
MLAANZ CONFERENCE 2013

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• 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

<table>
<thead>
<tr>
<th>Activity</th>
<th>International</th>
<th>Domestic</th>
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</thead>
<tbody>
<tr>
<td>Jet Boating</td>
<td>202,300</td>
<td>166,500</td>
</tr>
<tr>
<td>Dolphin Watching/Swimming</td>
<td>107,100</td>
<td>64,800</td>
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<tr>
<td>Fishing Sea/Coastal</td>
<td>75,100</td>
<td>976,500</td>
</tr>
<tr>
<td>Kayaking Sea</td>
<td>70,400</td>
<td>127,000</td>
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<tr>
<td>Rafting - White</td>
<td>53,200</td>
<td>21,500</td>
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<tr>
<td>Sailing</td>
<td>48,300</td>
<td>81,000</td>
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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