



Health and safety responsibilities of farmers to recreational visitors

FREQUENTLY ASKED QUESTIONS

Does the new *Health and Safety at Work Act 2015* change farmers' obligations to ensure the safety of recreational visitors to their land?

No. The *Health and Safety at Work Act 2015* continues to enable farmers to grant access to recreational visitors. Farmers should still warn visitors of risks in the workplace that they wouldn't normally expect on a farm.

What are the obligations of farm owners and managers towards recreational visitors to their farms?

Farm owners' or managers' obligations towards recreational visitors do not differ substantially from those under the previous law. When recreational visitors enter a workplace or a place near a workplace with the farm owner's or manager's consent, the owners or managers and their workers must ensure the safety of the visitors from work-related hazards.

The farm owner or manager and workers must warn visitors of hazards on the farm that they would not expect to encounter. These could include such things as tree-felling, blasting, earthmoving machinery or pest control activities. This obligation relates only to parts of the farm that visitors will be accessing. There is no need to warn visitors about hazards that are not on or near a route they will be using.

There is no need to warn about natural features like bluffs, landslides, rivers and wasp nests.

Farm owners or managers and their workers can ask visitors to obey farm safety rules. These might include speed-limits or wearing protective gear.

If a visitor trips over a tree-root or stone, a farm owner or manager is not responsible for the other person's carelessness.

If the owner or occupier could not have been expected to know of a hazard, they are not responsible for any harm that occurs to a recreational visitor.

Farm owners or managers must make sure they identify, manage and communicate risks to visitors, either by themselves or by workers or contractors working on the farm.

There is more information in WorkSafe's Policy clarification: Recreational access and the Health and Safety at Work Act (2015). This policy clarification explains WorkSafe's view on the responsibilities of farm owners, managers and visitors, and how it will manage and respond to related concerns.

What if there is a group of visitors to the farm? Is the farm owner or manager obliged to ensure everyone in the group knows of hazards?

No. If a group visits, it is enough to give a warning to a representative of that group, on the understanding that they will inform the others.

Is there an obligation for farm owners and managers to inform visitors in writing of any specific hazards on the property?

No. They can share information verbally, in an email or on the phone. The important thing is for the farm owner or manager and their workers to provide up-to-date information.

Are landholders liable if a member of the public is injured on public land intersecting or adjoining their land (such as a marginal strip, esplanade reserve or strip, or unformed legal road), or injured on a gazetted Walkway crossing their land?

Usually no. Generally, the *Accident Compensation Act 2001* covers persons injured as the result of an accident. Only in exceptional circumstances would there be a civil liability to compensate for the injury.

If an incident or injury occurred as a result of work on or near the public land, then there would be a liability, under the *Health and Safety at Work Act 2015*. For example, if the injury takes place on an unformed legal road and the road is being used is, or is close to, a workplace or workplace activity (such as tree felling) the *Health and Safety at Work Act 2015* applies.

What is the situation if a visitor is paying for the access, either to the farmer or to a trip organiser?

The *Health and Safety at Work Act 2015* recognises a landowner that charges for access to their land as a Person Conducting a Business or Undertaking (PCBU).

It is WorkSafe's position that when a PCBU charges for access to their land but does not provide the recreational activity, they:

- are not responsible for the risks of the recreational activity itself. A PCBU is only responsible for managing risks associated with a recreational activity when they are providing the activity;
- are responsible for risks arising from work or the workplace.

If a voluntary association such as a tramping club or rogaining club, runs the event or trip then the PCBU obligations will generally not apply.

It's important to keep in mind that this is a general position. The extent to which a PCBU is responsible for a recreational activity depends on the situation and context. If you have any uncertainty about how the Act applies to a specific situation, we'd encourage you to seek independent legal advice.

What responsibility does a landholder have for the personal property of persons accessing their land?

A landholder is not responsible for any loss or damage a person suffers while accessing the landholder's land unless the landholder's deliberate actions caused the loss or damage. This applies to access in general, not just on a Walkway.

Are landholders liable if a fire started by a member of the public on their land causes damage to neighbouring property?

No. The landholder is not liable for suppression costs if someone else starts a fire on their land, even when the person responsible cannot be found. Direct admission of responsibility or proof of causation is required.

When do you have a duty to warn people about hazards?

