



27 June 2024

Mr Nick Coyle

Email: fyi-request-26192-c27c8d68@requests.fyi.org.nz

OIA 2324-2309

Dear Mr Coyle

Thank you for your email of 23 April 2024 to the Ministry of Business, Innovation and Employment requesting, under the *Official Information Act 1982* (OIA), information from the Department of Labour's 'Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in New Zealand 2009/10'.

You had requested:

"I would like to limit my request to any key memos, reports or opinions (policy or legal) which discussed the 'wider policy question' referred to in the key findings:

Relying solely on the legislation poses problems:

The HSE Act is primarily designed for safety in employment. Customers are covered by the reference to 'others in the workplace'. There is a wider policy question here about whether this is the best fit for this sector in which the primary focus is the safety of consumers. However, the working group acknowledges that the legislation itself is workable."

Your request was rescoped in conversation with my team member Susan Adams on 2 May 2024 in relation to the wider policy question mentioned above:

Any information contained in final drafts of key memos, reports, policy advice or legal opinions, which summarises how the *Health and Safety in Employment Act 1992* applied to situations like adventure tourism, in which the primary focus is the safety of consumers.

This information is contained on page 8 of the Department of Labour's Stock-take Report¹, which contributed to the final Review report:

"No specific legislation covers the health and safety of participants in adventure tourism activities in New Zealand.

Instead, because the majority of activities are organised by businesses for gain or reward, the sector is regulated by means of the HSE [Health and Safety in Employment] Act, Maritime

¹ *Stock-take of risk management and safety provisions in the adventure and outdoor commercial sectors in New Zealand: A contributing paper for the review of risk management and safety in the adventure and outdoor commercial sectors in New Zealand 2009/10*, Department of Labour, January 2010.

Transport Act and Civil Aviation Act. That Act promotes the health and safety of people at work and those affected by workplace activities.”

Further information on the legislative coverage of the adventure tourism sector is in Section 8 of the Stock-take report. This report was publicly released and is still available here:

<https://www.srknowledge.org.nz/wp-content/uploads/2012/07/Department-of-Labour-2010-Stocktake-of-risk-management.pdf>

If useful, in the annex to this letter we have provided some excerpts containing further context to this information.

I trust that you find the information helpful.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact Susan Adams in my team.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'H. C. Fenwick', with a stylized flourish at the end.

Hayden Fenwick
Manager, Health and Safety Policy
Labour, Science and Enterprise Group
Ministry of Business, Innovation and Employment

Annex: Excerpt from page 8 of *“Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors: Note from Working Group to Governance Group, 5 May 2010”*

Relying solely on overarching legislation poses problems

42. Legislative controls (HSE and mirrored provisions) are designed for situations where all risk is to be reduced to minimum levels. In this sector some risk is inherent (and sought by clients) in many products. In this context it may not be appropriate to expect businesses (especially SME’s spread widely in often remote places) to be left to come up with standards themselves.
43. As its title suggests the HSE Act is primarily designed for safety in employment. Customers are covered as ‘and others in the workplace’. There is a wider policy question about whether this employment focus is the best fit for a sector in which the primary focus is the safety of consumers. The working group acknowledges that, the above notwithstanding, the legislation itself is workable.
44. The legislation places obligations on businesses to comply with no upfront checks or audits, relying instead on full awareness and understanding of obligations and penalties as deterrent to non compliance. Intervention is by exception. This creates a situation where businesses can operate unsafely either, by under-prioritising safety (say to cut costs), or unknowingly because they have poor information. This is an assurance problem which poses safety risks to participants and New Zealand’s reputation.
45. CAA and MNZ can be delegated authority to put such up front checks in place (and have done so in some situations). DOL, however, has no statutory authority to do so.
46. There appears to be less scope for DOL to act proactively for land based activities (and any others that fall outside MNZ and CAA jurisdiction). This appears to include statutory/regulatory tools as well as resource constraints.