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### Summary

This section contains the following topics:

- [Related instruction](#)
- [The Law](#)

This chapter relates to the issue of trespass notices and enforcement of the [Trespass Act 1980](#). The Act applies to commercial premises open to the public as well as private premises.

In general, Police should not become involved in issuing trespass notices. Exceptions may arise, for example where occupiers fear persons on whom they wish to serve notices, where there are large crowds, and where the owners / occupiers are unavailable.

A professional 'document server' or 'process server' can serve a trespass notice on behalf of members of the public for a small fee. Local document/process servers are listed in the [Yellow Pages](#) under 'Document Services' or 'Private Investigators'.

### Related instruction

This instruction should be read in conjunction with the Police Manual chapter '[Photographs of shop thieves](#)'.

### The Law

An owner / occupier in lawful occupation of a place or land may warn a person to leave that place or to stay off that place (sections [3](#) and [4](#) of the Trespass Act 1980). The lawful occupier may authorise any other person, including a member of police, to give the warning.

A warning to stay off the place may be given orally but is more generally given in writing, and is commonly known as a 'trespass notice'. A trespass notice may be issued only if the person is or has been a trespasser or is likely to trespass on that place.

Members of the public have an implied licence to enter shops and similar places open to the public. Before a person can become subject to the Trespass Act this implied licence to enter must be withdrawn.

This is done when the occupier or authorised person informs the person in clear terms that the licence is withdrawn, (e.g., "Go, and don't come into this shop again" or "Stay off these premises").

An offence is committed when a person who has been warned to stay off a place wilfully trespasses on that place within 2 years of the giving of the warning.

It is not sufficient merely to tell the person to leave or to inform the person that they are not welcome, as that does not withdraw the implied licence to enter on future occasions. The person must be advised not to return.

A trespass notice may be issued to a person who:

- has previously trespassed on that place
- has been warned to leave a place but refuses to leave (in this case the person may also be arrested - section [3](#) Trespass Act 1980)
- enters a place after the implied licence to be in that place has been withdrawn
- is reasonably suspected of being likely to trespass on that place (section [4](#)(2) Trespass Act 1980).

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**Note:** The withdrawal of the implied licence to enter and the warning to stay off can be given in the same notice.



### Licences to enter and remain

This section contains the following topics:

- [Property rights vs. licences](#)
- [Bare or implied licences](#)
- [Licence coupled with a contract](#)
- [Trespass by Police](#)
- [Trespass notices](#)
- [Trespass on licensed premises](#)

#### Property rights vs. licences

Common law distinguishes between a personal right to enter and remain upon land and an interest in the land itself. A personal right to enter and remain can be revoked by the person who granted that right, but an interest in the land is a property right that can be revoked only in terms laid down by law.

There are two types of personal rights to enter and remain on land:

- a bare, or implied, licence
- a licence coupled with a contract.

#### Bare or implied licences

Bare or implied licences exist when occupiers allow people onto their land in circumstances where, without the licence, such entry would be unlawful. Examples of a bare licence include when a shopper enters a bookshop to browse, or when a collector for charity calls at a house.

As the licence is not given for consideration, it may be revoked at any time and failure to leave after revocation of the licence constitutes trespass.

#### Licence coupled with a contract

A licence coupled with a contract exists when permission to enter is given for a consideration. The person's right to enter is guaranteed by contract and cannot, therefore, be arbitrarily revoked.

For example, people who have bought tickets to the theatre or similar entertainment cannot be removed from the premises on the management's whim. They have a right to stay for the duration of the performance if they behave properly and obey the management's (reasonable) rules.

Patrons can express their approval or disapproval of the performance if they do so reasonably and with regard to the rights of other members of the audience. They should not create a disturbance or behave in a disorderly manner (sections [4\(1\)\(a\)](#) and [37](#) of the Summary Offences Act 1981). If they behave in this way or disobey the management's rules, they are in breach of the contract and can be asked to leave.

#### Trespass by Police

Police constables are subject to the same laws of trespass as any other citizen unless they have legal authority to enter property under warrant or under warrantless powers such as under sections [14](#), [15](#), and [20](#) of the Search and Surveillance Act 2012, and section [119](#) of the Land Transport Act 1998.

Constables can enter a property and knock on the door but if the occupier, expressly or by implication, asks them to leave, in the absence of lawful authority to remain, they must do so. If, however, before being asked to leave, a constable tells the occupier that



## Trespass, Continued...

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he / she is under arrest, the constable can stay for the purpose of taking the occupier into custody.

Police constables do not have an absolute right to enter premises where meetings or public entertainments are being held, but may do so when they have reasonable grounds to believe that a breach of the peace may occur. In such cases they are entitled to remain, and efforts to remove Police can constitute an assault on a constable in the execution of their duty.

### Trespass notices

Occupiers can warn persons to stay off their land. This is commonly called a trespass notice. In effect, a trespass notice removes the licence that a person might otherwise have to enter and remain on land.

Under section [5](#) of the Trespass Act 1980, the warning to leave and not return may be oral or written. A written warning may be delivered to the person concerned or sent by registered mail to their usual home address in New Zealand.

In [Dixon v Police](#) (High Court Christchurch, 18 September 1985) the court held that, under section [3](#), a verbal warning was sufficient: for example, "I want you off my property right now". Under section [4](#), however, the warning must be more formal, with explicit instructions: for example, "I want you to leave my property right now and, under the terms of the Trespass Act, I do not want you to come back onto my property for two years". It is not enough to merely tell the person to leave or to inform the person that he or she is not welcome, because that does not withdraw implied licence to enter on future occasions. The court also preferred that warnings be in writing, setting out the purpose of the warning and the consequences of failing to observe it.

A trespass notice may be issued only if the person is, has been, or is likely to be a trespasser. In particular, a notice can be issued to a person who:

- has previously trespassed on that place
- has been warned to leave a place but refuses to leave
- enters a place after the implied licence to be in that place has been withdrawn
- while in a place, has had the implied licence to be there withdrawn, and the occupier has reasonable cause to suspect that the person is likely to trespass on that place.

**Note:** The licence withdrawal and warning to stay off can be given in the same notice.

### Trespass on licensed premises

Licensed premises are private property. This means that licensees may use the powers available under the Trespass Act 1980.

[Hospitality New Zealand](#) (HANZ) has a standard warning notice which allows the licensee to specify the reason for asking a person to leave, such as drunkenness and violent behaviour, and to deprive the person of the right to re-enter for up to 24 months.

**Note:** If the person subsequently trespasses, the notice cannot be enforced if the licensee who signed it has ceased to be the occupier.



### **Public meetings**

This section contains the following topics:

- [Public spaces](#)
- [Hall or other restricted area](#)
- [Shareholder meetings](#)
- [Meetings of public bodies](#)

#### **Public spaces**

When a meeting is held in an open public place, the chairperson of the meeting cannot prevent anyone from attending.

#### **Hall or other restricted area**

When a meeting is held in a hall or other restricted area, there is no automatic right to attend the meeting. If the chairperson asks people to leave, they must do so, because the chairperson is acting on behalf of the person or organisation that hired the hall and is effectively the occupier.

#### **Shareholder meetings**

The meeting of a listed public company is a meeting of the shareholders of that company. They decide who can attend.

#### **Meetings of public bodies**

The chairperson of a meeting of a public body can ask any officer of the body, or any Police constable, to remove people who are intoxicated, or engaging in noisy or disorderly conduct or other misbehaviour. Refer to 'Guidelines for policing election meetings' in the '[Election and political matters-a guide for Police employees](#)' chapter.



### **Trespasser photographs and information**

#### **Photographs may be issued**

Official Police photographs may be issued in accordance with the '[Community disclosure of offender information](#)' chapter to occupiers of commercial or retail premises who are participating in a trespass scheme but Police will not issue 'informal' photographs of persons in custody to scheme participants.

Photographs and personal information will be issued only where there is a crime prevention need. They will not be issued merely because a person has been warned to leave or stay off the premises by the occupier for non-criminal behaviour.

After an arrest for shop theft or other offending, an occupier may ask Police for that person's name and address. The person's name and address can be released to the occupier in order for the occupier to issue a trespass notice.

In appropriate cases, such as when there is concern about the person's behaviour or where a person has been seen acting suspiciously on security surveillance cameras and needs to be identified to be arrested, security surveillance footage may be released to the public in accordance with the '[Community disclosure of offender information](#)' chapter. Great care needs to be taken to ensure that release is necessary and appropriate in the circumstances. Staff must consult with their manager, and if necessary legal services.





### Trespass notices

This section contains the following topics:

- [Serving the trespass notice](#)
  - [Private premises](#)
  - [Commercial premises](#)
- [Verbal trespass](#)
- [Written trespass](#)
  - [Entry of outcome and alert on NIA](#)
  - [Storage of 'Trespass Notice' and 'Details of Service of Trespass Notice'](#)

#### Serving the trespass notice

Section 5 of the Trespass Act 1980 says that a trespass notice "shall be given to the individual person concerned either orally, or by notice in writing delivered to him or sent to him by post in a registered letter at his usual place of abode in New Zealand".

It is recommended that the trespass notice be served personally on the individual concerned rather than orally or by registered post. This should minimise later disputes over whether the person was aware of the notice.

Reasonable time should be allowed for the trespasser to leave. If the person remains or is taking an unreasonable time to leave, that person can be arrested.

#### Private premises

You may issue trespass notices on the request of, or on behalf of, an occupier of private premises that are not open to the public, or to enforce the Trespass Act after an occupier of private premises has made a complaint. However, as a general practice you should not issue trespass notices unless there is a valid reason why the owner / occupier cannot issue the notice. Good reasons for the owner / occupier not issuing a trespass notice may exist where the occupier fears the person they wish to serve the notice on. In such circumstances, consider whether other / additional responses might be appropriate, such as consideration of a warning or a charge such as threatening behaviour under the Summary Offences Act.

#### Commercial premises

You **should not** become involved in issuing trespass notices on behalf of commercial enterprises such as shops, yards and similar premises customarily open to the public. Exceptions arise where occupiers are in fear of people on whom they wish to serve notices, where there are large crowds, where the owners are unavailable, or for other valid reasons.

Do not issue a trespass notice unless:

- you are satisfied that you know who the lawful occupier of the property is
- there is good reason why the occupier cannot deliver the trespass notice themselves, and
- you have the occupier's authority in writing (unless written authority is impractical in the circumstances- and you should make a clear file note confirming the occupier's authority for you to act), and
- you are issuing the notice to prevent crime, offences of disorder, or breaches of the peace being committed in or on those premises or any other premises in which there is reasonable cause to suspect the person will trespass.



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### Verbal trespass

If a trespass notice is delivered verbally, it is advisable to record the instruction while it is still fresh in your mind, the date and time along with the reason for giving a trespass notice to that person, and a name or description of the person asked to leave.

### Written trespass

Templates of a **Trespass Notice** and **Details of Service of Trespass Notice** are available on the [Police intranet](#) and [Police internet](#) (for public use).

Print two copies – one to serve and the other to keep, with details about how the trespass notice was served recorded in the 'Details of Service of Trespass Notice' part.

The completed trespass notice can be served by the occupier or an agent of the occupier with the occupier's authority. 'Occupier' means any person in lawful occupation of that place or land and includes any employee or other person acting under the authority of any person in lawful occupation of that place or land.

To serve a notice, simply hand it to the person. If they refuse to accept it and it drops to the floor, it is still considered served. Keep that copy and note down that the person refused to accept the notice.

Rule [3.42](#) of the District Courts Rules 2009 provides some guidance on personal service. Personal service of a trespass notice is permissible and may be effected "by leaving the document with the person to be served, or, if that person does not accept it, by putting it down in that person's presence and bringing it to that person's attention".

### Entry of outcome and alert on NIA

Record service of the trespass notice as a '2Z' (Other Service Request) on a Police 101 (short report) so that an occurrence and alert can be generated.

There should be sufficient information contained in the alert to inform staff and clearly identify the reasoning behind the decision so as to support any challenge at some later point. In this situation it would be appropriate to attach supporting evidence/documents to the NIA alert.

**Note:** This is particularly important in the issue of blanket trespass notices.

### Storage of 'Trespass Notice' and 'Details of Service of Trespass Notice'

Store the copy of the 'Trespass Notice' and 'Details of Service of Trespass Notice' in accordance with local procedures.



## Blanket trespass bans

This section contains the following topics:

- [Introduction](#)
- [Definitions](#)
  - [Blanket trespass notices](#)
  - [Occupier](#)
  - [Trespass notice schemes](#)
- [Is it legal to issue blanket trespass notices?](#)
  - [Blanket trespass notices should only be used in exceptional circumstances](#)
- [Good practice guidelines in respect of blanket trespass notices](#)
  - [Action for Police \(premises using blanket trespass notices\)](#)
  - [Instances where issue of a blanket trespass notice may be lawful](#)
  - [Circumstances that might justify the issue of a blanket trespass notice](#)
  - [Legality of blanket trespass notices](#)

### Introduction

Section 4(2) of the Trespass Act 1980 has been used to issue 'blanket' trespass notices banning shop thieves or disorderly patrons from commercial and retail premises.

Blanket trespass notices are often held to be invalid by the court because it is difficult to show that a person is **reasonably likely to trespass on each and every location listed in the blanket trespass notice**. They can also be seen as unreasonably restricting free movement.

For this reason, Police officers must not issue, promote or become involved in serving blanket trespass notices without first obtaining legal advice.

Commercial entities have developed [trespass notice schemes](#) that involve the issue of blanket trespass notices to intoxicated and disorderly patrons to ensure they stay off a group/number of licensed premises or other private premises. For example, a blanket trespass notice may be used to bar shop thieves from entering multiple retail stores in the same chain or intoxicated persons from entering multiple licenced premises.

[Blanket trespass notices](#) are issued where either the participating owner/occupier:

- authorises other participants to issue trespass notices in respect of their premises, or
- is advised of the risk posed by an intoxicated and/or disorderly person (perhaps at a regular meeting) and decides to trespass the person from their premises.

This section of the chapter is focused on:

- the legality of blanket trespass notices
- good practice for Police when responding to incidents involving blanket trespass notices
- Police discouraging the practice of issuing blanket trespass notices by licensees, managers and staff of licensed or commercial and retail premises.

It will provide staff with:

- an understanding of the legal implications of the use of blanket trespass notices
- good practice guidance in the field.

### Definitions

This table provides definitions for key terms used through out this document.

Term	Definition
<b>Blanket trespass notices</b>	The term 'blanket trespass notices' means those notices issued under section 4 of the Trespass Act 1980 often banning

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	intoxicated and/or disorderly patrons from multiple licensed premises, banning thieves from participating commercial and retail premises or banning access to multiple pieces of land belonging to a cooperating group of owners, e.g. forestry blocks or farm land.
<b>Occupier</b>	'Occupier', in relation to any place or land, means any person in lawful occupation of that place or land; and includes any employee or other person acting under the authority of any person in lawful occupation of that place or land. Section 2 Trespass Act 1980 refers. <b>Note:</b> Licensed premises are regarded in law as private land.
<b>Trespass notice schemes</b>	'Trespass notice schemes' refer to community schemes, where each participant (occupier) either: <ul style="list-style-type: none"> <li>• authorises other participants to withdraw a person's licence to enter and stay on any participating premises and/or issue trespass notices in respect of any participating premises, or</li> <li>• is advised of incidents involving intoxication, theft or disorder at other participating premises and decides whether or not they will also trespass the person from their premises.</li> </ul>

### Is it legal to issue blanket trespass notices?

Test:

- Section 4 of the Trespass Act 1980 requires an occupier of a place to have reasonable cause to suspect that a person is likely to trespass on that place before he or she can warn a person to stay off that place. In the case of a blanket trespass notice, the occupier needs to have reasonable cause to suspect that a person is likely to trespass to **each and every** place listed on the trespass notice.

### Blanket trespass notices should only be used in exceptional circumstances

Police officers are discouraged from promoting or participating in blanket trespass schemes because of the underpinning legal principle discussed above. It is difficult to establish any reasonable likelihood that an individual will trespass on every location named on a blanket trespass notice. This means that blanket trespass notices are generally difficult to enforce in court.

#### Direction to staff

**For this reason, Police should not issue, promote or become involved in serving blanket trespass notices unless there are exceptional circumstances justifying their use. Officers must seek legal advice to ensure that the legal test is met, and must satisfy themselves that there is reasonable cause to suspect that the person is likely to trespass on every place covered by the notice.**

### Good practice guidelines in respect of blanket trespass notices

#### Action for Police (premises using blanket trespass notices)

Given the risks associated with blanket trespass notices, Police members must seek legal advice before becoming involved with any trespass notice scheme that promotes the use of blanket trespass notices. Their use is generally to be discouraged.

Section 4(2) of the Trespass Act requires the occupier to restrict the particular places included in a trespass notice to those where the occupier has reasonable cause to suspect the person will enter.

Step	Police action regarding blanket trespass notices
1	Discourage all licensing, commercial and retail action plans and accords from promoting trespass notice schemes using blanket trespass notices.

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2	Do not endorse any trespass notice scheme that uses blanket trespass notices.
3	Do not enforce trespass notice schemes using blanket trespass notices unless you are satisfied that the person issuing the trespass notice: <ul style="list-style-type: none"> <li>• Has the authority to issue trespass notices in respect of all premises listed in the notice; and</li> <li>• there are reasonable grounds to suspect that the person is likely to trespass on each place listed and has trespassed on one of the places listed.</li> </ul> or <ul style="list-style-type: none"> <li>• You have obtained legal advice confirming that the scheme is likely to be a valid use of a blanket trespass notices.</li> </ul>
4	Encourage licensees, managers and staff from licensed, commercial and retail premises as <a href="#">occupiers</a> to: <ul style="list-style-type: none"> <li>• stop issuing blanket trespass notices</li> <li>• issue individual trespass notices on persons: <ul style="list-style-type: none"> <li>– who have trespassed on their premises, or</li> <li>– where they have reasonable cause to suspect that those persons are likely to trespass on their premises</li> </ul> </li> <li>• serve their own trespass notices in person or by registered post</li> </ul> <b>Note:</b> Should licensees, managers and staff remain in doubt about the validity of the trespass notices then suggest they seek their own legal advice.
5	If Police arrest and charge a person with an offence involving licensed premises, then consider seeking bail conditions requiring them to “stay off” and not to “enter” licensed premises.

### Instances where issue of a blanket trespass notice may be lawful

[Blanket trespass notices](#) may be lawful if the:

- person issuing the notice is the [Occupier of all](#) the premises identified in the blanket trespass notice **and has reasonable cause to suspect** that the person is likely to trespass on each and every place listed,
- licensed premises identified in the blanket trespass notices are controlled and owned by a single licensing trust or, for example, a committee running a ‘Trespass Charter’ and the trust issuing the notice has reasonable cause to suspect that the person is likely to trespass on each and every place listed in the notice; or
- committee running a ‘Trespass Charter’ or ‘Trespass Notice Scheme’ has proper guidelines and procedures to ensure that a notice is issued with the participants’ authority and where the places specified on the notice are those where there is a reasonable cause to suspect the person will trespass.

### Circumstances that might justify the issue of a blanket trespass notice

A blanket trespass notice might be justified:

- to prevent continuing crime by repeat offenders, providing the occupier has reasonable cause to suspect that the trespasser is likely to continue their pattern of behaviour at all locations identified in the notice
- to exclude persons from several premises where their conduct or actions compromise staff and customer safety at those premises.
- where an individual poacher is reasonably suspected of poaching on multiple blocks of land (i.e. forestry blocks).

### Legality of blanket trespass notices

Blanket trespass notices are almost always held to be illegal. For this reason Police should exercise extreme care before serving or enforcing these notices.



## Trespass, Continued...

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Refer to *Auckland Council for Civil Liberties and Others v Attorney General (Police)*, (High Court, Auckland Registry, CP 452/93, 10 November 1993, Williams J) and to [Police v Heke](#) (*aka Stanton*) Nelson District Court 07/09/2011 CRI 2011 042 435.

In first case (Auckland Council for Civil Liberties) Police received advice from the Solicitor-General that blanket trespass bans were likely to be held invalid by the Court; assurances and undertakings were then given by Police to the plaintiffs. This led to the matter being resolved between the parties without the need for litigation.

In [Police v Heke](#) the Nelson City Council issued a blanket trespass notice to Mr Heke that covered almost all Council controlled parks and reserves in the Nelson area. The notice was held to be unreasonable and unlawful. This is because the notice:

- purported to limit Mr Heke's right to free movement,
- covered areas Mr Heke was unlikely to visit,
- did not assist him to determine where he could go.

Whilst there is no identified case law to support this proposition, the courts may more readily entertain blanket trespass notices issued in respect of private property than those issued in respect of premises the public may enter. Because of the uncertainty around this point, members must seek legal advice.



## Trespass, Continued...

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### Trespass procedures

This section contains the following topics:

- [Trespass after warning to leave](#)
- [Trespass after warning to stay off \(wilful trespass\)](#)
- [Being found on property without reasonable excuse](#)
- [Obligation to give name and address - section 9](#)

#### Trespass after warning to leave

If a person trespasses after being warned to leave, follow these steps.

Step	Action						
1	Obtain the complainant's full particulars and be sure they are an occupier.						
2	Ascertain all facts about the complaint.						
3	Decide whether the suspect is there without authority.						
4	Ask the complainant to, in your presence, warn the person to leave. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%;">If the person. . .</th> <th>then. . .</th> </tr> </thead> <tbody> <tr> <td>leaves peacefully</td> <td> <ul style="list-style-type: none"> <li>• record full particulars</li> <li>• if the occupier asks you to, warn the suspect to stay off and tell him or her it is an offence to return to the premises within two years.</li> </ul> </td> </tr> <tr> <td>refuses to leave</td> <td> <ul style="list-style-type: none"> <li>• Ask the complainant in the presence of the person: "Do you wish me to act on your behalf?"</li> <li>• If the complainant says "yes", warn the person to leave. Give the suspect a reasonable time to do so.</li> <li>• If the person still refuses, you can arrest. Report if the person was carrying a firearm.</li> </ul> </td> </tr> </tbody> </table>	If the person. . .	then. . .	leaves peacefully	<ul style="list-style-type: none"> <li>• record full particulars</li> <li>• if the occupier asks you to, warn the suspect to stay off and tell him or her it is an offence to return to the premises within two years.</li> </ul>	refuses to leave	<ul style="list-style-type: none"> <li>• Ask the complainant in the presence of the person: "Do you wish me to act on your behalf?"</li> <li>• If the complainant says "yes", warn the person to leave. Give the suspect a reasonable time to do so.</li> <li>• If the person still refuses, you can arrest. Report if the person was carrying a firearm.</li> </ul>
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#### Trespass after warning to stay off (wilful trespass)

If a person trespasses after being warned to stay off, follow these steps.

Step	Action
1	Obtain the complainant's full particulars and be sure they are an occupier.
2	Ascertain that a warning was issued to stay off the place within the last two years. The person must have been advised to stay off for 2 years.
3	Ideally get the person to acknowledge the previous warning.
4	Ask the person for an explanation.
5	Warn the person to leave and arrest if he / she refuses to do so.

#### Being found on property without reasonable excuse

If a person is found on property without a reasonable excuse, follow these steps.

Step	Action						
1	Be sure that the person has been found without reasonable excuse in one of the places named in section 29 of the Summary Offences Act 1981.						
2	Decide whether there was criminal intent. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%;">If. . .</th> <th>then. . .</th> </tr> </thead> <tbody> <tr> <td>there was <b>no</b> criminal intent</td> <td>warn the person to leave and if this is refused, you can arrest for an offence under section 29(1).</td> </tr> <tr> <td>there was criminal intent</td> <td>you can arrest under section 29. Search the person, and obtain full particulars of victims and a proper description of the place involved.</td> </tr> </tbody> </table>	If. . .	then. . .	there was <b>no</b> criminal intent	warn the person to leave and if this is refused, you can arrest for an offence under section 29(1).	there was criminal intent	you can arrest under section 29. Search the person, and obtain full particulars of victims and a proper description of the place involved.
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## Trespass, Continued...

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### **Obligation to give name and address - section 9**

An occupier or constable may require any person found trespassing to give his name and address, and the number of their firearms licence under the [Arms Act 1983](#) if the person is in possession of a firearm.

If the trespasser fails or refuses to give the constable this information, the constable may caution the person for failure or refusal to supply the required particulars and if the person continues to fail or refuse to provide the information, may arrest without warrant.





### Trespass on state highways

This section contains the following topics:

- [Background](#)
  - [State highways](#)
- [Management of state highways](#)
  - [Right to enforce the Trespass Act on state highways](#)
- [When is it appropriate for Police to exercise the NZTA delegation?](#)
  - [Determining 'reasonableness'](#)
- [Liaison required with NZTA](#)
  - [Contact details for liaison](#)
- [The delegation](#)

#### Background

In May 2009 thousands of people, after breaking a Police cordon, walked or cycled over Auckland Harbour Bridge to campaign for access over the bridge. This caused traffic chaos and put motorists and other road users at risk.

To ensure Police members are authorised to act on behalf of New Zealand Transport Agency (NZTA) in dealing with crowds or protesters in such situations, the Agency has authorised **all constables** of New Zealand Police by way of delegation to act on its behalf to prevent any person from trespassing on [state highways](#) or NZTA controlled land for the purposes of section [56](#) Crimes Act 1961 (relating to reasonable defence of land or buildings) and the Trespass Act 1980.

#### State highways

State highways are roads that are declared by notice in the *Gazette* to be a state highway. They are not Territorial Local Authority (Council) administered roads. (Refer to sections [5](#) and [103](#) Land Transport Management Act 2003).

#### Management of state highways

One of the functions of NZTA (see section [95](#) of the Land Transport Management Act 2003) is to manage the state highway system. The Agency's powers and duties in relation to state highways are set out in section 61 of the Government Roading Powers Act 1989. Section [61\(2\)](#) states:

(2) All rights and powers vested in any local authority under sections...353 of the Local Government Act 1974, and all rights and powers vested in any local authority in relation to roads under any other Act, may, in respect of any state highway be exercised by the Agency (i.e. NZTA).

#### Right to enforce the Trespass Act on state highways

The Court of Appeal decision in *Police v Abbot & Mountier (Police v James Abbott)* (CA109/2009) and *Frances Mountier* (CA110/2009)) raised the issue of powers of a local authority to invoke the Trespass Act 1980 in relation to a peaceful protest on an area designated as a road. The respondents argued that the Trespass Act could not be applied to public roads as trespass law protects a right of exclusive occupation which the Council did not possess as the public has a common law and statutory right to pass and re-pass on the highway together with an associated right to freedom of assembly under the New Zealand Bill of Rights Act 1990 (NZBORA).

Section [317\(1\)](#) of the Local Government Act 1974 vests in fee simple all roads in the council of the district in which they are situated and section [353](#) states that the Council "shall take all sufficient precautions for the general safety of the public and traffic and workmen employed on or near the road".

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The controlled document can be found in the Police Instructions site which is accessible via the New Zealand Police Intranet.



The Court held that these provisions give Council control over the land, that the Council is an 'occupier' and could avail itself of the Trespass Act. The fact that there were other remedies in the Local Government Act did not mean that the Trespass Act is excluded, although in some circumstances it may not be reasonable for the Council to choose to rely on trespass rather than engage relevant provisions of the Local Government Act. The appropriate remedy will be a question of fact and degree in a particular case.

### **When is it appropriate for Police to exercise the NZTA delegation?**

When authorising all constables to act under the Trespass Act on their behalf, the NZTA advised that because of the public's right to use and have access to a state highway, their power to enforce the Trespass Act "should only be carried out when an assembly on state highways is obstructive or creates a nuisance".

In addition to the restriction imposed by the NZTA, Police must:

- be satisfied that it is reasonable to use the Trespass Act rather than any other powers available to them
- ensure that the rights and freedoms in the New Zealand Bill of Rights Act 1990 (including freedom of expression and peaceful assembly) are limited only to the extent reasonably necessary.

### **Determining 'reasonableness'**

Factors to consider when deciding if using the Trespass Act (in situations involving trespass on state highways) is reasonable include:

- whether the assembly is unreasonably prolonged
- the rights and freedoms of other people using state highways
- the size of the assembly and its duration, when balancing the competing interests of the public authority and the effective operation of the property it owns against the interests of individuals wishing to assemble and to express themselves.

(See [Police v Beggs](#) [1999] 3 NZLR 615 (HC) (case involving protestors trespassed from Parliament grounds).

### **Liaison required with NZTA**

If there is advance warning of any protests or disruption by crowds on state highways, Police must liaise with regional NZTA staff with the aim of developing measures to prevent the trespass or to best manage the trespass should it occur.

### **Contact details for liaison**

Road Policing managers and other senior Police managers meet regularly with Regional Managers from NZTA to discuss matters of mutual interest. In the event that you become aware of planned disruptions on state highways, advise your district's Road Policing Manager or Area Commander as soon as possible so that they can raise the matter with the appropriate NZTA managers through their usual network contacts.

In the event of an emergency or if road closure assistance (e.g. contractors etc) is required, ask your local Comms Centre to contact the NZTA call centre which acts as a single contact point for Police to report events on state highways.

### **The delegation**

The delegation of powers from New Zealand Transport Agency comprises two parts:

- a sub-delegation from the Chief Executive NZTA to NZTA's Regional Director, Auckland and Northland of his power to authorise all members of NZ Police to act on behalf of the agency
- an authorisation from the NZTA's Regional Director, Auckland and Northland to **every** NZ Police constable.



## **Trespass, Continued...**

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These delegations can be viewed in the '[Delegations](#)' section of the Police Instructions site.