

Review of WorkSafe New Zealand’s performance of its regulatory functions in relation to activities on Whakaari White Island.

Terms of Reference

Purpose of the Review

The purpose of the review is to assess the way in which WorkSafe New Zealand (WorkSafe) performed its regulatory functions in relation to activities undertaken on Whakaari White Island in the period prior to the eruption on 9 December 2019 and to identify any changes to its regulatory approach that may be necessary or desirable.

Background

Worksafe is New Zealand’s primary health and safety regulator. It is established by the Worksafe New Zealand Act 2013. Its main objective and functions are set out in sections 9 and 10 of that Act. It also has responsibilities under the Health and Safety at Work Act 2015 and the Health and Safety at Work (Adventure Activities) Regulations 2016¹.

On 9 December 2019 Whakaari White Island, a volcanic island used for adventure tourism activities, erupted causing 22 deaths and significant injuries to the survivors of the incident.

Given the scale of the injury and death, the Minister for Workplace Relations and Safety has asked the Ministry of Business, Innovation and Employment (MBIE) for advice on whether WorkSafe has carried out its obligations as regulator of the activities on White Island appropriately.

Separately, MBIE has carried out a targeted review of the adventure activities regime, and intends to consult publicly on the need for changes to the Regulations and/or operational practice.

This review may contribute to MBIE’s targeted review of the adventure activities regulatory regime and findings could inform MBIE’s advice to the Minister.

Scope

The review will look at the way in which WorkSafe performed its regulatory functions in relation to Whakaari White Island from when the adventure activities regulations came fully into effect on 1 November 2014 and 9 December 2019 when the eruption occurred, and will assess the adequacy and appropriateness of the steps taken by WorkSafe in performing those functions.

It will also consider whether there are further steps that ought to have been taken and identify any changes to WorkSafe’s systems, processes and practices that are necessary or desirable taking into account the findings in MBIE’s Draft Report: *Targeted review of the adventure activities regulatory regime*.

Out of Scope

¹ The Health and Safety at Work (Adventure Activities) Regulations 2016 replaced and carried on the provisions in the Health and Safety in Employment (Adventure Activities) Regulations 2011, which came fully into force on 1 November 2014.

WorkSafe's health and safety investigation into the events relating to Whakaari White Island following the eruption on 9 December 2019 and its decision to prosecute 13 parties are outside the scope of the review.

Interdependencies

In undertaking the review, the reviewer is to have regard to the fact that WorkSafe has brought prosecutions against 13 parties in relation to their activities on or affecting Whakaari White Island, and particular care needs to be taken to ensure the review does not prejudice the prosecution activities or prejudice any party's rights to a fair trial.

Approach

In undertaking the review, the reviewer will:-

1. Carry out a desktop review of WorkSafe's records relating the performance of its functions in relation to activities on Whakaari White Island, and;
2. Conduct interviews if necessary with the following persons or organisations:-
 - relevant WorkSafe staff
 - representatives from Business New Zealand, the Council of Trade Unions, the Tourism Industry Association and Recreation Aotearoa

Should the reviewer consider that interviews beyond those identified above are required to fully inform the review, this should only be done with the agreement of MBIE. MBIE will consult with WorkSafe before giving agreement.

Reporting

The reviewer will provide a report to Carolyn Tremain, Chief Executive MBIE by 30 June 2021 outlining the review and any findings.

Subject to the requirements of the Official Information Act 1982, prosecution disclosure obligations and general fairness in prosecution, the report will remain confidential until MBIE has reported to the Minister.