

Neighbourhood Support New Zealand



Phone 0800 4NEIGHBOURS
Phone 0800 463 444
www.ns.org.nz

Neighbourhood Support Fact Sheet

Shoplifting – Trespass, Kids and Human Rights

Children are sometimes issued with a trespass notice after they have either been apprehended for shoplifting or have been with a friend who has been shoplifting. The most common complaint by parents is that their child has been discriminated against in terms of the Human Rights Act 1993. They want to know what they can do to challenge the trespass notice.

The first point to note is that provided the provisions of the Human Rights Act have not been infringed, there is very little a person can do if they are trespassed. Shops and malls are private property and management does not have to have any particular reason to trespass a customer. Management are in the same position as the owner of a private home who decides they want one of their guests to leave. They don't have to give a reason and can simply ask the guest to go.

The trespass notice provides formal evidence of a request to stay off the property. If the warning is ignored, the notice can be used in any subsequent trespass prosecution.

Parents may feel indignant where their child has not been guilty of any crime but has been in the company of others who have been caught shoplifting and been trespassed. Guilt by association is the only justification in these cases and cannot generally be challenged.

The Human Rights Act will only apply where a person has been trespassed from a place "to which the public generally has access" if the reason for prohibiting access is covered by one of the grounds contained in the Act. These prohibited grounds include discrimination based on sex, race, religion, political opinion, sexual orientation, family status or employment status. Unless one of these grounds can be proven, it will be very difficult to use the provisions of the Act to challenge the trespass notice.

Where however, a person is trespassed because a member of their family has been caught shoplifting, the provisions of the Human Rights Act may apply. In these cases a complaint can be made to the **Human Rights Commission** on grounds that there is discrimination due to a family relationship (i.e. family status). The Human Rights Commission may investigate the complaint and attempt to mediate a settlement between the parties. This would probably involve trying to get the trespass notice lifted and possibly some compensation for the humiliation caused to the family member. The Human Rights Commission has no power to order that the trespass notice be lifted.

The complainant has the option of taking a dispute to the Director of the Office of Human Rights Proceedings. The Director's Office is independent of the Commission. If the complainant wishes, the Director can investigate the dispute further and then attempt settlement and / or decide whether to take the dispute to the Human Rights Review Tribunal. The Tribunal has the power to order compensation for a breach of a person's human rights.

The [Human Rights Commission](#) has more information on the Human Rights Act and the Disputes Process.

The **Human Rights Act 1993** and other [New Zealand legislation](#) can be located at this address under Statutes.

Further information can also be obtained from a solicitor or a [Community Law Centre](#).