

## FREQUENTLY ASKED QUESTIONS

# Recreational access and the Health and Safety at Work Act (2015)

<p><b>1. What's recreational access?</b></p>	<p>It's when people use the land's features (eg forests, waterways or cliffs) for an outdoor activity (eg walking, cycling, hunting, fishing, rock climbing, swimming).</p>
<p><b>2. What's the issue with recreational access</b></p>	<p>Sometimes people need to cross or use land that's a workplace, or that's affected by work, to do these activities. This land can be:</p> <ul style="list-style-type: none"> <li>- public/crown-owned (eg Department of Conservation land, Council land, Crown owned forestry land school land), or</li> <li>- private (eg working farms).</li> </ul> <p>There's sometimes confusion about what responsibilities a person conducting a business or undertaking (PCBU) has under HSWA when this happens.</p>
<p><b>3. What does HSWA say?</b></p>	<p>HSWA only applies to recreational access when the land is part of a workplace or is affected by a PCBU's work activities.</p> <p>PCBUs need to make sure, so far as is reasonably practicable, that people's health and safety isn't put at risk from:</p> <ul style="list-style-type: none"> <li>- the work or workplace</li> <li>- the means of entering and exiting the workplace</li> <li>- anything arising from the workplace.</li> </ul>

**4. What's a workplace?**

Sometimes there's confusion about which parts of a PCBU's premises are classified as a workplace under HSWA. These flow charts will help you decide what counts as a workplace.

**A WORKPLACE ON A FARM**

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    graph TD
      Q1[Is the location part of the farm buildings or immediate surrounds (involved in the work)?] -- Yes --> W1[Is a workplace under HSWA]
      Q1 -- No --> Q2[Is the location at the dwelling house on the farm?]
      Q2 -- No --> Q3[Is work currently occurring at this location?]
      Q2 -- Yes --> W2[Not a workplace under HSWA]
      Q3 -- No --> W2
      Q3 -- Yes --> W1
  
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**A WORKPLACE OTHER PREMISES**

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    graph TD
      Q4[Does work physically occur on this part of your premises?] -- Yes --> W3[Is a workplace under HSWA]
      Q4 -- No --> Q5[Do workers go to, or are likely to go to, this part of your premises?]
      Q5 -- Yes --> W3
      Q5 -- No --> W4[Not a workplace under HSWA]
  
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5. Does it matter if the land is public or private?	It doesn't matter if the land is public or private. If there's work happening on it, or it's affected by work, it's covered by HSWA.
6. What does 'reasonably practicable' mean?	Our <a href="#">Reasonably practicable</a> fact sheet gives you information about what reasonably practicable means.
7. So what do PCBUs actually have to do?	<p>PCBUs can often meet their duties in simple ways (eg passing on warnings about work-related hazards through signs, emails, in person, or on the phone).</p> <p>It's possible some risks will remain even after the PCBU has done what is reasonably practicable. They <b>don't</b> have to manage the risks of the recreational activity. That's the responsibility of the person doing the activity.</p> <p>The only exception is when the PCBU also provides the activity. Then they're also responsible for managing the activity's risks, so far as is reasonably practicable.</p> <p>The <a href="#">Walking Access Commission</a> has <a href="#">guidance for landowners</a> about their responsibilities.</p>
8. Do recreational visitors have any responsibilities?	<p>Anyone accessing land for recreation needs to follow the PCBU's:</p> <ul style="list-style-type: none"> <li>- health and safety instructions regarding the work and workplace, and</li> <li>- other reasonable requests (eg shutting farm gates and not frightening stock during lambing).</li> </ul> <p>They should also manage the risks of their activity. This includes managing, caring for, and maintaining their own safety fixtures and equipment.</p>
9. Are PCBUs responsible for natural features on their land?	<p>Naturally occurring features include things like bluffs, rocks, forests, swamps, and rivers.</p> <p>PCBUs aren't responsible for naturally occurring features that aren't part of, or affected by, their work.</p> <p>If a natural feature is directly affected by the work of a PCBU (eg a commercial dam floods a river that is used for swimming) they may have duties to manage the risks.</p>
10. Are PCBUs responsible for recreation related accidents on their land?	<p>If someone accesses land for recreation and hurts themselves as a result of the recreation activity, the PCBU who provided access isn't responsible.</p> <p>The only exception is when the PCBU's business or undertaking also provides the activity. Then they're also responsible for managing the activity's risks.</p>
11. When will WorkSafe get involved?	<p>We don't want to stop recreational access.</p> <p>To date, we haven't investigated or prosecuted any accidents that have happened when visitors have been hurt as a result of their own recreational activities.</p> <p>If we're notified we'll follow our <a href="#">When will WorkSafe intervene</a> position. Where appropriate we'll refer enquiries to the <a href="#">Walking Access Commission</a></p>
12. What happens when there's a legal right of public access?	Even if there's a legal right of access, both PCBUs and visitors still have responsibilities as outlined in questions 3, 7 and 8.
13. What is WorkSafe's role in dealing with issues around recreational access?	<p>WorkSafe doesn't have a role in dealing with recreational access issues.</p> <p>Where appropriate we'll refer enquiries to the <a href="#">Walking Access Commission</a> who provide a free disputes resolution service.</p> <p>They can also help land owners create Walking Access Easements. Easements let land owners and visitors negotiate terms (eg access times and management and standards for any fixtures), which may help resolve some disputes.</p>