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Ministry for Primary Industries  
Walking Access Review Team  
Environment and Communities Directorate  
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## **Submission to the review of the Walking Access Act 2008**

### **Federated Mountain Clubs**

FMC was founded in 1931 and advocates for backcountry and outdoor recreation in Aotearoa on behalf of more than 22,000 members in over 80 clubs. In the 1970-80's FMC strongly supported development of public walkways and the subsequent formation of WAC. We continue to have a strong interest in all aspects of access to areas for outdoor recreation, particularly to conservation lands. Although the backcountry provides our main focus, FMC also supports development of peri-urban walkways and cycleways, and of tracks to and along coastlines, rivers and lakes.

Our submission is guided by and structured on, but not limited to, the Terms of Reference (ToR) provided for this review and follows the ToR numbering. We use the terminology of the Walking Access Act (the Act) that private land and the landowner also covers Crown land under long-term lease and the leaseholder. FMC does not agree that there should be no distinction between private land and leased Crown land. However, this is outside the scope of this review.

### **The need for the Act**

1. FMC is a strong supporter of WAC. We believe its continuing operation is an essential element to maintaining and developing outdoor recreation with a growing population and increasing pressures from tourism. However, strengthening of provisions in the Act and other legislation is required along with better governance and increases in funding.
2. The Act remains generally sound legislation. It enables WAC to set national standards and to coordinate local and regional efforts to enhance access through private land. WAC has had many successes over the past 20 years, particularly in regard to mapping, public walkways and application of OIA provisions. However, much remains to be done especially on access to conservation land. WAC's effectiveness is limited by lack of resources, weak governance, deficiencies in legislation and poor recognition by key authorities. FMC believes these are the broad areas that must be addressed by this review and given priority by the government to enhance the effectiveness of WAC over the next decade. The Act has wide scope and therefore good prioritisation of effort by WAC is essential. The changing landscape of the ever increasing demands for more outdoor recreation opportunities also should be reflected in the changes to the Act.

## Operation and effectiveness of the Act

### *Objectives and functions of the Commission*

3. The objective of WAC is appropriate.

4. The functions of WAC are appropriate although the list in section 10 should be reordered to better reflect the priorities. For example, FMC believes (f) Negotiating with landholders to obtain walking access, is the key active function for WAC and should be placed at (c).

The often multi-jurisdictional nature of access to major parks such as Egmont National Park, Ruahine Forest Park and Te Urewera could be acknowledged in the functions of WAC. It must have a role in developing national policies for access and helping implement them in the regions. However, FMC does not wish to see WAC becoming mainly a policy body. This is not appropriate at this time with many unresolved access issues that other departments and local authorities are often unwilling to tackle. In particular, local authorities are under pressure from ratepayers to limit expenditure on projects that are seen as mainly benefiting visitors.

### **Legislative imperatives**

This section deviates from the order of the ToR for the review and outlines 14 key areas where FMC believes changes in the Act and other legislation are required to further the objective and functions of WAC. The various pieces of legislation governing land are complex, technical and interrelated. FMC does not pretend to fully understand how the following recommendations could be implemented. FMC does clearly see that legislative changes in these directions are necessary and probably essential for the long-term viability of WAC.

L1. WAC is currently a Crown Agency. This is the lowest status of crown entity and means that its recommendations carry comparatively little weight in other government departments and offices - the recommendations can easily be ignored, as has been the case with the Overseas Investment Office in former years. Elevating WAC to become an Autonomous Crown Entity would provide WAC an improved level of independence and its reports would have to be taken more seriously by government and other departments. Making WAC an Autonomous Crown Entity would bring about a need for a higher level of authority and robustness in its reports than is presently the case, commensurate with the higher value being placed on them. This will in turn require the Commission Board to provide a stronger level of governance than is currently the case. This will have ramifications on the skills the Board will need to have, and for a more structured approach to appointing Board members than is currently the case.

MPI may not be the most appropriate authority to administer the Act. The strong regulatory imperatives for MPI in farming, forestry, fisheries and food do not fit well with the public interest focus for WAC. WAC is very small. It tends to fall beneath the gaze of senior MPI staff who have mega-issues and budgets to manage. However, MPI generally has the confidence of farmers. The Act also could be administered by Local Government NZ, Internal Affairs or DOC. A structure such as for the Nature Heritage Fund is advisable so WAC can have a measure of independence, set its own priorities and avoid too much bureaucratic entanglement.

The review panel should carefully consider this issue and recommend appropriate changes to the Act.

L2. Representative composition of the Board. The Act should be modified to require the Minister to appoint the Board, partly or fully, with nominated individuals from an appropriate list of organisations including those directly involved in outdoor recreation, particularly walking. This will ensure that WAC has effective governance that closely addresses the wide range of interests in public access and has tangible paths back into the community. See our response to ToR point 11 below.

For the Board to operate effectively, especially if the Commission were to become an Autonomous Crown Entity, it should comprise only of people recognised and respected in their fields, including but not limited to the outdoor recreation sector, the rural sector, local government and iwi. Ideally, the Board would include at least someone who understands the political nuances of Wellington.

L3. Budgets. The Act should specify all the general categories of funding that WAC will require for its operations. This should include funding for capital grants to assist development of access and walkways, and for on-going maintenance. The Backcountry Trust should be mentioned explicitly as a model for construction and maintenance of access tracks by volunteers with WAC providing some funding for transport and capital items. Further discussions are required on whether a budget (and associated rules) should be established for ex gratia payments to landowners for access under some circumstances. The wording in the Act should be expanded to give more detail on the establishment and operation of the trust fund.

L4. Access negotiations. FMC does not wish changes to the requirement that an access agreement be the result of negotiations between the landowner, WAC and other parties. However, FMC strongly advocates for the public Right to Access conservation land. The Act and relevant legislation should be reviewed to find ways to make it an imperative that these negotiations are conducted in good faith. Some sort of agreement should be a required outcome for all important access issues unless the circumstances are exceptional. As a final resort the Public Works Act should be invoked (see L10 below);

L5. Survey. New technologies and legal instruments are required for surveys and GIS mapping that can inexpensively establish and document the boundaries for a 'ribbon of access' to a level of accuracy satisfactory for the purpose. WAC should work with LINZ to develop changes to the relevant legislation. Once enacted, these should also be codified in the Act to ensure their legal status is recognised;

L6. Access agreements. The Act should define a statutory *Managed Access Environment* that sets out a process for agreeing on and operating an access with a context, manager, resourcing and any restrictions. This will increase the confidence of landowners during negotiations that their concerns are and will continue to be addressed, as well as providing checks and balances for the public. This could also offer a third way option between open access and no access. Open access is not always appropriate, particularly since the tourist boom, and with ongoing concerns re poaching /rustling.

FMC also seeks that WAC has the ability to become a Controlling Authority for tracks and trails that are established or maintained by volunteers and others, noting that DOC and territorial local authorities are seldom keen to take on this role. Becoming a Controlling Authority should be as a last resort, but on occasions this would be advantageous, and it may be particularly be so for establishing access through Maori Land. WAC are able to do this to some extent now, but having

this role defined in legislation would remove confusion and facilitate track and trail establishment and maintenance. FMC believes that being a Controlling Authority would in effect make WAC a de facto Walkways Commissioner under the previous Walkways Act.

L7. Access inventory. The Act should define a statutory *National Access Inventory*. Firstly to provide a list of priority areas for access improvements /reinstatements that must be taken into account by other decision-makers - usually local authorities under the Local Government Act or Resource Management Act. Secondly, to provide wider visibility and profile for WAC through consulting on and developing the NAI. The process of developing and adding to the list would be defined in statute, and be signed off by the WAC Board and the Minister.

L8. Legal roads. The Act and other legislation should be changed to strengthen the hand of WAC over the status of unformed and formed legal roads in regard to arbitrary and unlawful closures. Given the poor historic performance of territorial local authorities in enforcing the provisions of the Local Government Act around access, obstructions and signage on (often unformed) legal roads, consideration should be given to giving the Commission enforcement powers in this area. These should be only able to be exercised when the territorial local authority has not acted.

The ability to address access issues arising from movement of sections of a legal road from the surveyed route should also be addressed.

Stopping of legal roads is currently a decision of territorial local authorities. Such action should not be able to proceed without the consent of the Commission.

L9. Queens Chain and marginal strips. This review and WAC should advocate for changes to land legislation covering these important access rights to seashores, lakes and rivers. The cadastral recording of these access strips must be improved and the Queens Chain concept should be extended to areas not currently covered. Grazing of marginal strips is a benefit for farmers that should be able to be traded for an access across a farm.

L10. Changes in land ownership. The Act should better reflect and reinforce the provisions of the Overseas Investment Act regarding negotiating access, existing and new, with foreign buyers of land. FMC submitted to the recent review of the OIA and SOP with recommendations to strengthen the access provisions, including the more direct involvement of WAC. It is apparent that DOC and local government currently can and do work to undermine WAC recommendations to the OIO. This has to stop. Good faith negotiations for an access agreement must involve all affected parties and the final recommendations should reflect a consensus. However, the Act and the OIA should make it mandatory that the WAC recommendations are then adopted. FMC would submit that these provisions of the OIA should apply to all sales of land where there are important access issues, irrespective of the buyer.

Subdivision of land can also generate opportunities to include access. Territorial authorities should be required to involve WAC in district plans to ensure such opportunities are fully considered.

The new government have a focus on planting more trees – the One Billion Trees Programme. Unfortunately, one perhaps unintended consequence of speeding up forestry purchases by overseas investors as part of that programme is that our opportunity to seek, recommend, negotiate and then work with new owners to implement new access in such areas has largely been lost. Previously the Walking Access Commission have been able to seek riparian access,

access for trampers, hunters, mountain bikers etc to and through forestry areas subject to an OIO consent.

L11. Public Works act. The Act should include a clause on the PWA explicitly stating that obtaining access is “government work” and outlining when and how it will be used to facilitate an access in certain circumstances. This is a very important backstop provision for difficult access negotiations that are not being conducted in good faith. WAC has occasionally used the PWA. However, the ability and willingness of WAC to invoke the PWA should be strengthened and publicised.

L12. Pastoral Leases. The suspension of tenure review provides an opportunity to strengthen access provisions in any new legislation covering sale of such leases (including changes to the OIA). WAC must have a direct role for scoping and making recommendations for improved access, especially to abutting conservation lands. Inclusion of walkways to significant natural features such as streams, peaks and ridges may also be important.

L13. Te Araroa. This an important national walkway with major portions passing through private land. It should have a specific place in the Act and various options should be explored to make the relationship more tangible e.g. WAC involvement in access agreements for Te Araroa with landowners and DOC; Government funding for Te Araroa passing through WAC.

L14. Enforcement. A large proportion of the Act is devoted to enforcement. This balance of wording does not reflect WAC’s current or desired future operation. Not only does WAC rarely undertake enforcement, the weight of these sections in the Act has negative connotations that may not be conducive to good-faith negotiations. On the other hand WAC’s ability and willingness to act on issues affecting the Right to Access on legal roads should be strengthened (see L8 above). The benefits and operation of all these enforcement provisions should be part of this review and some rewording of the Act undertaken.

FMC’s responses to questions 5-19 in the ToR follow. Many of these amplify on the reasoning behind our legislative recommendations above.

## 5. Challenges and future requirements for public access.

1. Access is still severely limited to many areas of conservation land with contentious issues unresolved. Although inadequate resourcing of WAC is important, the intransigence of the landowner is often a key factor. Access to very large blocks of land can be restricted without practical alternatives e.g. the Western Ruahines and areas of South Island high country. This effectively makes this conservation land inaccessible to the public and they become the virtual sole provenance of the adjacent landowners e.g. as private hunting blocks and often with a commercial focus. This is exclusive capture of public land for private benefit. See L4 above for FMC’s recommendation for legislative changes to define a Right to Access;
2. Health & Safety issues are frequently raised as impediments to providing access. The recent clear guidance by Worksafe on recreational access must be pressed into service by WAC. There are usually no legitimate reasons for ‘health and safety’ to be an excuse to exclude the public. FMC believes that the current legislation is adequate, but that until there is legal precedent set, there still remains room for confusion and uncertainty in the minds of some landowners. Providing unequivocal declaration in the Act that the landowner is not

responsible for death or injuries, other than for gross negligence could be helpful in this respect and encourage more landowners to allow access;

3. Current surveying requirements to establish access are complex and expensive. They do not recognise in a practical way that an access agreement does not change the underlying ownership of the land. Surveyed boundaries for a walkway generally do not need the accuracy required for a sub-division or a legal road. WAC needs new legal instruments for cadastral surveys and GIS mapping that can inexpensively establish boundaries for a 'ribbon of access'. See L5 above and ToR item 9 below;
4. Access agreements should cover realistic concerns of landowners regarding facilities such as parking, signage, fencing, waste management and toilets. The WAC budget should contain line items for grants to cover this type of capital investment. Installation does not necessarily have to occur during the initial establishment phase of an access but should form part of regular formal reviews with the walkway manager and landowner as use increases. Cooperation with DOC, local authorities and NGOs regarding the on-going servicing of such facilities and maintenance of the walkway should be part of the initial negotiations on access agreements and the reviews. See L3 above;
5. The proposed legislative tool for *Managed Access Environments* (see L6 above) offers a third way option between open access and no access. Open access may not be appropriate in some cases, particularly since the tourist boom, and with ongoing concerns regarding poaching/rustling.
6. The proposed *National Access Inventory* (see L7 above) will give more visibility for WAC and assist prioritisation of effort on new access projects. The list should include areas where an access need to be reinstated and indicate areas where there is existing access that is coming under pressure and which requires more attention.
7. Conservation efforts by DOC and community groups are often compromised by poor access. The benefits for conservation of practical access arrangements should form part of negotiations. However, FMC does not support agreements that provide special long-term access rights to particular groups such as DOC staff;
8. WAC should initiate a review of the Queens Chain concept and marginal strips for access to waterfronts (rivers, lakes, seashore) and advocate for changes to the relevant legislation to improve public access. Marginal strips and esplanades need to be properly spatially captured. Many currently exist only in an aspatial form as land records that cannot be found by the public. See L9 above;
9. The status of formed and unformed legal roads should be the subject of a wider consultations led by WAC and LINZ. This should be incorporated into the scope of the Act (see L8 above). New Zealand does not have common law access across private land through Right to Roam or walkways with long-standing historical status. Our extensive, although incomplete, network of surveyed roads, many unformed, are therefore a very important part of the Right to Access. The use of such roads for walking access is often prohibited because of obstructions or relatively minor deviations of the current road from the legal survey e.g. due to changes in a river course or slips. WAC should actively promote recognition and enforcement of the long-established rights to pass, and repass, over legal

roads and the associated prohibition of any obstructions. Many regional district plans are currently inconsistent with roading law and common law rights.

10. Storm events are likely to increase in frequency and intensity with on-going climate change. There is always the risk of earthquakes. Consequential damage can drastically affect roads, tracks and access. WAC should have policies and procedures enshrined in the Act to cover these events and also lobby to increase the effectiveness and scope of relevant legislation. See L8 and 5.9 above).

6. The Act's themes are generally appropriate and FMC supports the emphasis on walking access. Although other access e.g. for cycle or vehicles may be appropriate in some cases, the establishment of access is best initially done on a walking basis with others potentially to follow e.g. through Cycleways NZ. The provisions of the Act regarding enforcement are excessive. See L14 above.

#### *Effectiveness of the Act – priority areas*

7. The broad priorities (Section 10 of the Act) remains appropriate with many important potential walkway projects and unresolved access issues in all the listed areas. As noted above, FMC considers that access arrangements to conservation land are of high priority. The wording of this section would be more balanced if items i) and iii) were combined and similarly ii) and iv).

The larger question is where WAC should put its priorities within this list. With limited resources (staff, budget) the tendency is to work on the more easily resolved access issues and neglect bigger, more complex issues of wider national significance e.g. Te Araroa. A key governance function for the Board is to be continually evaluating past, current and future access projects to ensure the overall best outcome for the public. A statutory National Access Inventory is a tool (see L5 and 5.6 above) that should be implemented for the longer term that registers all access issues to give them a focus for advocacy and resources.

8. Yes, the Act has been effective but limited as outlined in 2 above.

9. The issues preventing reaching access agreements with landowners are complex. As discussed in 5.1 above, the intransigence of the landowner is frequently an issue. Generally this will not be an absolute so more effort is required by WAC in the negotiations to identify and propose solutions, perhaps beyond WACs direct control, that could ameliorate difficult situations. The Managed Access Environment tool proposed in L6 and 5.5 above could assist. As a final resort the Public Works Act should be invoked (see L11 above). WAC's current meagre resources and budget are obviously limiting factors for both the negotiating and solutions phases.

FMC notes that the recent announcement by the Minister of Lands that New Zealand is looking to use Satellite Based Augmentation System (SBAS) to improve global navigation satellite system accuracy in New Zealand has the potential to allow users with SBAS enabled hand-held devices to navigate with confidence to within 100mm. SBAS surveying should provide sufficient confidence to walkers, land-owners and surveyors to establish free, accessible and guaranteed access across private land without fear.

The Walkways Commission under the previous Walkways Act was unable to gazette many of the walkways it helped establish because of the serious costs involved for surveying them. FMC believes that a much more flexible and low-cost legal instrument based on SBAS technology is called for, where legal boundaries can be defined with SBAS devices. FMC recognises that the

necessary legislation may be beyond the ambit of this review and could take some years and much wider consultation to draft good legislation to support it, but nonetheless is flagged here for consideration.

More satisfactory legislation, and clear interpretation thereof, for the Queens Chain and roads (legal and unformed) would benefit walking access. See L8 and 5.8 / 5.9 above.

Forestry companies control vast areas of land. There are many forestry blocks that are between public roads and important areas of conservation land e.g. SE Fiordland National Park, Taka Ra Haka Conservation Park, Mt Richmond Forest Park, Kaimanawa Forest Park, and many more. Access is often impeded directly by intransigence or indirectly by imposition of complex conditions. FMC recognises that periods for harvesting operations or of extreme fire risk are valid reasons to limit access on forestry roads. Other reasons such as Health & Safety are either non-issues or can be managed through communications on a goodwill basis. WAC should increase efforts to establish more uniform national standards for access, existing and new, through plantation forestry blocks. This potentially should also include vehicular access through very large blocks of forest. The relationship of the Act to the Overseas Investment Act is important for developing access. See L5 above.

FMC understands that incentives to farmers to open private land to public access is sometimes necessary. One way in which this could be done could be through an amendment to the Act to allow rates relief to farmers who provide access across their land and for commercial fees to be paid to guides. An ability for WAC, clearly set out in the Act, to purchase land from farmers by way of up-front payments and to contribute towards costs of track maintenance across private land would be very useful. We note that stretches of track crossing private land can become gorse and blackberry infested, impeding progress or even making practical access impossible. See L3 above. 10. FMC considers that MPI may not be the most appropriate authority to administer the Act. See L1 above.

11. FMC is very unhappy with the mix of appointees to WAC. The current CEO and board chair have appropriate skills and experience and both are performing well. However, recreational interests are otherwise poorly represented on the board. Seats on the commission should be allocated on a representative and skills basis to avoid this situation in future. See L2 above. Each appointee must be strongly committed to the objectives of the Act and have the appropriate knowledge, experience and good community links.

12. The Act has very little to say on the budget or funding for WAC. FMC understands that the current operations of WAC are unsustainable because the meagre government funding is being topped up from a diminishing trust fund. Much larger base funding is required and can easily be justified in terms of public good (access for life-affirming outdoor recreation and conservation; tourism). Current staffing levels for the key field work and negotiations with landowners are clearly inadequate. Regional positions that are currently part-time should be made full-time. WAC should have staff dedicated to key policy work and liaison with other departments to improve relevant legislation. An adequate budget to cover certain capital investments by walkway managers is essential. Capital grants by WAC should form part of access initiatives as part of encouraging new agreements and sustaining older ones. See L3 and 5.4 above.

Although not able to be directed by legislation, FMC estimates that WAC annual budget needs to be increased to the order of \$5 million to \$7 million.

13. Other funding sources than the public purse are desirable as top-ups and are important to demonstrate community support for the objectives of the Act and specific access projects. Sections 10 (1) h and i adequately cover much of this although no imperatives are provided. An adequate and sustainable trust fund is essential. However, obtaining private funds is very competitive and the WAC budget needs a specific substantial line item to cover specialised staff or consultants. Preparing thorough reports/proposals for the OIO is a very important activity for WAC that should be enhanced (see L10 and 9. above). Cost-recovery from the OIO applicant is appropriate.

#### *Access for Maori and Tikanga Maori*

14. FMC supports the general principle of public access to sites of cultural significance. Iwi should be encouraged to contribute to specific proposals and participate in the negotiations. The priority for such proposals should be decided by the board of WAC.

15. The NZ Outdoor Access Code has some useful guidance on tikanga maori with respect to access. Whether it is adequate for specific cases is largely up to the local iwi and hapu. FMC accepts that more notice will need to be taken of tribal rights and opinions with increasing awareness of tikanga.

#### *Management of public access*

16. Involvement of tangata whenua and community groups, and indeed the landowner in management of a walkway, should be an option. However, these aspects must form part of the initial negotiations and on-going reviews so the rights and responsibilities are clear, consistent and fully documented. Complex issues may arise for the longer-term management of a walkway and the full experience of WAC, DOC, local authorities and relevant NGOs e.g. the Backcountry Trust should be drawn on to ensure the longevity of agreements.

17. The general prescriptions in the Code regarding behaviour are adequate and broadly cover relevant areas. A revision should include a summary of the recent Worksafe findings on the implications of Health & Safety legislation for access across private land.

Managing human waste is an important issue for heavily used tracks and walkways, whether on private or public land. This needs more emphasis in the Code than just the brief point under Caring for the Environment (p22). Poor or no disposal of waste is also a health problem, very unsightly and a serious breach of tikanga. It is probably the most important issue arising from increases in visitor numbers on a walkway, local or tourist. As part of negotiations for a walkway and on-going support, WAC should always consider toileting arrangements and have capital grants available.

#### *Findings of the Review*

19. FMC has noted in L1-L14 above some areas where amendments to the Act and other legislation are required to enhance the status and powers of WAC to improve public access. Many of the important issues are legalistic in nature. FMC asks the Review panel to carefully consider all our points and recommend modifications to the legislation as required to implement them in spirit.

Kind regards

Jan Finlayson

FMC President