



Expert Reference Group to support policy response to the 2019 Whakaari/White Island Tragedy- Terms of Reference – March 2021

CONTEXT

As part of the Government response to the 2019 Whakaari/White Island tragedy, between July and November 2020 the MBIE conducted a targeted review into the adventure activities regulatory regime. This targeted review focused on whether weaknesses exist in the regime where activities intersect with natural hazards. Findings from this review were presented to the Minister for Workplace Relations and Safety in November 2020.

In addition to the targeted review, between June and September 2020 WorkSafe independently conducted an internal health check of their administration of the adventure activities regime.

Findings from both reviews were publically released in December 2020.

In response to the findings of MBIE's targeted review, the Minister for Workplace Relations and Safety has agreed to MBIE undertaking a second phase of work to develop detailed policy and implementation options to strengthen the adventure activities regime's requirements for management of natural hazard risks, the safety audit process and leadership role of WorkSafe as regulator.

This work will include the development of policy options for changes to the regime and public consultation on those proposals. Both regulatory and implementation change will be considered.

SCOPE

The key areas for consideration in this phase of the work are:

- Natural hazard identification and management in the regime
- Strengthened regulatory leadership role of WorkSafe
- Funding the regime
- Public transparency and evaluation of performance
- High level direction to support review of, and potential change to, the safety audit standard and/or activity safety guidelines.

Areas considered out of scope are:

- Specific areas in the adventure activities regime out of scope for immediate investigation
 - Intersection with transport regimes
 - Definition of Adventure Activities
 - The fundamental design of the regime, including the use of third party authorisation, and its commercial sustainability over the long term.



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- Elements of WS health check not directly relevant to the Targeted Review
 - Administrative and operational system changes and allocation of operational resource that have no impact on the design or the funding of the regime
 - Systems and strategies around operational enforcement activities
 - Detailed content development for the standard, scheme and guidelines
 - MBIE's independent review of WorkSafe in relation to Whakaari
 - WorkSafe prosecutions relating to the Whakaari event

THE FUNCTIONS OF THE EXPERT REFERENCE GROUP

In the context of developing proposals for regulatory or other change, the functions of the Expert Reference Group are to:

- Provide officials with access to expert and independent strategic and subject-matter advice
- Indicate that proposals wherever possible meet international best practice, moderated as necessary for New Zealand conditions
- Provide independent and transparent scrutiny of regulatory proposals
- Assist in strengthening the credibility of proposals released for public consultation and presented to the Government for decision.

Consistent with the Minister's expectations for the development of proposals, the Expert Reference Group is expected to function until Cabinet decisions regarding proposals are sought in June 2021, with face to face meetings expected to be held monthly throughout the first half of the year, and with additional communications as required. It is envisaged that more intense engagement will be required of Expert Reference Group members between the months of March and May.

Members of the Expert Reference Group

Representatives will be selected for their ability to support officials with expertise on:

- The natural hazards that participants in adventure activities are exposed to, and how the risks from such hazards may be managed
- Best practice risk management and audit processes
- Academic perspectives on tourism, regulatory stewardship and the management of natural hazards
- The strategic interests and sector view of the tourism and recreation sectors

The perspectives of other interested parties, such as operators, workers and participants in adventure activities, will be obtained through public consultation. Consultation will be designed to target these groups.

The group will comprise of senior representatives from:

- MBIE



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- WorkSafe
 - The Joint Accreditation System of Australia and New Zealand
 - Tourism Industry Aotearoa
 - NZ Māori Tourism
 - Recreation Aotearoa
 - GNS Science
 - Department of Conservation
 - MBIE's regulatory design expert
 - Tourism destination management expert
 - Natural hazard behavioural expert
 - Risk management expert.

The Expert Reference Group will select their own Chair who will be responsible for the leadership of the Group and the conducting of meetings.

Role of the Chair

The Chair of the Group is responsible for:

- chairing meetings and other stakeholder forums;
- setting the agenda, in consultation with Group members and MBIE;
- with MBIE determining and managing what action is appropriate if a member has a potential conflict of interest;
- liaising with MBIE on all matters relating to the role of the Group;
- acting as the spokesperson for the Group as required;
- maintaining close and effective relationships with all relevant stakeholders; and,
- reporting to MBIE on the recommendations of the Group.

The Chair will advise the MBIE directly of his/her or any other member's intention to make public comments. Any public comments will be subject to the Chair's discretion.

The Chair may appoint an alternative Chair in the event of illness or unavailability of the appointed Chair.

Expectations of Members

The members of the Group will support the Chair to give expert input to support the development of policy options for the proposed changes to the adventure activities regulatory regime. Members are expected to:

- attend meetings;
- prepare adequately prior to each meeting by reading all papers provided to them;
- ensure that matters of significance are brought to the attention of the Group;



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- bring and contribute to the Group perspectives based on their area of expertise, experiences and interests;
 - base their advice on understanding of broader issues in society and the economy;
 - to provide advice to MBIE on issue papers and the draft discussion document.

WAYS OF WORKING

Confidentiality

The Group will need to be able to offer free and frank advice to MBIE while maintaining discretion about that advice in wider circles.

The Group will maintain the confidentiality of material submitted to it or obtained in carrying out, or incidental to, its functions. Members may discuss materials with individuals as part of gathering relevant input to bring well-informed views to the group. Members will not enable public sharing of reference group material.

Group members will make public comments only after advising of the Chair of their intention to do so and gaining his/her approval. The Chairperson (if appointed) will advise MBIE directly of his/her or other Group members' intentions to make public comments. This injunction will apply whether the members agree or disagree with the Government's actions on which they are commenting.

MBIE and the Group will operate on a 'no surprises' basis.

Obligations of the Group

The Group members will:

- act in good faith, and show honesty, integrity, openness and accountability in their dealings with each other and all other stakeholders;
- comply with legal requirements;
- act consistently with the State Sector Standards of Integrity and Conduct;
- meet all relevant expectations and the Crown's obligations under the Treaty of Waitangi;
- provide free and frank advice in relation to matters before the Group; and
- consult and gain approval from the Chair before making public statements on any aspect of the Group.

GOVERNANCE, OVERSIGHT AND REPORTING

Primary responsibility for governance and delivery of the work programme rests with the Ministry of Business, Innovation and Employment.

The Expert Reference Group will advise the Ministry whether proposals meet international best practice, moderated as necessary for New Zealand conditions.

The views of the Expert Reference Group will be reported to Ministers when making their decisions.

The work of the Expert Reference Group will be supported, and administrative services provided by MBIE.



The development of proposals will be overseen by a senior officials group from WorkSafe New Zealand and MBIE.

The work of the Expert Reference Group will be reported to the senior officials' group.

The Official Information Act 1982 applies to the records of the Group.