



NEW ZEALAND OUTDOOR ACCESS CODE



WALKINGACCESS
ARA HĪKOI AOTEAROA

NEW ZEALAND WALKING ACCESS COMMISSION





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FOREWORD

New Zealanders love the great outdoors – whether it’s for hunting, tramping, or fishing, or for a trip to the beach or a picnic by the river.

The New Zealand Walking Access Commission, set up in 2008, now leads and supports the negotiation, establishment, retention, and improvement of walking access and associated types of access. Its goal is to achieve free, enduring and practical walking access to the outdoors in a way that respects everyone’s rights and the environment.

One of the Commission’s first tasks has been to produce a code of responsible conduct in relation to walking access, and I am pleased to present the New Zealand Outdoor Access Code. While the Code focuses on walking access, the basic principles are applicable to other activities, such as mountain biking, horse riding, or fishing.

The Code aims to enhance people’s knowledge and understanding of what to do in the outdoors and raise awareness of access rights and responsibilities. It is practical and informative. It should also help to minimise damage and nuisance caused by access users by encouraging responsible behaviour and consequently encouraging landholders to allow access for recreational visitors.

I commend the Commission and all stakeholder groups and members of the public who contributed to the development of this Code.



Hon David Carter
Minister of Agriculture



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INTRODUCTION

Access to New Zealand's outdoors is part of who we are, part of our nation's heritage and culture. Enjoyment of our beaches, rivers, and mountains is seen as the birthright of all our people.

The New Zealand Walking Access Commission respects the need to protect private property rights. We must also ensure that the rights of the public are not impeded.

However, public rights of access to beaches, rivers, and mountains are not always certain, and precise locations can be hard to establish. Access frequently relies on landholders' goodwill in allowing people to cross private land. The Commission's aim for the Outdoor Access Code (the Code) is to help reduce conflict and boost behaviour standards, as well as to help access users and land managers to understand and respect each others' interests.

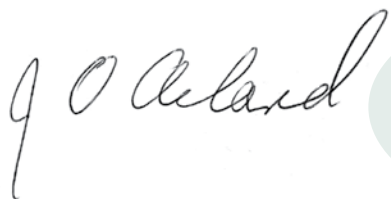
Urban New Zealanders and many overseas visitors increasingly lack knowledge about farming and rural practices. How to behave responsibly with respect to farm livestock and other property isn't always well understood. There is also a need to build an understanding that formal public access to and along lakes, rivers and the coast is fragmented, and that permission needs to be obtained to cross private land. When asked, many land managers readily allow access. However, this is a privilege and access may be refused or conditions applied.

Landholders and managers also need to recognise that in places there are public rights of access, such as use of unformed legal roads, esplanade reserves and marginal strips, even though these may not be fenced and exact locations can be hard to determine.

The Code, therefore, is relevant to both public and private land and is applicable to all walking access whether over legal access ways, negotiated public access over private land, or access over private land by permission.

The Commission recognises that there are other organisations providing information on aspects of appropriate behaviour in the New Zealand outdoors. We have listed their resources dealing with associated access issues such as outdoor safety, firearm safety and minimising impact on the environment as appendices.

As the leadership agency we consider that working in close partnership with others, supporting communities and individuals, will be the most effective way to achieve improvements in walking access arrangements.



John Acland
Chairman



BACKGROUND TO THE CODE

This Code has been prepared, as required under 'Subpart 2 – Code of Responsible Conduct' of the Walking Access Act, 2008. The Commission can, in the future, decide to amend the Code or prepare a new Code (section 18 of the Act). The relevant sections of the Act (Part 2; Subpart 2 – Code of Responsible Conduct) are reproduced in Appendix 1.

The Code provides guidance on appropriate behaviour in the outdoors and on the access rights and responsibilities of access users, landholders and land managers. It is not an authoritative statement of law on public access or private property rights.

The Commission has identified key behaviour principles that need to be incorporated into the Code. These are:

- › taking personal responsibility for one's own actions;
- › respecting the interests and rights of other people; and
- › taking care of the environment.

As required under the Act, this Code provides guidance on responsible conduct to:

- › users of walking access;
- › landholders of land on which walking access is located;
- › landholders of land adjoining land on which walking access is located; and
- › the controlling authorities of walkways¹.

The Act refers to a 'code of responsible conduct'. The Commission has selected the title *New Zealand Outdoor Access Code* as an appropriate generic name for an over-arching code that can be further defined for specific outdoor activities, such as biking, camping, or rock-climbing. Enabling issues of importance to particular users to be incorporated may mean that the Code is relevant to more people.

¹ 'Walkways' are a specific form of access arrangement defined in the Act, and include walkways established or administered under the New Zealand Walkways Act 1990 that were in existence prior to the new legislation. Any access having the status of a statutory walkway is subject to the wide range of constraints on behaviour as set out in sections 54-58 of the Walking Access Act 2008. The offences listed act as a statutory code of conduct for gazetted walkways.

ACCESS RIGHTS AND PRIVILEGES

Legal public access to the New Zealand outdoors is covered by a variety of statutes. It is currently difficult to ascertain exactly where there is public access and where there is private land with no right of access. For example, a river may have some sections where there is public access and other parts where there is no legal access. Tracks which are shown on maps, including the NZ Topographic map 1:50,000 series, are not necessarily public access ways.

This section of the Code describes many of the different types of legal public access and also explains issues around access across private land, including trespass and the liabilities that landholders may have for those who use their land for recreation. Responsible behaviour in the outdoors includes being aware of the fragmented nature of public access and seeking permission to go onto land that is fenced-off or appears to be private.

Practical information and guidance on what to do to avoid damage to property or the environment or risks to others is given in a later section of the Code.

1. Public access

In New Zealand, public access to land, waterways and the coast is extensive, but often fragmented and difficult to locate. Legal access along and to water margins and to other public land comes in many forms, with differing legal obligations and restrictions. While the Commission's focus is on walking access, legal public access may include rights to take vehicles, horses, dogs, firearms etc.

Public access along the foreshore (essentially to beaches) is covered by the Foreshore and Seabed Act 2004 but the Commission notes that this legislation is currently under review. Most of the foreshore is open to public access, except to some areas that have been affected by erosion and a few other areas where private title extends across the foreshore.

Access around the coast and lakes and along rivers is provided by a range of reservations that take various legal forms, including unformed legal roads, marginal strips and esplanade reserves. These water margin reserves, popularly known as the Queen's Chain, are far from complete and have been affected by erosion. A public right of access around the coast above the foreshore depends on the existence of reservations of these kinds.

Public land includes esplanades and other reserves administered by local authorities, Crown land, in respect of which the Crown has no reason to exclude the public, and marginal strips and unformed legal roads (paper roads²). Access restrictions to public land are a matter for the administering authority, and any statutory power they may have to regulate access.

Crown land other than that administered by the Department of Conservation (DoC) may be open to public access at the discretion of the Crown. However, Crown land that is subject to Crown pastoral lease (a large amount of the South Island high country) is in

² The term 'paper road' was originally applied to roads that were drawn on the survey plans, but not surveyed or pegged out on the ground. Case law has established that these roads have the same legal status as surveyed roads.



the exclusive possession of the leaseholders so is essentially the same as private land from an access perspective. Traditionally the owners or lessees of large rural holdings with recreational value have permitted public recreational access across their land.

Landholders do not have the right to refuse access over adjoining public land. This includes unformed legal roads. These roads do not form part of the title to the adjoining land, and are thus not subject to the rights attached to the private land. Nevertheless, users of these roads must respect the rights of adjoining landowners and their property.

Public access to some public lands or water bodies may be restricted for safety reasons where there are particular risks. For example, around hydro-electric infrastructure where taking and discharge of water for generation of electricity may cause rapid changes in water levels or voltage risks.

WATER MARGIN ACCESS

The various forms of water margin access have been documented by Hayes in *The Law on Public Access along Water Margins* (2003).

These statutory rights include:

- › **roads, including unformed legal roads:** these have the widest and most certain access rights, and include much of the land reserved along water margins;
- › **marginal strips along rivers, lakes and the coast:** these take two forms – those with fixed boundaries which were established up to 1990, and those established since then and which move with the water margin. Both forms are now administered by DoC and are generally open to public access but could be restricted (for example, for conservation purposes);
- › **public reserves:** various kinds with a variety of access rights;
- › **other Crown land reserved from sale:** often subject to public access by implicit consent of the Crown, but this depends on the use of the land by the Crown; and
- › **esplanade reserves, esplanade strips and access strips:** established under the Resource Management Act and administered by local authorities, these are generally open to public access, but there may be restrictions.

OTHER LEGAL ACCESS

There is no right of public access across private land. Owners of private land have an inherent right of exclusive occupation and enjoyment of that land. This right is enforceable by the provisions of the Trespass Act 1990. Particular rights of access across private land can be provided by:

- › easements or leases over private land forming part of walkways under the Walking Access Act;
- › other easements or rights of way providing for public access;
- › esplanade strips; and
- › informal arrangements allowing access over private land, such as negotiated agreement for access to a fishing river or on a case-by-case basis.

DESCRIPTION OF VARIOUS TYPES OF PUBLIC ACCESS

Because of the complexities in the legal provisions around different types of public access it is not possible to be definitive in this Code about all the rights and restrictions attached to each specific piece of land. This section gives a summary of key access types that provide public access opportunities, to help improve understanding about how difficult it is to be certain about public access. At the time this Code is issued the Commission is also working on providing information on the location and conditions of access through an online mapping system.

MARGINAL STRIPS

Marginal strips are strips of public land adjoining the coast, lakes of more than eight hectares in area, and rivers of more than three metres in width. They were formerly created under s58 of the Lands Act 1948 (and preceding legislation) on the sale or disposal of Crown land. Under the Land Act 1948 they were formally surveyed before the land was disposed of and are fixed in position irrespective of the effects of erosion and accretion. Since 1990 they have been created under Part 4A of the Conservation Act 1987, and are deemed to be created automatically on disposal of the Crown land. They do not need to be surveyed, and are deemed always to adjoin the relevant water margin, that is, they move with any movement in the water margin.

Marginal strips are administered by Department of Conservation for the purposes of conservation, enabling public access to adjacent water bodies and for public recreational use. Vehicles, firearms and dogs are not allowed on marginal strips unless they are explicitly permitted in that area.

ESPLANADE RESERVES, ESPLANADE STRIPS AND ACCESS STRIPS

The current statutory mechanism for establishing new water margin access over private land is the creation of esplanade reserves and strips under the Resource Management Act 1991 (RMA).

Esplanade reserves are parcels of land adjoining a water margin and are vested in the relevant territorial authority. They are usually created at the time of subdivision, and have a width of 20 metres or less. Esplanade reserves can be created for one or more of these purposes: protection of conservation values; to enable public access to or along any sea, river or lake; or to enable public recreational use, where the use is compatible with any conservation values. They are usually set up as local purpose reserves under the Reserves Act 1977 and administered by a local authority. Public foot access is allowed, unless there are specific reasons (for example, to protect biological values) to prohibit access. Firearms, dogs, vehicles, camping and fires are not allowed unless provided for in a specific reserve. Esplanade reserves can be closed to the public.

Esplanade strips are a form of easement over water margin land, created in favour of the territorial authority. They are also usually created at the time of subdivision and are of a width of 20 metres or less. Esplanade strips remain in the landholder's title and are ambulatory (move with the water margin). The purposes for esplanade strips are the same as those for esplanade reserves. Vehicles, firearms, camping and dogs are prohibited, unless specifically provided for when the strips are created. The strips may be closed for specific periods (for example, for lambing, high fire risk).



Esplanade reserves or strips are mandatory in the case of subdivision to lots of less than four hectares. No compensation is payable to the landowner, as the benefits accruing from the subdivision can be seen as compensation for the reserve or strip that is taken.

Establishing esplanade reserves or esplanade strips in respect of subdivisions of four hectares or more may be provided for in district plans but compensation must be paid in accordance with the provisions of the RMA. The requirement for compensation greatly limits the likelihood of the creation of esplanade reserves on subdivision of lots of four hectares or more.

Access strips (as well as esplanade reserves and esplanade strips), may also be acquired by councils by negotiated agreement with the landholder. The cost of reaching such agreement is, however, a very effective constraint on councils pursuing this option. Some councils prioritise their access needs and, in these cases, may pay compensation.

Vehicles, firearms, camping and dogs are prohibited, unless specifically provided for when access strips are created. The strips may be closed for specific periods (for example, for lambing, high fire risk).

PUBLIC RESERVES AND CROWN-OWNED LAND

There are many types of public reserve. The extent to which these provide for public access depends on the purpose for which they were created. The mapping of public access will, in due course, identify the reserves that are open to public access.

Crown-owned land is not necessarily open to public access. Land held by the Crown under the Land Act 1948 is subject to a trespass provision that is more restrictive than the Trespass Act 1980 which applies to private land. Access is often allowed by implied permission, but this depends on the use of the land and any other statutory restrictions. For example, s142 of the Corrections Act 2004 deals with trespass on any land that is part of a prison.

Riverbeds can be a useful form of access where water margin access is not available or not practicably usable. In areas where there is no public reservation of land along the water margin (no 'Queen's Chain') it is often assumed that the adjoining landowner has ownership rights extending to the mid-point of the river (the *ad medium filum aquae* (AMF) rule). However, many riverbeds are publicly owned even when the land adjoining the river is privately owned, as the beds of navigable rivers are vested in the Crown under the Coal Mines Amendment Act 1903 and subsequent legislation. In this context, navigability is defined in statute in a way that appears to include far more rivers and streams than has generally been assumed. However, as pointed out by Hayes (2007b)³ in his detailed discussion of the topic, applying the concept to particular waterways is "vastly difficult".

WALKWAYS

The term 'walkway' is widely used, and does not necessarily denote formalised legal public access.

However, 'walkways' under the Walking Access Act 2008 do have specific legal status, including a wide range of offences specified in the Act. These include prohibitions against

³ For a detailed analysis of the ownership of riverbeds see Hayes (2007b).

lighting fires, carrying firearms on or near a walkway, taking a horse, dog or motor vehicle on a walkway, damaging property, and being a nuisance to other users unless the specific arrangements for a particular walkway allow the activity.

Walkways under this Act may be over public land or private land, and access is secured by the establishment of easements or leases. These easements or leases obviously require the agreement of the landholder. The rights of property owners, both public and private, are to be fully respected. The rights of public access created by the Act are for walking purposes only unless otherwise provided for in any particular walkway or part of a walkway.

All walkways established formally under the New Zealand Walkways Act 1990 are now walkways under the Walking Access Act 2008.

UNFORMED LEGAL ROADS (PAPER ROADS)

The nature, status and use of unformed legal roads are matters of considerable public interest, and are a very important facet of the public "access network". Hayes (2007a) provides a very comprehensive analysis.

Most of the road network in New Zealand was created by the reservation of land on the initial sale of land to settlers. In addition, land was reserved around much of the coast and along major rivers for public use. The water margin reserves generally took the form of legal road. Not all the land set aside as road has been formed into recognisable surfaced roads and the water margin land reserved as road was, for the most part, never intended to be formed. These water margin reservations were created as roads, as this was the most convenient and secure legal form available at that time to ensure that this land was kept for public use. Some roads that were formed in the past are no longer maintained by the responsible territorial authority, and have, in effect, reverted to being unformed.

The amount of unformed legal road in New Zealand is estimated to be up to 56,000 kilometres⁴. The proportion of unformed legal road varies considerably from local authority to local authority, with a much greater proportion in rural areas.

Unformed legal roads are no different in law from formed roads. That is, the public have the right to use them on foot, on horse, or in vehicles without hindrance from the adjacent landholder or anyone else⁵. The general rules of the road apply, as well as the provisions in Part 21 of the Local Government Act 1974. However, users of these roads should still be considerate of others, including adjoining landowners and their property.

These provisions include the conditions under which an adjoining landowner may place a cattle-stop or a swing gate across an unformed road. This is permissible only when the road is not fenced laterally, and is clearly aimed as a measure to enable the control of stock in these circumstances. Otherwise it is not lawful to place a gate, fence or other obstruction across an unformed legal road. Gates may only be placed with the permission of the relevant territorial authority, they must not be locked, and must have a sign indicating that they are on a public road.

⁴ Based on a MAF analysis of cadastral data held by LINZ (from Walking Access Consultation Panel report 2007).

⁵ For a full analysis of the rights attaching to unformed legal roads see Hayes (2007a).



There are examples of unformed legal roads being blocked by locked gates or fences which has the effect of incorporating them into the properties that they intersect. Although, in practice, not all unformed legal roads will be useful for access, the Commission is of the view that, because they are public, they should be available for access with appropriate signage.

Responsibility for administering unformed legal roads rests with the relevant territorial authority and they sometimes face practical difficulties in applying the legislation relating to unformed legal roads. The Commission will work with local authorities, Local Government New Zealand (LGNZ) and others to manage this issue.

Some unformed legal roads are not readily available for practical use because they are difficult to identify on maps or hard to locate on the ground because of a lack of signage. The Commission is working to implement a public access database to show the location of legal walking access.

2. Private land

REFUSING ACCESS

The Commission accepts fully that it is the prerogative of landholders to refuse access to their land, even if such access may have been traditional and the request seems to be reasonable, for example, to gain access to a river for fishing or to get to a national park.

The terms of access over private land are a matter for negotiation, and landholders have the right to apply conditions, including charges. However, the sale of fishing rights for sports fish and hunting rights for game birds are both prohibited. See Section 6 for more information on fishing and hunting.

Before allowing access for recreation, the majority of forestry companies in New Zealand require users to have public liability and fire fighting insurance. Some national sport and recreation organisations carry such cover on behalf of their members. Most forestry companies also require recreational users to obtain an access permit to ensure that the company has the user's contact details, and can provide information about fire risk, forestry operations and other hazards.

LANDHOLDER LIABILITY

ACCIDENT COMPENSATION

All New Zealanders and visitors to New Zealand who get injured are covered by the no-fault accident compensation scheme provided by the Injury Prevention, Rehabilitation and Accident Compensation Act 2001 (ACC legislation). In return, people do not have the right to sue landholders or others for injuries, other than for exemplary damages (damages awarded to punish or make a public example of the party at fault). This applies to overseas tourists too.

HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

Under the Health and Safety in Employment Act 1992 (HSEA) the liability of landholders to persons on their land for the purposes of recreation is limited. A fact sheet produced by the Department of Labour explains landholder obligations under the HSEA in respect of visitors to their land. The fact sheet *If Visitors to My Farm are Injured, Am I Liable?* can be found in Appendix 4 and at www.walkingaccess.govt.nz/store/doc/farming-bulletin-990419.pdf.

The Commission notes that some landholders have concerns that there is too much uncertainty about their possible liability, especially that arising under s16(1) of the HSEA concerning hazards to persons in the vicinity of a place of work, and this makes them reluctant to allow visitors onto their property for recreation.

The fact sheet explains that landholders have:

- › no duty to any visitors who do not have express permission to be on the land;
- › for visitors who are on their land with express permission: a duty to warn of any work-related, out-of-the-ordinary hazards;
- › for visitors who have paid to be in a place of work or to undertake an activity there⁶: a duty to take all practicable steps to ensure that no hazard that is, or arises, in the place of work harms; and
- › a duty to take all practicable steps to ensure that no work-related hazard that is, or arises, in a place of work harms people in the vicinity of the place, including people who are in the vicinity of the place solely for the purpose of recreation or leisure.

There are three different situations concerning the duties of the landholder (where some or all of the land is a place of work) to persons on their land for recreation or leisure with the landholder's permission and are not paying to use the land. These depend on where the person is at any particular time in relation to that part of the property that is, at that time, a place of work. The three locations and their consequences are:

- 1. In a place of work:** there is a duty to warn of any out of the ordinary hazards.
- 2. Adjacent to a place of work** (this may include public land such as an unformed legal road that is occupied by the landholder): there is a duty to take all practicable steps to ensure that no harm occurs as a result of work-related hazards.
- 3. Not in or adjacent to a place of work:** there is no duty.

OTHER LIABILITY

There may be landholder liability under the Occupiers Liability Act 1962. The extent of liability under this Act is unclear, but the Commission notes that that under the Walking Access Act (s66), there is a limitation on landholder liability for loss or damage suffered using walking access on private land or on gazetted walkways. Note that the exemption does not apply to any loss or damage caused by a landholder's deliberate act or omission.

TRESPASS

If somebody is interfering with the rights of an occupier of land by entering their property, there are remedies under the Trespass Act 1980. Disturbing domestic animals, setting traps, shutting an open gate and opening a closed gate on private land are all offences under the Trespass Act 1980. These provisions in this Act do not, of course, apply to land that is subject to public access rights.

The process for dealing with trespassers under the Trespass Act includes giving a warning to a person who is trespassing. If the person then refuses to leave, they commit an offence against

⁶ This includes people who come for recreation or leisure and pay for activities such as camping or horse trekking, as well as employees, contractors etc.



the Act. However, the offender has several defences, such as proving that it was necessary to remain for their own protection or to protect someone else. If the person has left the property then, to prevent future trespassing, a trespass notice should be served on the person (this is referred to in the Act as a “warning to stay off”). Once someone has been given a warning to stay off, they commit an offence if they enter the property within two years. The process for serving a trespass notice is set out at www.police.govt.nz/safety/home.trespassnotice.html.

Legally, an occupier has the right to sue a trespasser for trespass to land. However, because of the costs involved, this is often not a realistic option unless the trespasser has caused substantial damage and compensation is sought. A lawyer would advise on the merits of a specific case.

Access users who are on private land without permission must be warned before they commit a trespass offence. Because of the difficulties in knowing where property boundaries are on the ground, it may be hard to determine whether or not trespass has actually occurred.

For example, a walker who is intending to use an unformed legal road could stray onto private land. Hayes (2007b) describes potential issues surrounding water margin and riverbed access and notes that trespass along water boundaries may occur in several situations where it is difficult to know where the boundaries are on the ground.

He explores the uncertainties for both the public and landholders about the application of the law of trespass in these circumstances. Examples include:

- › where legal water margin access (for example, a road or marginal strip) has become ineffective because of the natural processes of erosion and accretion; and
- › whether private title extends to the centre line of the water, or there is Crown ownership of the bed of the river.

BEING RESPONSIBLE

It is important that those enjoying the outdoors understand what is meant by reasonable and responsible behaviour. This section of the Code identifies seven areas of responsibility and provides guidance on how to take personal responsibility for one's own actions. In particular, it covers respecting the interests of other people and taking care of the environment.

While many already understand what behaviour is appropriate, the topics covered in this section will provide information so that everyone can make informed decisions. This will help to avoid damage such as breaking a fence, disturbing stock, causing interference such as blocking a gate with a vehicle, or recklessly disturbing birds or other wildlife.

Being aware of others and making room for them can help avoid conflicts between different outdoor pursuits (for example, walking, mountain-biking and horse riding on the same track or fishing and boating in the same reach of river).

There is a large body of legislation that deals with the kinds of inappropriate behaviour of concern on both public and private land. Many aspects of poor conduct are covered by existing laws and by-laws, for example, littering, vandalism and excessive noise. A list of relevant statutes is given in Appendix 2. Landholders or access users who are faced with serious and/or persistent anti-social behaviour should contact Police, local authority or the Commission for advice.

1. Tikanga Māori and Māori relationships with land

Whaia nga tapuwae o nga tupuna (Follow in the ancestors' footprints)

Section 13(d) of the Act provides that the Code may include:

"Information about tikanga Māori (Māori customary values and practices) and Māori relationships with land and waterways."

The Commission considers that it is important to provide guidance on Māori cultural practices for access users, as access users may not be knowledgeable about tikanga Māori or Māori relationships with land and waterways.

This Code provides some general clarification for access users wishing to enter 'whenua Māori' (Māori land – see Appendix 3) but the Commission recognises that the true authority for tikanga knowledge and application rests with respective Māori tribes. Variations in tikanga may occur between iwi (tribes), and even between hapū (sub-tribes).

Tikanga Māori is defined in several pieces of legislation 'as Māori customary values and practices'. However, tikanga Māori is complex and this is only one of a number of definitions. When considering the definition of tikanga, Hirini Mead in his book, *Tikanga Māori: Living by Māori Values*⁷, states (on p11) that:

"For example tikanga can refer to a 'rule, 'plan' or 'method', and more generally to 'custom' and 'habit'. Indeed, for many people tikanga Māori means the 'Māori way' or done 'according to Māori custom'. Another set of meanings refers to reason, motive or purpose."

⁷ Mead, S.M (2003) *Tikanga Māori: Living by Māori Values*, 398 pp. Huia Publishers, Wellington, New Zealand.



Mead also states that tikanga is generally, but not always, considered to include both the knowledge base and ideas associated with a particular tikanga as well as the correct practices for that tikanga.

TIKANGA WHENUA: GUIDELINES FOR BEHAVIOUR ON MĀORI LAND

Māori have a holistic approach to the management of the environment and its resources, and consider that all resources are treasures handed down to them as guardians by their ancestors. Fundamental to this approach is the principle of interconnectivity between people and the natural world through whakapapa (genealogical ties).

Whenua (the land) is the most valued resource to Māori. The special significance of whenua relates back to Papatuanuku (Earth Mother) who is the source of all creation.

The guidelines for appropriate behaviour on Māori land are known as tikanga whenua. Tikanga whenua is based on values and practices and provides the framework to help differentiate between right and wrong and to guide actions. Knowledge about tikanga whenua will help give the access user an insight into Māori custom and practice while ensuring behaviour is appropriate and does not cause cultural offence.

Tikanga can be expected to include provisions relating to respect for taonga (cultural treasures), wāhi tapu (sacred places) and compliance with local prohibitions on taking resources (rāhui), as well as other Māori sites, customs and practices. The tikanga must be checked for each place as there could be specific customs or requirements.

RESPONSIBLE BEHAVIOUR FOR ACCESS TO MĀORI LAND

There is often a lack of understanding about the legal differences between some types of Māori land and general title land that can affect access arrangements (see Appendix 3 for a brief explanation).

Māori land frequently has multiple owners, but does not have public access rights. Permission must be sought from the owners or those authorised by them. Information must also be requested about the relevant tikanga to be observed on that land.

Extreme cultural offence may be caused by 'haere pokanoa' (unauthorised wandering). Note that Crown land handed back to Māori as part of a Treaty of Waitangi settlement has general land status, rather than Māori land status under the Te Ture Whenua Māori Act 1993. Any pre-existing public access rights are usually preserved.

Seeking permission may not be straight-forward. Property boundaries, owners and appropriate contacts may have to be identified with the help of the Māori Land Court and tribal runanga. Where land is owned by Māori trusts or Māori land incorporations, it is often possible to contact these entities directly. The Māori Land Information Base (www.tpk.govt.nz/en/services/land/mlib/) provides information on Māori land that may assist in obtaining permission.

Because of these complexities, the Commission notes the need to explicitly recognise that there are specific provisions applicable to Māori land. In particular, the need to identify and contact Māori landholders to seek permission and learn the tikanga.

RESPECT FOR WĀHI TAPU AND RĀHUI ON OTHER LAND

In addition to Māori land issues, facilitating greater access for the public to either private or public lands can have particular consequences for Māori. There are examples where open public access has resulted in the desecration of taonga, such as wāhi tapu, and sacred sites not identified on legal plans.

The Commission recognises that information about the location of wāhi tapu and rāhui is customary knowledge and acknowledges tribal reluctance to reveal these locations. Tangata whenua must be free to control this information as they see fit.

ACCESS BY MĀORI TO TAONGA LOCATED ON PRIVATE LAND

In earlier consultation, Māori expressed concern that there are instances where they find it difficult to obtain access to taonga on private land or where there is a need to obtain access to cross private land to sites of particular significance.

The Commission recognises the importance to Māori of access to taonga on private land. It understands that some iwi authorities are working with private landowners to arrange better access to wāhi tapu and other taonga. This is an area where the Commission may be able to help explore opportunities to improve access by Māori to taonga both through the use of existing access rights such as unformed legal roads and through negotiation and agreement with private landowners. This could be a means by which the Crown could meet its duty of 'active protection' under Article 2 of the Treaty of Waitangi.

2. Fires

Campfires have been part of the outdoors for a long time. However, they can cause lasting impacts and be devastating to forests, natural habitats and farmland. Where fires are permitted and appropriate, their impact should be minimised – for example, by using designated fireplaces, burning only dead wood, and ensuring that any fires are fully extinguished before leaving.

Fires in rural areas of New Zealand are the responsibility of the person(s) who light them. The cost of fighting out of control fires on rural lands can be passed on to the landowner, or the person who caused the fire.

The suppression of uncontrolled fires in rural areas is the responsibility of the Rural Fire Authority. This is different from urban areas where the New Zealand Fire Service is the urban fire authority and is responsible for the fire suppression. There are extensive powers under the Forest and Rural Fires Act (FRFA) to regulate not only the lighting of fires in forests and other areas of risk, but also to restrict access to areas of risk.

FIRE SEASONS AND FIRE PERMITS

In New Zealand there are three rural fire seasons:

- › **Open Fire Season:** no fire permit is needed to light a fire in the open air;
- › **Restricted Fire Season:** a fire permit from the relevant Rural Fire Authority is required to light a fire in the open air. Failure to obtain a permit for a fire is an offence against the FRFA; and
- › **Prohibited Fire Season:** a total fire ban. Lighting of fires is not permitted in the open air.



Under section 21 of the FRFA, designated Rural Fire Officers may restrict all access to certain areas in times of extreme fire risk.

Changes to fire seasons are notified by radio announcements, newspaper advertisements, and on websites (for example, nrfa.fire.org.nz/FireNet/Regions/Rural), or information is available directly from the relevant Rural Fire Authority. When restricted or prohibited fire seasons are in place, the relevant Rural Fire Authority may also erect signs in the affected area.

LANDHOLDER LIABILITY UNDER THE FOREST AND RURAL FIRES ACT 1977

The Commission is aware that some landholders consider that if a visitor is on their property (in particular, if they were on a rural property without the landholders' knowledge) and start a fire, and then could not be found, the liability for costs would rest with the landholder.

The Commission notes that the landholder is not generally liable for suppression costs if a fire is started on their land by someone else, even in cases where the responsible person cannot be located. Direct admission of responsibility or proof of causation is required. The Forest and Rural Fires Act 1977 and its Regulations cover the legislative requirements relating to forest and rural fires. There are specific provisions relating to landholders' fire management and liability in forests that are declared to be 'forest areas' under the Act. Suppression costs are only part of the potential losses that a rural fire can impose. There is also the possibility of loss of property, crops, or even human life. These costs can be significant and the risk of fire associated with walkers can be a concern in the minds of some landholders, given that the risk, however small, could have severe consequences.

BEING RESPONSIBLE WITH FIRE IN THE OUTDOORS

Fire is one of the greatest threats to our environment. The devastating effects of fire are obvious. The use of fires for cooking, warmth or atmosphere has environmental consequences. Fires use up wood, destroy insects and other animal life, and they can scar sites with blackened and charred fireplaces. The Department of Conservation guidelines *Take Care with Stoves and Fires* (www.doc.govt.nz/parks-and-recreation/plan-and-prepare/care-codes/nz-environmental-care-code/take-care-with-stoves-and-fires/) includes the following guidance for visitors to the backcountry and rural areas who want to use a fire:

- › be aware of fire bans and the higher fire risk during summer months. You may need a permit for your fire. Contact the local Department of Conservation or Council for details;
- › keep fires small and efficient. Use existing fire places if possible;
- › use only dead wood. Select wood from riverbeds or areas where wood is plentiful;
- › make sure the fire is completely out by dousing it with water and checking the ashes are cold. Dismantle the fire site, and scatter unburnt wood before leaving the area; and
- › NEVER leave fires unattended.

3. Caring for the environment

The Commission recognises that our environment is an asset, and needs to be treated with care. It supports the *New Zealand Environmental Care Code, Toitu te whenua (Leave the land undisturbed)*, that can be found at www.doc.govt.nz/parks-and-recreation/plan-and-prepare/care-codes/nz-environmental-care-code/ and *Leave No Trace New Zealand* (www.leavenotrace.org.nz) which promotes skills and ethics for outdoor recreation to maintain and protect the outdoors for future generations.

The *New Zealand Environmental Care Code* ten-point checklist is reproduced in Appendix 5. Many of these key points are covered elsewhere in this Code. Some others that should be well-recognised include:

- › public access ways, particularly on water margins may have high values for native flora and fauna. Damaging or removing plants and animals not only destroys part of the environment, it is illegal in most parts of the country. Many areas are fragile and may take years to recover from damage. Wherever possible, find a way around coastal and wetland plants, alpine herb fields and moss beds; and
- › remove rubbish. Litter is unpleasant and encourages rats and mice, wasps and disease. It's not acceptable to burn or bury rubbish or leave it for others to remove.

4. Dogs

The right to walk with a dog, including hunting dogs, depends on the existing rights that run with access. For example, if the access is by way of an unformed legal road, those using the access are able to do all the things that are lawful on a public road. Other forms of access may have restrictions on whether or not dogs can be taken. Private landholders may place whatever restrictions they consider appropriate in terms of dogs on their land, including prohibiting them. The Dog Control Act 1966 applies to dogs on both public and private land.

Landholders are concerned about dogs spreading diseases such as sheep measles, and that dogs will worry stock. If dogs are not under proper control, they may frighten other people or disturb wildlife, such as nesting birds.

Appropriate standards of behaviour for taking dogs into the outdoors require that they are kept under proper control. They should not be allowed to frighten other people, or disturb birds or other wildlife unless they are game and hunting is permitted. Dogs should be kept on a short lead or under close control around farm animals. Note that dogs that have not been trained to behave around stock may become aggressive.

Dog faeces must be picked up and removed.



5. Respecting other people's property

The Commission notes that with an increasingly urban population, there is often a lack of understanding of issues to be aware of when walking in rural areas, especially on farms.

Key points that should be observed include, that users should:

- › leave gates as they are found – open or closed;
- › not climb unsupported fence wires – in the absence of a gate or stile, go through the fence wires or climb over at posts;
- › not block or obstruct gateways, tracks or entrances (for example, with vehicles);
- › walk in single file around farm animals, without driving them;
- › not feed farm animals;
- › walk around, rather than through, crops; and
- › report damage, stock in difficulties or anything suspicious to the land manager.

6. Fishing and hunting

Fishing and hunting activities both require permits in addition to any permission required for walking access. Further information on these requirements can be obtained from the New Zealand Fish and Game Council (Fish and Game) or the various regional Fish and Game Councils (www.fishandgame.org.nz).

There is no legal right of access either to private land or across private land to public land, for the purpose of sports fishing or game hunting. Landholders do not have any special rights to utilise sports fish or game on their property, except that, unlike other anglers and hunters, they do not need to hold a current fishing or hunting licence.

The right to carry firearms or to take dogs depends on the existing rights that run with access. For example, if the access is by way of an unformed legal road, then persons using that access will be able to do all of the things that are lawful on a public road. That would generally include the right to carry a firearm, but may not include the right to use a firearm. Other forms of legal access may have more restrictions on the carrying and use of firearms.

The management of sports fish is governed by the Conservation Act 1987, while the management of game is governed by the Wildlife Act 1953. These statutes prohibit the sale of sports fish and game per se, and the sale of sports fishing and game hunting rights. Regulation 19 of the Freshwater Fisheries Regulations 1983 specifies that no licence (to fish) shall confer any right of entry upon the land of any person.

Section 21 of the Wildlife Act 1953 makes it clear that a licence or authority under that Act does not entitle the holder to hunt or kill game on any land without the consent of the occupier of the land.

Hunting requires both the carrying and use of firearms, which are two separate issues. The safe use of firearms is controlled by the Arms Act 1983 which is administered by the New Zealand Police. The Arms Code is a firearms safety manual issued by the New Zealand Police. The Firearms Safety pamphlet published by the New Zealand Mountain Safety Council (Appendix 7) summarises key points of firearms safety and licencing.

7. Motor vehicles

While the focus for the Commission is on walking access, it notes that not only are vehicles often necessary to get to walking locations, but that there are rights to take vehicles on certain types of public access ways – for example, unformed legal roads.

Access with motor vehicles can, however, be much more intrusive than access on foot or on bicycle. The Commission notes that vehicle users should:

- › keep strictly to formed tracks;
- › minimise vehicle damage, such as deep ruts;
- › not leave vehicles where they block or obstruct gateways, tracks or entrances;
- › ensure that any access right or permission includes use of motor vehicles, if this is the intention;
- › even where access with vehicles is legally allowed, such as on an unformed legal road, it is a courtesy to notify the adjacent landholder, especially where the access crosses unfenced farmland; and
- › note that formed tracks may not necessarily be on the line of the legal road.

More information on responsible conduct when using vehicles can be found at www.treadlightly.org.nz.





CHECKLIST OF ACCESS RIGHTS AND RESPONSIBILITIES

Public access

Not all rivers, lakes, beaches and mountain lands have public access to, along or around them. Where there is public access to the New Zealand outdoors, it can be one of many types, such as:

- › most foreshore (beaches), but some foreshore is private;
- › national parks, reserves and other conservation lands;
- › legal roads (including unformed legal roads);
- › walkways under the Walking Access Act;
- › marginal strips along waterways under the Conservation Act; and
- › easements across private land.

Different types of access have varying legal obligations and restrictions.

Private land

There is no general right of public access across private land. If land is fenced off or appears to be private and there are no signs indicating access, then permission should be sought. There may be valid reasons (such as lambing or mustering) for farmers to deny access, and refusals should be accepted with good grace.

Dogs

The right to walk with a dog, including hunting dogs, depends on the rights that run with the type of access. On private land, permission must be obtained to take a dog. Dogs should be kept under proper control, and not allowed to frighten other people, worry farm animals or disturb birds or wildlife, unless they are game and hunting has been permitted. Dog faeces should be picked up and removed or buried.

Firearms

The New Zealand Firearms Safety Code (Appendix 7) must always be observed, and permission must be obtained before shooting on any land. Even where you can legally carry a firearm, recognise how others may feel.

Motor vehicles

Access with motor vehicles can be much more intrusive than access on foot or on bicycle. Even where access with vehicles is legally allowed, such as on an unformed legal road, it is a courtesy to inform the adjoining landholder, especially where the access crosses unfenced farmland. Vehicles should be kept strictly to formed tracks.

Respecting other people's property

Responsible behaviour includes:

- › leaving gates as they are found – open or closed;
- › not climbing unsupported fence wires – in the absence of a gate or stile, going

- through the fence wires or climbing over at posts;
- › not blocking or obstructing gateways, tracks or entrances;
- › walking in single file around farm animals, without driving them;
- › walking around, rather than through, crops; and
- › reporting stock in difficulty, damage or anything suspicious to the land manager.

Limiting outdoor fire risk

Fires should not be lit without permission, and all fires fully extinguished before leaving.

Caring for the environment

The natural environment is an asset and should be treated with care by:

- › not disturbing stock or damaging vegetation, wildlife, historic places, pasture or crops;
- › taking litter home; and
- › burying toilet waste away from waterways.

Managing the outdoors

When those with authority as a landowner or manager are asked for access permission, it is appropriate to:

- › respond reasonably when people request permission for walking access;
- › explain the reasons for any conditions that are applied;
- › advise visitors of out-of-the-ordinary hazards arising from farm activities (for example, tree felling, blasting); and
- › respect people's rights of public access, such as use of unformed legal roads and marginal strips. The exact locations of these can be hard to determine.

Unformed legal roads may be unsurfaced, unfenced and indistinguishable from surrounding land, but have all the legal rights and obligations of formed roads.

Māori land

Whaia nga tapuwae o nga tupuna – Follow in the ancestors' footprints

Māori land under the Te Ture Whenua Act does not generally have public access rights, so permission must be sought from the owners or those authorised by them, and the relevant tikanga⁸ learned and followed. Cultural offence may be caused by haere pokanoa (unauthorised wandering).

⁸ Tikanga are the customary values and practices that reflect Māori beliefs and provide the correct procedures to be followed. Tikanga knowledge rests with the respective tribes and must be checked for each place as there could be specific customs or requirements.



Being responsible

Outdoor access to both public and private land comes with obligations. These include:

- › taking responsibility for one's own actions;
- › following any reasonable advice offered;
- › being considerate and respecting the interests of other people;
- › caring for the environment;
- › seeking permission for access to private or Māori land;
- › learning and respecting the tikanga Māori so that behaviour does not cause cultural offence; and
- › getting the correct permits for hunting and fishing.

REFERENCES

Hayes, B (2003) *The Law on Public Access along Water Margins*, Ministry of Agriculture and Forestry, Wellington.

Hayes, B (2007a) *The Law on Roads Which Have Never Been Formed*, Ministry of Agriculture and Forestry, Wellington.

Hayes, B (2007b) *Elements of the Law on Moveable Water Boundaries*, Ministry of Agriculture and Forestry, Wellington.

These papers can all be downloaded from www.walkingaccess.govt.nz.



GLOSSARY

CROWN LAND: Land vested in Her Majesty the Queen in right of New Zealand that is not set aside for any public purpose (such as a national park or conservation land) and not held in private title.

ESPLANADE RESERVE: A parcel of water margin land vested in a local authority under Part 10 of the Resource Management Act 1991. It has fixed, surveyable boundaries.

ESPLANADE STRIP: A statutory easement along a water margin made under Part 10 of the Resource Management Act 1991. It has boundaries that move with changes in the watercourse.

LANDHOLDER: Includes owners of land, lessees, licensees, sharemilkers, trustees and other persons who have authority to grant access permission.

MARGINAL STRIP: A strip of land along a water margin reserved by the Crown on the disposal of the adjoining land by the Crown. These were originally made under various Land Acts and were fixed in location irrespective of movements in water margins. Since 1987, they have been made under the Conservation Act 1987, and those made since 1990 move with any change in the location for the water margin.

MOBILITY DEVICE: A vehicle that is designed and constructed (not merely adapted) for use by persons who require mobility assistance due to a physical or neurological impairment and is powered solely by a motor that has a maximum power output not exceeding 1500 W, or any other device that meets the definition in the Land Transport Act 1998.

PAPER ROAD: A commonly-used expression for an unformed legal road. See “unformed legal road”.

PRIVATE LAND: Any land that is held in fee simple by any person other than the Crown; any Māori land (within the meaning of section 4 of Te Ture Whenua Māori Act 1993), and any land that is held by a person under a lease or license granted to that person by the Crown.

PUBLIC LAND: Any land that is not private land. This includes parks and reserves held by local government or the Department of Conservation for a variety of purposes, and Crown lands and forests held by Land Information New Zealand and state-owned enterprises. Public land may not always be available for public recreation.

QUEEN’S CHAIN: A commonly used expression for a parcel of land (usually 20 metres wide) reserved for public use alongside a water margin, including the sea, lakes and rivers.

ROAD: A formed or unformed road, that does not include a private road (within the meaning of section 315 (1) of the Local Government Act 1974).

TERRITORIAL AUTHORITY: A city council, district council, or regional authority recognised as such under the Local Government Act 2002.

UNFORMED LEGAL ROAD: Land legally set aside as being road, but not formed as a road. That is, it may be unsurfaced, unfenced and often indistinguishable from the surrounding land but is still subject to all the legal rights and obligations that apply to formed roads, including the right to pass and re-pass with or without vehicles and animals.

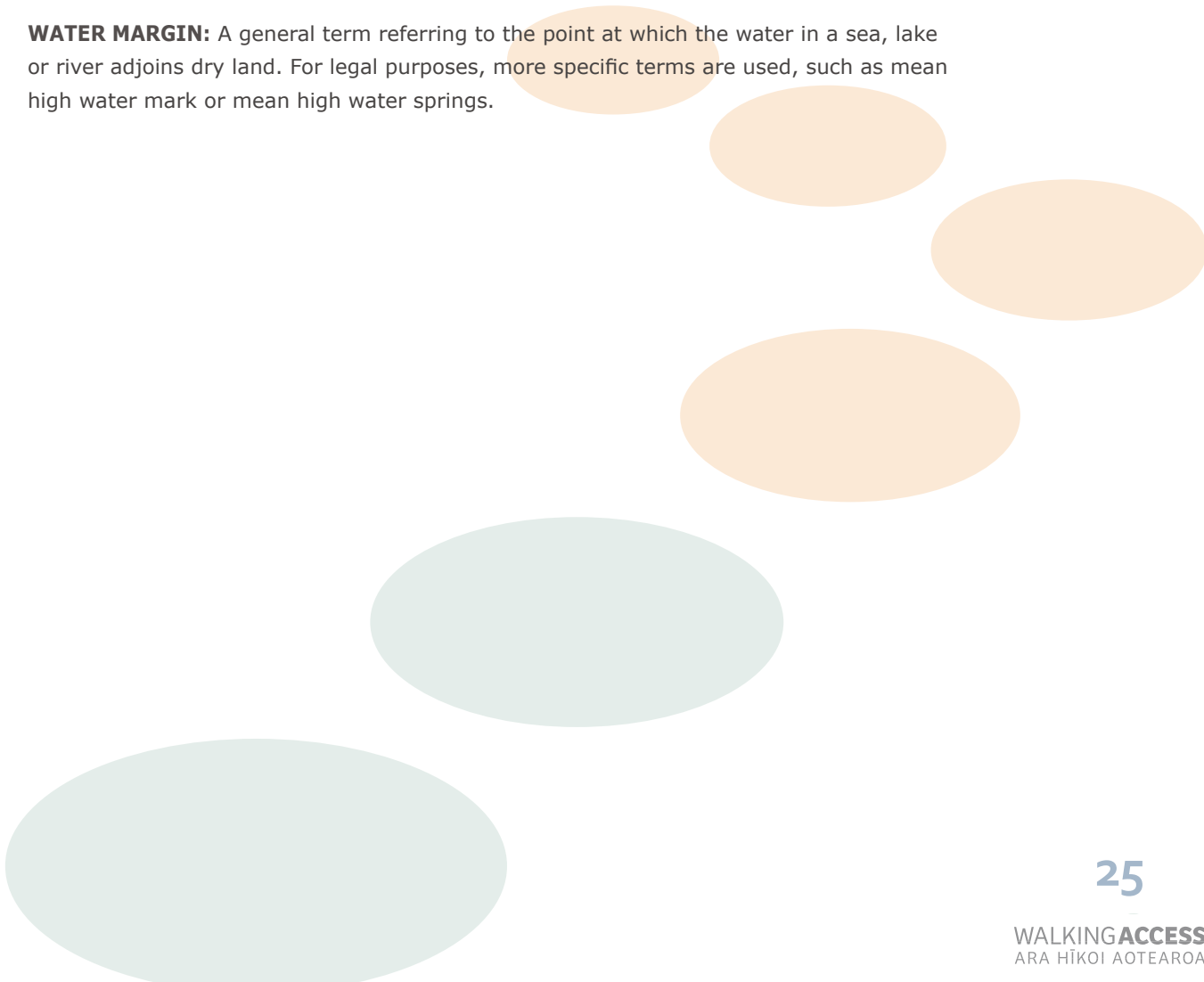
VEHICLES: Cycles, horses, motorbikes, four-wheel-drives, cars, etc.

WALKING ACCESS: The right of any member of the public to gain access to the New Zealand outdoors by passing or re-passing on foot over land over which the public has rights of access, and performing any activity that is reasonably incidental to that passing or re-passing. It includes the use of mobility devices and disability-assistance dogs.

WALKWAY: Walkways are one of a range of legal mechanisms that provide walking access. Walkways differ from the other walking access in that they are declared as walkways under sections 24 or 31 of the Walking Access Act 2008 and have statutory benefits and obligations.

It includes any part of a walkway and includes any walkway, established or administered under the New Zealand Walkways Act 1990, that was in existence immediately before the Walking Access Act 2008 came into force.

WATER MARGIN: A general term referring to the point at which the water in a sea, lake or river adjoins dry land. For legal purposes, more specific terms are used, such as mean high water mark or mean high water springs.



APPENDICES

APPENDIX 1: WALKING ACCESS ACT 2008 – SECTIONS 12-19

Part 2; Subpart 2 – Code of Responsible Conduct, from the Act is reproduced below.

12. Purpose and status of code

The purpose of sections 13 to 19 is to provide for the development and issue of a code of responsible conduct in relation to walking access for the general guidance of:

- a. users of walking access; and
- b. landholders of land on which walking access is located; and
- c. landholders of land adjoining land on which walking access is located; and
- d. controlling authorities of walkways.

13. Contents of code

1. The code may include all or any of the following:
 - a. summaries of benefits conferred and obligations imposed, by this Act or any other enactment, on members of the public and relevant landholders in relation to walking access;
 - b. recommendations on the standards of behaviour to be observed by users of walking access and relevant landholders, including in relation to sites of cultural significance;
 - c. information about the administration of walkways under this Act, including conditions on the use of walkways and the powers of enforcement officers in relation to walkways;
 - d. information about tikanga Māori (Māori customary values and practices) and Māori relationships with land and waterways;
 - e. any other information that the Commission considers would be useful for users of walking access and relevant landholders.
2. The code may make recommendations that are specific to a local area or a region.

14. Preparation of draft code

The Commission must prepare a draft code as soon as practicable after the commencement of this Act.

15. Notice of draft code to public

1. The Commission must, by any means it thinks appropriate,
 - a. give notice of the draft code to the public; and
 - b. invite members of the public to comment on the draft code.
2. The Commission must ensure that
 - a. the notice is widely published; and
 - b. the draft code is readily available to members of the public; and

- c. a reasonable period of time is allowed for members of the public to comment on the draft code.
3. The Commission must consider each comment it receives under this section.

16. Matters to be considered

1. Before issuing a code under section 17, the Commission must
 - a. reconsider the content of the draft code; and
 - b. be satisfied that the recommendations on standards of behaviour (if any) are appropriate.
2. In complying with subsection (1), the Commission must have regard to
 - a. any comments about the code received by the Commission; and
 - b. the purpose of this Act; and
 - c. any other matters that the Commission thinks are relevant to its considerations.

17. Issue of code

The Commission may issue the code at a time, and in a manner and form, that the Commission thinks appropriate.

18. Amendment or revocation of code

1. The Commission may, at any time,–
 - a. amend the code; or
 - b. revoke the code and substitute another code.
2. Sections 14 to 17 apply, with all necessary modifications, to amendments to, or the revocation and substitution of, the code under subsection (1).
3. However, sections 14 to 17 do not apply to minor amendments that do not materially affect the code.

19. Availability of code

The Commission must ensure that copies of the code are readily available to members of the public –

- a. for inspection; and
- b. for purchase at a reasonable price.

APPENDIX 2: RELATED LEGISLATION

There is a large body of legislation that deals with the kinds of inappropriate behaviour of concern on both public and private land.

Many aspects of poor conduct are covered by existing laws and by-laws, for example, littering, vandalism and excessive noise. Disturbing domestic animals, setting traps, shutting an open gate and opening a closed gate on private land are all offences under the Trespass Act 1980. These provisions in the Trespass Act 1980 do not, of course, apply to land that is subject to public access rights.

Relevant statutes include:

- › Arms Act 1983
- › Biosecurity Act 1993
- › Conservation Act 1987
- › Crimes Act 1961
- › Crown Forest Assets Act 1989
- › Dog Control Act 1996
- › Forest and Rural Fires Act 1977
- › Harassment Act 1997
- › Health and Safety in Employment Act 1992
- › Land Act 1948
- › Land Transport Act 1998
- › Litter Act 1979
- › Local Government Act 1974
- › Local Government Act 2002
- › Resource Management Act 1991
- › Summary Offences Act 1981
- › Te Ture Whenua Māori Act 1993
- › Trespass Act 1980
- › Wild Animal Control Act 1977
- › Wildlife Act 1953

APPENDIX 3: MĀORI LAND AND ACCESS

BACKGROUND

Māori land is defined in Te Ture Whenua Māori Act 1993 as Māori customary land and Māori freehold land. The land under this special legislation is subject to restrictions and protections that do not apply to general land. There are 1.54 million hectares of Māori land, mainly in the central and east coast of the North Island. This makes up 5.7 percent of New Zealand's total land area and around 8.6 percent of all private land. A large proportion is rural and of limited use for horticulture or agriculture. The undeveloped nature of the land increases the attractiveness of the land for recreation purposes.

This Māori land does not include 'general land' owned by Māori. The majority of lands that have been handed back to Māori in Treaty settlements are general title land, not Māori freehold land.

Māori land often has multiple owners, usually with an ownership structure such as a Trust representing the owners. It is estimated that 80 percent of Māori land is held under such ownership structures. Understanding the history of Māori land title is important for understanding why water margin reserves do not exist on most Māori land.

The process that was applied during the period 1862–1909, when almost all Māori customary land was converted to Māori freehold land, differed from general (non-Māori) land, which permitted a coastal or riverside reservation to the Crown. The conversion to Māori freehold land was through a formal grant of the land from the Crown. The Crown did not at any stage own the land, thus there was no scope to reserve land from sale and hold it as some form of reserve.

When Māori titles had been converted to general title, Māori owners could sell the land free of tribal constraints. Large areas, including land adjacent to water, were sold to settlers through Crown purchases, confiscations and direct sales from Māori.

The Land Subdivision in Counties Act 1946 provided for the taking of water margin land on subdivision of general land. Māori land was, however, exempt from this provision. Subsequent legislation, starting with s432 of the Māori Affairs Act 1953, made various provisions whereby it was possible for reserves to be made on the subdivision of Māori land. From 2002, by s47 of Te Ture Whenua Māori Amendment Act 2002, any water margin land reserved on subdivision of Māori land is set apart as a Māori reservation for the common use and benefit of the people of New Zealand.

PUBLIC ACCESS TO MĀORI LAND

As with general title land, access along waterways by Māori land requires the permission of the landholder. However, where the land has multiple owners and no defined ownership structure it may be hard to identify from whom to seek permission.

As with other landholders, both Trust and incorporation managers are bound by requirements and obligations imposed by legislation, such as occupational health and safety. In some cases, Trust and incorporation managers may adopt management policies that may prevent all shareholders (beneficial owners) entering the land. In these cases shareholders may have to follow the same process for seeking access as the public.

Shareholders/beneficiaries would, however, expect to have access to their sacred sites (such as wāhi tapu) and customary food resources (for example, mahinga kai, a food-gathering place).

In general terms, legal access (such as the laying out of roadways) cannot be granted over Māori land except by agreement with the landholders or by order of the Māori Land Court. This is reflected in section 11 of the Resource Management Act, which exempts Māori land from the restrictions on the subdivision of land¹. An amendment to Te Ture Whenua Māori Act 1993, however, provides that a Māori reserve (that is not a wāhi tapu) may be held for “the common use and benefit of the people of New Zealand”.

Forest land transferred to Māori under the Crown Forests Assets Act 1989 is still subject to the marginal strip provisions in Part 4A of the Conservation Act, unless the settlement legislation specifically overrides it. Advice received from Crown Forestry and a preliminary scoping of the legislation suggests that in most cases, Part 4A does apply. Section 28 of the Crown Forests Assets Act allows public access easements to be reviewed and cancelled after land is transferred to Māori, and in most cases such easements are cancelled at the request of iwi.

Even within Māori land there are variations, such as the access strip along the shore of Lake Taupo. This access strip was created through the Māori Land Amendment and Māori Land Claims Act 1926 as part of an agreement between Ngāti Tuwharetoa, the tangata whenua of the Lake Taupo region, and the Crown. This agreement provided that the bed of Lake Taupo and the Waikato River, down to and including Huka Falls, would be the property of the Crown, but did not give title to the Crown. In 1992, ownership of the beds was re-vested in Ngāti Tuwharetoa.

The deed in respect of Lake Taupo allows continued freedom of entry to, and access on, the lake waters for recreation and enjoyment, subject to conditions and restrictions by the Taupo-nui-a-Tia Management Board to protect and control the public use. To reflect the access privileges given to the public, the Crown makes an annual payment to Ngāti Tuwharetoa equivalent to half of the annual income from fishing licenses for the Taupo fishing area which is administered by DOC.

More information on Māori land related to public access issues can be found in Hayes, B.E. (2008) *Roads, water margins, and riverbeds: the law on public access*, 235 pp. University of Otago, Dunedin, New Zealand in conjunction with Ministry of Agriculture and Forestry, Wellington, New Zealand.

¹ There are variations on this provision. For instance, where there is a partition of land into parcels to be held by owners who are not members of the same hapū, the Māori Land Court must have regard to the requirements of the territorial authority in respect of esplanade reserves and make an order for a Māori reservation instead of an esplanade reserve.

APPENDIX 4: IF VISITORS TO MY FARM ARE INJURED, AM I LIABLE?

Department of Labour

FACT SHEET

Department of Labour
TE TARI MAHI



IF VISITORS TO MY FARM ARE INJURED, AM I LIABLE?

Under section 16 of the Health and Safety in Employment Act 1992, people who control workplaces, including farmers, have a simple duty to warn visitors who have permission to be on their properties of any work-related, out-of-the-ordinary hazards that they know about that may cause serious harm.

Under section 16 of the Act, farmers have two types of duties:

- A duty to warn authorised visitors
- A full duty to employees, contractors and their employees, people in the vicinity of the place of work and people who are paying customers (this is explained later).

You are not liable if anyone comes on to your land without your permission and suffers harm, whether from a work-related hazard or for any other reason.

This fact sheet answers questions you may have about this law.

Duty to warn

You have a duty to warn authorised visitors of work-related, out-of-the-ordinary hazards.

What is meant by an authorised visitor?

This is anyone who comes on to your farm with your express permission. It includes people who come for leisure or recreational activities. It also includes people on your property who are doing work that is unrelated to your work, such as research workers.

What about workers who have legal authority to go on my property?

Your duty to warn expands to people who are legally authorised to be on your property, but only where they have given you oral notice of their visit. People in this situation include employees of electrical companies, Department of Conservation workers and local authorities.

What is meant by a work-related, out-of-the-ordinary hazard?

This is a hazard that:

- arises from some work activity on the farm;

- wouldn't normally be expected to be on a farm; and
- could cause a person serious harm.

Examples might be:

- trees being felled;
- blasting;
- earthmoving machinery operating; or
- where pest control operators are working.

Natural hazards are excluded. You are not liable for warning visitors of natural hazards on your farm, such as:

- bluffs;
- landslides;
- rivers;
- swamps;
- wasp nests, etc.

What sort of warning should I give and when?

You need only give a verbal warning about the hazard. You need to do this at the time you give that person express permission to go on to your land. If a group of people are involved, it's sufficient to give the warning to a representative of that group.

The warning can be given by your farm manager if he or she is the person giving permission.

Full duty

The relationship changes if people pay to use your land for any purpose. In this case the people become your customers, and you have a full duty to take "all practicable steps" to ensure that they are not harmed by any hazard arising on the farm.

This would include situations where people pay to use your land in situations such as camping, horse trekking, "pick your own" fruit, or where a tour operator pays for tourists to visit a scenic site on your land.

You also have a full duty to other groups:

- all employees who work for you (e.g. farmhands, fruit pickers)
- all contractors you engage and their employees (e.g. for shearing, fencing, tree felling)
- all people buying or inspecting goods offered for sale (e.g. farm produce, craft items)

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- all people in the vicinity of a place of work (e.g. driving on a road alongside a paddock where you are spraying chemicals)

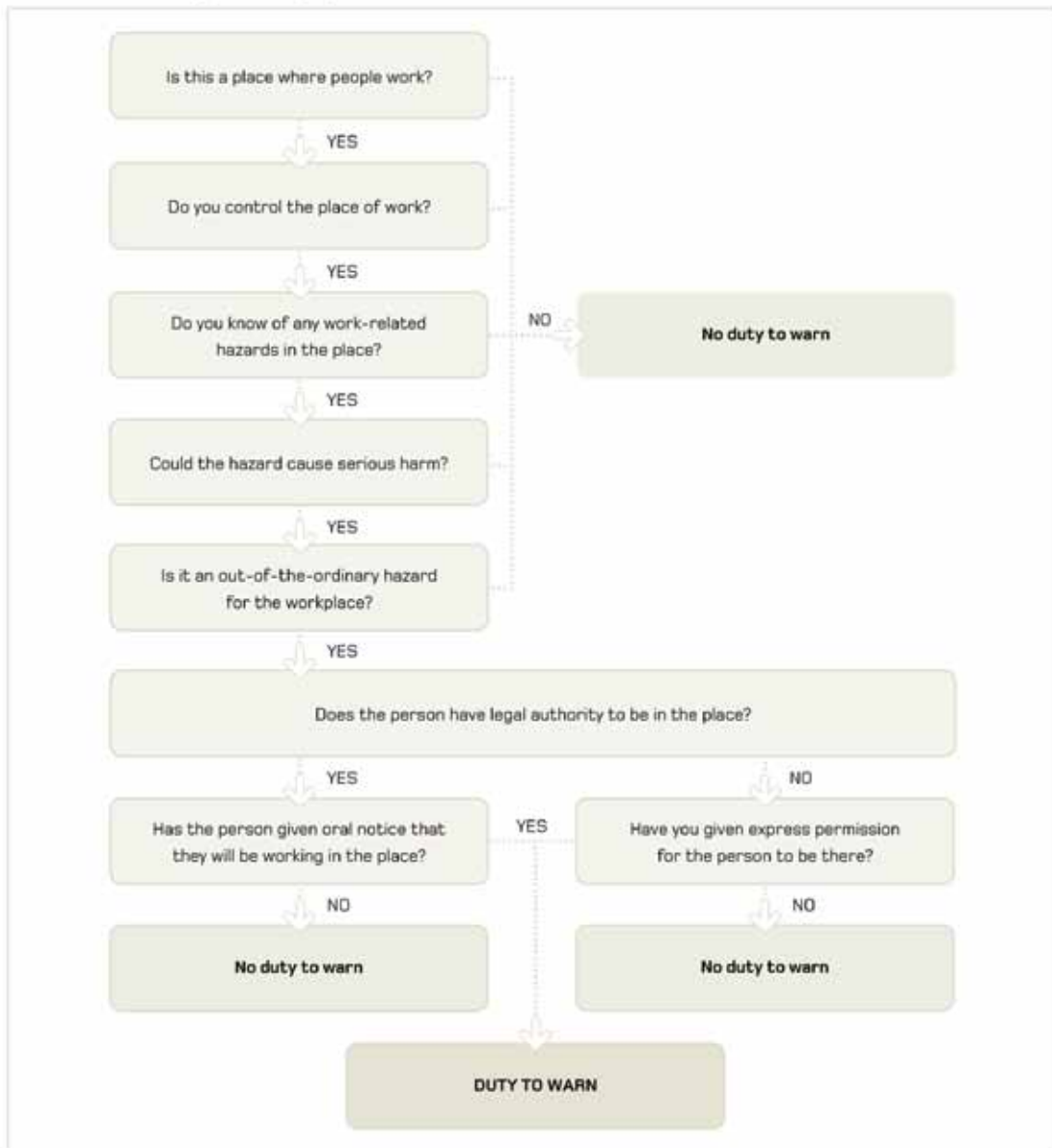
What is meant by "all practicable steps"?

It means things that can reasonably be done to ensure that people are not harmed. It might also mean restricting access to certain areas of your farm, e.g. where chemical spraying is being done, or setting weight limits on bridges.

But remember, you are only required to take steps in respect of circumstances you know or ought reasonably to know about.

This fact sheet highlights the duties under section 16 of the Health and Safety in Employment Act 1992 only. Other duties may be owed under other provisions of the Act, e.g. as an employer, self employed person or principal.

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



APPENDIX 5: OUTDOOR SAFETY CODE

Mountain Safety Council



Before you go

**KNOW THE OUTDOOR
CODE**

**Before you go into the outdoors get familiar with
New Zealand's Outdoor Safety Code**

**5 simple rules
to help you stay safe:**

- 1 Plan your trip**
Seek local knowledge and plan the route you will take and the amount of time you can reasonably expect it to take.
- 2 Tell someone**
Tell someone your plans and leave a date for when to raise the alarm if you haven't returned.
- 3 Be aware of the weather**
New Zealand's weather can be highly unpredictable. Check the forecast and expect weather changes.
- 4 Know your limits**
Challenge yourself within your physical limits and experience.
- 5 Take sufficient supplies**
Make sure you have enough food, equipment, clothing and emergency rations for the worst-case scenario. Take an appropriate means of communication.

For more information visit www.outdoorsafetycode.co.nz

APPENDIX 6: NEW ZEALAND ENVIRONMENTAL CARE CODE CHECK LIST

Department of Conservation



NEW ZEALAND
environmental
CARE CODE

Care code check list

Protect plants and animals

- * Treat New Zealand's forests and birds with care and respect. They are unique and often rare.

Remove rubbish

- * Litter is unattractive, harmful to wildlife and can increase vermin and disease. Plan your visits to reduce rubbish, and carry out what you carry in.

Bury toilet waste

- * In areas without toilet facilities, bury your toilet waste in a shallow hole well away from waterways, tracks, campsites, and huts.

Keep streams and lakes clean

- * When cleaning and washing, take the water and wash well away from the water source. Because soaps and detergents are harmful to water-life, drain used water into the soil to allow it to be filtered. If you suspect the water may be contaminated, either boil it for at least 3 minutes, or filter it, or chemically treat it.

Take care with fires

- * Portable fuel stoves are less harmful to the environment and are more efficient than fires.
- * If you do use a fire, keep it small, use only dead wood and make sure it is out by dousing it with water and checking the ashes before leaving.

Camp carefully

- * When camping, leave no trace of your visit.

Keep to the track

- * By keeping to the track, where one exists, you lessen the chance of damaging fragile plants.

Consider others

- * People visit the back country and rural areas for many reasons. Be considerate of other visitors who also have a right to enjoy the natural environment.

Respect our cultural heritage

- * Many places in New Zealand have a spiritual and historical significance. Treat these places with consideration and respect.

Enjoy your visit

- * Enjoy your outdoor experience. Take a last look before leaving an area; will the next visitor know that you have been there?
- * Protect the environment for your own sake, for the sake of those who come after you, and for the environment itself.

Toitu te whenua / Leave the land undisturbed

For more information about caring for the environment visit the DOC website: www.doc.govt.nz



Department of Conservation
Te Papa Atawhai

Department of Conservation Wellington
recreation@doc.govt.nz DM-451775

APPENDIX 7: FIREARMS SAFETY

Mountain Safety Council

Firearms Safety



① RESOURCES

MANUALS

- Arms Code
- New Zealand Firearms Handbook
- HUNTS Manual (Hunter National Training Scheme)
- Bushcraft Manual
- Outdoor First Aid Manual
- Outdoor Safety – Risk Management
- NZ Bow Hunting Manual

PAMPHLETS

- Going Bush? – Tramping safety
- Survival
- Radio Communications
- Hypothermia
- River Safety (W/SNZ)
- Mountain Radio Service – contacts
- Let's Breathe – camping appliance safety

VIDEOS/DVDs

- On Target – safe and successful hunting in NZ
- Do You Need to Cross? – river safety
- Found Alive – bush survival
- It Was Just a Tramp in the Bush – Bushcraft

OTHER USEFUL RESOURCES

- Firearms Safety Hologram Cards
- Firearms Safety Code Poster

USEFUL CONTACTS

- www.police.govt.nz – New Zealand Police
- www.nzshootingfed.org.nz – NZ Shooting Federation
- www.nranz.com – National Rifle Association of NZ
- www.nzclaytarget.org.nz – NZ Clay Target Association
- www.pistolnz.org.nz – NZ Pistol Association
- www.targetshootingnz.co.nz – Target Shooting NZ
- www.doerstalkers.org.nz – NZ Doerstalkers' Association

REMEMBER

- Have your firearm checked regularly by a gunsmith who knows about the firearms you own.
- Don't rely on safety catches - they are subject to wear and may not work properly.
- Make sure there is nothing obstructing the barrel of your firearm before you fire.
- Learn basic bush skills such as navigation, first aid, river crossing and survival if you're going hunting.
- Get permission before shooting on any land.
- Protect your hearing with proper ear muffs or ear plugs, and protect your eyes with safety glasses when shooting.

THE ARMS CODE

For more comprehensive information on owning a firearm, refer to the Arms Code.

The Arms Code is a firearms safety manual compiled by NZ Police with the assistance of MSC. It is essential reading for all firearm owners and users, and includes information on choosing a firearm, firearm types, correct ammunition, applying for a licence, buying and selling, safe storage, and the basic rules of firearms safety.

You can download the Arms Code from the NZ Police website at www.police.govt.nz/services/firearms. It is also available free from MSC and all police stations.



NEW ZEALAND MOUNTAIN SAFETY COUNCIL

For resources and further information contact:
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Email: orders@mountainsafety.org.nz
www.mountainsafety.org.nz
www.avalanche.net.nz
www.incidentreport.org.nz



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Firearm Safety

New Zealand Mountain Safety Council (MSC) is a leading authority for outdoor safety information and training in New Zealand.

MSC's volunteer firearms instructors, are approved by NZ Police to deliver firearm safety training and administer the Firearm Safety Test to new firearms licence applicants.

FIREARMS LICENCING

- ✦ All those who possess a firearm need a Firearms Licence.
 - ✦ Application for a Firearms Licence must be made at the nearest Police Station.
 - ✦ 16 years is the minimum age to apply for a licence.
 - ✦ A first time licence applicant must undertake training in safe handling, storage and use of firearms as outlined in the Arms Code. On completion of this training, the licence applicant is required to sit the Firearms Safety Test.
 - ✦ Police will carry out inquiries to determine if the applicant is fit and proper to possess firearms.
- For more details, refer to the NZ Police 'Arms Code.'

JOIN A CLUB

It's best to join a club when getting involved in shooting activities. There are clubs for:

- ✦ Hunting
- ✦ Pistol shooting
- ✦ Clay target shooting
- ✦ Smallbore rifle shooting
- ✦ Fullbore rifle shooting, and others.

See useful contacts on the back page of this pamphlet.

THE NZ FIREARMS SAFETY CODE

The following seven rules are part of the NZ Arms Code and must be followed:

- 1 Treat every firearm as loaded**
Check every firearm yourself. Pass or accept a firearm only if it has the action open and is not loaded. If it belongs to someone else, ask them to show you that it is empty.



- 2 Always point firearms in a safe direction**
This rule can be easily broken so extra care is necessary particularly when moving firearms, e.g. when you are:

- ✦ Crossing a fence
- ✦ Placing a firearm in a vehicle
- ✦ Unloading a firearm from a vehicle
- ✦ Preparing a firearm for use, e.g. loading or unloading a firearm.

- 3 Load a firearm only when ready to fire**
Only load a firearm when you intend to fire, and only in an area where it can be safely and legally discharged.

4 Identify your target beyond all doubt

Never fire unless you are absolutely certain that your target is not a person. Do not fire at movement, colour, shape or sound only. If in doubt, don't shoot.

5 Check your firing zone

You must think about what you could hit in the area between you and your target, and in the area beyond the target. Remember that when you follow a moving target with your firearm, your firing zone changes rapidly. When shooting near thick bush or scrub, extra care should be taken as you may not be able to see all of your firing zone.

6 Store firearms and ammunition safely

When not in use, lock away the unloaded firearm, bolt and ammunition separately. If you possess a semi-automatic or lever-action firearm, you need to use a trigger lock. Firearms must be safe and secure whether you're at home or in the field.



7 Avoid alcohol or drugs when handling firearms

Alcohol and some drugs, even if prescribed, dull and slow your mental and physical reactions. This is dangerous because you must be able to think clearly when handling firearms.

NEW ZEALAND WALKING ACCESS COMMISSION

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