



NEW ZEALAND FOUR WHEEL DRIVE ASSOCIATION INC.

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www.NZFWDA.org.nz

29 May 2015

Presidents
Four Wheel Drive Clubs
Northern, Central & Southern Zones

Dear Presidents

**RE: CLUB RUNS, TRIPS, SAFARI AND FUN DAYS ETC.
HEALTH AND SAFETY IN EMPLOYMENT (ADVENTURE ACTIVITIES) REGULATIONS 2011**

1. As President of the Northern Zone of the New Zealand Four Wheel Drive Association, I was asked to provide an opinion about:
 - 1.1 **Public Rides:** Giving the public rides in four wheel drives at an event and people paying a fee for a ride around the track.
 - 1.2 **A Fun Day Out:** E.g. Taking IHC children and/or adults for rides as a fun day out for them.
2. I have provided an opinion to the relevant club, however the issues appear to affect most clubs so I am passing these comments on to you so that you may be aware of the issues involved and may discuss them with your members. Obviously in the circumstances this is provided on a pro bono no liability basis, as I will not know the circumstances of your trips or runs.

The Issues

3. I consider the issues are:
 - 3.1 Whether such activities are adventure activities within the meaning of the Health and Safety in Employment (Adventure Activities) Regulations 2011; and
 - 3.2 What is the position about the Association's insurance?
4. You may find assistance by considering the provisions of the Regulations and the Health and Safety and Employment (Adventure Activities) Regulations 2011 Guidance for Operators as provided by the Department of Labour (March 2012).

The Law

5. The Health and Safety in Employment (Adventure Activities) Regulations 2011, Regulation 4(4) state that:
 - 5.1 An adventure activity (Regulation 4(1)) means an activity:
 - (a) (i) That is provided to a participant in return for payment; and
 - (ii) That is land-based...; and
 - (iii) That involves the participant being guided, taught or assisted to participate in the activity; and
 - (iv) The main purpose of which is recreational...; and
 - (v) That is designed to deliberately expose the participant to a risk of serious harm and must be managed by the provider; and
 - (vi) In which:
 - (A) Failure of the provider's management systems is likely to result in serious harm; or
 - (B) That the participant is deliberately exposed to dangerous terrain; and
 - 5.2 Adventure activities listed in the schedule to the Regulation include off-road vehicle driving.
 - 5.3 An adventure activity does not include an activity provided by a sports club or recreation club to:
 - (a) A member of the club;
 - (b) A member of another sports club or recreation club under an agreement between the clubs;

- (c) A person who is not a member of a club if the activity:
 - (i) Is provided only to encourage membership of the club or interest in the club's activities or for the purpose of competition; and
 - (ii) Is provided to any one person no more than 12 days in any 12 month period.

Public Rides

- 6. So I consider that charging a fee for public rides is likely to be an adventure activity which requires approval unless the club exemption in regulation 4(4) applies:
 - 6.1 I consider that the Club could have a membership day for new members (see above);
 - 6.2 If the Club's Constitution permits day members then this should mean your club is covered by the Association's insurance;
 - 6.3 I am aware that the National President Neville Dunton is lodging a remit proposing that the New Zealand Four Wheel Drive Constitution be changed to refer to day members and that may clarify matters further. In the meantime I suggest:
 - (a) Day membership should be on the basis that:
 - (i) A fee is charged for day membership.
 - (ii) Day members do not have any voting rights;
 - (iii) A day member cannot go out with the club more than 3 times unless they become a full member.
 - (b) If a day member becomes a full member then the association affiliation fee should be forwarded to the Association.
 - 6.4 Please note that I consider that to have day members a club's constitution should specifically permit them.

Fun Day Out

- 7. In relation to a fun day out, from time to time there are such activities by clubs. (I think it is great for those involved):
 - 7.1 A run should be in accordance with the objects of the NZ Four Wheel Drive Association i.e. to further and improve four wheel drive activities or incidental or be conducive to the attainment of these objects (Article 2 of the Constitution);
 - 7.2 The run needs to be an official club run to be covered by Association insurance – this insurance covers third party risks but not vehicles or passenger risks.
 - 7.3 So I consider that:
 - (a) The run should be an official club sanctioned run; and
 - (b) A fee should be charged but you do not need to charge much; and
 - (c) The aim should be to:
 - (i) Encourage interest in the Club's activities; and/or
 - (ii) The furtherance or attainment or promotion of Four Wheel Drive activities and perhaps by returning something to the community.
 - (d) The run needs to be recorded and run/trip records kept.

Fundraising

- 8. From time to time we all participate in fundraising. I consider that for the purpose of the Adventure Activity Regulations any fundraising, run or safari or similar event needs to be run by a club as a club event with the club controlling the run. So if there is a fundraising for say a school or other charity, the school or charity cannot organise or run the Four Wheel Drive event.

Insurance

- 9. For insurance purposes records need to be kept. I understand that the Association's insurers will allow clubs some time to update their rules to cover day and family members mindful of the fact that it is often only changed at an AGM. So the rules should be changed as soon as possible subject to each club's own rules.

Risk Assessment

- 10. A risk assessment should be carried out for each four wheel drive – it does not need to be complicated.

Regards


JOHN HICKEY
 Northern Zone President
 New Zealand Four Wheel Drive Association Inc.