



NEW ZEALAND  
ARCHAEOLOGICAL  
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**NEW ZEALAND ARCHAEOLOGICAL ASSOCIATION NEWSLETTER**



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ON TRESPASS - A NOTE ON THE TRESPASS ACT 1968

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Members of the Association undertake, on signing the membership form, always to seek the permission of the owner or occupier of land where any archaeological investigations are intended. The Association therefore does not condone acts of trespass by its members.

However, anyone tempted to commit trespass will in future be liable to incur not only the displeasure of the Association, but also the penalties for the criminal offences now set out in the Trespass Act 1968. This Act widens the range of criminal offences relating to trespass, and the law on this matter is now more stringent than previously.

Before the passing of the Act, trespass to land was not, except in certain circumstances, a criminal offence in New Zealand, but it was a tort in law, that is, a wrongful act giving the person who suffers the wrong a right of action for damages against the wrongdoer. Trespass might be committed by entry on another's land without lawful justification, refusal to leave after being warned to do so, or by the placing without lawful justification of any material object on another's land. A property owner had the right to use reasonable force to eject a trespasser or prevent him entering. He also had the right to take a civil action against a trespasser for damage caused. The disadvantage of this procedure to the property owner was that only nominal damages could be claimed unless the trespass caused actual damage (McVeagh, 1962, Ch. XXVI).

Prior to last year, trespass was a criminal offence only in the case of certain Crown Lands, state forest areas, National Parks, reserves and private exotic forests. This is still the case. It was also an offence to neglect to leave land after being warned to do so (Police Offences Act, S.6A), and to go on to any land with dog or firearm and disturb any stock depasturing on the land (Animals Act, S.103).

The Trespass Act 1968 includes these last two offences and adds some new ones. The following offences are now prescribed by the Act.

1. Wilful trespass after having been warned to leave (Section 3).

2. Wilful trespass after having been warned, while trespassing on a previous occasion, to stay off the land, provided the warning was given not more than six months before (Section 4).
3. Disturbance of domestic animals by trespassers with dog, firearm or vehicle, or wilful or reckless disturbance of domestic animals (Section 5).
4. Discharge of firearm on, into or across private land (Section 6).
5. Failure to shut gate on or leading to farming land (Section 7).

Offences against section 3 are punishable by three months' imprisonment or a fine of \$200, those against section 4 by a fine of \$200, those against sections 5 and 6 by a fine of \$100, and those against section 7 by a fine of \$50. In addition, a trespasser may be required to give his name and address to the landowner. Failure to do so may result in a fine of \$200, and any trespasser who refuses outright to give his name and address may, after being cautioned by a member of the Police, be arrested without warrant.

Criminal prosecutions may now be taken on the information of the landowner for all the offences described above. This replaces the previous situation under which, apart from the criminal offences under the Police Offences and Animals Acts, a landowner could only take civil action for damages against a trespasser.

The trespasser has some protection under the new legislation. The mere act of trespass is not an offence, provided the trespasser leaves when asked to do so. If he does not, or if he enters the land within six months of being warned off while trespassing, then he is committing an offence.

Nevertheless, the goodwill of landowners is vital to archaeologists, and the general rule must still be to request permission before entering on any land.

#### REFERENCE

McVeagh, J. P. 1962. McVeagh's Land Valuation Law (3rd edition).