

Trespass

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Policy statement and principles

What

The issuing and enforcement of trespass notices comes under the [Trespass Act 1980](#) and applies to commercial premises that are open to the public as well as private premises.

Police should approach the issuing of trespass notices with care. The key elements of trespass can be complicated and revolve around things such as who actually is the lawful owner/occupier, does the person wanting another trespassed from a property have the authority to trespass a person, does the person to be trespassed have an implied licence to be at the location, and has this been withdrawn? Potential trespass matters involving leases, public meetings and Māori land can further complicate matters.

Police should only become involved in issuing trespass notices to assist in circumstances such as, the occupiers fear the person(s) on whom they wish to serve notice, or where there are large crowds, or where the owners/occupiers are unavailable, or a criminal offence has also been identified and the trespass notice becomes part of the incident resolution.

As there are also professional 'document server' or 'process server' services available to serve trespass notices on behalf of members of the public, Police involvement is more aligned with incidences of non-compliance and/or enforcement.

Staff, victim and public safety is the primary concern when attending the scene of any trespass incident.

Why

In the interest of public satisfaction and safety, victim focus and offender apprehension, Police have a responsibility to prevent, investigate, reduce and resolve crime(s).

How

Police will ensure that:

all relevant staff are suitably trained and aware of their responsibilities when exercising any powers under the Trespass Act 1980

for staff safety any discretionary action taken is in accordance with Police safety policies and that the [TENR-Operational threat assessment](#) tool is utilised. This will ensure compliance with the Health and Safety at Work Act 2015

if any offences are identified, actions such as enforcement, detention and/or prosecution as deemed appropriate will be taken.

Related instruction

This instruction should be read in conjunction with the Police Manual chapter '[Community disclosure of offender information](#)'.

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 Police employee, 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).

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

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 (i.e. no money changes hands) a bare or implied licence 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 (some form of payment is made). 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 and residential premises

Where a person has a tenancy (is a lessee) for the purposes of the Residential Tenancies Act (RTA), his or her rights and obligations (as well as the rights and obligations of a landlord (lessor)) are determined by that Act. The Tenancy Tribunal has exclusive jurisdiction to determine disputes between landlords and tenants.

A landlord may apply to the Tenancy Tribunal for an order terminating a tenancy where, for example, the tenant has failed to pay rent, or has damaged the property. An order of the Tribunal terminating the tenancy simultaneously operates as an order for possession of the property, thereby returning to the landlord rights of occupation of the property. Possession orders enable the landlord to have the tenant removed from the premises. Once the possession order is filed with the District Court a court enforcing officer may assist the landlord in removing the tenant, but a landlord may not remove a tenant without such an order.

If a residential tenant refuses to leave the premises at the end of a tenancy the landlord must not enter into possession of the premise without a possession order made by the Tenancy Tribunal.

The RTA is designed to deal with a range of disputes between those who occupy residential premises and those who own them. For this reason, **trespass notices should not be issued by Police where access to a residential property is disputed.**

Enforcing tenancy possession orders

Police cannot enforce a possession order from the Tenancy Tribunal. The possession orders must be firstly filed with the District Court, where they become eviction warrants that a bailiff can use to evict someone from a property. **Note** that:

- section 106 of the Residential Tenancies Act 1986 requires a possession order be filed with the District Court before it can be

enforced;

- once filed, the enforcement timeline outlined in section 138 of the District Court Act 2016 applies; and
- a Court bailiff should be the first option for enforcement of the order, however:
 - where necessary it can also be enforced by Police who then have the powers as if the possession order is a warrant for the recovery of land as in section 194 of the District Court Act 2016.

Boarding house tenants

Unlike tenants, a boarding house occupant may be subject to the supervisory control of the landlord even if the tenant has exclusive right to occupy his or her room. Boarding house tenants are licensees; they have exclusive possession of a room, but no estate in the land. Again, the general rule is that the landlord must seek a possession order if the boarding house tenant fails to vacate the boarding house following lawful termination of tenancy.

Once the landlord has been granted a possession order in the District Court police may oversee the court officer's eviction of the former owners.

Squatters

Squatters do not hold licences. A squatter does not have permission from the occupier of the premise to be there. The occupier may seek assistance of the court once the Tenancy Tribunal has issued a possession order in favour of the occupier.

Once the occupier has been granted a possession order in the District Court the police may oversee a court officer's eviction of the squatters.

Trespass and Māori Land

Māori concepts of land holding differ from Pakeha concepts. Communal ownership and a sense of a continuing relationship with and obligations to land are tenets of Māori beliefs, and are reflected in our law.

The Te Ture Whenua Māori Act 1993 promotes the retention of Māori land in the hands of owners, their whanau and hapu, to protect wahi tapu, and facilitate the occupation, development, and utilisation of that land for the benefit of those owners, whanau and hapu. The primary purpose of the Te Ture Whenua Māori Act is to provide for the protection and management of Māori freehold land; land whose beneficial ownership has been determined by the Māori Land Court.

A freehold order issued by the Māori Land Court, once registered, vests the land in named persons as tenants in common for an estate in fee simple (freehold-but may still have a mortgage).

Māori land may be held in trust for the beneficial owners of the land. Several types of trusts may be established for administration of Māori land. Applicable rules vary, depending on the nature of the trust. The trustees are occupiers of the land and can therefore determine who is permitted access to and use of the land. They may deny individuals access to the land, by means of a trespass notice, even if those individuals are beneficial owners of it.

Beneficial owners of Māori land might seek to resist a trespass notice served on them, on the basis of their beneficial ownership. Beneficial owners might seek to exclude others from the land.

The Māori Land Court may determine claims for damages for trespass or other injury to Māori freehold land ([s18\(1\) \(c\)](#) Te Ture Whenua Māori Act).

Injunctions

The Court may issue injunctions against actual or threatened trespass or injury to Māori freehold land and all Māori reservations, including taking of products from the land, and the distribution of proceeds of any alienation. The Court may also issue injunctions requiring occupiers to leave the land and to remove structures those occupiers have erected on that land.

Even if the Court issues an injunction compelling an individual or group to vacate the land, Police may not act on the injunction itself. Where an injunction is issued by the Māori Land Court, pursuant to section 85 of the Te Ture Whenua Māori Act, it is then transmitted to the High Court for filing in that Court. The injunction may be enforced after a writ of attachment (court order to seize an asset) is issued by the High Court (or other means of enforcement is permitted by the Court). The writ of attachment allows enforcement of the terms of the injunction and may be acted on by an officer of the Court.

Case law makes it clear that a beneficial owner of Maori land may be trespassed from that land by trustees of that land. In *Police v Taueki* [2016] NZHC 3098 Police appealed the lower court's findings that the trustees of the land were not occupiers of that land and so were not empowered to trespass Mr Taueki from it. The second point on appeal concerned the nature of Mr Taueki's interest in the land in question. While Mr Taueki was a beneficial owner of the land the High Court determined that the trustees of the land were empowered to trespass him. Finally, the Court held that there was sufficient evidence of the trustees' resolution (the decision made by trustees) to trespass Mr Taueki, satisfying the procedural requirement of recording (and thereby proving) the decision to trespass him.

Police are frequently asked to intervene in disputes over occupation of Maori land. Given the complexity of titles to Maori land, and the possibility that many persons may have an interest in any one parcel of land, it is not easy for Police to establish with certainty when and if a group with interests in the land may override the interests of another group. Disputes over access to Maori land are best dealt with in a civil setting, and where possible Police should stay out of civil processes unless there is a risk of disorder or violence (in which case the issues may be criminal in nature, not civil).

Where allegations of trespass to Maori land are made, and police assistance sought, staff may wish to contact the Maori Land Court. Court staff may be aware of the dispute and / or proceedings may be before the court. Information obtained from Court staff may inform the police response; which could simply be ensuring maintenance of the peace pending resolution of proceedings. As well, Iwi Liaison Officers and Maori Wardens may be called upon for practical advice and assistance.

Enforcement of Māori Land Court Orders

Police may be obliged to participate in enforcement of Māori Land Court orders.

For the purpose of enforcing any order made by the Court for the payment of money, according to section [81\(1\)](#) of the Te Ture Whenua Māori Act, a Māori Land Court Judge may, on the application of any part or of the Judge's own motion, transmit a copy of that order to the District Court where it shall be filed as of record in the District Court. Upon filing, the order must be deemed to be a judgment of the District Court and enforced as if the order has been made in a proceeding of the District Court.

Similarly, if the Māori Land Court makes an order for the recovery of land, according to section [81A](#) of the Te Ture Whenua Māori Act, the Court may, on application of any party or of its own motion, transmit a sealed copy of the order to whichever of the High Court or District Court to enforce the order. Upon filing, the order is treated as having been made by the enforcing court and may be enforced by the enforcing court.

If a Māori Land Court order is to be enforced as a District Court order, the District Court Act 2016 applies. An order may be enforced by Police if the District Court issues a warrant for enforcement according to part 10 of the District Court Act 2016.

If a Māori Land Court order for the recovery of land is to be enforced as a High Court Order, a High Court Judge can direct enforcement through a possession order. If a possession order is made, Police are authorised and required to enforce possession of the land per the order according to part 17 of the High Court Rules 2016.

Police assistance to court officials

Police should only become involved in removing a person from property where the court enforcing officer overseeing the removal holds a possession order or similar court process authorising possession of the property in question. In such cases, police are acting to support the actions of the enforcing officer and should be covered by the protections afforded to that officer. In general, the court order on which the enforcing officer is acting itself provides sufficient authority for the action taken. If the action taken exceeds the authority of the relevant court order then the enforcing officer could be held liable (as could Police). For this reason, Police should satisfy themselves, even when assisting court enforcing officers, that the officers are properly exercising their powers.

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 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

Lawful 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 tracked courier service to their usual home address in New Zealand as registered mail is no longer available via NZ Post.

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.

Public meetings

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

At the request of the chairperson or lawful occupier you can, for the purpose of preserving order, remove persons from halls or venues hired or made available for an election meeting. Refer to '[Guidelines for policing election meetings](#)' in the 'Election and political matters-a guide for Police employees' chapter.

Trespasser photographs and information

In some circumstances 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

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 sent by tracked courier service to their usual home address in New Zealand as registered mail is no longer available via NZ Post.

Serving a trespass notice personally 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, e.g. 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.

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 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) via Winscribe (or other locally agreed method) so that an occurrence and alert can be generated. This file should be electronic only with no need for a hard copy file.

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'

Scan and attach the 'Trespass Notice' and 'Details of Service of Trespass Notice' and attach to the 2Z occurrence. Destroy the original working documents so as to keep the file fully electronic.

Blanket trespass bans

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 and good practice guidance in the field.

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.

Definitions

This table provides definitions for key terms used throughout this document.

Term	Definition
Blanket trespass notices	The term 'blanket trespass notices' means those notices issued under section 4 of the Trespass Act 1980 often banning 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.
Occupier	'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. Note: Licensed premises are regarded in law as private land.
Trespass notice schemes	'Trespass notice schemes' refer to community schemes, where each participant (occupier) either: <ul style="list-style-type: none"> - 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 - 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.

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 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

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 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.
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"> - has the authority to issue trespass notices in respect of all premises listed in the notice; and - 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. <p>or</p> <ul style="list-style-type: none"> - you have obtained legal advice confirming that the scheme is likely to be a valid use of a blanket trespass notices.
4	Encourage licensees, managers and staff from licensed, commercial and retail premises as occupiers to: <ul style="list-style-type: none"> - stop issuing blanket trespass notices - issue individual trespass notices on persons: <ul style="list-style-type: none"> - who have trespassed on their premises, or - where they have reasonable cause to suspect that those persons are likely to trespass on their premises - serve their own trespass notices in person or by registered post <p>Note: Should licensees, managers and staff remain in doubt about the validity of the trespass notices then suggest they seek their own legal advice.</p>
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.

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, officers must seek legal advice.

Trespass procedures

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"> <thead> <tr> <th>If the person...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>leaves peacefully</td> <td> <ul style="list-style-type: none"> - record full particulars - if the occupier asks you to, warn the suspect to stay off and tell them it is an offence to return to the premises within two years. </td> </tr> <tr> <td>refuses to leave</td> <td> <ul style="list-style-type: none"> - Ask the complainant in the presence of the person: "Do you wish me to act on your behalf?" - If the complainant says "yes", warn the person to leave. Give the suspect a reasonable time to do so. - If the person still refuses, you can arrest. If the person is carrying a firearm ensure that this is recorded in the NIA occurrence and that a Firearms Licence check is carried out. </td> </tr> </tbody> </table>	If the person...	then...	leaves peacefully	<ul style="list-style-type: none"> - record full particulars - if the occupier asks you to, warn the suspect to stay off and tell them it is an offence to return to the premises within two years. 	refuses to leave	<ul style="list-style-type: none"> - Ask the complainant in the presence of the person: "Do you wish me to act on your behalf?" - If the complainant says "yes", warn the person to leave. Give the suspect a reasonable time to do so. - If the person still refuses, you can arrest. If the person is carrying a firearm ensure that this is recorded in the NIA occurrence and that a Firearms Licence check is carried out.
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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 they refuse 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" data-bbox="134 349 1514 622"> <thead> <tr> <th>If...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>there was no 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 no 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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Obligation to give name and address - section 9

An occupier or constable may require any person found trespassing to give their 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

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 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 Roothing 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 (freehold-but may still have a mortgage) 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".

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. If 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.

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