

Herenga ā Nuku Aotearoa, the Outdoor Access Commission – Inger Perkins (S462):

I referred to health and safety advice for farmers this morning and was asked to forward it.

I'd be grateful if you could forward this email to the commissioners.

Main link: <https://www.herengaanuku.govt.nz/advice/landholders/>

Which includes: <https://www.herengaanuku.govt.nz/advice/landholders/landholders-health-and-safety-obligations-to-recreational-visitors/>

Our advice has been updated since we first worked with organisations such as Federated Farmers. I have attached the original document from 2016 to illustrate that collaboration, including with Fish & Game, more clearly.

July 2016

## 12. Health and safety responsibilities of farmers to recreational visitors

### Frequently Asked Questions



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

No. Changes made during the consultation process for the *Health and Safety at Work Act 2015* have ensured the legislation continues to enable farmers to readily grant access to recreational visitors as they have done for generations. The obligation remains for farmers to 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?

The obligations of farm owners or managers towards recreational visitors do not differ substantially from those under the former *Health and Safety in Employment Act 1992*. 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 have a duty to ensure the safety of the visitors from work-related hazards that place them at risk of harm.

As the people in charge of the workplace, the farm owner or manager and their workers have an obligation to ensure visitors are warned of any specific hazards on the farm that they would not normally expect to encounter, such 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.

Natural features like bluffs, landslides, rivers and wasp nests are excluded, along with

hazards you would expect to find as part of a farm operation, such as barbed wire and electric fences.

If there are explicit farm rules, for example around speed or wearing of protective gear, farm owners or managers and their workers are entitled to request that visitors obey these.

If a visitor trips over a tree-root or stone, a farm owner or manager won't be held responsible for the other person's carelessness. If the owner or occupier could not reasonably have been expected to know of a hazard, they cannot be held responsible for any harm that occurs to a recreational visitor.

Farm owners or managers have a general duty to ensure risks are identified, managed and communicated to visitors, either by themselves or by workers or contractors working on the farm. They will not be held liable for injury to unauthorised visitors where there is no opportunity to communicate.

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

No. If a group visits, it is sufficient to give the 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. The information can be passed on verbally, in an e-mail 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 (e.g. a marginal strip, esplanade reserve or strip, or unformed legal road), or injured on a gazetted Walkway crossing their land?

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

If an incident or injury occurred as a result of work being conducted on or near the public land, then there would be 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 as, 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?

If a landholder is charging a fee for access, an activity that might have been purely recreational (e.g. access to a fishing spot) becomes a workplace activity. The landholder would therefore have the obligations of a person conducting a business or undertaking (PCBU) under the *Health and Safety at Work Act 2015*. Whether a trip or event organiser given permission to use the land has the obligations of a PCBU depends on whether individuals personally profit from the event. If a trip or event is run by a voluntary association, such as a tramping club or rogaining club, the PCBU obligations will generally not apply.

### What responsibility does a landholder have for the personal property of persons exercising walking access on their land?

A landholder is not responsible for any loss or damage suffered by a person using walking access on the landholder's land unless the loss or damage is caused by the deliberate action of the landholder. This applies to walking 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 a fire is started on their land by someone else, 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?

