

## CROWN PASTORAL LAND BILL

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### EXPLANATORY NOTE

THIS Bill, which comes into force on assent, has 3 substantive Parts, and 1 machinery Part.

*Part I* enacts, with some modifications, provisions equivalent to those in the Land Act 1948 ("the former Act") relating to pastoral land. The most important modification is that it will not be possible to grant new pastoral leases except as a consequence of a subdivision of an existing pastoral lease. The other modifications are detailed later in this note.

*Part II* contains provisions enabling the review of existing tenures under pastoral leases (and also special leases under section 67 of the former Act) and pastoral occupation licences, with a view to restoring some pastoral land to full Crown ownership and control, and disposing of some pastoral land to the holders of the existing leases and licences over it.

*Part III* contains consequential amendments and repeals.

*Part IV* contains a substantive amendment to the Land Act 1948. It is intended that this Part will be split from the Bill to become a Land Amendment Act.

*Clause 1* relates to the Bill's Short Title.

*Clause 2* defines certain terms used in *Parts I to III* of the Bill.

### PART I

#### PASTORAL LEASES AND OCCUPATION LICENCES

##### *Pastoral Leases*

*Clause 3* specifies the rights conferred by a pastoral lease, and is to the same effect as section 66 (2) of the former Act.

*Clause 4* specifies the term of a pastoral lease, and is to the same effect as section 66 (4) of the former Act.

*Clause 5* specifies the manner in which the rent payable during the first 11 years of the first renewal of a pastoral lease granted before 1 December 1979 is to be calculated, and is to the same effect as subsections (7) and (8) of section 66 of the former Act.

*Clause 6* specifies the manner in which the rent payable during the first 11 years of a pastoral lease granted after 30 November 1979 is to be calculated, and is to the same effect as subsections (5) and (7) of section 66 of the former Act.

*Clause 7* specifies the manner in which the rent payable during periods not covered by *clauses 6 and 7* is to be calculated, and is to the same effect as subsections (5) and (7) of section 66 of the former Act.

*Clause 8* deals with a matter not expressly referred to in the former Act. In the past, some doubt has existed as to whether it is possible to grant a renewal of a pastoral lease after it has expired, or whether in those circumstances it is necessary to grant a new lease. Given that it will no longer be possible to grant new pastoral leases (except on subdivision), *clause 8* is an express power to renew pastoral leases with back-dated effect.

*Clause 9* enables the completion of certain transactions that were initiated years ago but have not yet been completed.

Section 126A of the former Act enables the holder of a pastoral lease over land that has all been reclassified as farm land to surrender it and obtain a renewable lease in exchange.

Nearly all (if not all) land of this kind has been vested in State enterprises under the State-Owned Enterprises Act 1986; and in the case of some pastoral leases the land had been reclassified as farm land, and the Land Settlement Board had agreed to accept a surrender of the lease, before the land was vested in the State enterprise. But after the vesting it has not been clear exactly how the agreed renewable lease is to be granted.

The clause empowers the Commissioner to grant the new lease on behalf of the State enterprise.

It should be noted that *clause 33* repeals section 126A of the former Act; so the ability to obtain a renewable lease in exchange for a surrendered pastoral lease will in future be limited to those half-completed transactions described above.

#### *Occupation Licences*

*Clause 10* provides for the granting of licences to occupy pastoral land ("occupation licences") and specifies the rights conferred by them. It is to the same effect as section 66AA of the former Act.

*Clause 11* prescribes procedures to be followed on the expiry of occupation licences granted for terms of 5 years or more, and is to the same effect as section 109 of the former Act.

#### *Pastoral Land Generally*

*Clauses 12 to 18* are general provisions relating to the use of pastoral land held under lease or licence.

*Clause 12* forbids the burning of vegetation on pastoral land without the consent of the Commissioner of Crown Lands ("the Commissioner"), and is to the same effect as section 106 (1) of the former Act.

*Clause 13* relates to the undertaking on pastoral land of certain activities that have the effect of disturbing the soil.

*Subclause (1)* is new, and expressly forbids these activities. Under the former Act, it has been taken for granted that these activities are forbidden by virtue of the fact that the former Act provides that holders of pastoral leases and pastoral occupation licences have "no right to the soil".

*Subclause (2)* specifies the activities forbidden.

*Subclauses (3) and (4)* give the Commissioner a limited power to authorise the undertaking of some of the activities forbidden.

*Clause 14* is new. At present, the fact that pastoral leases and pastoral occupation licences are granted under the former Act with a view to exploiting the productive capacity of pastoral land imposes severe restrictions on the matters to which the Commissioner can have regard when deciding whether to consent to certain activities. The clause gives the Commissioner express power to have regard to protecting the land's inherent values.

Because a pastoral lease or occupation has already extinguished public recreational rights by virtue of the holder's exclusive right to occupy the land, recreational values are not to be considered in the case of existing leases and licenses.

*Clause 15* is also new. The former Act does not provide entirely satisfactory powers to deal with lessees and licensees who act in breach of that Act or their lease or licence. Some breaches are criminal offences (making those convicted liable to a fine of up to \$400 or imprisonment for up to 1 year). Some breaches make the holder liable to forfeiture of the lease or licence. But the Crown has no easy way to make a lessee or licensee remedy a breach.

This clause enables the Commissioner to take the lessee or licensee to Court and obtain an order to remedy a default, or damages, or forfeiture and damages.

*Clause 16* relates to the resolution of boundary disputes between holders of adjacent pastoral land, and is to the same effect as section 107 (1) of the former Act.

*Clause 17* empowers the Commissioner to make adjustments in the boundaries between pastoral land, and is to the same effect as section 107 (2) of the former Act.

*Clause 18* authorises people travelling with cattle or sheep to pasture them for up to 24 hours on certain unfenced and uncultivated pastoral land, and is to the same effect as section 110 of the former Act.

#### *Application of Land Act 1948*

*Clause 19* provides that (subject to the specific provisions comprised in *clauses 3 to 18*) the general provisions of the former Act relating to leases and licences continue to apply to pastoral leases and occupation licences.

## PART II

### TENURE REVIEWS

#### *Principles*

*Clause 20* specifies the objects of *Part II*; and, to the extent that *clause 21* requires the Commissioner to have regard to those objects in administering *Part II*, is perhaps the most important clause in that Part.

The objects are—

- to promote the sustainable management of reviewable land;
- to facilitate the restoration to full Crown ownership and control of reviewable land with high inherent values, the freehold disposal of reviewable land capable of productive use, and the creation of appropriate public rights of access to and enjoyment of reviewable land.

It should be noted that some of the matters to be facilitated have the potential to conflict with others. The effect is that cases of conflict will involve some balancing of the conflicting objects.

*Clause 21* requires the Commissioner to take into account the principles of the Treaty of Waitangi and the objects specified in *clause 20*, in administering *Part II*.

*Clause 22* requires the Commissioner, in any particular transaction, to have regard to the objects specified in *clause 20* in the light of their application to all the land involved, rather than different portions of it.

#### *Undertaking of Tenure Reviews*

*Clause 23* empowers the Commissioner to undertake reviews of the tenure of land held under pastoral lease, special lease, or occupation licence.

Reviews may be undertaken in respect of land held under a single instrument or 2 or more instruments; but may be undertaken only with the agreement of the holders of the land concerned.

*Clause 24* provides for the Commissioner to put preliminary proposals to holders as to the ultimate way to which the land should be dealt with. Proposals may be unconditional or conditional.

*Clause 25* requires the Commissioner to give public notice of a preliminary proposal, and consult the appropriate iwi authority.

*Clause 26* empowers the Commissioner to put substantive proposals to holders. These may be the same as or modified versions of the preliminary proposals.

*Clause 27* requires the Commissioner to have regard to matters raised by the local iwi authority, and public submissions, in formulating substantive proposals.

*Clause 28* provides for holders to accept or reject substantive proposals. A proposal not accepted within 3 months is deemed to have been rejected.

*Clause 29* empowers the Commissioner to take the actions necessary to give effect to an accepted substantive proposal.

*Clause 30* declares that the implementation of an accepted substantive proposal is not a subdivision (and thus is not subject to further scrutiny or consent).

*Clause 31* empowers the imposition on land being disposed of of covenants intended to ensure sustainable management.

### PART III

#### CONSEQUENTIAL AMENDMENTS AND REPEALS

*Clause 32 and 33* effect consequential amendments and repeals.

### PART IV

#### SUBSTANTIVE AMENDMENT TO LAND ACT 1948

*Clause 34* provides that *Part IV* is to be read with the Land Act 1948.

*Clause 35* amends the Land Act 1948 so as to make clear that where land is disposed of, or a new lease or licence is granted for it, the new title, lease, or licence comes not only subject to existing encumbrances, etc., but also with the benefit of existing covenants and appurtenant encumbrances over other land.

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*Hon. Denis Marshall*

## CROWN PASTORAL LAND

### ANALYSIS

Title	<i>Application of Land Act 1948</i>
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PASTORAL LEASES AND OCCUPATION LICENCES	21. Matters to be taken into account by Commissioner
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3. Tenure	<i>Undertaking of Tenure Reviews</i>
4. Term	23. Undertaking of tenure reviews
5. Special provisions relating to calculation of rent payable for first 11 years of first renewal of pastoral lease granted before 1 December 1979	24. Preliminary proposals may be put to holders
6. Special provisions relating to calculation of rent payable for first 11 years of pastoral lease granted after 30 November 1979	25. Commissioner to give notice of preliminary proposals
7. Calculation of rent payable under pastoral leases after first 11 years	26. Substantive proposals may be put to holders
8. Renewals	27. Commissioner to consider submissions
9. Belated exchange of pastoral leases for renewable leases	28. Acceptances
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<i>Occupation Licences</i>	30. Implementation of proposal not to be subdivision
10. Commissioner may grant occupation licences	31. Land management covenants
11. Procedure on expiry of occupation licences for long terms	<b>PART III</b>
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<i>Pastoral Land Generally</i>	32. Consequential amendments
12. Burning of vegetation	33. Consequential repeals
13. Activities involving disturbance to soil	
14. Discretionary actions	<b>PART IV</b>
15. Breaches of statutory or contractual provisions	SUBSTANTIVE AMENDMENT TO LAND ACT 1948
16. Boundary disputes	34. Part to be read with Land Act 1948
17. Boundary adjustments	35. Easements, etc.
18. Travelling stock	Schedules

## A BILL INTITULED

**An Act to provide for the administration of Crown pastoral land**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title**—This Act may be cited as the Crown Pastoral Land Act 1995. 5

**2. Interpretation**—(1) In **Parts I to III** of this Act, unless the context otherwise requires,—

“The former Act” means the Land Act 1948:

“Its commencement”, in relation to a pastoral lease or an occupation licence, means— 10

(a) The day on which it was granted, if the land to which it relates was not held under other lease or licence on that day:

(b) The day on which the other lease or licence was determined, if that land was held under other lease or licence on the day on which it was granted: 15

“Grass” includes clover and lucerne:

“The holder”, in relation to a reviewable instrument, means the lessee or licensee under the instrument: 20

“Inherent values”, in relation to any land, means—

(a) Its natural resources (within the meaning of the Conservation Act 1987); and

(b) Its recreational, cultural, and historical values:

“The land”, in relation to a reviewable instrument, means all the land held under the instrument: 25

“Occupation licence” means licence granted under section 66AA of the former Act or **section 10 (1)** of this Act:

“Pastoral lease” means lease granted under section 66 (1) of the former Act: 30

“Protective mechanism” means—

(a) Easement; or

(b) Covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1966, section 77 of the Reserves Act 1977, or section 27 of the Conservation Act 1987, or **section 31** of this Act: 35

“Removable improvement”, in relation to an occupation licence, means building, enclosure, fencing, or other improvement on the land (other than an improvement effected by the doing of anything 40

specified in **section 13 (2)** of this Act) erected, made, or paid for by the licensee:

“Reviewable instrument” means instrument (other than an instrument over land that has been vested in a State enterprise under the State-Owned Enterprises Act 1986) that is—

- (a) A pastoral lease; or
- (b) A lease under section 67 of the former Act; or
- (c) An occupation licence:

“Reviewable land” means land held under a reviewable instrument on the commencement of this Act:

“Sustainable management” has the meaning given to that term by section 5 (2) of the Resource Management Act 1991:

(2) Except as provided in **subsection (1)** of this section, in **Parts I to III** of this Act terms defined in section 2 of the former Act have the meanings given to them by that section.

## PART I

### PASTORAL LEASES AND OCCUPATION LICENCES

#### *Pastoral Leases*

**3. 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.

Cf. 1948, No. 64, s. 66 (2)

**4. Term**—The term of a pastoral lease expires on the expiration of 33 years from the 1st day of January or July (whichever is the sooner) next following its commencement.

Cf. 1948, No. 64, s. 66 (4)

**5. Special provisions relating to calculation of rent payable for first 11 years of first renewal of pastoral lease granted before 1 December 1979**—To the extent only that the land held under a pastoral lease granted before the 1st day of December 1979 is pastoral land,—

- (a) The yearly rent payable in respect of any of the period comprising the first 11 years of its first renewal shall continue to be calculated as if the reference in Part VIII of the former Act to the proportion of 4½ percent is a reference to the proportion of 1½ percent; but

- (b) The holder continues not to be entitled to any rebate in respect of the payment of any amount of rent falling due during that period.

Cf. 1948, No. 64, ss. 66 (7), (8)

**6. Special provisions relating to calculation of rent payable for first 11 years of pastoral lease granted after 30 November 1979**—To the extent only that the land held under a pastoral lease granted after the 30th day of November 1979 is pastoral land,—

- (a) The yearly rent payable under it for the period between—

- (i) Its commencement; and  
 (ii) The expiration of 11 years from the 1st day of January or July (whichever is the sooner) next following its commencement,—  
 shall continue to be  $2\frac{1}{4}$  percent of the land's rental value, as determined by the Board (or, as the case requires, the Commissioner) at the time the lease was granted; but

- (b) That rental value shall continue not to include any potential value the land may have—

- (i) For subdivision for building purposes; or  
 (ii) For commercial or industrial use.

Cf. 1948, No. 64, s. 66 (5), (7)

**7. Calculation of rent payable under pastoral leases after first 11 years**—Subject to section 5 of this Act, to the extent only that the land held under it is pastoral land, the yearly rent payable under a pastoral lease for every period of 11 years after the expiration of 11 years from the 1st day of January or July (whichever is the sooner) next following its commencement shall continue to be calculated as for the renewal of a renewable lease; but as if the reference in Part VIII of the former Act to the proportion of  $4\frac{1}{2}$  percent is a reference to the proportion of  $2\frac{1}{4}$  percent.

Cf. 1948, No. 64, s. 66 (7)

**8. Renewals**—For the avoidance of doubt, it is hereby declared that where—

- (a) At the time a pastoral lease expired, the Commissioner and the holder were negotiating as to the rent to be paid under a renewal of the lease; and  
 (b) A rent is later agreed,—



the Commissioner may grant a renewal of the lease; which shall in that case take effect from the expiry, as if the lease had not expired.

**9. Belated exchange of pastoral leases for renewable leases**—(1) Subject to **subsection (2)** of this section, where—

- 5 (a) Before the commencement of **Parts I to III** of this Act, any land comprised in a pastoral lease was vested in a State enterprise under the State-Owned Enterprises Act 1986; and
- 10 (b) Before it was vested,—
- (i) All the land comprised in that lease had been reclassified as farm land; and
- (ii) The Land Settlement Board, the Department of Lands, or the Commissioner had agreed to issue a
- 15 renewable lease to the holder under section 126A of the former Act, in exchange for the pastoral lease; and
- (iii) No renewable lease had in fact been issued; and
- 20 (c) Since it was vested the holder has (or successive holders have) been paying rent as if the land was held on renewable lease,—

the Commissioner may under the former Act, with the consent of the State enterprise concerned, grant a renewable lease to

25 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 was still in force.

(2) Where a renewable lease is granted under **subsection (1)** of this section,—

- 30 (a) It shall be deemed to have been granted under section 126A of the former Act immediately before the land comprised in it was vested in the State enterprise concerned; and
- (b) The former Act shall be deemed to have applied, and shall continue to apply, to it accordingly; and
- 35 (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 reviewable lease in exchange for it shall be deemed
- 40 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)** of this section is a disposition for the purposes of section 24 of the Conservation Act 1987.

*Occupation Licences***10. Commissioner may grant occupation licences—**

- (1) Subject to **subsections (2) and (3)** of this section, the Commissioner may from time to time grant licences to occupy pastoral land. 5
- (2) The Commissioner may, as the Commissioner thinks fit, grant an occupation licence subject to—
- (a) The payment of any rent:
- (b) Any restrictions on the numbers and kinds of stock to be carried on the land to which it relates. 10
- (3) An occupation licence gives the licensee the exclusive right of pasturage over the land to which it relates; but—
- (a) No right of renewal:
- (b) No right to the soil:
- (c) No right to acquire the fee simple of the land. 15
- (4) The term of an occupation licence—
- (a) Commences on the commencement of the licence; and
- (b) Expires on the expiration of the period (in the case of a licence granted after the commencement of this Act, not exceeding 21 years) specified in it after the 1st day of January or July (whichever is the sooner) next following the commencement of the licence. 20

Cf. 1948, No. 64, s. 66AA

**11. Procedure on expiry of occupation licences for long terms—**

- (1) Not later than 1 year before the expiry of an occupation licence for a term of 5 years or more (or within such later time as may be practicable), the Commissioner shall determine whether the land should be let again on occupation licence, or on lease or licence under the former Act. 25
- (2) If the Commissioner determines that the land should not be let again,— 30
- (a) The Commissioner may also determine that any specified removable improvements should not be removed from the land; and in that case the licensee,— 35
- (i) Shall not remove, or cause to be removed, from the land any removable improvement specified; but
- (ii) Is entitled to compensation for all the specified removable improvements that remain on the land when the licence expires:
- (b) Except as provided in **paragraph (a)** of this subsection, the licensee— 40
- (i) Shall, on or before the expiry of the licence (or within any further time the Commissioner allows),

remove all removable improvements from the land; and

(ii) Is not entitled to any compensation for any of those improvements:

5 (c) The licensee is not in any circumstances entitled to any compensation for any building, fencing, or other improvement on the land that is not a removable improvement.

(3) If the Commissioner determines that the land should be  
10 let again, the Commissioner shall—

(a) As soon as is practicable after doing so, cause to be made a valuation of all the removable improvements on the land, and all improvements on the land effected by—

15 (i) Ploughing any portion and sowing it in grass; or

(ii) Clearing any portion by felling bush or scrub, and sowing it in grass; or

(iii) Surface sowing any portion in grass,—

20 (b) Offer the land for acquisition on lease or licence under the former Act;—

and sections 149 (2), 149 (3), and 150 of that Act, with all necessary modifications shall apply to the land and the right of the licensee to be paid compensation for those improvements.

25 Cf. 1948, No. 64, s. 109

*Pastoral Land Generally*

**12. Burning of vegetation**—(1) A lessee or licensee of pastoral land shall not burn any vegetation on the land (whether felled or not), or cause or permit any such vegetation  
30 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.

35 (2) Notwithstanding subsection (1) of this section, 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.

40 Cf. 1948, No. 64, s. 106

**13. Activities involving disturbance to soil**—(1) A lessee or licensee of pastoral land shall not—

- (a) Without the Commissioner's prior written consent under **subsection (3)** of this section; or
- (b) Otherwise than in accordance with any condition, direction, or restriction subject to which the Commissioner gave such consent,— 5
- do any of the things specified in **subsection (2)** of this section.
- (2) The things referred to in **subsection (1)** of this section are, in relation to the pastoral land concerned,—
- (a) Afforest, crop, cultivate, or plough any portion: 10
- (b) Clear any bush or scrub: 10
- (c) Sow any portion in grass: 10
- (d) Undertake any other activity involving or causing disturbance to the soil.
- (3) The Commissioner may, unconditionally or subject to any conditions the Commissioner thinks necessary, authorise a lessee or licensee of pastoral land to— 15
- (a) Cultivate any portion of the land for the purpose of growing winter feed for stock depastured (or to be depastured) on the land:
- (b) Crop any portion of the land sufficient for the use of— 20
- (i) The lessee or licensee; or
- (ii) Any family, employee, or officer of the lessee or licensee; or
- (iii) Any family or employee of any officer of the lessee or licensee: 25
- (c) Plough any portion of the land and sow it in grass: 25
- (d) Clear any portion of the land by felling and burning bush or scrub, and sow it in grass:
- (d) Surface sow any portion of the land in grass:
- (e) Cultivate any portion of the land for the purpose of growing crops for sale: 30
- (f) Afforest any portion of the land for the purpose of growing timber for sale; and undertake any clearing of bush or scrub necessary for the purpose:
- (g) Undertake on the land any other activity involving or causing disturbance to the soil that is necessary or desirable to enable or facilitate the carrying out of— 35
- (i) The activity of pastoral farming; or
- (ii) Any other activity for the time being authorised under any of **paragraphs (a) to (f)** of this subsection. 40
- (4) Unless the Commissioner determines (or has determined) otherwise, every consent under **subsection (1)** of this section (or section 108 of the former Act) shall be deemed to have been given subject to the condition that the lessee or licensee concerned shall, on the termination of the lease or licence 45

concerned, leave the whole of any portion of the land concerned that has been ploughed or cultivated properly laid down in good permanent grasses to the Commissioner's satisfaction.

5 (5) Nothing in subsection (1) of this section limits or affects the Crown Minerals Act 1991.

Cf. 1948, No. 64, s. 108

**14. Discretionary actions—(1) In—**

10 (a) Determining whether to act under any of sections 60 (1) or 100 of the former Act, or section 10 of this Act, in relation to any reviewable land; or

(b) Exercising any discretion under section 60 (3) of the former Act or section 10 of this Act, in relation to any reviewable land,—

15 the Commissioner shall have regard to the desirability of ensuring (so far as is practicable) the protection of the inherent values of the land.

(2) In—

20 (a) Determining whether to act under section 66A (1) of the former Act in relation to any reviewable land; or

(b) Exercising any discretion under section 66A of the former Act, or section 12 or section 13 of this Act, in relation to any reviewable land,—

25 the Commissioner shall have regard to the desirability of ensuring (so far as is practicable) the protection of the inherent values (other than recreation values) of the land.

**15. Breaches of statutory or contractual provisions—**

30 (1) In subsection (2) of 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 former Act, or section 12(1) or section 13(1) of this Act, (in its application to the land held under the instrument); or

35 (b) In contravention of any provision of or covenant contained in the instrument.

(2) If satisfied that the holder of a reviewable instrument has committed a breach, a District Court may, on the application of the Commissioner,—

(a) Order the holder—

40 (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, it is impossible, impracticable, or otherwise inappropriate to remedy the breach, (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, 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 likely costs to the Crown of remedying the breach; or
- (ii) Exemplary damages (not exceeding \$50,000) for the breach.
- (3) The provisions of section 118 of the Property Law Act 1952 are not available in respect of a forfeiture under **subsection (2) (c)** of this section.

**16. Boundary disputes**—Every dispute between the holders of adjacent pastoral land as to the boundary between them shall be determined by the Commissioner or a person appointed by the Commissioner for the purpose.

Cf. 1948, No. 64, s. 107(1)

**17. 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.

Cf. 1948, No. 64, s. 107(2)

**18. 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).

Cf. 1948, No. 64, s.110

*Application of Land Act 1948*

**19. Application of Land Act 1948**—Except as provided in sections 3 to 19 of this Act, the former Act, so far as it is applicable and with all necessary modifications,—

- 5 (a) Continues to apply to every pastoral lease as if it is a lease within the meaning of that Act; and
- (b) Continues to apply to every occupation licence granted under section 66AA of the former Act as if it is a licence within the meaning of that Act; and
- 10 (c) Applies to every occupation licence granted under section 8 of this Act as if it is a licence within the meaning of that Act.

PART II

TENURE REVIEWS

15 *Principles*

**20. Objects of Part II**—The objects of this Part of this Act are—

- (a) To promote the sustainable management of reviewable land; and
- 20 (b) Subject to paragraph (a) of this section, to facilitate—
  - (i) The restoration to full Crown ownership and control of reviewable land that has high inherent values; and
  - (ii) The freehold disposal of reviewable land
  - 25 capable of productive use; and
  - (iii) The creation of appropriate public rights of access to and enjoyment of reviewable land.

**21. Matters to be taken into account by Commissioner**—In acting under this Part of this Act, the Commissioner shall (to the extent that those matters are applicable) take into account—

- 30 (a) The objects of this Part of this Act; and
- (b) The principles of the Treaty of Waitangi.

**22. Objects to be applied globally**—The Commissioner shall take into account the objects of this Part of this Act in the light of their application to all the land held under the instrument or instruments concerned, rather than particular areas of it.

*Undertaking of Tenure Reviews*

- 23. Undertaking of tenure reviews—**(1) The Commissioner may, on the written invitation or with the written agreement of the holder or holders, cause to be undertaken— 5
- (a) A review of the tenure of all the land for the time being held under any reviewable instrument; or
  - (b) A review of the tenure of all the land for the time being held under 2 or more reviewable instruments under which adjacent or neighbouring land is held. 10
- (2) The Commissioner may at any time discontinue a review; and shall discontinue a review if asked in writing by the holder, or 1 of the holders, concerned.
- 24. Preliminary proposals may be put to holders—**
- (1) After the completion of a review under **section 23** of this Act, the Commissioner may in writing put to the holder or holders of any instrument or instruments concerned a preliminary proposal to designating the land (or various areas of it) as— 15
- (a) Land to be restored to the Crown; or
  - (b) Land to be restored to the Crown subject to the granting to the holder of a lease (on terms specified in the proposal) under section 73 of the Reserves Act 1977 or section 14 of the Conservation Act 1987; or 20
  - (c) Land to be disposed of to the holder by freehold disposal; or 25
  - (d) Land to be disposed of to the holder by lease under section 67 of the former Act; or
  - (e) Other land.
- (2) Subject to **subsection (3)** of this section, the Commissioner may propose to designate any area of land as land to be disposed of to the holder unconditionally, or subject to the creation of 1 or more protective mechanisms, each relating to either or both of the following matters: 30
- (a) Public access to or enjoyment of the land:
  - (b) The sustainable management of the land. 35
  - (3) The Commissioner—
  - (a) Shall not propose the designation of any area of land as land to be disposed of to the holder subject to the creation of a covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1966 without the prior written consent of the Queen Elizabeth the Second National Trust: 40
  - (b) Shall not propose the designation of any area of land as land to be disposed of to the holder subject to the



creation of an easement under section 8 of the New Zealand Walkways Act 1977 without the prior written consent of the Minister of Conservation:

5 (c) Shall not propose the designation of any area of land as land to be disposed of to the holder subject to the creation of a covenant under section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987 without the prior written consent of the Minister of Conservation:

10 (d) Shall not propose the designation of any area of land as land to be restored to the Crown subject to the granting to the holder of a lease under section 73 of the Reserves Act 1977 or section 14 of the Conservation Act 1987 without the prior written consent of the Minister of Conservation, who shall not give consent unless satisfied that the area has high inherent values that will be protected by the terms of the lease.

20 (4) Where the preliminary proposal relates to the land held under 2 or more reviewable instruments, it may, so far as any holder is concerned, be unconditional, or conditional on its ultimate acceptance by some other holder or holders.

(5) The proposal shall also specify—

25 (a) Any amounts of money proposed to be paid (including any amounts proposed to be paid by way of equality of exchange) if land is ultimately dealt with as it has been designated; and

(b) In respect of every sum specified, the point at which it will become payable.

30 **25. Commissioner to give notice of preliminary proposals**—(1) Where a preliminary proposal has been put under section 24 of this Act, the Commissioner shall give notice,—

35 (a) Specifying the land, a day (no sooner than 40 days after the publication of the last of the notices to be published), and an address; and

(b) Subject to subsection (2) of this section, describing the proposal in general terms,—  
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.

40 (2) The notice shall not disclose any matter referred to in section 24(5) of this Act.

(3) The Commissioner shall cause the notice to be published—

(a) In some newspaper circulating in the area in which the land concerned 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.

(4) The Commissioner shall also cause a copy of the notice to be given to the iwi authority (within the meaning of the Resource Management Act 1991) of the area in which the land concerned is situated, and shall consult that authority on the proposal.

**26. Substantive proposals may be put to holders—**

Subject to **section 28** of this Act, the Commissioner may in writing put to the holder or holders of the instrument or instruments concerned (or any of them) a substantive proposal that is (so far as it relates to that holder or those holders) the same as or a modified version of a preliminary proposal previously put to that holder or those holders.

**27. Commissioner to consider submissions—**

The Commissioner shall 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; and

(b) All written submissions relating to the preliminary proposal concerned received by the Commissioner (from any person or organisation) on or before the day specified in the notice given under **section 25** of this Act at the address specified in that notice.

**28. Acceptances—**(1) The holder of a reviewable instrument may, by written notice to the Commissioner, accept or reject any proposal put to the holder under **section 26** of this Act.

(2) If the Commissioner does not receive an acceptance within 3 months of putting the proposal to any person, the person shall be deemed to have rejected it.

(3) Where the proposal—

(a) Relates to the 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 shall not take effect unless it is also accepted by the other holder or holders concerned.

5 (4) If any person other than the holder of the instrument concerned has an interest in the land, its acceptance by that holder shall not take effect unless the notice contains that person's written consent to the holder's acceptance.

10 (5) Subject to **subsections (3) and (4)** of this section, the acceptance of a proposal put to the holder under **section 26** of this Act shall have effect as an irrevocable authority to and obligation on the Commissioner to take the actions specified in **section 29** of this Act.

**29. Actions**—(1) Subject to **subsection (2)** of this section,—

15 (a) To the extent that an accepted substantive proposal designates land as land to be restored to the Crown unconditionally, it shall be deemed to be a surrender of the instrument concerned; and the Commissioner shall deal with it accordingly under the former Act:

20 (b) To the extent that an accepted substantive proposal designates land as land to be restored to the Crown subject to the granting to the holder of a lease under section 73 of the Reserves Act 1977,—

25 (i) On receipt by the Commissioner of a certificate from the Chief Surveyor of the district in which the land is situated that it has been surveyed, the land shall become vested in the Crown as a reserve and the instrument concerned shall be deemed to have been surrendered; and

30 (ii) The Minister of Conservation shall (in accordance with the proposal) grant the holder a lease, with effect from acceptance, under that section; but

(iii) Nothing in subsection (4) of that section shall apply to the granting of the lease:

35 (c) To the extent that an accepted substantive proposal designates land as land to be restored to the Crown subject to the granting to the holder of a lease under section 14 of the Conservation Act 1987—

40 (i) On receipt by the Commissioner of a certificate from the Chief Surveyor of the district in which the land is situated that it has been surveyed, the instrument concerned shall be deemed to have been surrendered, and (subject to that Act) the land shall be held for conservation purposes; and

- (ii) The Minister of Conservation shall (in accordance with the proposal) grant the holder a lease, with effect from acceptance, under that section; but
- (iii) Nothing in paragraph (c) or paragraph (d) of subsection (1), or subsections (2) to (6), of that section shall apply to the granting of the lease: 5
- (d) To the extent that an accepted substantive proposal designates land as other land, it shall be deemed to be a surrender of the instrument concerned; and the Commissioner shall try to dispose of that land under the former Act: 10
- (e) Subject to section 24 of the Conservation Act 1987, to the extent that an accepted substantive proposal designates land as land to be disposed of to the holder, the Commissioner shall dispose of that land to the holder (in accordance with the proposal) under the former Act: 15
- (f) In complying with paragraph (e) of this section, the Commissioner shall act as if the reviewable instrument concerned has already been surrendered (and the District Land Registrar shall act likewise); but the instrument shall in fact continue in force until a certificate of title or registered lease is issued for the land concerned, and shall then be deemed to have been surrendered: 20 25
- (g) Where an accepted substantive proposal includes the creation of a covenant under section 22 of the Queen Elizabeth the Second National Trust Act 1966, the Commissioner shall create the covenant by reservation (citing that section) with the consent of but otherwise without the involvement of the Queen Elizabeth the Second National Trust; but it shall be deemed to have been created under that section: 30
- (h) Where an accepted substantive proposal includes the creation of an easement under section 8 of the New Zealand Walkways Act 1977, the Commissioner shall create the easement (citing that section) with the consent of but otherwise without the involvement of the Minister of Conservation; but it shall be deemed to have been created under that section: 35 40
- (i) Where an accepted substantive proposal includes the creation of a covenant under section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987, the Commissioner shall create the 45

5 covenant by reservation (citing the section concerned) with the consent of but otherwise without the involvement of the Minister of Conservation; but it shall be deemed to have been created under that section.

(2) Where the proposal specified the payment of any amount to the Crown, the Commissioner shall not proceed beyond the point specified for its payment until it has been paid.

10 **30. Implementation of proposal not to be subdivision**—For the avoidance of doubt, it is hereby declared that taking action under **section 29** of this Act in respect of a proposal involving dealing in different manners with different parts of the land held under a reviewable instrument is not a subdivision of that land for the purposes of section 218  
15 of the Resource Management Act 1991.

**31. Land management covenants**—(1) Notwithstanding any enactment or rule of law, there may be reserved over any reviewable land disposed of under this Part of this Act a covenant in favour of the Commissioner providing for the  
20 management of the land, and the monitoring of activities undertaken on the land and their effect on the land.

(2) Every covenant runs with and binds the land to which it relates; and shall be deemed to be an interest in land for the purposes of the Land Transfer Act 1952.

25 (3) The District Land Registrar of the land registration district in which land over which a covenant has been created shall, on application by the Commissioner, without fee take all steps, and make all entries in the registers, necessary to give effect to its creation.

30 (4) With the prior written consent of the regional or district council in which the land concerned is situated, the Commissioner may transfer to the council the Commissioner's interest in a covenant.

### PART III

35 CONSEQUENTIAL AMENDMENTS AND REPEALS

**32. Consequential amendments**—The former Act is hereby consequentially amended in the manner indicated in the **First** Schedule to this Act.

40 **33. Consequential repeals**—The following enactments specified in the **Second** Schedule to this Act are hereby consequentially repealed.

## PART IV

## SUBSTANTIVE AMENDMENT TO LAND ACT 1948

**34. Part to be read with Land Act 1948**—This Part of this Act shall be read together with and deemed part of the Land Act 1948 (in this Part of this Act referred to as the principal Act). 5

**35. Easements, etc.**—The principal Act is hereby amended by repealing section 114, and substituting the following section:

“114. (1) In this section, ‘encumbrance’ includes any easement, lien, restrictive covenant, or other interest in land. 10

“(2) Where a lessee or licensee of land held under lease or licence that was subject to or had appurtenant to it any encumbrance acquires an estate in fee simple in the land,—

“(a) The estate in fee simple shall be subject to or (as the case may be) have appurtenant to it each encumbrance as if it had been created in respect of that estate; and 15

“(b) The District Land Registrar shall, before issuing the certificate of title for the land, take all steps, and make all entries in the registers and on the certificate, necessary to record the existence of each such encumbrance. 20

“(2) Where—

“(a) A lease or licence is surrendered, and the lessee or licensee receives a new lease or licence in exchange; 25  
or

“(b) On the expiry of any lease or licence the lessee or licensee is granted a renewal of it, or a new lease or licence of the same land; or

“(c) The fee simple of land previously held under lease is under licence (hereafter in this subsection referred to as the substituted licence) bought by the lessee on deferred payments,— 30

the new lease, new licence, renewed lease, renewed licence, or substituted licence shall be deemed to be subject to or (as the case may be) to have appurtenant to it each encumbrance over or appurtenant to the surrendered, expired, or former, lease or licence; and the District Land Registrar shall record every such encumbrance on it (if more than 1 in their order of registered priority).” 35 40

## SCHEDULES

## Section 32

## FIRST SCHEDULE

## CONSEQUENTIAL AMENDMENTS TO LAND ACT 1948

Provision Amended	Amendment
Section 2      ...      ...	By repealing the definition of the term "pastoral occupation licence".
Section 51      ...      ...	By repealing subsection (3) and substituting the following subsection: " (3) The Commissioner may classify again under subsection (1) of this section any land (other than pastoral land) that has at any time been classified under that subsection or a corresponding provision of a former Land Act, whether or not the land is at the time let on any lease or licence."
Section 67 (1)      ...      ...	By omitting the words "commercial or industrial land, or pastoral land", and substituting the words "or commercial or industrial land".

## Section 33

## SECOND SCHEDULE

## CONSEQUENTIAL REPEALS

- 1948, No. 64—The Land Act 1948: Sections 51 (1) (d), 62 (b), 66, 66AA, 106 to 110, and 126A (R.S. Vol. 23, p 559.)
- 1972, No. 73—The Land Amendment Act 1972 (R.S. Vol. 23, p. 731.)
- 1977, No. 51—The Land Amendment Act 1977: Section 5 (R.S. Vol. 23, p. 733.)
- 1979, No. 57—The Land Amendment Act 1979: Sections 3 and 4 (R.S. Vol. 23, p. 734.)