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New Zealand Forest  
Owners Association

# BRIEFING

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## Forest Owners Public Responsibilities for Forestry Roads

**T**here has been increasing interest among forest owners as to their legal responsibilities and obligations to members of the public who use forestry roads either invited or uninvited. This increasing interest has resulted from a number of recent incidents where members of the public have been injured while on private land.

**O**ne such incident resulted in an amendment to Section 16 of the Health and Safety in Employment Act to remove liability from landowners under certain circumstances. In another recent case, the Police gave serious consideration as to whether to lay charges against a landowner where a farm road on his property had been used by members of the public who had drowned as a result of a wash out in the road.

**T**he following information is designed to provide information to forest owners on their legal responsibilities and obligations and on measures they can take to mitigate their exposure to possible prosecution in the event of a mishap occurring to a member of the public using a forestry road.

### Introduction

**I**t should be noted that the following information is necessarily very general and summarises a broad range of legal obligations that may possibly apply to different forest owners. It is therefore recommended that individual forest owners seek specific legal advice that is directed to their individual circumstances.

**I**t should be noted, too, that the information set out in this document is not directed towards forest owners obligations towards their employees who use forestry roads.

The document is divided into three parts, viz:

- Summary of legal situation.
- Forestry owners' obligations towards people who have permission to use forestry roads.
- Obligations of owners towards people on forestry roads, whether or not they have permission to be there.

## NZFOA Mission Statement

To actively promote commercial forestry in New Zealand with a view to creating a favourable economic, political and social climate for the profitable operation of members' businesses in the commercial forestry sector.



# Obligations to All Persons on Forestry Roads

## Land Transport Act and Traffic Regulations

**F**orestry owners have more general obligations towards all people who use forestry roads—whether or not they have permission to use the roads—in the following circumstances:

*Land Transport Act and Traffic Regulations*

outrageous, the road-user *may* be able to bring a claim for physical loss to their person. Further, a breach of these obligations may result in a prosecution for criminal nuisance under the Crimes Act (discussed in section *Criminal Liability—see below*)

These impose obligations on forestry owners, but it is not an offence under the regulations to fail to meet these obligations. However, a breach of these obligations resulting in damage to a road-user's property *may* allow that person to bring a claim against the forestry owner; and if the breach is

Forestry owners are not able to exclude their duties under the Regulations. The only way to avoid liability is to ensure that no person in fact uses the forestry road.

## Common Law of Occupiers Liability

**A** forestry owner owes a duty of “common humanity” to people using forestry roads if their presence on the roads is reasonably to be anticipated. A forestry owner is liable for damage to that person's property resulting from any failure by the owner to take reasonable care to ensure that the state or condition of the land allows the visitor to be reasonably safe. A forestry owner is only liable for any physical loss suffered by the person themselves if the owner has acted outrageously.

**I**t appears that a forestry owner is unable to exclude this basic duty, but may be able to mitigate it by erecting appropriate warning signs if the owner knows of any dangers (refer later section).

*Duty of “common humanity”*

## Common Law of Negligence

**A** forestry owner may also be liable where the presence of a road user is reasonably foreseeable, and he or she acts negligently in undertaking activities on the land, and this negligence results in damage to property (or, if outrageous conduct, damage to the person).

**A** forestry owner may limit his or her risk of liability by an appropriately worded notice. The aim of the signage is twofold. First, general signage can be used to “contract out” of any duty of care that may exist between the owner and the users of the road. These signs essentially suggest that entry to the area is at the individuals own risk.

### **WARNING**

**This area and the roads within it are private forestry. Hazardous activities are carried out in this area.**

**[Owner] takes no responsibility for persons in this area without permission.**

**S**econd, signage can be used to meet the forest owners duty of care to people who may be using the roads. These signs should identify the specific hazards in a particular area and suggest appropriate actions to avoid those hazards.



#### Note:

Permanent safety signs on forest roads should comply with the relevant Transit New Zealand requirements.

Prior approval for signage can be obtained by contacting Transit New Zealand.

*...forest owner's  
duty  
of care ...*

## Criminal Liability

**A**lthough this point is yet to be tested, it appears that a forestry owner may be charged with manslaughter if a forestry road is so badly maintained that it is capable of endangering human life, if that failure to properly maintain the road is a major departure from what a reasonable person would do, and if a person dies as a result of the bad maintenance.

Further, a forestry owner may be charged with criminal nuisance if he or she has breached a statutory duty or acted negligently, and knew that this would result in a risk of danger to life, safety or health to the public or to an individual.

# Use of Signs to Limit Liability

In some circumstances, the use of signs at the entry to a forest or within the forest may provide mitigation against claims by the public for injury, or loss incurred in the use of a forestry road.

These signs can attempt to either limit or prohibit entry onto forestry roads, or attempt to exclude liability for any damage caused to persons on that road.

In respect of signs that identify the road as private and seek to limit or prohibit entry:

- The forest owner's responsibilities under the Land Transport Act or the traffic regulations are not excluded, as these roads may remain a place to which the public have access, albeit as trespassers.
- The signs do not exclude, or attempt to exclude, liability on the part of the land owner for harm to people on their land. This leaves open the possibility that the land owner may be liable:
  - Under the common law duty of occupiers liability.
  - In the law of negligence, notwithstanding that a person on the land may have been a trespasser.
  - Under the Crimes Act 1961 for manslaughter or breach of a legal duty.

- There is no liability on forestry owners under the health and safety (OSH) legislation for people on forestry roads without express or implied permission.
- In respect of signs that attempt to exclude the forestry owner from liability for damage suffered by other people on the property, it is possible to exclude some liability in some situations through this form of non-contractual notice. To be effective, such a notice must:
  - Be reasonably sufficient to alert the person to the existence of the condition (*Harvey v Ascot Dry-cleaning Company Limited* [1953] NZLR 549)
  - The more onerous the terms of any condition, the greater the need for those conditions to be brought to the notice of the person concerned (*Interfoto Picture Library Ltd v Stilleto Visual Programmes Ltd* [1989] QB 433)
  - The notice must be in "clear and unambiguous language" and "must use ordinary english and 'Not inventive words of doubtful meaning'" (*London and Northwestern Railway Co v Neilson* [1922] 2 AC 263 at 271-272)
- Whether the notice meets the above requirements will depend on the individual circumstances of each case. Likely points in issue would be the size, prominence, and number of signs, and their suitability for the particular area involved.
- It should be noted that these forms of disclaimer, if effective, will exclude liability in negligence. However, such notices will not exclude most forms of statutory liability. In the case of forestry roads, the land owner will not be able to exclude their responsibilities, and potential liability, under the Land Transport Act, the Traffic Regulations, or the Crimes Act.
- In addition, the law is unclear whether or not it is possible to disclaim liability for breaches of the common law duty of occupier's liability. As is noted above, some academic comment suggests that this 'baseline duty' cannot be excluded. However, the point is yet to be tested in the courts.

## Conclusion

**T**here is obviously a wide range of legal obligations that potentially apply to forestry owners in respect to the presence of the public on forestry roads. In some cases these obligations apply whether or not the forestry owner authorises members of the public to enter the land. However, there are steps that the forestry owner can take in order to lessen or minimise his or her risk of legal liability.

**F**inally, the situation of each forestry owner will be different, and the legal requirements and obligations of each will therefore differ. If a forestry owner has specific areas of concern, or would like more detailed information on any of the issues discussed in this membership briefing paper, he or she should contact the Association office for more detailed material and/or obtain separate legal advice from his/her own legal adviser or from KPMG Legal.



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**Accompanying Sign Reads:**

**WARNING**

**Dangers in use of road include:**

- Oversized logging trucks
- Falling trees and logs
- Restricted visibility
- Machines crossing road and other hazardous operations.

Forestry Signs continued:

