

Submission on New Zealand's work health and safety regulatory system to the Ministry of Business, Innovation and Employment

23 October 2024

Tēnā koutou

Introduction

1. Herenga ā Nuku Aotearoa, the Outdoor Access Commission, is the Crown agent responsible for providing leadership on outdoor access issues. Our role is to advise on and advocate for free, certain, enduring, and practical access to the outdoors.
2. Herenga ā Nuku has a legislative function to facilitate the resolution of disputes about outdoor access, and one of its enduring priorities is to ensure public access to the outdoors is maintained and enhanced. Many restrictions on access stem from land managers' concerns that they may be liable for the health and safety of recreational visitors on their land.

Land managers misunderstand the current legislation

3. Our main interaction with the health and safety regulatory system is through section 37 of the Health and Safety at Work Act 2015 (**Duty of PCBU who manages or controls workplace**). Many land managers mistakenly believe that they are responsible in their role as PCBU for the health and safety of people who are on their land for recreation.
4. The '2019 Worksafe Policy Clarification on Recreational Access and the Health and Safety at Work Act' clearly states that the Act does not make land managers liable for the health and safety of people accessing their land for recreation.
5. However, despite this clarification, a significant amount of misunderstanding about the Act persists among land managers. This makes many land managers reluctant to allow recreational activities on their land.

Our advice to land managers

6. The Health and Safety at Work Act allows landholders, including farmers and forest owners, to grant recreational visitors access. Landholders should warn visitors of workplace risks that they wouldn't normally expect to encounter, such as tree-felling, blasting, earthmoving machinery or pest control activities. This obligation relates only to parts of the land visitors will access. There is no need to warn visitors about hazards not on or near a route they will be using.
7. They are not required to warn visitors about natural features like bluffs, landslides, rivers and wasp nests. They are not liable if a visitor trips over a tree root or injures themselves by accident or by being careless or reckless. They are not responsible for any harm to a recreational visitor from a hazard that landholders could not have been expected to know of. They are not liable for people who are on their land without consent.

Clarifying the law

8. We are aware that several recreation advocacy groups, including Federated Mountain Clubs and Aotearoa Climbing Access Trust, have submitted on this issue. We broadly support the issues and solutions that those groups have raised.
9. We believe that the law, as Worksafe describes it, works well. However, not enough land managers are aware of how it operates. Their misunderstanding that they are responsible for the health and safety of recreational visitors on their land means they are **impeding or removing important recreation opportunities** for many New Zealanders.

Recommendation: That section 37 of the legislation more clearly states Worksafe's position in its 2019 policy clarification by specifically excluding liability for recreational visitors on land who face risks unrelated to the land manager's business or undertaking.

Thank you for the opportunity to submit on this issue

We would welcome an opportunity to speak to this issue if you want further information. My contact details are ric.cullinane@herengaanuku.govt.nz and 027 477 5042.



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