

Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Crown Pastoral Land Act 1998. It would replace the land-valuation basis for setting rents for pastoral leases with a property-earning-capacity basis. A new formula would be used to assess the productive capacity of each pastoral lease as a pastoral farming operation, using net farm revenue data and stock-carrying capacities.

This commentary focuses on the main amendments we recommend and does not address minor technical amendments.

Setting rents for pastoral leases

We recommend amending clause 6, which would insert new part 1A—Setting rents for pastoral leases (comprising new sections 23A to 23P) into the Act, in the ways detailed below.

Purpose

We recommend amending new section 23A, the purpose provision for Part 1A. The proposed amendment would expand the purpose provision to give more guidance in interpreting the widely-drawn new powers proposed for the Valuer-General, especially those to make rules; and to provide clearer links between the various technical provisions—distributed among the Act, regulations, and rules—necessary to make the system work, thus outlining the rent-setting process in which the new formula would be applied.

Regulation-making power

We recommend amending new section 23N(a), which would allow regulations (to be made by the Governor-General on the recommendation of the Minister) to specify the method for calculating the dollar rate per stock unit. The amendment, which would delete section 23N(a)(i) and insert a new section 23N(a)(i), would require the data series used by the method to consist of the publicly available data about farm revenues and expenses that is most comparable to that of pastoral farming operations. It would also require the measure of net farm revenues per stock unit used in the method to refer to revenues from pastoral farming.

Rule-making power

We recommend amending new section 23O(1), which provides that the Valuer-General may make rules concerning several technical details of the new system. The amendment would organise the rule-making powers (which would all be discretionary as introduced) into mandatory and discretionary groups. New section 23O(1)(a)(i) (previously section 23O(1)(a)) provides that the Valuer-General now must make rules specifying the information to be provided or referenced by the Commissioner under subsection 23C(5). New section 23O(1)(a)(iii) (previously section 23O(1)(e)) provides that the Valuer-General now must, for the purposes of ensuring that base

and current carrying capacities are assessed and used consistently to calculate rent, make rules for the following purposes: to define a standard stock unit by reference to an annual energy requirement; to specify the standard stock-unit equivalent of different kinds of stock; and to specify how non-standard stock-unit measurements are to be converted to standard stock-unit measurements.

New Zealand Labour Party minority view

Labour supports the continuation of tenure by leaseholders on Crown pastoral lands to ensure sustainable management and productive utilisation of high country leases.

However, this bill challenges the basic tenets of property rights between the land owner and lessee. The bill severely compromises the property rights of the land owner, the Crown, to negotiate a fair return on the full value of the land.

The bill allows the Government to charge rent on the productive capacity of Crown land but excludes rental for the right to exclusive occupation which the lessees also enjoy.

This amounts to giving away a significant share of the Crown's interest, so depriving taxpayers of a return on the true value of the Crown's land assets. Low rentals are capitalised into the sale price of leases. The profits from such sales are retained by the lessee, not the Crown. The subjective nature of the calculation and outcome for individual leases will mean huge variation in returns to the Crown.

Submitters expressed the need for certainty in rental setting. Labour agrees this is a priority. However, certainty can be achieved using a system that recognises the total value of the land, not selectively chosen aspects of that value.

Labour supports the principle of income-related rents where cases of hardship can be established and the fair rights of lessees are difficult to uphold. We support implementation of a mechanism to provide relief to those lessees who can demonstrate that a fair market rental is beyond the earning capacity of the land they occupy.

The Minaret Land Value Tribunal decision confirmed the lessee's rights over the land and reaffirmed tenure over the land exclusive of improvements. Legislation to specifically address the contradiction in law is now required to secure that decision, which an appeal to the High Court could possibly overturn.

The previous National Government amended the Maori Reserves Land Act in 1997 to address injustices for Māori. As owners of the land Māori were, until that amendment was made, forced to accept lower than market rents for their land through leases based on unimproved land value with similar perpetual rights of tenure for lessees as exists for Pastoral Leases.

Labour cannot support inconsistencies in law that will inevitably lead to further legislative amendments and compromise the basic property rights of the Crown.

Appendix

Committee process

The Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill was referred to the committee on 17 February 2011. The closing date for submissions was 25 March 2011. We received and considered 12 submissions from interested groups and individuals. We heard nine submissions.

We received advice from Land Information New Zealand.

Committee membership

Shane Ardern (Chairperson)

Hon Jim Anderton

Dr Ashraf Choudhary

Hon Craig Foss

Sandra Goudie

Colin King

Moana Mackey

Hon Damien O'Connor

Iain Lees-Galloway replaced Moana Mackey for much of this item of business.

**Crown Pastoral Land (Rent for Pastoral
Leases) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Maurice Williamson

Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crown Pastoral Land (Rent for Pastoral Leases) Amendment Act **2010**.
- 2 Commencement**
This Act comes into force on the earlier of— 5
 - (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. 10
- 3 Principal Act amended**
This Act amends the Crown Pastoral Land Act 1998.

Part 1
Amendments to Crown Pastoral Land
Act 1998

4 Interpretation

(1) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order: 5

“**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 10

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

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

“**current carrying capacity**, in relation to a pastoral lease, means the ~~plausible~~ 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 15

“**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 20

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

“**land** means land that is subject to a pastoral lease 25

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

“**Minister** means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act 30

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

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

“(a) the ~~date of the~~ day immediately after the first period of 11 years from the commencement date of the pastoral lease: 35

- “(b) the ~~date of the~~ day immediately after the second period of 11 years from the commencement date of the pastoral lease:
- “(c) the ~~date of the~~ day immediately before the expiry of the pastoral lease if the pastoral lease is to be renewed 5
- “**stock unit** means the standard stock unit for the purposes of **Part 1A** defined by the Valuer-General under **section 230(1)(a)(iii)**
- “**Valuer-General** has the same meaning as in section 2 of the Valuers Act 1948”. 10
- (2) Section 2 is amended by repealing the definition of **rental value**.
- 5 Sections 6 to 8 repealed**
Sections 6 to 8 are repealed.
- 6 New Part 1A inserted** 15
The following Part is inserted after Part 1:
- “Part 1A**
“Setting rents for pastoral leases
- “23A Purpose of this Part** 20
The purpose of this Part is to replace the land valuation basis for setting rents for pastoral leases with a property-earning-capacity basis for setting rents for pastoral leases that—
- “(a) assesses the productive capacity of each pastoral lease as a pastoral farming operation; and
- “(b) uses net farm revenue data to estimate the value of that productive capacity. 25
- “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—** 30
- “(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 5
- “(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 **paragraph (iii)** to be calculated; and 10
- “(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 15
- “(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,— 20
- “(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 25
- “(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 30
- “(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 35
- “(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.

“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. 5

“(2) The following formula must be used to calculate the annual rent for any pastoral lease to which **subsection (1)** applies: 10

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

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 ~~on~~ to the rent review date 15
- 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. 20

“(3) The following formula must also be used to calculate the annual rent for any pastoral lease to which **subsection (1)** applies: 25

$$b \times c$$

where—

- b is the dollar-per-stock-unit rate published by the Valuer-General in the *Gazette* that applies ~~on~~ to the rent review date 30
- c is the base carrying capacity of the pastoral lease as determined under this Part and any regulations or rules made under this Part.

“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— 5
“(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. 10
- “(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 15
“(b) ending on the close of the day that is 90 days before the rent review date.
- “(4) ~~The Commissioner may appoint 1 or more Crown assessors to make concurrent initial assessments of the base carrying capacity and the current carrying capacity of any pastoral lease or pastoral leases.~~ 20
- “(5) 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 230**. 25
- “(6) 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.

“23D Initial assessment of carrying capacity by Crown assessors 30

- “(1) A Crown assessor must, in accordance with the terms of the Crown assessor’s appointment under **section 23C**, inspect the land in a pastoral lease and formulate an initial assessment of— 35
“(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 in a pastoral lease for the purposes of **subsection (1)**. 5
- “(3) ~~The Commissioner must, within 15 working days after the completion of the Crown assessor’s inspection of the land in a pastoral lease, give the lessee written notice of the Crown assessor’s initial assessment that includes—~~ 10
- “(a) ~~the Crown assessor’s initial assessment of the base carrying capacity or current carrying capacity, or both, of the pastoral lease (as the case may be); and~~
- “(b) ~~a copy of—~~
- “(i) ~~the information provided or referred to the Crown assessor under **section 23C(5)**; and~~ 15
- “(ii) ~~any rule made or guidance provided by the Valuer-General that is relevant to the Crown assessor’s initial assessment; and~~
- “(iii) ~~any other information that contributed significantly to the assessment; and~~ 20
- “(e) ~~if the Crown assessor’s initial assessment allows a rent to be calculated, the rent that the lessee must pay if the lessee accepts the Crown assessor’s initial assessment.~~
- “(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— 25
- “(a) be in writing; and
- “(b) include— 30
- “(i) the information provided or referred to the Crown assessor under **section 23C(5)**; 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 35
- “(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. 5
- “(4) The lessee must, within 15 working days after the date on which the notice is ~~sent to~~ received by the lessee, respond to the Crown assessor’s initial assessment, in writing to the Commissioner, by— 10
- “(a) accepting the Crown assessor’s initial assessment; or
- “(b) rejecting the Crown assessor’s initial assessment.
- “23E Process if lessee accepts, or fails to respond to, initial assessment** 15
- If the lessee accepts, or fails to respond to, an initial assessment under **section 23D(4)**, the Crown assessor’s initial assessment of—
- “(a) in the case of the base carrying capacity of a pastoral lease lease,— 20
- “(i) becomes the base carrying capacity for that pastoral lease; and
- “(ii) must be used to calculate the rent for ~~the~~ that pastoral lease under **section 23B**;
- “(b) in the case of the current carrying capacity of a pastoral lease lease,— 25
- “(i) becomes the current carrying capacity for that pastoral lease; and
- “(ii) must be used to calculate the rent for ~~the~~ that pastoral lease under **section 23B**. 30
- “23F Framework for dispute resolution if lessee rejects initial assessment**
- “(1) If the lessee rejects the initial assessment of a Crown assessor ~~or Crown assessors, then then,~~ within 10 working days after the 15-working-day period specified in **section 23D(4)**,— 35
- “(a) the Commissioner must—

- “(i) appoint an expert determiner in accordance with **subsection (2)**; and
- “(ii) submit a copy of the ~~notice~~ assessment given under **section 23D(3)** to the expert determiner; and 5
- “(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 10 agree, appoint a person ~~that~~ 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 ~~or assessors~~, and the expert determiner must meet at on 15 the land ~~in the pastoral lease~~ 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 ~~or assessors~~ 20 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,— 25
 - “(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 ~~or assessors~~ as soon as practicable but at least 10 working 30 days before the date of the resolution hearing.
- “**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 ~~or assessors~~, and the expert determiner have the following duties:

- ~~“(a) the lessee's assessor and the Crown assessor ~~or assessors~~ 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~~ 5
- ~~“(b) the lessee's assessor, the Crown assessor ~~or assessors~~, and the expert determiner must, at the meeting ~~at~~ 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~~ 10
- ~~“(c) the Crown assessor ~~or assessors~~ must explain to the lessee's assessor and the expert determiner ~~how the Crown assessor or assessors arrived 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 significant elements of the method that the Crown assessor or assessors used in making the initial assessment; and~~ 15~~
- ~~“(d) the lessee's assessor must formulate an assessment of the base carrying capacity or the current carrying capacity, or both, of the pastoral lease (as the case may be) and provide the assessment to the Crown assessor or assessors and the expert determiner—~~ 20
 - ~~“(i) taking into account any explanation provided by the Crown assessor or assessors under **paragraph (c)**; and~~ 25
 - ~~“(ii) including any information that contributes significantly to the lessee's assessor's assessment of the base carrying capacity or the current carrying capacity of the pastoral lease; and~~ 30
 - ~~“(iii) specifying the regulations or rules that permit the use of that information to assess the base carrying capacity or the current carrying capacity of the pastoral lease; and~~ 35
- “(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 cur-

- rent 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 5
- “(ii) specify the regulations or rules that permit or require the use of the method referred to in **sub-paragraph (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— 10
- “(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 15
- “(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 20
- “(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 25
- “(e) the expert determiner must analyse and evaluate how the lessee’s assessor and the Crown assessor ~~or assessors~~ 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 ~~or assessors~~ 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). 30
- “(2) If the expert determiner provides guidance or assistance after the conclusion of the meeting referred to in **section 23F(3)**— 35
- “(a) to the lessee’s assessor, the expert determiner must provide the Crown assessor ~~or assessors~~ with a written summary of the guidance or assistance:

- “(b) to the Crown assessor ~~or assessors~~, 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 ~~or Crown assessors~~ 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. 5
- “(4) Despite **subsection (3)**, the information required to be given by a Crown assessor ~~or Crown assessors~~ 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)**. 10
- “**23H Resolution hearing**
- “(1) If an agreement is not reached between the lessee’s assessor and the Crown assessor ~~or assessors~~ 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 ~~or assessors~~ on the date fixed under **section 23F(4)(a)** to— 15 20
- “(a) facilitate agreement between the lessee’s assessor and the Crown assessor ~~or assessors~~; 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). 25
- “(1A) 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. 30
- “(2) The expert determiner may establish any procedures ~~or rules~~ for the resolution hearing, but the procedures ~~and rules~~ must be consistent with any regulations or rules made under this Part.
- “(3) The Arbitration Act 1996 does not apply to the resolution hearing, but the expert determiner may apply any provision of that 35

Act to a resolution hearing in any procedures ~~or rules~~ that the expert determiner may establish.

- “(4) The expert determiner may make an award of costs that complies with **subsection (5)** and any regulations or rules made under this Part. 5
- “(5) 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 10
 - “(b) the Commissioner pay the fees of the Crown assessor ~~or assessors~~ and pay for any expenses incurred by the Crown assessor ~~or assessors~~ that are associated with complying with the requirements of this Part; and
 - “(c) the lessee and the Commissioner pay an equal share 15 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).
- “(6) Despite **subsection (5)**, the expert determiner may require the lessee to pay a portion of the fees and expenses that the 20 Commissioner would otherwise pay, or require the Commissioner to pay a portion of the fees and expenses that the lessee would otherwise pay pay, if the lessee’s assessor or a Crown assessor (as the case may be) has, unreasonably or without justification,— 25
- “(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, 30 including (but not limited to) refusing to accept facts that should have been accepted.

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

- “(1) If the lessee’s assessor and the Crown assessor ~~or assessors~~ 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,— 35

- “(a) the lessee’s assessor and the Crown assessor ~~or assessors~~ must ~~both~~ 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 5
- “(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 ~~or assessors~~ 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). 10
- “(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). 15
- “(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),— 20
- “(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 25
- “(ii) must be used to calculate the rent for ~~the~~ that pastoral lease under **section 23B**;
- “(b) in the case of a current carrying capacity, the recorded current carrying capacity of a pastoral lease— 30
- “(i) becomes the current carrying capacity for that pastoral lease; and
- “(ii) must be used to calculate the rent for ~~the~~ 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. 35

- “(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. 5
- “(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. 10

“**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. 15
- “(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: 20
- “(a) ~~reverse, confirm, 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: 25
 - “(c) make any other order in relation to the matter that the High Court thinks fit.

“**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— 30

- “(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. 35

“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** 5
- “(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** 10
- “(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—** 15
 - “(i) assessing or determining the base carrying capacity and the current carrying capacity of pastoral leases; and**
 - “(ii) ~~determining the base carrying capacity and the current carrying capacity of pastoral leases; and~~** 20
 - “(iii) 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** 25
- “(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** 30
- “(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,—** 35
 - “(i) ~~information about—~~**

- “(A) assessing the base carrying capacity and the current carrying capacity of a pastoral lease; and
- “(B) determining the base carrying capacity and the current carrying capacity of a pastoral lease; and 5
- “(C) setting the rent for a pastoral lease; and
- “(ii) any guidance provided under ~~paragraph (c):~~ **paragraph (c)**; and
- “(iii) any rules made under ~~section 230:~~ **section 230**; and 10
- “(iv) 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 aim to ensure that— 15
- “(a) any assessment or determination is carried out quickly and efficiently; and
- “(b) any lessee’s assessor, Crown assessor, or expert determiner does not use more information or undertake more analysis than is necessary to make an assessment or a determination. 20
- “(2) In carrying out the functions and duties and exercising the powers specified in **subsection (1)**, the Valuer-General must— 25
- “(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 30
- “(b) have regard to the purpose of this Part. 35

“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,— 5

“(a) any function, duty, or power conferred on the Valuer-General by this Act (other than the power to make rules under **section 230**) 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). 10

“23N Regulation-making power

The Governor-General may, on the recommendation of the Minister, make regulations that— 15

“(a) specify the method for calculating the dollar-per-stock-unit rate, which must—

~~“(i) use publicly available data about farm revenues and expenses; and 20~~

“(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 25

“(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 30

“(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 35

- “(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: 5
- “(d) provide for the matters that are contemplated by, or necessary for, by or necessary for giving effect to this Part and for its due administration.
- “**23O Rule-making power**
- “(1) For the purposes of this Part, the Valuer-General may make rules that— 10
- “(a) specify the information to be provided or referenced by the Commissioner under **subsection 23G(5)**, including (but not limited to)—
- “(i) information predicting the characteristics of land in the pastoral lease, including information in the form of raw data, a land classification, a model, or an algorithm: 15
- “(ii) assumptions about how the information referred to in **subparagraph (i)** reveals the base carrying capacity and the current carrying capacity of a pastoral lease: 20
- “(iii) other information about the land in a pastoral lease:
- “(b) specify how a lessee’s assessor, a Crown assessor, or an expert determiner must, when making an assessment or a determination,— 25
- “(i) use the information provided or referenced by the Commissioner under **section 23G(5)**; and
- “(ii) use the information gained at a meeting under **section 23F(3)** on land subject to a pastoral lease; and 30
- “(iii) use or not use any other information about a pastoral lease:
- “(c) 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 35

- making an assessment or a determination of base carrying capacity:
- “(d) 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)—
 - “(i) how concepts useful to determining the base carrying capacity or the current carrying capacity of a pastoral lease are to be used (for example, average efficient farming):
 - “(ii) information about stock numbers carried on a pastoral lease:
 - “(iii) constraints on stocking that arise from the obligations under a pastoral lease:
 - “(iv) other constraints on stocking:
 - “(e) for the purposes of ensuring base carrying capacities and current carrying capacities are assessed and used consistently to calculate rent,—
 - “(i) 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):
 - “(ii) specify the standard stock-unit equivalent of different kinds of stock for the purposes of this Part:
 - “(iii) specify how non-standard stock-unit measurements are to be converted to standard stock-unit measurements for the purposes of this Part:
 - “(f) provide for any other matters relating to—
 - “(i) 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
 - “(ii) 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:
 - “(g) prescribe forms:

- ~~“(h) provide for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.~~
- “(1) For the purposes of this Part, the Valuer-General—

 - “(a) must make rules that— 5

 - “(i) specify the information to be provided or referenced by the Commissioner under **section 23C(5)**, 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: 10
 - “(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: 15
 - “(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,— 20

 - “(A) use the information provided or referenced by the Commissioner under **section 23C(5)**; and
 - “(B) use the information gained at a meeting on the land under **section 23F(3)**; and 25
 - “(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,— 30

 - “(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): 35

- “(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: 5
- “(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: 10
- “(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)— 15
- “(A) how relevant concepts are to be used:
- “(B) information about stock carried on a pastoral lease: 20
- “(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— 25
- “(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 30
- “(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: 35
- “(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: 5
- “(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: 10
- ~~“(d) may, in cases where it is useful to do so to assess or determine the current carrying capacity of a pastoral lease, make provision about how land farmed in conjunction with a pastoral lease is to be considered.~~ 15
- “(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). 20
- “(3) Before making any rules under this section, the Valuer-General must— 25
- “(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 30
- “(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. 35
- “(4) Any rule made under **subsection (1)** is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is

not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“(5) In the event of any conflict between any regulation made under **section 23N** and any rule made under **subsection (1)**, the regulation prevails.

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“**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.

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“(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 (3) to (5)** have been met; or

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“(b) designate any individual as eligible to be appointed as a lessee’s assessor or a Crown an assessor if the individual—

“(i) is a member of—

“(A) an organisation specified in any regulations or rules made under this Part; or

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“(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

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“(iii) is otherwise qualified to act as an assessor.

“(2A) The Valuer-General may direct that an individual designated under **subsection (2)** must, if appointed as an assessor, carry out assessments of—

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“(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.

“(3) 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.

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- “(4) 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). 5
- “(5) 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.
- “23Q Service of notices 10**
- “(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. 20
- “(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 a District Court. 25
- “(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. 30
- “(6) Despite anything in **subsections (1) to (5)**, a District Court may in any case make an order directing the manner in which 35

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.”

Part 2 Miscellaneous

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7 Transitional provision in respect of Part 1A of Crown Pastoral Land Act 1998 Act (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. 10
- (2) ~~However,~~ 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— 15
- (a) the lease has a rent review date on or after 1 June 2002; and 20
- (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. 25
- (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 30
- (b) the dates referred to in any section in **Part 1A** of the Crown Pastoral Land Act 1998 (as inserted by **section 6** of this Act), other than **section 23C**, may be varied as agreed between the lessee and the Commissioner. 35
- (b) the Commissioner and the lessee may agree—

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- (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): 5
 - (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). 10
- (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): 15
 - (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). 20

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Committee
