



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of paper	<i>Targeted review of the adventure activities regulatory regime</i>	Date to be published	18/12/2020

List of documents that have been proactively released

Date	Title	Author
23 January 2020	<i>Whakaari/White Island - reviewing policy settings</i>	Ministry of Business, Innovation & Employment
9 March 2020	<i>Aide Memoire: Targeted Review of Adventure Activity Regulations</i>	Ministry of Business, Innovation & Employment
14 August 2020	<i>Whakaari/White Island eruption: cross government response</i>	Ministry of Business, Innovation & Employment
3 September 2020	<i>Targeted review of the adventure activities regulatory regime: stakeholder engagement</i>	Ministry of Business, Innovation & Employment
1 October 2020	<i>Weekly Report: Whakaari/White Island eruption: targeted review of the adventure activities regulatory regime</i>	Ministry of Business, Innovation & Employment
26 November 2020	<i>Targeted review of the adventure activities regulatory regime</i>	Ministry of Business, Innovation & Employment
3 December 2020	<i>Weekly Report: Targeted review of the adventure activities regulatory regime: release of the report</i>	Ministry of Business, Innovation & Employment

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.



BRIEFING

Targeted review of the adventure activities regulatory regime

Date:	26 November 2020	Priority:	High
Security classification:	Sensitive	Tracking number:	2021-1155

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	<p>Agree to progress a second phase of work to implement changes to the adventure activities regulatory regime</p> <p>Refer this briefing to the Prime Minister and the Ministers of Local Government and Tourism</p>	3 December 2020

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Lisa Collins	Manager, Health and Safety Policy		Privacy of natural persons	✓
Harriet Miller	Principal Policy Advisor, Health and Safety Policy		Privacy of natural persons	

The following departments/ agencies have been consulted
WorkSafe NZ, Department of the Prime Minister and Cabinet, Department of Internal Affairs, Department of Conservation, GNS Science, National Emergency Management Agency

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Targeted review of the adventure activities regulatory regime

Date:	26 November 2020	Priority:	High
Security classification:	Sensitive	Tracking number:	2021-1155

Purpose

This briefing delivers the findings from a targeted review of the adventure activities regulatory regime and seeks your agreement to a second phase of work to implement improvements to it.

Executive summary

The Minister of Local Government is leading the group of Ministers responsible for matters relating to the economic and social recovery following the Whakaari/White Island eruption on 9 December 2019. As part of this response, the previous Minister for Workplace Relations and Safety directed the Ministry for Business, Innovation and Employment to complete a targeted review of the adventure activities regulatory regime (the regime). The review considers whether weaknesses exist where adventure activities intersect with natural hazards. The regime includes both the Adventure Activities Regulations and how they are implemented.

The targeted review qualitatively assessed that the regime is generally performing well and supporting policy objectives of increasing safety standards. Analysis indicates that natural hazard risks are pervasive across the adventure activity sector, and suggests that all identified natural hazards have some inherent risk of causing catastrophic harm. The degree and type of risk differs according to the natural hazard and the nature and location of activities taking place. Control measures can be used to lower the inherent level of risk.

The review has identified some aspects of the regime, including; the safety audit standard, the audit process, and the regulatory leadership role of WorkSafe, that could be strengthened to help operators better identify and manage natural hazard risks. To support this approach, additional natural hazard risk guidance material will need to be developed.

Officials recommend these areas for strengthening are addressed immediately as a way to mitigate the inherent risk of catastrophic harm from natural hazard events. Officials will develop a public consultation document outlining the findings from the review and policy proposals addressing where improvement can be made. Detailed policy options will be developed through this process, covering both regulatory and implementation change. Consultation with appropriate parties will be undertaken in 2021 to inform final policy recommendations on changes to the regime.

WorkSafe has independently begun a programme of work to take a stronger regulatory leadership role in the regime. The Ministry for Business, Innovation and Employment is supportive of this and notes the targeted review identified a similar gap in regulatory leadership. MBIE will monitor the impact this programme has on the performance of the regime.

The targeted review has also identified a number of system-level issues around the regime's commercial viability, definitional scope and use of third-party certifiers. These system-level issues should be addressed as part of a first-principles review. Commencement for this review can be delayed to 2023 as the issue relate to the long-term sustainability and optimisation of the regime rather than the immediate risk of catastrophic harm associated with natural hazard events.

Recommended actions

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** MBIE officials have completed the targeted review of adventure activities regulatory regime with the draft report attached to this advice *Noted*
- b **Note** the review has found almost all registered adventure activities intersect with natural hazard risks to some degree and this has broadened the scope of the review from that originally envisaged *Noted*
- c **Note** the regime is generally working well and supporting the policy objective of increasing safety standards in the adventure activity sector but there are areas for improvement *Noted*
- d **Note** WorkSafe has begun a programme of work to strengthen its regulatory leadership role in the regime, MBIE will monitor the impact this has on the performance of the regime *Noted*
- e **Agree** to a second phase of work to develop detailed policy and implementation options for proposed changes to the regime in relation to management of natural hazard risks, the safety audit process and the strengthened regulatory leadership role of the regulator *Agree / Disagree*
- f **Agree** to publicly release the findings of this review (subject to any legal caveat) as part of consultation on proposed changes to the regime *Agree / Disagree*
- g **Note** MBIE will develop a discussion document to present the review findings and support consultation on proposed changes to the regime for Cabinet approval in March 2021 *Noted*
- h **Agree** to undertake a first-principles review of the regime starting in 2023 *Agree / Disagree*
- i **Refer** this briefing to the Prime Minister in her role as spokesperson on Whakaari/White Island 9 December event *Refer*
- j **Refer** this briefing to the Minister of Local Government in her role as lead Minister on matters relating to the economic and social recovery following the Whakaari/White Island event *Refer*
- k **Refer** this briefing to the Minister of Tourism for his information *Refer*

L Collins

Lisa Collins
Manager, Health and Safety Policy
MBIE

26/11/2020

Hon Michael Wood
**Minister for Workplace Relations and
Safety**

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Proactively Released

Background

The Minister of Local Government is leading a suite of work in response to the 9 December 2019 Whakaari/White Island eruption

1. On 9 December 2019, during a guided tour of the island, Whakaari/White Island erupted. The eruption left 21 people dead and 26 people with serious injuries.
2. The principal tour operator operating on Whakaari (White Island Tours) was a registered adventure activity operator. Three other operators providing tours to the island (including one present on the island at the time of eruption) were not registered.¹
3. The Minister of Local Government is leading the group of Ministers responsible for matters relating to the economic and social recovery following the Whakaari/White Island eruption on 9 December 2019. The Minister of Local Government is also the territorial authority for Whakaari/White Island under the Local Government Act 2002. A range of work is taking place across government to determine if regulatory systems relevant to the Whakaari/White Island event are fit for purpose and operating effectively (briefings 2048 19-20 and 2021-0584 refer).

The Minister for Workplace Relations and Safety is lead Minister on a targeted review of the adventure activities regulatory regime

4. As part of this suite of work, the previous Minister for Workplace Relations and Safety directed the Ministry for Business, Innovation and Employment (MBIE) to complete a targeted review of the adventure activities regulatory regime (briefing 2021-0584 refers), including considering the roles and responsibilities of the organisations involved in the implementation of the regime. MBIE is responsible for administering, monitoring and evaluating the Health and Safety at Work (Adventure Activities) Regulations, with WorkSafe responsible for their implementation.
5. The targeted review considers whether weaknesses exist in the adventure activities regulatory regime (the regime) where activities intersect with natural hazards. The objectives guiding the review are reducing the risk of catastrophic harm from natural hazards, avoiding a chilling effect on the adventure activities sector, and avoiding significantly impacting public access to New Zealand's environment. The draft report outlining findings from the targeted review is attached in **Annex 1**.

Adventure Activities Regulatory Regime

The adventure activity regime is a novel regulatory solution for a novel sector

6. Safety in the adventure activities sector is primarily regulated through the Health and Safety at Work Act 2015 (HSW Act) and Health and Safety at Work (Adventure Activities) Regulations 2016 (Adventure Activities Regulations).
7. The Adventure Activities Regulations were brought in to address widespread concerns over the management of risk in the adventure tourism sector and to reduce perceived damage to New Zealand's reputation as an international visitor destination.
8. Adventure activities are defined as an activity²:

¹ Along with White Island Tours, three helicopter tour operators landed and provided tours on Whakaari prior to the eruption. WorkSafe was notified that these helicopter operators were providing tours in November 2017. Ongoing engagement between these operators and WorkSafe regarding whether they were required to register under the Adventure Activity Regulations continued until November 2019.

² See regulation 4 of the *Health and Safety at Work (Adventure Activities) Regulations 2016*.

- (i) that is provided to a participant in return for payment; and
- (ii) that is land-based or water-based; and
- (iii) that involves the participant being guided, taught how, or assisted to participate in the activity; and
- (iv) the main purpose of which is the recreational or educational experience of the participant; and
- (v) that is designed to deliberately expose the participant to a serious risk to his or her health and safety that must be managed by the provider of the activity; and
- (vi) in which— (A) failure of the provider’s management systems (such as failure of operational procedures or failure to provide reliable equipment) is likely to result in a serious risk to the participant’s health and safety; or (B) the participant is deliberately exposed to dangerous terrain or dangerous waters.

9. The Adventure Activities Regulations were passed in late 2011, and following an extended implementation phase were brought into force in November 2014. New Zealand is an outlier amongst other jurisdictions in providing sector-specific regulations that require operators to register their adventure activity operations. These requirements provide an additional layer of regulatory oversight in comparison to most international jurisdictions. The Adventure Activities Regulations make it an offence for operators to offer adventure activities while being unregistered.

The adventure activity sector is a fragmented but important part of New Zealand’s tourism portfolio

- 10. The adventure activity sector is made up of around 300 to 330 operators offering over 60 different types of adventure activities. Registered operators are regionally spread. Operators range in size from single person operations to large enterprises.
- 11. The sector is split roughly equally between commercial tourism operators offering adventure activities predominantly to the international tourist market and recreational operators offering activities to educational providers and other domestic recreational groups.
- 12. Prior to travel restrictions associated with COVID-19 international tourism had been an important export earner for New Zealand, contributing \$17.2 billion, or 20 per cent of export earnings in 2019. The impact of COVID-19 on the tourism sector has been significant. The government has responded to the challenges of COVID-19 with a focus on saving strategic tourism assets and building the sector back better. High-quality and safe adventure activities are well positioned to support the tourism sector to rebuild.

The performance of the regulatory regime

Natural hazard risks are pervasive across the adventure activity sector and control measures can help mitigate inherent risk of catastrophic harm

- 13. Natural hazard risks are defined as physical events which are quick onset with a degree of localised impact and which have the potential to cause fatalities. The indicative analysis has identified 12 natural hazards that intersect with adventure activities.³ Analysis of the adventure activities register has found that almost all adventure activities (665 out of 667 registered adventure activities and 311 out of 312 registered operators) intersect with natural hazard risks to some degree.

³ Extreme weather events, water surge, flood (enclosed space), flood (surface), rockfall, landslide, snow avalanche, icefall avalanche, rapids, collapse of natural hazard structures, volcano (in proximity to active or potentially active vents), and, geothermal hazards.

14. The analysis suggests that all identified natural hazards have some inherent risk of causing catastrophic harm.⁴ The degree and type of risk differs according to the natural hazard and the nature and location of activities taking place. Control measures can be used to lower the inherent level of risk.
15. The risk of catastrophic harm caused by natural hazards is not limited to the adventure activity sector. Natural hazards can cut across many sectors, in particular when work or leisure activity takes place outdoors: for example, tourism, forestry, and other land or sea-based sectors. Given the pervasiveness of natural hazards as part of New Zealand's geography, it may be that other sectors also require a greater level of attention around natural hazard identification and management. This question has not been addressed as part of the targeted review.

The initial scope of the review was broadened from a group of specific operators to examine the adventure activity regime as a whole

16. When the review was initially scoped, there was an expectation it would be primarily targeted to a small group of activities/operators offering activities in naturally hazardous environments. This would allow any recommended changes to the regime to also be tightly targeted. However, this review has found natural hazard risks are pervasive throughout the sector, and that many of the weaknesses associated with the management of natural hazards are linked to broader issues in the regime. Consequently, the scope of the review's findings and recommendations were broadened to the implementation of the regime more generally.

While still relatively new, the regulatory regime appears in many respects to be performing well and supporting policy objectives of increasing safety standards

17. Based on a qualitative assessment of the regime officials consider that in many respects, it is working well and supporting the policy objective of increasing safety standards in the adventure activity sector. Indicatively, this can be seen in the reduction in fatality numbers since the regulations were implemented.⁵ That the regime is driving improvements to operator safety management has also come through as a key message in stakeholder consultation.
18. Catastrophic events (with five or more fatalities) have historically occurred in the adventure tourism sector on an occasional basis.⁶ The Whakaari/White Island event suggests catastrophic events may continue to periodically occur in the sector, despite the adventure activities regime.
19. This occasional occurrence of catastrophic events has much to do with the nature of adventure activities which are defined by the deliberate exposure of a participant to serious risk to their health and safety as well as the group make-up of many of the activities. While strengthening safety standards in the regime (both for natural hazards and more generally) will help decrease these inherent risks, risks of catastrophic harm cannot be eliminated entirely. Further trend analysis over a longer time period will be needed before officials can fully understand the impact of the regime on the frequency and severity of catastrophic events.

⁴ WorkSafe NZ definition of catastrophic event is a single incident resulting in more than five fatalities

⁵ Thirty-one deaths occurred in the sector in the five years prior to the Department of Labour's review of incidents in the adventure and outdoor commercial sector (2004-2009). Between 2014 (when the regime came fully into effect) and December 2019, there were eight deaths in these regulated adventure activities (excluding the Whakaari/White Island event).

⁶ For instance, Mangatepopo Gorge tragedy in 2008 with 7 fatalities, the Carterton hot-air ballooning tragedy in 2012 with 11 fatalities and Whakaari eruption in 2019 with 21 fatalities and 26 people with serious injuries. While only the last of these incidents involved operators subject to the Adventure Activities Regulations, this gives an indication of the semi-regular nature of catastrophic events in the adventure tourism sector.

20. The review did not identify significant issues with the legislative framework of the adventure activities regime. The Adventure Activity Regulations appear to adequately support the compulsory operator registration and third party auditing regime. Through the enforcement powers of the Health and Safety at Work Act, the regulator has a suite of options to address any non-compliance.
21. As the regime is still relatively new, a full impact evaluation has not yet been conducted. However a 2016 performance study of the adventure activities certification scheme concluded the scheme had improved safety management in the sector, though there was room for further refinement.⁷ Additional research on the regime will likely be of value to further test the performance of the regime against policy objectives.

Suggested improvements to the regulatory regime

WorkSafe taking an increased regulatory leadership role will improve safety standards further

22. The functions outlined in the Adventure Activities Regulations and the WorkSafe New Zealand Act 2013 allows WorkSafe to have a strong role in supporting the implementation of the regime. In practice, these functions have not been used to their full effect.
23. A key theme from stakeholder engagement was that WorkSafe has had little direct oversight of how operators are performing, relying instead on auditors to identify issues. Stakeholder consultation suggests a single staff position acts as the registrar and the primary contact point regarding the administration of the regime. A lack of engagement and enforcement activity was also noted. Between 2014 and 2019 WorkSafe undertook 18 investigations involving adventure activities operators, 3 of which resulted in enforcement activities⁸.
24. Tourism Industry Aotearoa (TIA) considers it has been acting beyond its remit in identifying and convening expert groups to create good practice guides to support the regime.

Confidentiality

This has the potential to create gaps in the regime around provision of guidance to operators and administration of certifying bodies.

25. In response to the Whakaari/White Island event, WorkSafe proactively conducted an internal health check considering the registration, monitoring, and enforcement aspects of their implementation of the adventure activities regime. This project took place between June and September 2020 and was independent of MBIE's targeted review. Findings from the internal health check concluded that WorkSafe needs to recommit to its regulatory leadership role and strengthen how it administers the regime. Key actions for WorkSafe include:

ensuring that internal processes, policies and guidance on how the regime is administered are clear,

- developing a comprehensive strategy for engaging with stakeholders
- better coordination of its' registration, compliance and enforcement functions.

Refer **Annex 2** for the main findings and actions from WorkSafe's internal health check.

⁷ Galloway (2016) *New Zealand Adventure Activities Certification Scheme: A Performance Study*, worksafe.govt.nz/topic-and-industry/adventure-activities/documents-and-resources/.

⁸ Refer Aide Memoire 19/00985 for full details on WorkSafe's enforcement activities in the adventure activities sector.

26. WorkSafe advises that work is underway to progress these actions, with an expected completion date of June 2021. WorkSafe notes that the resource required for this work will necessarily impact on its other activity.
27. MBIE is supportive of WorkSafe's programme of work to address the recognised regulatory leadership gap in the regime and notes the targeted review identified a similar gap in regulatory leadership. MBIE will continue to work alongside WorkSafe to monitor the impact this programme of work has on the performance of the regime.

The review made several recommendations that would strengthen aspects of the regime around natural hazard risk identification and management and audit processes

28. The safety audit standard is a largely generic health and safety standard with limited information specific to the adventure activities sector. Risk and hazard management is discussed at a high-level with little tailoring to take into account the pervasiveness of natural hazard risks (weather events are the only natural hazard risk mentioned).
29. The safety audit standard could be improved through increased requirements around natural hazard risk identification and management, such as:
 - Specific requirements relating to natural hazard management in the risk and hazard management section. A competent technical advisor would be required for this assessment.
 - More emphasis on natural hazard risks in the emergency preparedness and response plans section.
 - More emphasis on the communication of natural hazard risk to participants by the operator.
 - Managerial responsibility for natural hazard risk management in the leadership and management section.

30.

Confidential advice to Government

31. Broader structural changes in the certification scheme have also been identified that could strengthen the regime and improve safety outcomes:
 - changing the audit process to require a minimum of two on-site safety audits over the three-year period⁹
 - supporting improved use of technical experts in audit processes
 - developing requirements for operators to notify certain events to WorkSafe (including near miss events) that align with the risks in the adventure activity sector.

⁹ Options for this include: operators paying for an additional audit from certifying bodies; WorkSafe funding (or undertaking) the additional audit; or increased inspections of registered operators by WorkSafe.

Officials will develop a document outlining the findings from the review and detailed policy proposals for public discussion

32. MBIE will develop a discussion document publicly presenting the review findings, and present policy proposals on where improvements can be made to the regime. These proposals will include both regulatory and implementation change. Some aspects of implementation change will be led by WorkSafe. MBIE and WorkSafe will work together on the consultation document to ensure a single-government view is represented. Consultation with appropriate parties will be undertaken to inform final policy recommendations on changes to the regime.
33. Depending on Ministerial preference around timings, this consultation process and implementation of any changes could be undertaken over a 12 month period, starting in early 2021. This timing would dovetail with the current audit cycle and give the sector time to implement any changes before the next audit certification round in 2023.

The long-term sustainability of the regulatory regime

The review has also identified several system-level issues around the regime commercial viability and definitional scope for future consideration

Commercial viability of third party auditing services:

34. The adventure activities regime is reliant on third-party certifying bodies to conduct audits on operators. There are indications this may not be commercially sustainable, [REDACTED]
35. If both certifying bodies were to withdraw from the market a significant redesign of the regime would be required, with the regulator likely to be required to take over the operator auditing and certification function. Officials understanding is that this is not an imminent risk, however this potential for the independent certifier market to fail is a key underlying risk of the current system.

Definitional scope:

36. Several key aspects of the adventure activity definition are considered overly open to interpretation, such as what constitutes “dangerous terrain” and whether operations “deliberately expose” participants to serious risk. The current definition of “adventure activity” may also not cover all activities that pose a similar level of risk to those in the regime. Currently, horse tracking and alpine hunting are generally not included but arguably have a similar level of risk to alpine hiking or off-road vehicle tours.
37. Any adjustments to the regulatory definition of “adventure activities” will have a significant impact on the sector. The uncertainty and extra cost created by expanding registration requirements may result in some businesses ceasing to operate or changing the activities they offer. However, ensuring the scope of the regime is clear and provides appropriate coverage is necessary to ensure the regime achieves its policy objectives, and will also result in more equitable outcomes for operators.

Third party auditing services may not be the most effective way to achieve objectives, and other regulatory designs may need to be considered

38. When the adventure activities regime was established in 2011, the use of third-party auditors to certify operators was considered the most cost-effective and efficient way to increase regulator oversight of and safety outcomes in the adventure activities sector.

¹⁰ Integra and Qualworx and the two certifying bodies currently offering adventure activity safety audits for the sector.

39. Government practice on how third-party certification systems should be used in regulatory regimes has continued to evolve. Third-party certification allows regulators to harness the expertise of private industry, can be more efficient than direct regulator oversight and can provide a direct user pay mechanism. However, a number of reviews have noted such systems also carry risks that must be managed, such as regulator overreliance on certification to drive operator compliance, audits not being carried out to an appropriate standard by third parties, and regulator overreliance on certifiers to notify them of issues.¹¹
40. The targeted review has found the regulator's monitoring and enforcement of the adventure activities sector requires improvement, and recommends WorkSafe's regulatory leadership role is strengthened. A subsequent and first-principles review of the adventure activities regime would examine if these recommended changes have been effective, or whether current weaknesses may be indicative of limitations in the regime's regulatory design, creating structural risks.
41. Dependent on the outcomes of the first-principles review, consideration may need to be given to alternative regulatory designs.

Further work to support findings from the targeted review

MBIE officials propose a two-stage approach to address these findings

42. Officials recommend a two-stage approach to address the review findings, where MBIE would:
 - Immediately commence further policy work to address the regime's limitations around natural hazard risk management and audit processes. This would include proposals to add specific requirements regarding natural hazard risks to the safety audit standard, change how audits are undertaken, and include a strengthened leadership role of WorkSafe. These proposals will cover both regulatory and implementation change.
 - Undertake a first-principles review of the regime starting in 2023. This would include consideration of the identified system-level issues around the regime's commercial viability, definitional scope and the use of third-party certification.
43. MBIE officials consider that this approach reflects the differing risks associated with the issues identified through the review. Proposed changes to natural hazard risk management and audit processes and the role of the regulator are where immediate steps can be taken to address risks of catastrophic harm associated with natural hazards. In contrast, the system-level issues identified (commercial viability, definitional scope and use of third-party certifiers) relate to the long-term sustainability and optimisation of the regime.
44. The proposed immediate policy work is estimated to take 12 months to complete. This process would involve officials developing a discussion document for consultation with appropriate parties, outlining the findings of this review and presenting proposals for where improvements can be made. Depending on Ministerial preferences, consultation on this document could occur between March and June 2021, with any changes to audit standards and regulations occurring in late 2021.
45. A first-principles review of the regime is estimated to take up to two years to complete and would start in 2023. This review would involve significant policy work to examine if the settings of the regime continue to be appropriate, if the design of the regulations support the policy, and if the regime is being effectively implemented.

¹¹ See, for example, Sapere Research Group (2018) *Insights into the operation of New Zealand's conformance system*, Office of the Auditor-General 2009 and 2012 reports *Effectiveness of arrangements to check the standard of services provided by rest homes*, and MBIE 2015/16 Building Consent Authority accreditation scheme review.

46. To support the first-principles review MBIE officials will undertake further research on the performance of the regime, alongside an assessment of regulatory design and stewardship best practice.

While officials have considered other approaches to this work, the two-stage approach is the preferred option

47. One alternative option considered was to commence a first principles review immediately, incorporating both the natural hazard risk management and systems-level issues identified. This was not considered a preferred option as:
- An immediate start to a first principles review would have resource and timing implications for the current priorities in MBIE's work health and safety regulatory reform programme.
 - Incorporating all issues into a single review will delay the implementation of measures to address the inherent risks associated with natural hazards.
 - The adventure tourism sector is currently under significant commercial pressure due to COVID-19. Any proposals to expand the scope of activities requiring registration or changing the registration process or costs would likely decrease industry confidence.
 - Current commercial pressures may also result in longer-term structural changes to the adventure activities sector, such as reducing operator numbers or the consolidation of operations into larger companies. Any such changes will usefully inform what policy settings and design is appropriate for the regime.
 - An immediate review will not be able to be informed by court findings from any prosecutions related to the Whakaari/White Island event.
48. A review of the Adventure Activities Regulations is currently scheduled to commence after 2023 as part of MBIE's scheduled multi-year programme of regulatory reform work. Officials have considered deferring all further work to this date. This option is not preferred, as the issues identified in this review would remain unaddressed until that time.

Cross-agency response to the Whakaari/White Island eruption

A wide range of work is taking place across government in response to the Whakaari/White Island event

49. Investigations by WorkSafe and the New Zealand Police (on behalf of the Coroner) are continuing into the circumstances of the Whakaari/White Island event and whether there were any breaches of the law. WorkSafe's decision on whether any charges will be filed is expected on or before the anniversary of the event on 9 December.
50. Te Rūnanga of Ngāti Awa in co-operation with local and national government are hosting the official remembrance event to mark the first anniversary of the Whakaari/White Island eruption.

Development of policy advice on future access to Whakaari/White Island is continuing

51. Government agencies are working together to consider the legislative and regulatory impacts of commercial and private activity on Whakaari/White Island. The owners of the Island, the Buttle Family, hold the primary right to restrict, prevent or allow access to Whakaari/White Island, and any request for access must go to the owners. The Crown does not have the ability to ban access to Whakaari/White Island. Any decisions about the regulations and protocols that control future activity on Whakaari/White Island need to be undertaken in a collaborative way across multiple stakeholders and regimes.

52.

Confidential advice to Government

[Redacted]

A formal inquiry risks cutting across the investigations, the option remains open to Government to commission an inquiry at a later date

53. Previous advice (briefing 2048 19-20 refers) considered that initiating a formal inquiry into the event at the same time as the investigations would risk cutting across them.

54. It remains open to Cabinet to commission an independent or wider-ranging review at a later stage, including in light of any new information arising from the investigations or any policy review suggesting there are systemic failures of institutional or regulatory approach.

Releasing the findings of the review to the public

Review findings should be released as part of a discussion document next year, with you providing an update on the review during media interviews and stakeholder meetings near the anniversary of the event

55. The scope of the targeted review was released on MBIE's website in September 2020 to support stakeholder engagement (briefing 2021-0743 refers).

56. Officials anticipate high media interest around the anniversary of the 9 December eruption, and when the outcome from WorkSafe's investigation is announced. Officials suggest that you provide a high-level update on the review and next steps during any related media interviews or stakeholder meetings.

57. Key stakeholders, including the victims and their families, should be informed of the outcome of the review and subsequent phases of work before any public update is given. Communications collateral will be developed and shared with your office prior to being released.

58. The MBIE communications team will work closely with Department of Internal Affairs, WorkSafe, Department of Conservation, and other key agencies, where appropriate.

Legal professional privilege

[Redacted]

61. Perceived deficiencies in the safety audit standard have been already been raised through a judicial review application lodged by Dr Wislang in August 2020. This application was declined in October 2020. The judgement noted that changes to the regulation of adventure activities may occur as a result of the Whakaari/White Island event, such as the development of new audit standards or changes to WorkSafe's role, but that these were matters for government policy and legislation rather than the court.¹²

62. Legal professional privilege



Next steps

63. MBIE officials will work closely with your office to develop communications material to support a release of high-level findings from the review and next steps.

64. Officials will come back to you with timings for the consultation process before the end of 2020.

65. Officials will develop a draft discussion guide on the findings from the review and the proposed changes to the regime for approval in March 2021.

Annexes

Annex One: Draft report: targeted review of the adventure activities regulatory regime

Annex Two: WorkSafe Internal Health Check

¹² *Wislang v Attorney-General & Ors* [2020] NZHC 2588

Proactively Released

Annex 2: WorkSafe Internal Health Check

Between June and September 2020, WorkSafe proactively conducted an internal health check considering the registration, monitoring, and enforcement aspects of their implementation of the regime. This project was separate to MBIE's targeted review. The health check was conducted by a cross-organisation project team, with findings presented to WorkSafe's Executive Leadership Team (ELT) in September.

The findings concluded that WorkSafe needs to better understand and recommit to its regulatory leadership role for the regime. This requires WorkSafe to:

- take a system view of the regime, including understanding the sector, its participants, and their context
- proactively escalate Regulation issues to MBIE
- monitor, evaluate, and report on the performance of the regime, and implement any identified improvements where possible
- have checks and balances in place to provide WorkSafe and others with assurance that the regime is working as intended, and
- intervene in the regime when needed.

WorkSafe has identified a suite of actions to strengthen how it administers the regime. Actions include:

- identifying issues with the design of the Regulations, and referring these to MBIE
- identifying and addressing gaps in the operational policy framework
- commissioning a project to more proactively ensure the regime is working as intended, and taking actions to improve it
- reviewing the certification scheme and safety audit standard
- establishing a system to flag when recognitions and registrations are due
- improving record-keeping
- improving support for the registration compliance, and enforcement functions, and the connection between these
- clarifying responsibilities and delegations
- reviewing the WorkSafe-JAS-ANZ Memorandum of Understanding, and
- developing a stakeholder engagement strategy, and strengthening WorkSafe's education role in the regime.

WorkSafe's ELT agreed to the suite of actions, and work is now underway to progress them. The suite of actions is expected to be complete by June 2021, with many due for completion sooner.