



DLA PHILLIPS FOX

EVERYTHING MATTERS

Health & Safety in Employment Act 1992: update

MLAANZ CONFERENCE 2013

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Developments

- Exposure for damages for personal injury is to increase, making insurance for breaches of regulatory statutes an important part of risk management.
- There are likely to be changes to the powers of Inspectors investigating offences under the Act.
- Fines for breaches of the HSEA are beginning to 'bite'

Damages for personal injury

- Current position: recovery of damages for personal injury largely prohibited by ACC legislation: *Davies v New Zealand Police* [2009] 3 NZLR 189
- Reform: recovery through criminal process allowed except for sums *paid* by ACC: Victims of Crime Reform Bill
- Result: new focus on recovery through criminal process

Damages for personal injury – employers affected

- Commercial vessels, including fishing
- Aquaculture

• Tourism	International	Domestic
Jet Boating	202,300	166,500
Dolphin Watching/Swimming	107,100	64,800
Fishing Sea/Coastal	75,100	976,500
Kayaking Sea	70,400	127,000
Rafting - White	53,200	21,500
Sailing	48,300	81,000

Average annual participation rates by tourists in water-based adventure tourism activities (2006 - 2008).

Source: Ministry of Tourism International Visitor Survey and Domestic Travel Survey.

Health and Safety in Employment Amendment Bill (No 2) 2013

- s31(6) HSEA 1992 – right not to give answer which may incriminate
- *Bull v Utumapu* (2011) – privilege applies to companies
- Amendment Bill: new s31(6) - privilege no longer applies
- s56 HSEA: privilege may still be available if answer or information tending to incriminate director/officer personally

Fines beginning to 'bite'

Ministry of Business Innovation & Employment v Mondiale Freight Services Limited (4 July 2012)

- December 2010 while investigating accident, discovered other earlier accidents not reported:
- Crushed foot
- Fractured thumb (6 weeks off work)
- Fractured rib (month off work)

- Fines for failing to report these accidents: \$62,475