

Walking Access Act 2008

The Walking Access Act came into legislation on 30 September 2008 after extensive consultation with groups and individuals such as landowners, conservation groups, local authorities and outdoor associations. The purpose of the Act is:

- a) to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors (including around the coast and lakes, along rivers, and to public resources) so that the public can enjoy the outdoors; and
- b) to establish the New Zealand Walking Access Commission with responsibility for leading and supporting the negotiation, establishment, maintenance, and improvement of -
 - i. walking access (including walkways, which are one form of walking access) over public and private land; and
 - ii. types of access that may be associated with walking access, such as access with firearms, dogs, bicycles, or motor vehicles.

The Walking Access Commission provides a central point for the coordination of all walking access in New Zealand. Once it is fully operational, the Commission will provide information on walking access routes, negotiate new walking access across private land (e.g. to lakes, rivers and forests) and facilitate the resolution of disputes relating to walking access. The Commission is also responsible for walkways which were formerly under the New Zealand Walkways Act 1990.

The New Zealand Walking Access Commission's Statement of Intent for 2009/12 states that during this period they are looking to

- establish a national walking access strategy
- establish a positive relationship with key stake holders in walking access
- set up a mapping system for walking access
- establish systems to assess needs and undertake actions to enhance walking access
- establish a code of responsible conduct
- administer walkways under the Act, and administer a fund to help finance access proposals

How Could It Affect You?

Section 26 in the new act details how a walkway is negotiated over private land. It states that:

If the Commission considers that all or part of any private land should be made available for use as a walkway, it may negotiate an agreement with the landholder for -

- a) an easement or lease over all or that part of the land (as the case may be) for use as a walkway; or
- b) the purchase of any land that includes all or that part of the land (as the case may be) proposed for use as a walkway.

If it is agreed that a walkway is to be formed, then a plan of the walkway is to be prepared by a surveyor for approval by Land Information New Zealand.

After creation of the walkway any member of the public may, at any time without charge, pass or re-pass over any walkway on foot and perform any activity that is reasonably incidental to that passing or re-passing.

Members of the public will be committing an offence if they:

- take any plant (other than a noxious weed) growing on or adjacent to a walkway; or
- have in his or her possession a firearm while on a walkway; or
- discharge a firearm on, adjacent to, or across a walkway; or
- bring a horse or dog onto, or has control of a horse or dog on, a walkway; or
- set a net, trap, or snare, or places poison or explosives, on or 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); or
- light a fire on a walkway (other than in a fireplace provided by the controlling authority responsible for the walkway); or
- having lit a fire on a walkway in a fireplace provided by the controlling authority, fails to extinguish the fire before leaving the walkway; or
- use a vehicle on a walkway; or
- erect a structure on or over a walkway

A person will also be committing an offence if they interfere with or disturb livestock or wildlife on, or adjacent to a walkway, or they damage, destroy or alter a structure on, over or adjacent to a walkway. It is also an offence if a person obstructs access on or over a walkway, or annoys, disturbs or endangers any person using a walkway.

Obstructing, threatening or attempting to intimidate the landowner on whose land a walkway is located or whose land adjoins a walkway will also be a prosecutable offence.

Any person may defend an offence if they can prove:

- that they took all reasonable steps to ensure that the offence was not committed; or
- 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.

A person is not guilty of one of the above offences in relation to a walkway if the person:

- was at the time the landholder of the land on which the walkway is located; or
- did that thing -
 - (a) with the permission of the landholder of that land; or
 - (b) in accordance with an agreement between the landholder of that land and the controlling authority of the walkway.
- The defences set out in this section do not limit any other defences that may be available.

Penalties for the offences above range from a maximum of \$5,000.00 - \$10,000.00 and offenders can also be responsible for the costs associated with returning animals or plants and repairing any damage.

A landholder is not liable for any loss or damage suffered by a person using walking access on the landholder's land, in the case of private land; or a walkway on the landholder's land, in the case of public land. This is with the exception that this exemption from liability does not apply to any loss or damage caused by the landholder's deliberate act or omission

If however, you do inherit or agree to the creation of a public access it is important to be aware of the above legalities as dealing with issues early and appropriately is preferential to living with constant headaches due to the actions of a small portion of the public. If this generates questions please do not hesitate to make contact with us for clarity.

In Summary

The Walking Access Act 2008 does not interfere with private property rights. Public access to private land remains subject to negotiation and agreement between parties.

Sourced from <http://www.walkingaccess.org.nz/>.