (6) and any regulations or rules made under this Part.
- (6) An award of costs must provide that—
  - (a) the lessee pay the fees of the lessee’s assessor and pay for any expenses incurred by the lessee’s assessor that are associated with complying with the requirements of this Part; and
  - (b) the Commissioner pay the fees of the Crown assessor and pay for any expenses incurred by the Crown assessor that are associated with complying with the requirements of this Part; and
  - (c) the lessee and the Commissioner pay an equal share of the fees of the expert determiner and pay for any expenses that are associated with holding the resolution hearing (whether it proceeds or not).
- (7) Despite subsection (6), the expert determiner may require the lessee to pay a portion of the fees and expenses that the Commissioner would otherwise pay, or require the Commissioner to pay a portion of the fees and expenses that the lessee would otherwise pay, if the lessee’s assessor or a Crown assessor (as the case may be) has, unreasonably or without justification,—
  - (a) contributed to the time or expense involved in complying with the requirements of this Part; or
  - (b) failed to comply, by act or omission, with this Part or any regulations or rules made under this Part; or
  - (c) taken a position or pursued an argument that lacks merit, including (but not limited to) refusing to accept facts that should have been accepted.

Section 23H: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23I Recording and noting carrying capacities**

- (1) If the lessee’s assessor and the Crown assessor agree on the base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be) at any time before a resolution hearing,—
  - (a) the lessee’s assessor and the Crown assessor must communicate to the expert determiner the agreed base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be); and
  - (b) the expert determiner must record the agreed base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be).
- (2) If the lessee’s assessor and the Crown assessor agree on the base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may

- be) during a resolution hearing, the expert determiner must record the agreed base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be).
- (3) If the expert determiner determines the base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be) at a resolution hearing, the expert determiner must record the agreed base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be).
- (4) If the expert determiner records a base carrying capacity or current carrying capacity, or both, of a pastoral lease (as the case may be),—
- (a) in the case of a base carrying capacity, the recorded base carrying capacity of the pastoral lease—
- (i) becomes the base carrying capacity for that pastoral lease; and
- (ii) must be used to calculate the rent for that pastoral lease under section 23B:
- (b) in the case of a current carrying capacity, the recorded current carrying capacity of a pastoral lease—
- (i) becomes the current carrying capacity for that pastoral lease; and
- (ii) must be used to calculate the rent for that pastoral lease under section 23B.
- (5) The expert determiner must notify the Commissioner and the lessee of the base carrying capacity or current carrying capacity of any pastoral lease that is agreed or determined under this Part.
- (6) If the Commissioner becomes aware of a base carrying capacity to which section 23E(a)(i) applies or receives a notice referred to in subsection (5) in relation to the base carrying capacity of a pastoral lease, the Commissioner must as soon as practicable advise the Registrar-General of Land of the base carrying capacity of the pastoral lease.
- (7) If the Registrar-General of Land receives advice under subsection (6), the Registrar-General of Land must, on any relevant computer register, note a memorial that specifies the base carrying capacity of the pastoral lease.

Section 23I: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23J Appeals on questions of law**

- (1) If the Commissioner or a lessee of a pastoral lease is dissatisfied with any determination by an expert determiner of base carrying capacity or current carrying capacity as being erroneous in point of law, the Commissioner or lessee may appeal to the High Court on that question of law.
- (2) An appeal under this section must be dealt with in accordance with the rules of court.

- (3) On any appeal, the High Court must hear and determine the question of law arising in the proceedings, and must do 1 or more of the following:
- (a) confirm or amend the determination in respect of which the appeal has been brought;
  - (b) quash the determination and remit the matter to the expert determiner along with a copy of the decision of the High Court;
  - (c) make any other order in relation to the matter that the High Court thinks fit.

Section 23J: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23K Exclusion from liability**

An expert determiner is not liable for any act done or omitted to be done by the expert determiner in good faith in—

- (a) the performance or intended performance of a function or duty under this Part or any regulations or rules made under this Part; or
- (b) the exercise or intended exercise of a power under this Part or any regulations or rules made under this Part.

Section 23K: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23L Functions, duties, and powers of Valuer-General**

- (1) The Valuer-General—
- (a) must, using the method prescribed in regulations made under section 23N, calculate dollar-per-stock-unit rates and the periods to which they apply and publish them in the *Gazette*; and
  - (b) may make rules under section 23O; and
  - (c) may provide guidance in relation to any matter for which the Valuer-General may make rules under section 23O; and
  - (d) may provide information to lessees' assessors, Crown assessors, and expert determiners to assist them in performing their functions and duties under this Part; and
  - (e) may provide information, monitor, and publish reports on, the processes specified in this Part for—
    - (i) assessing or determining the base carrying capacity and the current carrying capacity of pastoral leases; and
    - (ii) setting the rent for pastoral leases; and
  - (f) may audit any assessment or determination of the base carrying capacity or current carrying capacity, or both, of any pastoral lease (as the case may be) against any rules made under section 23O and any guidance provided under paragraph (c); and

- (g) may appoint members to form 1 or more expert panels to assist in the performance of the Valuer-General's functions and duties or the exercise of the Valuer-General's powers under this Part; and
  - (h) must appoint a person nominated by any organisation the Valuer-General considers is representative of lessees of pastoral leases to any expert panel formed under paragraph (g); and
  - (i) must publish, in any form or manner that the Valuer-General considers appropriate, including (but not limited to) on an Internet site maintained by the department,—
    - (i) any guidance provided under paragraph (c); and
    - (ii) any rules made under section 23O; and
    - (iii) any determination made by an expert determiner under this Part in relation to base carrying capacity.
- (2) In carrying out the functions and duties and exercising the powers specified in subsection (1), the Valuer-General must—
- (a) aim to ensure that—
    - (i) any assessment or determination is made quickly and efficiently; and
    - (ii) any lessee's assessor, Crown assessor, or expert determiner does not use more information or undertake more analysis than is reasonably necessary to make an assessment or a determination; and
  - (b) have regard to the purpose of this Part.

Section 23L: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23M Delegation of Valuer-General's functions, duties, and powers**

The Valuer-General may, in accordance with section 41 of the State Sector Act 1988, delegate to employees of the department, in the same manner and to the same extent as if the Valuer-General were its chief executive,—

- (a) any function, duty, or power conferred on the Valuer-General by this Act (other than the power to make rules under section 23O) or any other enactment;
- (b) any function, duty, or power delegated to the Valuer-General by any Minister of the Crown (other than a power that is subject to a delegation that provides that the power may not be delegated).

Section 23M: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23N Regulation-making power**

The Governor-General may, on the recommendation of the Minister, make regulations that—

- (a) specify the method for calculating the dollar-per-stock-unit rate, which must—
  - (i) use the publicly available data about farm revenues and expenses from pastoral farms and farms that are most comparable to pastoral farms; and
  - (ii) use a measure of net farm revenues per stock unit derived from the data referred to in subparagraph (i); and
  - (iii) set the dollar-per-stock-unit rate as a proportion of the measure referred to in subparagraph (ii) that corresponds as closely and consistently as practicable to the long-term average spent on rent and servicing mortgage debt; and
  - (iv) contain a floor that will operate as the minimum dollar-per-stock-unit rate; and
  - (v) use an appropriate index of farm costs to annually adjust the floor referred to in subparagraph (iv); and
  - (vi) specify how the dollar-per-stock-unit rate is to be calculated for different periods for the purposes of this Part:
- (b) prescribe forms:
- (c) prescribe rules and procedures for resolution hearings:
- (d) provide for the matters that are contemplated by or necessary for giving effect to this Part and for its due administration.

Section 23N: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23O Rule-making power**

- (1) For the purposes of this Part, the Valuer-General—
  - (a) must make rules that—
    - (i) specify the information to be provided or referenced by the Commissioner under section 23C(4), including (but not limited to)—
      - (A) information predicting the characteristics of land, which includes information in the form of raw data, a land classification, a model, or an algorithm:
      - (B) assumptions about how the information referred to in subparagraph (A) reveals the base carrying capacity and the current carrying capacity of a pastoral lease:
      - (C) other information about the land:

- (ii) specify how a lessee's assessor, a Crown assessor, or an expert determiner must, when making an assessment or a determination,—
  - (A) use the information provided or referenced by the Commissioner under section 23C(4); and
  - (B) use the information gained at a meeting on the land under section 23F(3); and
  - (C) use the information provided under section 23G(4); and
  - (D) use or not use any other information about the land:
- (iii) for the purposes of ensuring that base carrying capacities and current carrying capacities are assessed and used consistently to calculate rent,—
  - (A) define a standard stock unit for the purposes of this Part by reference to an annual energy requirement (taking into account relevant industry norms and practices):
  - (B) specify the standard stock-unit equivalent of different kinds of stock for the purposes of this Part:
  - (C) specify how non-standard stock-unit measurements are to be converted to standard stock-unit measurements for the purposes of this Part:
- (b) may make rules that—
  - (i) provide that a specified process or method is the only process or method that may be used by a lessee's assessor, a Crown assessor, or an expert determiner when making an assessment or a determination of base carrying capacity:
  - (ii) specify how a lessee's assessor, a Crown assessor, or an expert determiner must deal with relevant matters when making an assessment or a determination of current carrying capacity, including (but not limited to)—
    - (A) how relevant concepts are to be used:
    - (B) information about stock carried on a pastoral lease:
    - (C) constraints on stocking that arise from the obligations under a pastoral lease:
    - (D) physical and other constraints on stocking:
  - (iii) provide for any other matters relating to—
    - (A) assessing or determining the base carrying capacity or current carrying capacity of a pastoral lease that may be necessary or desirable to allow the Valuer-General to perform a function or duty, or exercise a power, under this Part; or



- (B) setting rents for pastoral leases that may be necessary or desirable to allow the Valuer-General to perform a function or duty, or exercise a power, under this Part:
    - (iv) provide for the designation of individuals eligible to be appointed as assessors or expert determiners:
    - (v) provide for the matters that are contemplated by or necessary for giving full effect to this Part and for its due administration.
- (2) Rules made under subsection (1)—
  - (a) may specify upper and lower bounds or other constraints for the base carrying capacity and current carrying capacity of pastoral leases:
  - (b) may prescribe different rules for different sets of pastoral leases:
  - (c) may, in the case of rules referred to in subsection (1)(a) and (b), make different provision for the base carrying capacity and current carrying capacity of a pastoral lease:
  - (d) may provide that stock carried on land for any period is counted towards the current carrying capacity of the land in proportion to the part of the year that the stock spends on the land (whether or not that stock is also grazed on any other ground that is not subject to a pastoral lease).
- (3) Before making any rules under this section, the Valuer-General must—
  - (a) publish a notice of the Valuer-General’s intention, including (but not limited to) on an Internet site maintained by the department; and
  - (b) take reasonable steps to bring the notice to the attention of lessees of pastoral leases; and
  - (c) give interested persons a reasonable period of time, which must be specified in the notice, to make submissions on the proposed rules; and
  - (d) consult persons who the Valuer-General considers represent the lessees of pastoral leases and the Valuer-General considers appropriate, having regard in each case to the content and effect of the proposed rules.
- (4) A rule made under subsection (1) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.
- (5) In the event of any conflict between any regulation made under section 23N and any rule made under subsection (1), the regulation prevails.

Section 23O: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 23O(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

**23P Valuer-General may designate individuals eligible to be appointed as assessors and expert determiners**

- (1) No individual may be appointed as a lessee's assessor, a Crown assessor, or an expert determiner under this Part unless the person is eligible to be so appointed.
- (2) The Valuer-General must, in accordance with any regulations or rules made under this Part,—
  - (a) designate any individual as eligible to be appointed as an expert determiner if the requirements in subsections (4) to (6) have been met; or
  - (b) designate any individual as eligible to be appointed as an assessor if the individual—
    - (i) is a member of—
      - (A) an organisation specified in any regulations or rules made under this Part; or
      - (B) a subset of members of an organisation specified in any regulations or rules made under this Part; or
    - (ii) holds a qualification specified in any regulations or rules made under this Part; or
    - (iii) is otherwise qualified to act as an assessor.
- (3) The Valuer-General may direct that an individual designated under subsection (2) must, if appointed as an assessor, carry out assessments of—
  - (a) the base carrying capacity of pastoral leases; or
  - (b) the current carrying capacity of pastoral leases; or
  - (c) the base carrying capacity and the current carrying capacity of pastoral leases.
- (4) No individual who is designated as eligible to be a lessee's assessor or a Crown assessor may be designated as eligible to be appointed as an expert determiner.
- (5) In exercising a power under this section, the Valuer-General must have regard to the skills and experience necessary and desirable to perform the functions and duties and exercise the powers of a lessee's assessor, a Crown assessor, or an expert determiner (as the case may be).
- (6) Before exercising the power to designate an individual as eligible to be appointed as an expert determiner, the Valuer-General must consult persons and organisations that the Valuer-General considers represent lessees of pastoral leases.

Section 23P: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

### **23Q Service of notices**

- (1) Any notice or other document required or authorised by this Part to be served on or given to any person must be in writing and is sufficiently served or given if it is—
  - (a) delivered to that person; or
  - (b) left at that person's usual or last known place of abode or business or at an address specified for that purpose in any document received from that person; or
  - (c) posted in a letter addressed to that person by name at that place of abode or business or address.
- (2) If the person is absent from New Zealand, the notice or other document may be served on or given to the person's agent in New Zealand.
- (3) If the person is deceased, the notice or other document may be served on or given to the person's personal representatives.
- (4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document must be served or given in such manner as may be directed by an order of the District Court.
- (5) If any such notice or other document is sent to any person by post, it is, unless the contrary is shown, deemed to have been delivered to the person on the seventh day after the day on which it was posted; and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.
- (6) Despite anything in subsections (1) to (5), the District Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving of the notice or document.
- (7) This section does not apply to notices or other documents served or given in any proceedings in any court.

Section 23Q: inserted, on 6 July 2012, by section 6 of the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36).

Section 23Q(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 23Q(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **Part 2 Tenure reviews**

### *General*

### **24 Objects of Part 2**

The objects of this Part are—

- (a) to—
  - (i) promote the management of reviewable land in a way that is ecologically sustainable;
  - (ii) subject to subparagraph (i), enable reviewable land capable of economic use to be freed from the management constraints (direct and indirect) resulting from its tenure under reviewable instrument; and
- (b) to enable the protection of the significant inherent values of reviewable land—
  - (i) by the creation of protective mechanisms; or (preferably)
  - (ii) by the restoration of the land concerned to full Crown ownership and control; and
- (c) subject to paragraphs (a) and (b), to make easier—
  - (i) the securing of public access to and enjoyment of reviewable land; and
  - (ii) the freehold disposal of reviewable land.

## **25 Matters to be taken into account by Commissioner**

- (1) In acting under this Part, the Commissioner must (to the extent that those matters are applicable) take into account—
  - (a) the objects of this Part; and
  - (b) the principles of the Treaty of Waitangi; and
  - (c) if acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.
- (2) In acting under this Part in relation to any part of the land held under a reviewable instrument or reviewable instruments, the Commissioner must take the objects of this Part into account in the light of—
  - (a) their application to all the land held under the instrument or instruments; rather than
  - (b) their application to that part of the land alone.

## **26 Consultation**

- (1) Before taking any action specified in subsection (3), the Commissioner must consult the Director-General of Conservation.
- (2) At any time, the Commissioner may consult any person or body the Commissioner thinks fit (including the Director-General of Conservation) about taking any action specified in subsection (3).
- (3) The actions are—
  - (a) undertaking a review under section 27:

- (b) putting a preliminary proposal to a person under section 34(1):
- (c) putting a substantive proposal to a person under section 46.

*Tenure reviews*

**27 Commissioner may undertake reviews of land held under pastoral lease**

On the written invitation or with the written agreement of the holder or holders concerned, the Commissioner may undertake a review of all the land for the time being held under a reviewable lease, or under 2 or more reviewable leases of neighbouring land.

**28 Inclusion of land held under occupation licence**

On the written invitation or with the written agreement of the licensee or licensees concerned, the Commissioner may include in the review of land held under a reviewable lease or reviewable leases all the land held under 1 or more occupation licences of neighbouring land.

**29 Inclusion of unused Crown land**

The Commissioner may include in the review of land held under a reviewable lease or reviewable leases any neighbouring unused Crown land.

**30 Inclusion of freehold land**

If the holder of a reviewable instrument has an estate in fee simple in any neighbouring land, the Commissioner may, with the prior written agreement of the holder, include the neighbouring land in a review of land that is or includes the land held under the instrument.

**31 Inclusion of conservation area and reserve**

With the prior written agreement of the Minister of Conservation, the Commissioner may include in the review of land that is or includes the land held under a reviewable lease any neighbouring conservation area or reserve.

**32 Administration of reviews**

The Commissioner may, in the Commissioner's absolute discretion, decide—

- (a) how many reviews to undertake:
- (b) the order in which reviews are to be undertaken:
- (c) the urgency with which any review is to be undertaken:
- (d) the resources to be devoted to any review.

**33 Discontinuance of reviews**

The Commissioner may discontinue a review at any time; and must discontinue a review if asked in writing by the holder, or one of the holders, concerned.

*Preliminary proposals***34 Preliminary proposals may be put to holders**

- (1) After completing a review under section 27, the Commissioner may put a preliminary proposal—
  - (a) to the holder of the reviewable lease concerned; or
  - (b) to the holders of all or (as long as at least 1 is a reviewable lease) some of the reviewable instruments concerned.
- (2) A preliminary proposal—
  - (a) must deal with all the land held under the reviewable instrument or instruments to which it relates; and must designate it in accordance with section 35; and
  - (b) may deal with any land included in the review concerned that is not held under a reviewable instrument, and must designate it in accordance with sections 35 to 39.
- (3) A preliminary proposal put to the holder of a reviewable instrument must (unless no payment is proposed) be accompanied by a notice specifying—
  - (a) all amounts of money proposed to be paid to or by the holder (including amounts proposed to be paid by way of equality of exchange) if land designated in the proposal is ultimately dealt with as it has been designated; and
  - (b) in respect of each sum specified, the point at which it will become payable.

**35 Designation of land held under reviewable instrument, freehold land, and unused Crown land**

- (1) This section applies to—
  - (a) land held under a reviewable instrument; and
  - (b) land held in fee simple; and
  - (c) unused Crown land.
- (2) A preliminary proposal may designate all or any part of any land to which this section applies as—
  - (a) land to be restored to or retained in full Crown ownership and control—
    - (i) as conservation area; or
    - (ii) as a reserve, to be held for a purpose specified in the proposal; or
    - (iii) for some specified Crown purpose; or
  - (b) land to be restored to or retained in Crown control—
    - (i) as conservation area; or
    - (ii) as a reserve, to be held for a purpose specified in the proposal; or

- (iii) for some specified Crown purpose; or
  - (iv) under the Land Act 1948; or
- (c) land that may be disposed of to any person.
- (3) A preliminary proposal may designate all or any part of any Crown land to which this section applies as land to be disposed of by freehold disposal to a person specified in the proposal.
- (4) A preliminary proposal may designate all or any part of any land held in fee simple as land to be kept by its owner.

### **36 Qualified designations**

- (1) A preliminary proposal designating land to which section 35 applies as land to be restored to or retained in Crown control must so designate it subject to 1 or more of the following things:
  - (a) the granting of a specified concession to a person specified in the proposal:
  - (b) the granting of a specified special lease to a person specified in the proposal:
  - (c) the granting of a specified grazing permit to a person specified in the proposal:
  - (d) the continuation in force of an existing special lease:
  - (e) the continuation in force of an existing grazing permit.
- (2) If land to which section 35 applies will be marginal strip, a preliminary proposal may designate it as land to be restored to or retained in Crown control as conservation area, subject to the appointment as manager under section 24H(1) of the Conservation Act 1987 of a person specified in the proposal.
- (3) A preliminary proposal designating land to which section 35 applies may designate it subject to any or all of the following things:
  - (a) the creation of a sustainable management covenant:
  - (b) the creation of an easement, in gross, or in favour of adjacent land (whether or not included in the review out of which the proposal arises):
  - (c) the continuation in force of an existing easement.
- (4) Subsections (1) to (3) are cumulative.

### **37 Designation of conservation area**

- (1) A preliminary proposal may designate all or any part of any conservation area as—
  - (a) land that is to remain conservation area; or
  - (b) land that is to remain conservation area subject to the granting to a specified person of a specified concession; or

- (c) land to be disposed of by way of exchange with other land designated by the proposal, under the Conservation Act 1987.
- (2) If it is marginal strip, a preliminary proposal may designate all or any part of any conservation area as land to remain conservation area, subject to the appointment of a specified person as manager under section 24H(1) of the Conservation Act 1987.

### **38 Designation of reserves**

- (1) A preliminary proposal may designate all or any part of any reserve as—
  - (a) land that is to remain a reserve; or
  - (b) land that is to remain a reserve subject to the granting to a specified person of a specified concession; or
  - (c) land to be disposed of by way of exchange with other land designated by the proposal, under the Reserves Act 1977.
- (2) If (and only if) it is or is part of a recreation reserve that has no administering body, a preliminary proposal may designate all or any part of any reserve as land that is to remain a reserve subject to the granting to a specified person of a specified lease under section 73 of the Reserves Act 1977.

### **39 Information to be included in respect of concessions**

A preliminary proposal designating land as land to be restored to or retained in Crown control, subject to the granting of a concession, or over which a concession is to be granted, must include (in respect of each concession, if more than 1 is proposed)—

- (a) a description of each proposed activity;
- (b) a description identifying the places where each proposed activity is proposed to be carried out, and indicating the status or proposed status of each place;
- (c) a description of the potential effects of each proposed activity, and any actions that the proposed grantee of the concession proposes to take to avoid, remedy, or mitigate any adverse effects;
- (d) details of the proposed type of concession;
- (e) a statement of the proposed duration of the concession and the reasons for the proposed duration;
- (f) relevant information about the proposed grantee, including information relevant to the grantee's ability to carry out each proposed activity.

Compare: 1987 No 65 s 17S(1)

### **40 Protective mechanisms**

- (1) A preliminary proposal may designate land as—



- (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 subsection (2).
- (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;
  - (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.
- (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—
- (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.

Section 40(5): amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

#### **41 Provisional consent of Minister of Conservation needed for some designations**

- (1) Without the prior written provisional consent of the Minister of Conservation, a preliminary proposal may not—
- (a) designate any land to which section 35 applies as land to be restored to or retained in Crown control as conservation area or a reserve, subject to the granting of a concession;
  - (b) designate any conservation area or reserve as land to remain conservation area or a reserve, subject to the granting of a concession:

- (c) designate any conservation area as land to be disposed of by way of exchange:
  - (d) designate any conservation area that is marginal strip as land to remain conservation area, subject to the appointment of any person as manager under section 24H(1) of the Conservation Act 1987:
  - (e) designate any reserve as land to be disposed of by way of exchange:
  - (f) designate any reserve that is or is part of a recreation reserve as land to be granted by lease under section 73 of the Reserves Act 1977:
  - (g) designate any land to which section 35 applies as land to be restored to or retained in Crown ownership as conservation area, subject to the appointment of any person as manager under section 24H(1) of the Conservation Act 1987:
  - (h) designate any land to which section 35 applies as land to be disposed of to a specified person, or land that may be disposed of to any person, subject to the creation of a protective mechanism.
- (2) The Minister must not consent provisionally to a designation in a preliminary proposal unless satisfied that it is reasonably likely that the Minister would consent to a substantive proposal containing the designation.

#### **42 Proposal may be conditional on acceptance by other holders**

A preliminary proposal relating to land held under 2 or more reviewable instruments may (so far as any holder is concerned) be unconditional, or conditional on its acceptance by some other holder or holders.

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

- (1) The Commissioner must give notice of every preliminary proposal put under section 34(1),—
- (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.
- (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
  - (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
- (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,—
  - (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
  - (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
- (b) give the Minister of Conservation copies of all those submissions.

Compare: 1977 No 66 s 120(1)(e)

*Substantive proposals*

**46 Substantive proposals may be put to holders**

- (1) If a preliminary proposal has been put to the holder of 1 or more reviewable instruments and notified under section 43, the Commissioner may in writing put to the holder a substantive proposal that is the same as or a modified version of the preliminary proposal.
- (2) If a preliminary proposal has been put to several holders of reviewable instruments and notified under section 43, the Commissioner may in writing put—
  - (a) to those holders; or
  - (b) as long as it or at least 1 of them is a reviewable lease, to the holder or holders of 1 or more of the instruments,—a substantive proposal that is (so far as it relates to that holder or those holders) the same as or a modified version of the preliminary proposal.
- (3) If the substantive proposal designates any land as land that may be disposed of to any person, it must specify the day on which the surrender of the reviewable instrument concerned is to take effect.

- (4) A substantive proposal put to the holder of a reviewable instrument must (unless no payment is proposed) be accompanied by a notice specifying—
- (a) all amounts of money proposed to be paid to or by the holder (including amounts proposed to be paid by way of equality of exchange) if land designated in the proposal is ultimately dealt with as it has been designated; and
  - (b) in respect of each sum specified, the point at which it will become payable;—

and when an approved plan arising out of the proposal is registered, the notice has effect as a binding contract between the Crown and the holder, according to its tenor.

#### **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
  - (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 (1) prevents the Commissioner from considering any late or oral submission.

#### *Duties of Minister of Conservation in relation to proposed concessions*

#### **48 Consent of Minister of Conservation needed for proposed concessions**

Without the prior written consent of the Minister of Conservation, a substantive proposal must not—

- (a) designate any reviewable land as land to be restored to or retained in Crown control as conservation area or a reserve, subject to the granting of a concession; or
- (b) designate any conservation area or reserve as land to remain conservation area or a reserve, subject to the granting of a concession.

#### **49 No consent to easement if other concession more appropriate**

The Minister of Conservation must refuse consent to a substantive proposal—

- (a) designating any reviewable land as land to be restored to or retained in Crown control as conservation area or a reserve, subject to the granting of a concession that is an easement; or

- (b) designating any conservation area or reserve as land to remain conservation area or a reserve, subject to the granting of a concession that is an easement,—

if the Minister considers that a lease, licence, or permit is more appropriate in that case.

Compare: 1987 No 65 s 17Q

#### **50 No consent if inadequate information provided**

If a substantive proposal designates any land held under a reviewable instrument as land to be restored to or retained in Crown control as conservation area or reserve, or designates any conservation area or reserve as land to remain conservation area or reserve, subject to the granting of a concession that is—

- (a) a lease; or
- (b) a *profit à prendre*; or
- (c) a licence granting an interest in land; or
- (d) an easement,—

the Minister of Conservation must refuse consent to it unless the Commissioner has given the Minister sufficient information to satisfy the Minister, in terms of section 51, that it is both appropriate to grant the concession and lawful to grant it.

Compare: 1987 No 65 s 17S(2)

#### **51 Matters to be considered**

- (1) If satisfied that the granting of any concession concerned would not comply with or would be inconsistent with the provisions of the Reserves Act 1977, or (as the case may be) the Conservation Act 1987 or any relevant conservation management strategy or conservation management plan, the Minister of Conservation must refuse consent to a substantive proposal containing a concession designation.
- (2) The Minister of Conservation may not consent to a substantive proposal containing a concession designation without having regard to—
  - (a) the nature of each activity proposed to be carried on, and the type of each facility (if any) proposed, under the concessions concerned:
  - (b) the effects of the activity or facility:
  - (c) any measures that can reasonably and practicably be taken to avoid, remedy, or mitigate any adverse effects of each activity:
  - (d) any relevant environmental impact assessment, including any audit or review:
  - (e) any relevant matters contained in the information sent to the Minister under section 45(b) in relation to the preliminary proposal concerned:

- (f) any relevant information that may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.
- (3) The Minister of Conservation may refuse consent to a substantive proposal containing a concession designation if the Minister considers that—
- (a) the information available to the Minister is insufficient or inadequate to enable the Minister to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity proposed to be carried on, or facility proposed, under the concessions concerned; or
  - (b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of any activity proposed to be carried on, or facility proposed, under the concessions concerned.
- (4) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if any activity proposed to be carried on under the concessions concerned is contrary to the provisions of the Reserves Act 1977, or (as the case may be) the Conservation Act 1987 or the purposes for which the land concerned is to be held.
- (5) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if any concession concerned is a concession to build a structure or facility, or extend or add to an existing structure or facility, if the Minister is satisfied that any of the activities proposed to be carried on under the concession—
- (a) could reasonably be undertaken in another location that—
    - (i) is outside the conservation area or reserve (or proposed conservation area or reserve) concerned; or
    - (ii) is in another conservation area or reserve (or proposed conservation area or reserve), or in another part of the conservation area or reserve (or proposed conservation area or reserve) concerned, where the potential adverse effects would be significantly less; or
  - (b) could reasonably use an existing structure or facility or the existing structure or facility without the extension or addition.
- (6) The Minister of Conservation may consent to a substantive proposal containing a concession designation providing for the granting of a concession that is a lease or licence (other than a grant of *profit à prendre*) only if—
- (a) the lease or licence relates to 1 or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger structure or facility); and
  - (b) in any case where land over which the lease or licence is to be granted includes an area or areas around any structure or facility,—

- (i) either—
    - (A) it is necessary for the purposes of the safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or
    - (B) it is necessary to include any clearly defined area or areas that are an integral part of any activity proposed to be carried on under the concession concerned; and
  - (ii) the grant of a lease or licence granting an interest in land is essential to enable any activity proposed to be carried on under the concession concerned.
- (7) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation providing for the granting of a concession that is a lease, unless satisfied that exclusive possession of the land concerned is necessary for—
- (a) the protection of public safety; or
  - (b) the protection of the physical security of any activity proposed to be carried on under the concession; or
  - (c) the competent operation of any activity proposed to be carried on under the concession.
- (8) For the purposes of subsection (7), the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.

Compare: 1987 No 65 s 17U

## **52 Proposed concessions over marginal strip**

- (1) The Minister of Conservation may refuse consent to a substantive proposal containing a concession designation relating to land that is or is to become marginal strip in any case if satisfied that it is more appropriate in that case to enter into an agreement or arrangement under section 24H of the Conservation Act 1987.
- (2) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation relating to land that is or is to become marginal strip if the concession would authorise the owner of adjoining land to use the marginal strip for farming purposes or forestry purposes or any purpose associated with or incidental to any farming or forestry carried out on the adjoining land is to be granted; but nothing in the preceding provisions of this subsection limits or affects section 24H of the Conservation Act 1987.
- (3) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation relating to land that is or is to become marginal strip if the concession is a lease (other than a lease that formalises an oc-

cupation of the land that existed before 10 April 1990), and the Minister is not satisfied that—

- (a) the grant of a lease over the land would be permitted by Part 3B of the Conservation Act 1987; and
- (b) the activities authorised by the lease require the use of both the land and the adjacent water; and
- (c) the land and facilities to which the lease relates are essential to the carrying out of those activities.

Compare: 1987 No 65 s 17V

### **53 Conditions generally**

The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if not satisfied that the concession concerned will be granted subject to conditions appropriate for any proposed activity or facility, including (but not limited to) conditions relating to or providing for any of the matters referred to in section 17X (except for paragraph (c)) of the Conservation Act 1987.

Compare: 1987 No 65 s 17X

### **54 Rents, fees, and royalties**

- (1) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if not satisfied that the concession concerned will be granted subject to—
  - (a) the condition that the grantee must pay any specified rents, fees, and royalties to the Minister; and
  - (b) the condition that the grantee must pay any other levy or charge made on an occupier or owner of land, as the result of the grant of a lease, licence, or easement, either to the Minister or as directed by the Minister; and
  - (c) the condition that the rent, fees, and royalties for the concession must be reviewed at intervals not exceeding 3 years.
- (2) The rent, fee, or royalty may be fixed at the market value, having regard to the matters referred to in section 17Y(2) of the Conservation Act 1987.

Compare: 1987 No 65 s 17Y

### **55 Term**

- (1) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if the concession concerned is a lease or licence, and—
  - (a) the term for which it is to be granted (including all renewals of the lease or licence) exceeds 60 years; or



- (b) the term for which it is to be granted (including all renewals of the lease or licence) exceeds 30 years, and the Minister is not satisfied that there are exceptional circumstances.
- (2) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if the concession concerned is a permit, and—
  - (a) the term for which it is to be granted exceeds 5 years; or
  - (b) it is to be renewable.
- (3) The Minister of Conservation must refuse consent to a substantive proposal containing a concession designation if the concession concerned is an easement, and—
  - (a) the term for which it is to be granted exceeds 60 years, and—
    - (i) the Minister is not satisfied that the easement provides a right of way access to a property to which there is no other practical access; or
    - (ii) the Minister is not satisfied that the term is appropriate; or
  - (b) the term for which it is to be granted exceeds 30 years, and the Minister is not satisfied that there are exceptional circumstances.

Compare: 1987 No 65 s 17Z

*Duty of Minister of Conservation in relation to proposed exchanges of conservation area*

**56 Consent of Minister of Conservation needed for proposed exchanges of conservation area**

A substantive proposal must not designate any conservation area as land to be disposed of by way of exchange under the Conservation Act 1987 without the prior written consent of the Minister of Conservation; and the Minister must not give consent unless satisfied, after consultation with the local Conservation Board (established under section 6L of that Act), that the exchange will enhance the natural and historic resources of land managed by the Department of Conservation for conservation purposes and promote the purposes of that Act.

Compare: 1987 No 65 s 16A

*Proposal to appoint manager of marginal strip*

**57 Consent of Minister of Conservation needed for proposed appointment of manager of marginal strip**

Without the prior written consent of the Minister of Conservation, a substantive proposal must not—

- (a) designate any conservation area that is marginal strip as land to remain conservation area, subject to the appointment of any person as manager under section 24H(1) of the Conservation Act 1987;
- (b) designate any land to which section 35 applies as land to be restored to or retained in Crown ownership as conservation area, subject to the appointment of any person as manager under section 24H(1) of the Conservation Act 1987.

*Powers and duties of Minister of Conservation in relation to proposed disposal of reserves*

**58 Proposed disposal of reserve otherwise than by concession**

- (1) A substantive proposal must not designate any reserve as land to be disposed of by way of exchange under the Reserves Act 1977 without the prior written consent of the Minister; and if the reserve has an administering body (within the meaning of that Act), the Minister may not give consent except pursuant to a resolution of that body requesting the exchange.
- (2) A substantive proposal must not designate any reserve that is or is part of a recreation reserve as land to be granted by lease under section 73 of the Reserves Act 1977 without the prior written consent of the Minister of Conservation; and the Minister may not give consent except if it is not for the time being required for the purpose for which it was classified, or if the Minister considers it in the public interest, or if the Minister has decided under section 53(1)(a)(ii) of that Act that it is necessary or desirable to farm, graze, or afforest the reserve.

Compare: 1977 No 66 s 73

*Powers in relation to proposed creation of certain easements and covenants*

Heading: amended, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

**59 Consent needed for some designations**

- (1) Without the prior written consent of the Minister of Conservation, a substantive proposal may not designate any land as land to be disposed of subject to the creation of—
  - (a) an easement under section 12 of the Reserves Act 1977 or section 7(2) of the Conservation Act 1987; or
  - (b) a covenant under section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987.
- (2) Without the prior written consent of the New Zealand Walking Access Commission (established by section 6 of the Walking Access Act 2008), a substantive proposal may not designate any land as land to be disposed of subject to

the creation of an easement under sections 26 to 29 of the Walking Access Act 2008.

Section 59 heading: amended, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

Section 59(1)(a): amended, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

Section 59(2): added, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

*Acceptance of substantive proposals, and consequences of acceptance*

**60 Acceptances**

- (1) The holder of a reviewable instrument may, by written notice to the Commissioner, accept or reject a substantive proposal put to the holder under section 46.
- (2) If the Commissioner does not receive an acceptance within 3 months of putting the substantive proposal to the holder, the holder is deemed to have rejected it.
- (3) If the substantive proposal—
  - (a) relates to land held under 2 or more reviewable instruments; and
  - (b) is, so far as any holder is concerned, conditional on its ultimate acceptance by some other holder or holders,—its acceptance by that holder does not take effect unless it is also accepted by that other holder or those other holders.
- (4) If any person other than the holder of the instrument has an interest in the land, the substantive proposal's acceptance by that holder does not take effect unless the notice contains the person's written consent to the acceptance.
- (5) Subject to subsections (3) and (4), a holder's acceptance of a substantive proposal put to the holder under section 46 is irrevocable; and has effect as an irrevocable authority to and obligation on the Commissioner to take the appropriate actions required by this Part.

**61 Notice of proposal may be registered against title to protect acceptance**

- (1) If—
  - (a) any person has accepted a substantive proposal; and
  - (b) that proposal relates to land held in fee simple, or land held under a lease registered under the Land Act 1948,—the Commissioner must sign and forward to the appropriate District Land Registrar a written notice of the acceptance of the proposal, describing the proposal in general terms.
- (2) The District Land Registrar must register the notice against every relevant instrument of title to the land or lease.

- (3) In the case of a notice relating to a lease, the validity of the notice is not affected by any misdescription of the land it relates to if it—
  - (a) specifies the lease; and
  - (b) contains (or has attached to it) an illustrative diagram of the land showing how it has been designated.
- (4) Every person who, after the notice has been registered, acquires an estate or interest in any land against whose instrument of title it has been registered is bound by the acceptance of the proposal to which it relates to the same extent as the person who accepted the proposal; and this Act has effect accordingly.
- (5) If a person acquires an estate or interest in any land—
  - (a) after any person has accepted a proposal (put to that person under section 46) relating to the land; and
  - (b) before a notice registered under this section against the certificate of title to it was lodged for registration,—this Part has effect as if the entire proposal had been rejected.

## **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.
- (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
    - (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—
  - (a) has complied with 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

- (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.

### **63 Approval of plan**

If (and only if) satisfied that—

- (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
- (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,—

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.

### **64 Commissioner to register accepted proposals and approved plans**

On receiving an approved plan, the Commissioner must lodge it and a copy of the proposal to which it relates with the appropriate District Land Registrar, who must register them against every instrument of title to land to which they relate.

### **65 Effect of registration of approved plan in relation to land designated to be restored to Crown ownership**

- (1) Land that an approved plan designates as land to be restored to Crown ownership vests in the Crown when the plan is registered,—
  - (a) depending on its designation in the plan,—
    - (i) as conservation area, or for the Crown purpose specified, or without the specification of any status or purpose; or
    - (ii) as a reserve, held for the purpose specified in the plan; and
  - (b) subject to the special leases, grazing permits, and easements (if any) whose continuation in force is provided for in the proposal; and
  - (c) subject to the special leases and grazing permits (if any) whose granting is provided for in the substantive propose concerned; and
  - (d) subject to or, as the case requires, with the benefit of any easement whose creation is provided for in the substantive proposal concerned; and

- (e) except as provided in paragraphs (b) to (d), freed and discharged from all mortgages, charges, claims, estates, and interests.
- (2) If land vests under this section—
- (a) subject to a special lease or grazing permit whose granting is provided for in the substantive proposal concerned; or
  - (b) subject to or with the benefit of any easement whose creation is provided for in the substantive proposal concerned,—
- the lease, permit, or easement is deemed to have been granted or created immediately before the land vests.

**66 Land vesting as conservation area subject to granting of concession**

When land that an approved plan designates as land to be restored to Crown ownership subject to the granting of a concession vests as conservation area under section 65,—

- (a) the Commissioner must promptly give the Minister of Conservation written notice that it has vested subject to the granting of the concession; and
- (b) the Minister must promptly, in accordance with the substantive proposal concerned, grant the concession to the person concerned; and
- (c) section 17ZD(1) of the Conservation Act 1987 applies to the granting of the concession as if the reference in it to any applicant for a concession who has been granted a concession were a reference to the person; but
- (d) sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act 1987 do not apply to the granting of the concession.

**67 Land vesting as conservation area subject to appointment of manager of marginal strip**

When land that an approved plan designates as land to be restored to Crown control subject to the appointment of any person as manager under section 24H(1) of the Conservation Act 1987 vests as conservation area under section 65,—

- (a) the Commissioner must promptly give the Minister of Conservation written notice that it has vested subject to the person's appointment as manager; and
- (b) the Minister must promptly, in accordance with the proposal, appoint the person manager of the land.

**68 Land vesting as reserve subject to granting of concession**

When land that an approved plan designates as land to be restored to Crown control subject to the granting of a concession vests as a reserve under section 65,—

- (a) the Commissioner must promptly give the Minister of Conservation written notice that it has vested subject to the granting of the concession; and
- (b) the Minister must promptly, in accordance with the proposal, grant the concession to the person concerned; and
- (c) section 17ZD(1) of the Conservation Act 1987 applies to the granting of the concession as if the reference in it to any applicant for a concession who has been granted a concession were a reference to the person; but
- (d) sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act 1987 do not apply to the granting of the concession; and
- (e) if the concession is a lease under section 73 of the Reserves Act 1977, the Minister does not have to comply with subsection (4) of that section.

**69 Effect of registration of approved plan in relation to reviewable land designated to be disposed of**

- (1) When an approved plan designating land as land to be disposed of to a specified person has been registered, the Commissioner must promptly, in accordance with the plan (but subject to Part 4A of the Conservation Act 1987), dispose of it under the Land Act 1948.
- (2) In complying with subsection (1), the Commissioner must act as if the reviewable instrument concerned were already surrendered (and the District Land Registrar must act likewise); but the instrument in fact continues in force until a certificate of title or registered lease is issued for the land concerned, and is then deemed to have been surrendered in respect of that land.
- (3) When an approved plan designating land as land that may be disposed of to any person has been registered,—
  - (a) the instrument is deemed to have been surrendered in respect of the land; and
  - (b) the Commissioner must try to dispose of the land under the Land Act 1948.

**70 Effect of registration of approved plan in relation to unused Crown land designated to be conservation area subject to granting of concession**

When an approved plan designating unused Crown land as land to be retained in Crown control as conservation area subject to the granting of a concession has been registered,—

- (a) the Commissioner must promptly give the Minister of Conservation written notice that the land has vested subject to the granting of a concession; and
- (b) the Minister must promptly, in accordance with the plan, grant a concession to the person concerned; and

- (c) section 17ZD(1) of the Conservation Act 1987 applies as if the reference in it to any applicant for a concession who has been granted a concession were a reference to the person concerned; but
- (d) sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act 1987 do not apply to the granting of the concession.

**71 Effect of registration of approved plan in relation to unused Crown land designated to be conservation area subject to appointment of manager of marginal strip**

When an approved plan designating unused Crown land as land to be retained in Crown control as conservation area subject to the appointment of any person as manager under section 24H(1) of the Conservation Act 1987 has been registered,—

- (a) the Commissioner must promptly give the Minister of Conservation written notice that the land has vested subject to the person's appointment as manager; and
- (b) the Minister must promptly, in accordance with the plan, appoint the person manager of the land.

**72 Effect of registration of approved plan in relation to unused Crown land designated to be reserve subject to granting of concession**

When an approved plan designating unused Crown land as land to be retained in Crown control as a reserve subject to the granting of a concession has been registered,—

- (a) the Commissioner must promptly give the Minister of Conservation written notice that the land has vested subject to the granting of a concession; and
- (b) the Minister must promptly, in accordance with the plan, grant a concession of the land to the person concerned; and
- (c) section 17ZD(1) of the Conservation Act 1987 applies as if the reference in it to any applicant for a concession who has been granted a concession were a reference to the person concerned; but
- (d) sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act 1987 do not apply to the granting of the concession; and
- (e) in the case of a lease under section 73 of the Reserves Act 1977, the Minister does not have to comply with subsection (4) of that section.

**73 Effect of registration of approved plan in relation to unused Crown land designated to be retained in Crown ownership subject to granting of special lease or grazing permit**

Promptly after an approved plan designating unused Crown land as land to be retained in Crown control subject to the granting of a lease or grazing permit



under section 67(2) or section 68A of the Land Act 1948 has been registered, the Commissioner must, in accordance with the plan, grant the lease or permit.

**74 Effect of registration of approved plan in relation to unused Crown land designated to be disposed of**

- (1) Promptly after an approved plan designating unused Crown land as land to be disposed of has been registered, the Commissioner must, in accordance with the plan (but subject to Part 4A of the Conservation Act 1987), dispose of it under the Land Act 1948.
- (2) Promptly after an approved plan designating unused Crown land as land that may be disposed of has been registered, the Commissioner must try to dispose of it under the Land Act 1948.

**75 Effect of registration of approved plan in relation to conservation area subject to granting of concession**

When an approved plan designating any conservation area as land over which a concession is to be granted has been registered,—

- (a) the Minister of Conservation must promptly, in accordance with the plan, grant a concession of the land to the person concerned (and section 17ZD(1) of the Conservation Act 1987 applies as if the reference in it to any applicant for a concession who has been granted a concession were a reference to the person concerned); but
- (b) sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act 1987 do not apply to the granting of the concession.

**76 Effect of registration of approved plan in relation to conservation area subject to appointment of manager of marginal strip**

When an approved plan designating any conservation area that is marginal strip as land of which a person is to be appointed manager under section 24H(1) of the Conservation Act 1987 has been registered, the Minister of Conservation must promptly, in accordance with the plan, appoint the person manager of the land.

**77 Effect of registration of approved plan in relation to conservation area designated to be exchanged**

When an approved plan designating any conservation area as land to be disposed of by way of exchange has been registered,—

- (a) the Commissioner must promptly give the Minister of Conservation a copy; and
- (b) the Minister must promptly do all things necessary to dispose of the land in accordance with the proposal; and

- (c) subsections (6) to (8) of section 16A of the Conservation Act 1987 apply to the disposal as if it were part of an exchange authorised under that section.

**78 Effect of registration of approved plan in relation to reserve subject to granting of concession**

- (1) When an approved plan designating any reserve as land over which a concession (other than a lease under section 73 of the Reserves Act 1977) is to be granted has been registered,—
  - (a) the Commissioner must promptly give the Minister of Conservation a copy; and
  - (b) the Minister must promptly, in accordance with the proposal, grant a concession of the land to the person concerned; and
  - (c) section 17ZD(1) of the Conservation Act 1987 applies as if the reference in it to any applicant for a concession who has been granted a concession were a reference to the person concerned; but
  - (d) sections 17Q(2), 17R to 17Z, and 17ZJ of the Conservation Act 1987 do not apply to the granting of the concession.
- (2) When an approved plan designating any reserve as land to be granted by lease under section 73 of the Reserves Act 1977 has been registered,—
  - (a) the Commissioner must promptly give the Minister of Conservation a copy; and
  - (b) the Minister must promptly grant the lease.

**79 Effect of registration of approved plan in relation to reserve designated to be exchanged**

When an approved plan designating any reserve as land to be disposed of by way of exchange has been registered,—

- (a) the Commissioner must promptly give the Minister of Conservation a copy; and
- (b) the Minister must promptly do all things necessary to effect the disposal; and
- (c) subsections (5) to (8) of section 15 of the Reserves Act 1977 apply to the disposal as if it were part of an exchange effected under that section.

**80 Creation of protective mechanisms**

- (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,—
  - (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
  - (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,—
- (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
  - (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,—
- (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 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.
- (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,—
- (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.
- (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
  - (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,—
- (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
  - (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.

Section 80(3): amended, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

Section 80(3)(a)(ii): amended, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

Section 80(3)(b): substituted, on 30 September 2008, by section 82 of the Walking Access Act 2008 (2008 No 101).

Section 80(6): amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

Section 80(6)(b): amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

## **81 Effect of registration of approved plan in relation to freehold land designated to be restored to Crown ownership**

When an approved plan designating land held in fee simple as land to be restored to Crown ownership has been registered, the substantive proposal concerned has effect as a binding agreement for the sale to the Crown by the holder of all land designated by the plan as—

- (a) land to be restored to full Crown ownership and control as conservation area; or

- (b) land to be restored to Crown ownership as conservation area, subject to the granting to any specified person of a concession on terms specified in the proposal; or
- (c) land to be restored to full Crown ownership and control as a reserve; or
- (d) land to be restored to Crown ownership as a reserve, subject to the granting to any specified person of a concession, on terms specified in the proposal; or
- (e) land to be restored to full Crown ownership and control for some specified Crown purpose; or
- (f) land to be restored to Crown ownership subject to the granting to any specified person of a lease, on terms specified in the proposal, under section 67(2) of the Land Act 1948; or
- (g) land to be restored to Crown ownership subject to the granting to any specified person of a grazing permit under section 68A of the Land Act 1948; or
- (h) land that may be disposed of to any person.

**82 Payments to the Crown**

If an accepted substantive proposal is accompanied by a notice under section 46(4) specifying the payment of any amount to the Crown, the Commissioner must not proceed under this Part beyond the point specified for its payment until it has been paid.

**Part 3**  
**Reviews of other Crown land**

*General*

**83 Objects of Part 3**

The objects of this Part are—

- (a) to promote the management of Crown land in a way that is ecologically sustainable; and
- (b) to enable the protection of significant inherent values of Crown land; and
- (c) subject to paragraphs (a) and (b), to make easier—
  - (i) the securing of public access to and enjoyment of Crown land; and
  - (ii) the freehold disposal of Crown land capable of economic use.

**84 Matters to be taken into account by Commissioner**

In acting under this Part, the Commissioner must (to the extent that those matters are applicable) take into account—

- (a) the objects of this Part; and
- (b) the principles of the Treaty of Waitangi; and
- (c) if acting in relation to land used or intended to be used by the Crown for any particular purpose, that purpose.

**85 Consultation**

- (1) Before taking any action specified in subsection (3), the Commissioner must consult the Director-General of Conservation.
- (2) At any time, the Commissioner may consult any person or body the Commissioner thinks fit (including the Director-General of Conservation) about taking any action specified in subsection (3).
- (3) The actions are—
  - (a) undertaking a review under section 86(1); and
  - (b) devising a preliminary proposal under section 86(4); and
  - (c) adopting a substantive proposal under section 89.

*Procedure***86 Commissioner to review certain Crown land**

- (1) The Commissioner—
  - (a) must undertake reviews of all land for the time being held under an un-renewable occupation licence; and
  - (b) may undertake (alone, or as part of reviews under paragraph (a)) reviews of any unused Crown land.
- (2) The Commissioner must undertake any review of land held under an un-renewable occupation licence,—
  - (a) if the licence is not due to expire within 18 months of the commencement of this Act, not later than 15 months before the licence is due to expire;
  - (b) if the licence is due to expire within 18 months of the commencement of this Act, as soon as is practicable after the commencement of this Act.
- (3) Subject to subsection (2), the Commissioner may, in the Commissioner's absolute discretion, decide—
  - (a) how many reviews to cause to be undertaken;
  - (b) which land each review is to relate to;
  - (c) the order in which reviews are to be undertaken;

- (d) the urgency with which any review is to be undertaken:
- (e) the resources to be devoted to any review.
- (4) After conducting any review, the Commissioner must devise a preliminary proposal to designate the land concerned in accordance with subsection (5).
- (5) The land (or various areas of it) must be designated as—
  - (a) land to be retained in full Crown ownership and control—
    - (i) as conservation area; or
    - (ii) as a reserve, to be held for a purpose specified in the proposal; or
    - (iii) for some specified Crown purpose; or
  - (b) Either or both of the following:
    - (i) land suitable for disposal by special lease (on terms specified in the proposal):
    - (ii) land suitable for disposal in fee simple under the Land Act 1948.
- (6) If a preliminary proposal designates any land as land suitable for disposal by special lease, land suitable for disposal in fee simple, or both, it may designate it subject to either or both of the following things:
  - (a) the creation of a sustainable management covenant:
  - (b) the continuation in force of an existing easement.
- (7) If a preliminary proposal designates any land held under an occupation licence as land to be retained in Crown ownership, it may also specify any holder's improvements that are to remain on the land.

**87 Provisional consent of Minister of Conservation needed for some designations**

- (1) Without the prior written provisional consent of the Minister of Conservation, a preliminary proposal may not designate any land as land suitable for disposal subject to the creation of a protective mechanism.
- (2) The Minister must not consent provisionally to a designation in a preliminary proposal unless satisfied that it is reasonably likely that the Minister would consent to a substantive proposal containing the designation.

**88 Certain provisions of Part 2 relating to preliminary proposals to apply**

The following sections apply to a preliminary proposal under this Part as if it were a preliminary proposal under Part 2:

- (a) section 40 (which enables designations in a preliminary proposal to be subject to the creation of a protective mechanism):
- (b) section 43 (which requires the Commissioner to give public notice of preliminary proposals):

- (c) section 44 (which requires the Commissioner to consult the local iwi authority about any preliminary proposal):
- (d) section 45 (which requires the Commissioner to give the Minister of Conservation information about the results of consultations on a preliminary proposal).

### **89 Commissioner may adopt substantive proposals**

- (1) The Commissioner may, by signing on it a statement to the effect that it is adopted, adopt a written substantive proposal that is (as far as the land to which it relates is concerned) the same as or a modified version of a preliminary proposal previously notified, in accordance with section 88, under section 43.
- (2) Subject to subsection (3), the holder of any land held under an occupation licence that is dealt with by a proposal adopted under subsection (1) may apply under section 17 of the Land Act 1948 for a rehearing of the Commissioner's decision to adopt the proposal.
- (3) No person has a right to apply under section 17 of the Land Act 1948 for a rehearing of the Commissioner's decision to adopt a proposal under subsection (1) if the decision is the alteration, confirmation, modification, or reversal under a rehearing granted under that section of an earlier decision to adopt a substantive proposal.
- (4) The Commissioner must notify every holder concerned of a decision to adopt under subsection (1) a substantive proposal dealing with land held under an occupation licence.
- (5) Where within the time provided by section 17 of the Land Act 1948 no holder entitled by subsection (2) to do so applies under that section for a rehearing of a decision to adopt a substantive proposal under subsection (1), the adoption of the proposal takes effect on the expiration of that time.
- (6) Where—
  - (a) within the time provided by section 17 of the Land Act 1948 1 or more holders entitled by subsection (2) to do so apply under that section for a rehearing of a decision to adopt a substantive proposal under subsection (1); but
  - (b) the Commissioner then decides not to rehear the decision,—the adoption of the proposal then takes effect.
- (7) Where the Commissioner rehears under section 17 of the Land Act 1948 a decision to adopt a substantive proposal under subsection (1),—
  - (a) if the Commissioner reverses the decision, the adoption of the proposal has no effect:
  - (b) the Commissioner may alter or modify the decision by adopting an altered or modified substantive proposal under subsection (1); and if the Commissioner does so,—



- (i) subsection (3) applies; and
- (ii) the altered or modified proposal takes effect immediately:
- (c) If the Commissioner confirms the decision, it takes effect on confirmation.

**90 Certain provisions of Part 2 relating to substantive proposals to apply**

- (1) Section 47 (which forbids the Commissioner to put a substantive proposal to the holder of a reviewable instrument without first considering matters arising out of the consultations on the preliminary proposal out of which the substantive proposal arises) applies to the adoption of a substantive proposal under this Part as if it were the putting of a substantive proposal under Part 2 to the holder of a reviewable instrument.
- (2) The following sections apply to a substantive proposal under this Part as if it were a substantive proposal under Part 2 (but as if the reference in section 62(1) to its acceptance were a reference to its adoption):
  - (a) section 62 (which requires the Commissioner to prepare a final plan of the land to which an accepted substantive proposal relates):
  - (b) section 63 (which relates to the approval of a final plan by the Chief Surveyor):
  - (c) section 64 (which relates to the registration of an approved final plan and the substantive proposal out of which the plan arises).

**91 Consent of Minister of Conservation needed for some designations**

Without the prior written consent of the Minister of Conservation, a substantive proposal may not designate any land as land suitable for disposal subject to the creation of a protective mechanism.

*Effect of substantive proposals*

**92 Effect of registration of approved plan in relation to land designated to be retained in Crown ownership**

Land that an approved plan designates as land to be retained by the Crown vests in the Crown when the plan is registered or (in the case of land held under an occupation licence) when the licence expires, whichever is the later,—

- (a) depending on its designation in the plan,—
  - (i) as conservation area, or for the Crown purpose specified; or
  - (ii) as a reserve, held for the purpose specified in the plan; and
- (b) subject to the easements (if any) whose continuation in force is provided for in the substantive proposal concerned; and
- (c) except as provided in paragraphs (b) and (c), freed and discharged from all mortgages, charges, claims, estates, and interests.

**93 Creation of protective mechanisms**

Section 80 (which enables the creation of protective mechanisms provided for in an accepted substantive proposal under Part 2) applies to an approved plan arising out of the adoption of a substantive proposal under this Part as if it were an approved plan arising out of the acceptance of a substantive proposal under Part 2.

**94 Disposal**

When an approved plan relating to land that a substantive proposal designates as—

- (a) land suitable for disposal by special lease; or
- (b) land suitable for disposal in fee simple under the Land Act 1948; or
- (c) both,—

has been registered or (in the case of land held under an occupation licence) when the licence expires, whichever is the later, the Commissioner must try to dispose of it accordingly.

**Part 4****Provisions applicable to all reviews****95 Improvements on land held under occupation licence**

- (1) A substantive proposal under Part 2 or Part 3 dealing with any land held under an occupation licence may specify 1 or more holder's improvements that are to remain on the land; and in that case—
  - (a) the holder must not remove any improvement specified from the land, or cause or permit it to be removed from the land; but
  - (b) if when the licence expires or is surrendered the improvement is still on the land, the holder is entitled to compensation for it (being an amount equal to the added value that it then gives the land).
- (2) Except as provided in subsection (1),—
  - (a) on or before the expiry or surrender of an occupation licence (or within any later time the Commissioner allows), the holder must remove all holder's improvements from the land; and
  - (b) the holder is in no circumstances entitled to compensation, and may not in any circumstances be paid compensation,—
    - (i) for any improvement required by paragraph (a) to be removed from the land; or
    - (ii) for any improvement that is not a holder's improvement.
- (3) When a substantive proposal under Part 3 designating land held under an occupation licence as land suitable for disposal is adopted,—

- (a) the Commissioner must promptly have all holder's improvements valued; and
- (b) on the expiry of the licence, subsections (2) and (3) of section 149, and section 150, of the Land Act 1948 apply to the land and the right of the former holder to be paid compensation for improvements on the land effected, erected, made, or paid for by the former holder or any predecessor of the former holder (including improvements effected by doing, before or after the commencement of this Act, any thing specified in section 16(1)).

Compare: 1948 No 64 s 109

#### **96 Implementation not subdivision**

- (1) Taking action under Part 2 or Part 3 so that different parts of any land are dealt with in different manners is not a subdivision of the land for the purposes of the Resource Management Act 1991.
- (2) Subsection (1) is for the avoidance of doubt.

#### **97 Sustainable management covenants**

- (1) Despite any enactment or rule of law, there may be reserved over land disposed of under Part 2 or Part 3 a covenant in favour of the Commissioner providing for the management of the land, and the monitoring of activities undertaken on the land and their effects on the land.
- (2) A sustainable management covenant runs with the land over which it was reserved; and is an interest in land for the purposes of the Land Transfer Act 1952.
- (3) On application by the Commissioner, the District Land Registrar of the land registration district in which the land over which a sustainable management covenant has been reserved is situated must take all steps, and make all entries in the registers, necessary to give effect to the covenant's registration.
- (4) With the prior written consent of the regional or district council in which the land over which a sustainable management covenant has been reserved is situated, the Commissioner may transfer to the council the Commissioner's interest in the covenant.

#### **98 Application of sections 25 and 84 to section 97**

- (1) Section 25 applies to the exercise of the Commissioner's powers under section 97 in relation to the disposal of land under Part 2 as if section 97 were part of Part 2.
- (2) Section 84 applies to the exercise of the Commissioner's powers under section 97 in relation to the disposal of land under Part 3 as if section 97 were part of Part 3.

**99 Commissioner to meet certain official costs**

The Commissioner must pay the appropriate costs of any action taken by a Chief Surveyor or District Land Registrar under Part 2 or Part 3.

**100 Application of sections 17 and 18 of Land Act 1948**

Except as provided in section 89(2), neither section 17 nor section 18 of the Land Act 1948 applies to any decision made under Part 2, Part 3, or this Part.

**Part 5****Savings, and consequential amendments and repeals****101 Savings**

The repeal by section 104 of this Act of section 109 of the Land Act 1948—

- (a) does not affect any decision made under section 109 before its repeal; and (in particular)
- (b) does not prevent land held under an occupation licence from being let again on lease or licence if a decision that it is to be let again has been made under section 109 before its repeal.

**102 Consequential amendments to Land Act 1948**

The Land Act 1948 is amended in the manner indicated in Schedule 1.

**103 Director-General to administer special leases and grazing permits over certain reserves**

*Amendment(s) incorporated in the Act(s).*

**104 Consequential repeals**

The enactments specified in Schedule 2 are repealed.

**Schedule 1**  
**Consequential amendments to Land Act 1948**

s 102

*Amendment(s) incorporated in the Act(s).*

**Schedule 2**  
**Consequential repeals**

s 104

**Land Act 1948 (1948 No 64) (RS Vol 23, p 559)**

*Amendment(s) incorporated in the Act(s).*

**Land Amendment Act 1972 (1972 No 73) (RS Vol 23, p 731)**

**Land Amendment Act 1977 (1977 No 51) (RS Vol 23, p 733)**

*Amendment(s) incorporated in the Act(s).*

**Land Amendment Act 1979 (1979 No 57) (RS Vol 23, p 734)**

*Amendment(s) incorporated in the Act(s).*

## **Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012**

Public Act	2012 No 36
Date of assent	7 May 2012
Commencement	see section 2

### **1 Title**

This Act is the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012.

### **2 Commencement**

This Act comes into force on the earlier of—

- (a) the day that is 180 days after the date on which it receives the Royal assent;
- (b) a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(b): this Act brought into force, on 6 July 2012, by the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act Commencement Order 2012 (SR 2012/168).

### **3 Principal Act amended**

This Act amends the Crown Pastoral Land Act 1998.

## **Part 2 Miscellaneous**

### **7 Transitional provision in respect of Part 1A of Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act)**

- (1) Nothing in Part 1A of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act) applies to or affects any proceedings instituted or commenced in relation to a pastoral lease before this section comes into force.
- (2) Despite subsection (1), a lessee of a pastoral lease may, by giving notice in writing to the Commissioner of Crown Lands, elect to have the rent for the pastoral lease set under Part 1A of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act) if—
  - (a) the lease has a rent review date on or after 1 June 2002; and
  - (b) the lessee has not—
    - (i) had a final determination of rent made under this Act or the Land Act 1948; or

- (ii) reached a final agreement about rent made under this Act or the Land Act 1948.
- (3) If a lessee of a pastoral lease has given notice under subsection (2),—
  - (a) Part 1A of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act) applies, with any necessary modifications, as if the dates referred to in section 23C were dates determined by the Commissioner; and
  - (b) the Commissioner and the lessee may agree—
    - (i) on values for b, c, and d in the formulas specified in section 23B of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act);
    - (ii) to vary the dates or periods of time referred to in any section (other than section 23C) in Part 1A of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act);
    - (iii) to omit any of the steps or modify any of the processes provided for in sections 23C to 23H of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act).
- (4) The Commissioner and the lessee may agree on values for b, c, and d in the formulas specified in section 23B whether or not—
  - (a) any relevant regulations or rules have been made under Part 1A of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act);
  - (b) the Valuer-General has performed any relevant functions or duties or has exercised any relevant powers under Part 1A of the Crown Pastoral Land Act 1998 (as inserted by section 6 of this Act).

## Reprints notes

### 1 *General*

This is a reprint of the Crown Pastoral Land Act 1998 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

District Court Act 2016 (2016 No 49): section 261

Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26): section 107

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Legislation Act 2012 (2012 No 119): section 77(3)

Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act 2012 (2012 No 36)

Walking Access Act 2008 (2008 No 101): section 82

Property Law Act 2007 (2007 No 91): section 364(1)