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# BILLS DIGEST

Digest No. 1612

## Walking Access Bill 2008

<b>Date of Introduction:</b>	08 April 2008
<b>Portfolio:</b>	Rural Affairs
<b>Select Committee:</b>	As at 14 April, 1st reading not held.
<b>Published: 15 April 2007</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of this Bill is to provide for the establishment and administration of walkways in New Zealand and to establish the New Zealand Walking Access Commission (the Commission).

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## Background

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"The Bill arises from public concern about the availability of public walking access to the outdoors, especially around the coast, around lakes, and along rivers"<sup>1</sup>.

## Main Provisions

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### Establishment of walkways over public land

The Bill provides that where the Commission considers that all or part of any "public land"<sup>2</sup> should be made a "walkway", it may propose to declare the land to be a walkway. The Commission must obtain the written consent of the "administering authority"<sup>3</sup> of public land before declaring the land to be a walkway. Consent may be made subject to any conditions that the administering authority may impose. Where the land concerned is or includes an unformed legal road, the Commission must consult the public on the proposal by giving public notice of the proposed declaration, inviting the public to comment on it, and considering the comments received. The Commission must also obtain the written consent of the local authority in whose district the land is located. If the local authority consents to the declaration of a walkway, the landholders with legal frontage on, or direct access to, the unformed legal road retain their existing right to use the unformed legal road. The Bill makes provision for appropriate plans and for the gazetting of declarations (*Part 3, Subpart 1, Clauses 23-28*).

### Establishment of walkways over private land

The Bill provides that if the Commission considers that any private land should be made available for use as a walkway, it may negotiate with the landholder to acquire an easement or lease over the land for use as a walkway (*Part 3, Subpart 1, Clauses 29-34*).

### Powers of Commission in relation to walkways

The Bill provides, in detail, for the Commission's powers in relation to walkways, including powers relating to accessibility, the approval of facilities, amenities, and charges, powers in relation to committees, organisations, and controlling authorities, and powers of enforcement. The Commission must obtain the written consent of relevant landholders before approving facilities or charges, unless those matters are provided for in the terms of the relevant easement or licence (*Part 3, Subpart 1, Clause 35*).

### Rights of public and liability of landholders

The Bill provides, in general, that members of the public may, at any time and without charge, pass or repass over any walkway on foot and may perform any activity that is reasonably incidental to that

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<sup>1</sup> Walking Access Bill, 2008, No 208-1, Explanatory note, General policy statement, p. 1.

<sup>2</sup> defined as any land that is not private land (*Part 1, Clause 4, definition of "public land"*).

<sup>3</sup> defined as any Minister, department, local authority, public body, or statutory officer that owns, controls, or administers any public land (*Part 1, Clause 4, definition of "administering authority"*).

passing or repassing. The Bill limits the liability of landholders of land on which a walkway is located (*Part 3, Subpart 2, Clauses 36 and 37*).

### Controlling authorities

The Bill provides for the Commission to appoint, with the consent of the appropriate Minister, a department, or a local authority, or other public body to be the controlling authority of a walkway. A controlling authority's functions relate to marking the line of a walkway, structures and notices on walkways, the control and use of walkways, and the promotion and maintenance of walkways. A controlling authority has the power to do anything that is reasonably necessary or desirable to enable it to carry out its functions, including the expenditure of money in respect of a walkway. In discharging its functions and powers, a controlling authority is responsible to the Commission. Controlling authorities have powers to close a walkway for such reasons as safety or development (*Part 3, Subpart 3, Clauses 38-45; Subpart 4, Clauses 41-45*).

### Compliance and enforcement

The Bill provides that the Commission may appoint and remove enforcement officers. Sworn members of the police and fish and game rangers are enforcement officers by right of office. Honorary enforcement officers may be appointed. The Bill provides for the manner of exercising powers by enforcement officers and honorary enforcement officers. Enforcement officers and honorary enforcement officers may enter a walkway with a vehicle or dog if necessary for the purpose of exercising their powers. They are able to exercise a power to prevent an offence or stop a person in the act of committing an offence and they may require personal details to be given in certain circumstances. Protection against civil and criminal liability is provided unless bad faith is involved or there are no reasonable grounds for the person's conduct (*Part 4, Subpart 1, Clauses 46-55*).

### Strict liability Offences and penalties

The Bill provides that it is a strict liability offence (i.e. offences requiring no proof of intention) where any person, without lawful authority:

- takes any plant (other than a noxious weed) from a walkway or from land adjacent to a walkway;
- has in his or her possession a firearm while on a walkway;
- discharges a firearm on a walkway or on land adjacent to a walkway;
- brings a horse or dog onto, or has control of a horse or dog on, a walkway;
- sets a net, trap, or snare, or places poison or explosives, on a walkway or on land adjacent to a walkway (except a net or trap set for the purposes of fishing in a water body or lake adjacent to a walkway);
- lights a fire on a walkway (other than in a fireplace provided by the controlling authority responsible for the walkway);
- having lit a fire on a walkway in a fireplace provided by the controlling authority, fails to extinguish the fire before leaving the walkway;
- uses a vehicle on a walkway; or
- erects a structure on or over a walkway.:

The Bill provides for a maximum penalty of \$5,000 for conviction for strict liability offences. The following defences are provided for:

- that the defendant took all reasonable steps to ensure that the offence was not committed;
- that the act or omission of the defendant took place or occurred in an emergency and was consistent with providing for the safety and welfare of a person; or
- the person was the landowner or did the thing with the permission of the landowner (*Part 4, Subpart 2, Clauses 57, 58 and 61*).

#### Offences requiring knowledge, intent, or recklessness

The Bill sets out in detail the offences which are not strict liability offences. These carry a maximum penalty of \$10,000 (*Part 4, Subpart 2, Clauses 59 and 61*).

#### New Zealand Walking Access Commission

The Bill establishes the New Zealand Walking Access Commission. It is to be a Crown entity for the purposes of the Crown Entities Act 2004. The provisions of the Crown Entities Act 2004 apply to the Commission, except as expressly provided in the Bill. The governing body of the Commission is a board consisting of 5 to 8 members appointed by the Minister. At least 1 member must have a knowledge of tikanga Maori. The objective of the Commission is to lead and support the establishment, maintenance, and improvement of walking access. The functions of the Commission in meeting its objective are set out. The Commission is charged with responsibility for the development and issuing of a code of responsible conduct in relation to walking access for the general guidance of certain people. The code may include all or any of the following:

- summaries of benefits conferred and obligations imposed, by the Bill or any other enactment, on members of the public and relevant landholders in relation to walking access;
- recommendations on the standards of behaviour to be observed by users of walking access and relevant landholders;
- any other information that the Commission considers would be useful for users of walking access and relevant landholders.

The code may make recommendations that are specific to a local area or a region. The Commission must prepare a draft code as soon as practicable after the commencement of the Bill (*Part 2, Subparts 1 and 2, Clauses 6-22*).

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