



Health and safety responsibilities of landholders to recreational visitors

One of the main concerns farmers, forest owners and other landholders have for limiting access to land is worry about being liable for people's safety.

Not enough people know that farmers and forestry owners are not liable for the health and safety of recreational visitors on their land. They are not required to warn visitors about natural features like bluffs, landslides, rivers and wasp nests. They are not liable if a visitor trips over a tree root or injures themselves by accident or by being careless or reckless. They are not responsible for any harm that occurs to a recreational visitor from a hazard landholders could not have been expected to know of. They are not liable for people who are on their land without consent.

They are responsible, though, for ensuring the safety of visitors from work-related hazards. That means they must warn visitors of hazards on the land 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 land that visitors will be accessing. There is no need to warn visitors about hazards not on or near a route they will be using.

Worksafe Policy

Worksafe has published a policy clarification: Recreational access and the Health and Safety at Work Act (2015)

www.walkingaccess.govt.nz/worksafe-policy

This policy explains WorkSafe's view on landholders' responsibilities to visitors. It also describes how Worksafe will manage and respond to related concerns.

The law

The Health and Safety at Work Act 2015 allows landholders to grant access to recreational visitors. Landholders can include farmers and forest owners. Landholders should warn visitors of workplace risks that they wouldn't normally expect to encounter.

When recreational visitors enter a workplace or a place near a workplace with consent, the landholder and their workers must ensure the safety of the visitors from work-related hazards.

The landholder and workers must warn visitors of hazards 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 land that visitors will be accessing.

There is no need to warn visitors about hazards 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.

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

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

If we could not expect the landholder to know of a hazard, they are not responsible for any harm that occurs to a recreational visitor.

Landholders or managers must make sure they identify, manage and communicate risks to visitors. They can either do this themselves or by workers or contractors working on the land.

Groups of visitors

If a group visits, the landholder only needs to warn a representative of that group. The landholder understands that the representative will inform the others in the group.

Warnings do not need to be in writing

Landholders can share information verbally, in an e-mail or on the phone. The important thing is for the landholder to provide up-to-date information.

No liability for public access adjoining private land

Landholders are not usually liable if a person is injured on public land intersecting or adjoining their land. Examples of this include:

- marginal strips
- esplanade reserve or strip
- unformed legal roads, and
- gazetted walkways

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 an injury.

If an incident or injury occurred as a result of work on or near the public land, then the landholder could be liable under the Health and Safety at Work Act 2015. For example, if the injury happens 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.

Paying for recreational access

If a landowner 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. They are 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, generally, the obligations on landholders will not apply.

This is a general position. The extent to which a landholder is responsible for a recreational activity depends on the situation and context. If you are unsure how the Health and Safety at Work Act applies to your situation, you should seek independent legal advice.

Personal property of people accessing land

A landholder is not responsible for any loss or damage a person suffers while accessing the landholder's land. This applies unless the landholder deliberately caused the loss or damage.

Fire

Landholders are not liable if a visitor starts a fire on their land that causes damage to neighbouring property.

The landholder is not liable for suppression costs if someone else starts a fire on their land. This is the case even when the person responsible cannot be found.

Warning people about hazards

