

RMCA April 2017 Health and Safety

As you all now know the Health and Safety at Work Act 2015 has now come into legal effect. Due to the far reaching effects of this legislation, when it was a Bill., RMCA undertook a review of the Bill and reported back to the Clubs. We as a council then decided that we should commission someone to write a Guidance Manual for the Mountain Clubs and so commissioned Andy Hoyle, the RAL Health and Safety Officer to do this with input from myself and others. Andy produced the manual which was circulated to all Clubs last year.

Since that time there have been a number of legal texts written on the subject such as Schmidt-Cleave and Shortall, an Introduction to the Act by Worksafe and I have also had recourse to a presentation done by the Judicial Research Counsel, and a New Zealand Law Society guide on the subject and Tooma's Annotated Health and Safety at Work Act.

These texts and guides attempt to explain what is a complex piece of legislation, and it is fair to say sometimes the explanations given seem to be contrary.

Up until the present time, which I have checked with various legal and academic sources, there have been no cases brought before the Courts which give any guidance on the way the legislation is to be interpreted. Nor is there any what lawyers call guideline judgments. This is a judgment which examines the legislative history and parliamentary intent to set tariff ranges for sentences where the Act has been breached. There is some guidance on sentencing within the Act itself.

Suffice to say the clearly with the maximum sentences available to the Courts, accepted judicial interpretation means that Parliament clearly intends the Act to be taken very seriously by all to whom it applies. Further it is seen as a major reform of the previous law. Therefore I surmise that the approach that the Courts will take will be a purposive approach. That is the Courts will seek to give effect to Parliament's intentions. Currently the Courts have utilised language which gives 'significant weight' to deterrence and accountability for harm'. Two of the most important aspects of current sentencings (amongst a host of other) are the degree of culpability, and the degree of harm resulting. Obviously the environment in which the Clubs exist, holds great potential for risk and harm due to external factors both easily and not so easily foreseeable.

The focus for the Clubs should be on 'safety' rather than strict 'compliance'

Why do we need to be focused on that? Well we operate in an inherently hazardous environment.

With that in mind, I want to examine for you the meaning of some of the wording of the Act. As I am well aware from past correspondence that some Clubs considered the Act did not apply to them. In my considered view which I will attempt to explain, I think it does whether we like it or not. My view is supported by the Tooma book, which is the only publication I have consulted which mentions this issue.

Interestingly,also, no one can contract out of the provisions of the Act, or insure themselves against the fines regime in it.

The key definitions which cause controversy are what is a PCBU (person conducting a business or undertaking)? And whether the exemption of a Volunteer Organisation applies to the Clubs. On a first look at the definition of a PCBU, this can apply to the Clubs because it intends to cover organisations both in business, and also whether they they are profit making or not. Then looking at the definition of a Volunteer Organisation, it defines this as a group of volunteers working together for one or more community purpose where none of the volunteers whether jointly or alone employs anyone to do work for the organisation. Also, according to the current texts, a volunteer worker seems

to be limited in the Club situation to where a person may be a volunteer worker for a limited purpose, such as a Club Race Day moderator or official, or running a fundraiser. So essentially, the Clubs are captured in my view by the Act.

The definition of a PCBU whilst purportedly excluding volunteer organisations, but then goes on to catch them if they employ anyone as a worker, which includes a contractor OR a volunteer.`

The Act has a number of broad objectives, and those relative to the Clubs are;
protecting workers and other persons against harm to their health and safety by minimising or eliminating risks.

Providing education and training

Providing a framework for continuous improvement and progressively higher standards of health and Safety

Securing compliance with the Act.

Therefore the Clubs need to be proactive in dealing with these objectives.

In practical terms, this means utilising as a base, the Health and Safety template which RMCA has had done. This is of course a living document, and we will continue to refresh and update it as situations arise which mean it needs to be extended. To that end RMCA asks you all to advise us of any situation you encounter which may not be covered by the manual, upon which you would like some assistance. But you all need to think about your own particular situations to establish an effective management system. Also Clubs need to be aware of the duty to report a notifiable event as soon as possible. A notifiable event is serious harm to an employee or person in a place of work, such as serious, head, eye, burn or breakage,. You have to notify Worksafe New Zealand. The details are as follows.

There is a 24 hour helpline 0800 030 040. There is an online notification form.

The postal address is P.O. Box 165 Wellington 6140 and the ordinary phone number is 048977699. The more serious an incident the more likely a workplace inspector will attend.

The general obligations on a PCBU which apply to the Clubs are;

Providing and maintain a work environment which is without risks to H &S,

Safe work systems,

Adequate facilities for workers welfare,

Healthy and safe worker accommodation,

Fixtures fittings and Plant are safe,

Any contractors, installers of structures, dismantlers of equipment or outside workers on the Club have a H & S Plan.

You don't have to be concerned about the safety of a person who is on the premises unlawfully, e.g. perhaps a burglar.

Inspectors appointed under the Act have wide powers of entry and inquiry, and the power to compel the production of a wide range of information and documentation from any organisation they are investigating. They can issue notices to improve work practises and order the cessation of unsafe work.

I do not want to seem to over emphasise our responsibilities, however what does need to be understood is that we need to comprehend the obligations we are faced with and deal with them in a sensible practical way, because no one wants to have to deal with the very severe penalty regime which the Act imposes.

For information on the Act see www.worksafe.govt.nz and in particular the Introduction to the Health and Safety at Work Act 2015.