

## FMC Advice to clubs:



## Health and Safety at Work Act 2015 & Adventure Activities Regulations 2016

### Background

The Health and Safety in Employment (Adventure Activities) Regulations 2011 came into effect on 1 November 2011. These were replaced by the Health and Safety at Work (Adventure Activities) Regulations 2016, but there is no substantive change that affects us.

The point of these regulations is to require operators of adventure activities to be accredited and audited.

### Clubs are normally exempt

Many club activities fall within the definition of adventure activities, however, most club activities will be exempted by Regulation 4(3), which states:

*An adventure activity does not include an activity provided by a sports club or recreation club to—*

*(a) a member of the club; or*

*(b) a member of another sports club or recreation club under an agreement between the clubs; or*

*(c) a person who is not a member of the club if the activity—*

*(i) is provided only to encourage membership of the club or interest in the club's activities, or for the purposes of a competition; and*

*(ii) is provided to any 1 person on no more than 12 days in any 12-month period.*

### Non-members create potential exemption pitfalls for clubs

Considering Regulation 4(3)(c), there are some possible problem areas regarding non-members. Some clubs may find these provisions trickier to work around, and may have to amend their club rules to provide for more flexibility in their club membership.

#### **4(3)(c)(i) Encouraging membership, interest in the club's activities or competitions.**

##### **Club activities open for the public.**

*e.g. my club has run a public bushcraft course most years since the 60s*

Such activities cannot really be described as "provided only to encourage membership of the club or interest in the club's activities", although there's no doubt that they can be a fertile source of new members.

Clubs need to consider whether to enrol all participants as members. It might be that the course fee includes membership for the period of the course, or for the year. Some clubs may have a problem in granting short term membership with rules that require members to be proposed and seconded, or to have participated in a certain number of club trips. They may have to amend their rules to provide for more varied forms of membership.

### **Competitive events**

*e.g. my club fundraises by organising a competitive event open to the public.*

This is fine under the Act, even if the club intends to make a profit for fundraising. (Remember the context that one of the mandatory rules for a club to be legally incorporated prevents any one person or group of people from profiting from the club's activities.)

A good example was the former Kaweka Challenge, run for many years by the Heretaunga Tramping Club. It was open to the public and had an entry fee which contributed to club fundraising.

### **4(3)(c)(ii) The 12 day time limit on non-member participation**

#### **Clubs that have an informal approach to non-members on activities.**

Few clubs would be in the position of having someone do 12 days activity without joining. Clubs need to consider procedures to avoid this happening.

*e.g. my club runs weekly day trips on a 'just turn up' basis. It's possible that a regular attendee could simply not get around to joining. We could solve this by adding a column to the attendance page asking if they are a member, & if not how many days they've tramped with us in the last year.*

## **Getting a professional for a club trip or course**

If a professional is going to be paid for running an adventure activity, then they will almost certainly have to comply with the regulations.

### **Problem scenarios**

*Eg. XYZ Tramping Club needs an extra instructor on snowcraft, so they offer to pay a guide to come along and make up the instructor pool.*

This could get messy quickly. The club would likely be viewed as 'employing' the guide, which, under Section 17 of the Act, makes the club a PCBU and therefore have duties under the Act.

The professional would not have control of the overall situation, which means that if there were an accident, they could be potentially found liable under the Act for something done (or not done) by a volunteer 'co-instructor'.

Most professionals would (should) run a mile from an arrangement like this.



## Good scenarios

Clubs can liaise with their members and the professional to pencil in an activity, but with the clear understanding that individuals are going on an activity provided by the professional (not the club) and that the professional is responsible for all relevant duties under the Act.

*Eg. XYZ Tramping Club wants to run a snowcraft course, but they don't have enough instructors. They do the research and inquiries with ABC guiding company, and negotiate a group discount for the club course. The club advertises the course and encourages participants, who all sign up with ABC guiding and pay them directly. The club finds a bit of money to subsidise attendance for the aspiring volunteer instructors, allowing them to go on the course, and upskill to become a voluntary instructor in the near future.*

That way, clubs can ensure that there is a very clear separation between the club and the professional, so the club remains exempt.

## Voluntary instructors claiming reasonable expenses

Club members being reimbursed reasonable expenses relating to club activities is fine. However, as soon as an individual accepts payment in cash or kind over and above reasonable expenses, then they are no longer voluntary, and the club becomes a PCBU subject to the provisions of the Act.

*Compiled by David Barnes and Dan Clearwater*

*for FMC Executive, November 2020*

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