



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of briefing	Adventure Activities Regulatory Regime: Proposed Changes	Date to be published	8 November 2022

List of documents that have been proactively released

Date	Title	Author
September 2022	Adventure Activities Regulatory Regime: Proposed Changes	Office of the Minister of Workplace Relations and Safety
21 September 2022	Cabinet Economic Development Committee Minute of Decision: DEV-22-MIN-0222	Cabinet Office
14 June 2022	Regulatory Impact Statement: Strengthening the adventure activities regulatory regime	Ministry of Business, Innovation & Employment

Information redacted

YES

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- Confidentiality

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Development Committee

Changes to the adventure activities regulatory regime

Proposal

- 1 This paper seeks agreement to a package of regulatory and non-regulatory changes to the adventure activities regulatory regime. These changes will support improved safety standards in the sector, to better protect workers and people taking part in adventure activities.

Relation to government priorities

- 2 These proposals support the Government's objective of safe and productive work and communities, through supporting better safety for people who provide and participate in adventure activities. These proposals will also help support New Zealand's economic recovery as tourism resumes, through providing confidence that tourism activities in New Zealand are safe and that lessons have been learnt from the 2019 Whakaari tragedy.

Executive Summary

- 3 The 2019 Whakaari tragedy called into question whether New Zealand's current system for regulating safety in adventure activities is both fit for purpose and providing assurance that safety is consistently being managed well. As part of the response to this tragedy, the Ministry of Business, Innovation and Employment (MBIE) conducted a targeted review of the regulatory regime for safety in adventure activities.
- 4 Safety in adventure activities is primarily regulated under the health and safety at work framework. Adventure activity operators have general duties to ensure, so far as is reasonably practicable, that their operations do not put their workers or other people at risk. They are also required to undergo a safety audit at least once every three years and register their operations with WorkSafe New Zealand (WorkSafe).
- 5 MBIE's targeted review found that, while overall the regulatory regime was supporting improved safety standards, there are several key areas that should be improved. These relate to increasing the focus on risks from natural hazards, improving how risks are communicated to activity participants, and strengthening WorkSafe's monitoring, engagement, and enforcement towards the sector.
- 6 To address these areas, I am seeking Cabinet's agreement to a package of regulatory and non-regulatory changes with four key pillars:

- introducing specific requirements for how adventure activity operators must assess and manage natural hazard risks
 - strengthening requirements for operators to communicate risks to activity participants
 - stronger registration and notification requirements
 - reviewing and updating adventure activity safety guidance.
- 7 Together, I consider these changes will result in clearer, more consistent standards for what organisations providing adventure activities must do to manage risks and will support WorkSafe to take a stronger monitoring and enforcement role. These improvements will support the safer provision of adventure activities and help ensure tourists and recreational participants in these activities are kept out of harm's way as much as possible.
- 8 Alongside these changes, WorkSafe is undertaking a broader programme of operational changes to its oversight of the adventure activities regime. These include changes to its operational policies and processes to strengthen how it monitors the regulatory regime, recognises safety auditors, and enforces compliance.
- 9 These operational changes will support my recommended package of changes, through ensuring that the regulator is well-positioned to make effective use of the new information and powers it will be provided.
- 10 Should Cabinet agree to these proposals, changes will be implemented through amendments to regulations, changes to the adventure activity audit standard and guidance materials. I intend these changes to be fully implemented by late 2023, when a significant number of adventure activity operators are due to renew their registrations.

Background

- 11 On 9 December 2019, Whakaari White Island erupted. Forty-seven people were present on the island at the time of the eruption as part of guided tours. This eruption resulted in 22 deaths and left 25 people with serious, lifelong injuries.
- 12 Guided tours on Whakaari fall under the *Health and Safety at Work (Adventure Activities) Regulations 2016*. The 2019 tragedy called into question whether this system for regulating safety in adventure activities is fit for purpose and provides adequate assurance that safety is consistently well managed in the sector.
- 13 In 2020, the then Minister for Workplace Relations and Safety directed MBIE to begin a targeted review of the adventure activities regulatory system. The aim was to identify issues and suggest where immediate improvements could be made to support safety in the sector, with a particular focus on how the risks from the natural environment were being managed.

- 14 This targeted review found that while the introduction of the regulatory regime in 2014 improved safety standards within the sector overall, there were several key weaknesses in the system that should be addressed. The review also noted that there was a continued risk of catastrophic events occurring in the sector.
- 15 In 2021 Cabinet agreed to the release of a public consultation document with proposals for strengthening the adventure activities regulatory regime [DEV-21-MIN-0174 refers]. Having considered the findings of this consultation, I am proposing a package of changes to support improved safety in adventure activities.

Adventure activities are a key part of New Zealand's tourism and recreation sectors

- 16 Adventure activities, such as guided mountaineering, diving, kayaking and canyoning, are a well-known part of New Zealand's tourism and recreation offerings.
- 17 In 2019, 20 per cent of international tourists took part in at least one adventure activity while in New Zealand. Total spending by international tourists taking part in adventure activities in 2019 was an estimated \$3.1 billion.¹ Recreationally, adventure activities are a key way students and other New Zealanders experience the natural environment, challenge themselves and stay healthy, fit and connected.
- 18 Everyone working and taking part in these activities deserves to know their safety is being managed well. Furthermore, instilling confidence in New Zealand as a safe place for adventure activities is important to help revitalise our tourism sector.

Safety in adventure activities is primarily regulated under the Health and Safety at Work framework

- 19 Adventure activities, by definition, expose participants to some serious risk, such as dangerous terrain or dangerous waters. As a result of these inherent risks, the objective of the adventure activities regulatory regime is not to attempt to eliminate the risk of harm entirely, but rather to minimise the *preventable harm* that occurs and to provide assurance that safety is consistently being managed well across the sector.
- 20 Like all New Zealand businesses, adventure activity operators have general duties under the *Health and Safety at Work Act 2015* to ensure, so far as is reasonably practicable, that their work does not put at risk the safety of their workers or other persons. The Health and Safety at Work Act also imposes obligations on other parties involved in activities to manage risks, such as those who control access to the places where activities occur.
- 21 Sector-specific requirements are provided by the *Health and Safety at Work (Adventure Activities) Regulations 2016* (the Adventure Activities

¹ Based on the 2019 International Visitor Survey.

Regulations). The core requirement of these regulations is that all adventure activity operators must undergo a full safety audit at least once every three years and register their operation with WorkSafe. These audit requirements provide a proactive check that operators are meeting their obligations and have effective safety systems in place.

- 22 To pass a safety audit, operators must meet the requirements of the *Safety Audit Standard for Adventure Activities 2017* (the Audit Standard). This Standard is developed and published by WorkSafe. Audits are conducted by independent audit providers that have been recognised by WorkSafe (based on Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accreditation²) as having the appropriate expertise and systems to conduct adventure activities safety audits.
- 23 This system for regulating adventure activities is relatively new. Mandatory requirements for operators to undergo safety audits and register their operations have only been in effect since late 2014.

Reviews of the adventure activities regime have identified areas that can be improved

- 24 MBIE's 2020 targeted review and subsequent evaluation of the adventure activities system found that, overall, the current system of regulating adventure activities is working to improve safety standards in the sector.
- 25 While recent harm rates remain high, this is primarily due to the extreme amount of harm that resulted from the Whakaari tragedy. Excluding deaths from this tragedy, there were nine fatalities in adventure activities between 2014 (when the regime took effect) and 2019. In comparison, between 2004 and 2009 there were 29 fatalities in adventure activities.
- 26 The consistent view of operators, safety auditors, activity participants and others with an interest in the sector is that the safety performance of adventure activity operators has improved since the regulatory regime was introduced in 2014, and the improvements continue. The frequency of events causing deaths in the sector has notably declined since 2014.³
- 27 However, the targeted review did note that, given the nature of risks in the sector and the wide range of activities offered, there is an ongoing risk of catastrophic events (single incidents causing multiple fatalities) occurring in the sector. It was noted that although these risks can be reduced, it is unlikely they can be eliminated entirely.
- 28 Based on this evidence, I consider a major overhaul of the regulatory system is not needed at this time. However, there are several key areas that should be strengthened to improve how risks are managed in the sector, to minimise

² JAS-ANZ provides internationally recognised accreditation services. They assess and accredit auditing bodies against the New Zealand Adventure Activity Certification Scheme, which sets requirements for how auditing bodies perform auditing, certification, and monitoring functions.

³ Between 2004 and 2009, there were more than 15 separate incidents causing fatalities. Between 2014 and 2019, this decreased to nine.

harm when it occurs, and to reduce the likelihood of future catastrophic events.

More focus should be placed on natural hazard risks

- 29 Natural hazards (such as floods, water surges, avalanches, and eruptions) are associated with the majority of harm that occurs in the sector – both from isolated incidents and catastrophic events.⁴ While consultation findings suggest operators consider themselves to be managing natural hazard risks well, these risks continue to be a persistent source of harm.
- 30 The adventure activities regime does not currently set any detailed requirements for operators to assess and manage natural hazard risks. There is an opportunity to set clearer, consistent standards for how this category of risks is managed and to reduce the variations in how operators approach these risks.

Strengthening risk communication to participants

- 31 Statements made by participants in adventure activities suggest they are not always given enough information about the risks to enable them to give informed consent to taking part. Consultation findings suggest that operators have differing views of how and what information about risks should be passed to participants.
- 32 The current regulatory system does not provide detailed requirements regarding risk communication. While the Audit Standard requires operators to have procedures to communicate “relevant safety information” to participants, no direction is provided about what risk information should be communicated or how communications should be made. There is an opportunity to create clearer and consistent minimum standards for risk communication.

Strengthening WorkSafe’s regulatory leadership

- 33 One of the key findings of MBIE’s review was that WorkSafe’s limited engagement with the sector had exacerbated other weaknesses in the regime (such as inconsistent practices towards managing natural hazard risks). Consultation reinforced that the sector has not felt well supported by the regulator, with gaps such as guidance not regularly reviewed, administrative issues and limited enforcement.
- 34 WorkSafe is making operational improvements to refocus on the sector and strengthen its administration of the adventure activities regime. More information about this work underway is set out at paragraph 55 below. While these operational changes are the main way this issue will be addressed, there are also regulatory adjustments that can be made to support a stronger monitoring, engagement, and enforcement role for WorkSafe.

⁴ Natural hazards are associated with 26 of the 31 fatalities that occurred in the sector between 2014 and 2019, and with all five catastrophic or near catastrophic events that have occurred since 2000.

I am proposing a package of regulatory and non-regulatory changes to address these areas

- 35 To address these areas, I am seeking Cabinet's agreement to a package of regulatory and non-regulatory changes with four key pillars:
- introducing specific requirements for natural hazard risk management
 - strengthening requirements for risks to be communicated
 - stronger registration and notification requirements
 - reviewing and updating adventure activity safety guidance.

36 Together, I consider these changes will result in clearer, more consistent standards for what organisations providing adventure activities must do to manage risks and will support WorkSafe to take a stronger monitoring and enforcement role.

37 The focus is on changes that will standardise and support the spread of good risk management practices across the sector. Operators who already have robust safety systems are therefore likely to experience only minor costs in adapting to these new requirements, rather than requiring extensive changes to their systems.

38 These proposals align with feedback from industry, auditors, and activity participants about how government can best support operators to implement effective safety systems, while avoiding disproportionate costs to the sector.

Introducing specific requirements for natural hazard risk management

39 Through changes to the Audit Standard, clear minimum standards can be introduced for the systems operators must have in place to manage risks associated with natural hazards. Operators would be periodically assessed against these specific requirements in audits.

40 Such requirements could include, for example, specific obligations for operators to:

- have systems to identify risks from natural hazards (including taking into account information provided by experts and landowners),
- consider how risks from these hazards can be eliminated or minimised (such as taking alternative routes), and
- have pre-set policies for conditions under which activities will be called off.

41 Introducing such minimum standards will ensure that all operators have basic systems in place to manage risks from natural hazards. Establishing requirements specifically about natural hazard risks will encourage operators to have these particular risks front of mind when developing safety systems and ensure that audits focus on whether these risks are being managed to a high standard.

- 42 While such requirements could be introduced through regulations, I consider that introducing them through the Audit Standard is preferable as this will allow a greater level of technical detail to be provided.
- 43 To support this change, WorkSafe will publish a package of guidance materials on the good practice management of natural hazard risks. This will help operators to understand the types of factors and possible mitigations they should consider when managing natural hazard risks, supporting them to develop effective safety systems. Funding was provided to enable this guidance material to be developed in Budget 21.

Strengthening requirements for risk communication

- 44 A critical part of managing risks in adventure activities is making sure that participants are given enough information to make an informed decision about whether they wish to take part, and whether the activity aligns with their expectations and capabilities.
- 45 To emphasise the importance of risk communication and ensure this is consistently being done to a high standard, I recommend that a duty is introduced in the Adventure Activities Regulations requiring operators to have processes in place to communicate the risks associated with an activity to prospective participants, so far as is reasonably practicable.
- 46 This duty would be supported by associated changes to the Audit Standard and guidance materials to provide adventure activity operators with good practice information on how to communicate risks to participants and what information should be provided.
- 47 These changes will ensure there is sector-wide consistency in how risk information is communicated to participants and will better support the public to make informed decisions about their participation in adventure activities.
- 48 I propose to consult key stakeholders on the appropriate offence and penalty for breaches of this new risk communication duty, taking account of the framework for health and safety at work penalties that Cabinet agreed in 2015, which sets fine levels based upon the harm that may be caused by offending [CAB-15-MIN-0118], and the upper limit of \$50,000 for regulatory offences with fines provided in the Health and Safety at Work Act. I propose that I be authorised to include this offence and penalty in the Adventure Activity Regulations.

Stronger registration and notification requirements

- 49 To support WorkSafe to take a stronger monitoring and enforcement role, I recommend several adjustments to the registration framework for adventure activity operators and the information they are required to provide to WorkSafe. These changes are:

- Requiring adventure activity operators to register directly with WorkSafe (rather than indirectly via their auditor) and to provide more information upon registration (such as the size of their operation).
- Expanding the circumstances under which WorkSafe as the registrar can refuse, suspend, cancel or add conditions to operator registrations, where serious safety concerns arise.
- Providing WorkSafe the power to temporarily suspend an operator's registration while the operator is under investigation.
- Introducing a list of sector-specific "notifiable incidents", which operators must inform WorkSafe of, reflecting near-miss incidents from major risks in the sector.

50 Expansions to WorkSafe's powers to refuse, suspend, cancel or add conditions to registrations will be balanced by additional rights for operators to appeal or request reviews of registration decisions.

51 I consider these changes will support WorkSafe to take a stronger role through building a more direct relationship between operators and the regulator, providing WorkSafe more information to understand risks in the sector, and providing WorkSafe more tools to intervene and stop activities where serious safety concerns arise.

Reviewing and updating adventure activity safety guidance

52 The sector gave clear feedback that one of the most useful tools to improve safety is detailed, practical guidance about what good risk management practices are. Both operators and auditors highlighted existing "activity safety guidelines", co-developed by WorkSafe and industry, as a highly useful tool. These guidelines provide detailed, technical information about hazards and how safety should be managed in particular activities.

53 Current guidelines only cover 12 types of adventure activity, and several of these guidelines have not been reviewed since 2016. I expect WorkSafe to begin a programme to review and update this package of guidelines.

54 Updating these guidelines will ensure operators have detailed information about the types of factors and methods they should consider in their safety management systems. Activity guidelines are used as common reference points by operators, auditors, and industry groups for what good practice looks like, so more comprehensive and up-to-date guidelines will support the uptake of good safety practices across the sector.

WorkSafe is strengthening how it administers and regulates the adventure activities regime

55 Alongside these proposals, WorkSafe is making operational changes to improve its oversight and implementation of the adventure activities regime. These changes include adjustments to operational policies and systems, and reviews of instruments such as the accreditation scheme for safety auditors. A particular focus is adjusting operational systems and building capacity to

ensure WorkSafe takes timely and effective enforcement action where operators are not meeting requirements.

- 56 These actions by WorkSafe will support and complement my recommended package of changes, by ensuring the regulator is effectively overseeing the adventure activities regime and is well-positioned to intervene where minimum requirements are not being met.

Ensuring effective implementation

- 57 Implementing these changes will require a combination of amendments to the Adventure Activity Regulations, and changes to the Audit Standard and guidance published by WorkSafe.
- 58 I intend for changes to the Adventure Activity Regulations and Safety Audit Standard to be enacted by May 2023 and be fully in effect by September 2023. Having these new requirements in place by late 2023 is important as roughly 40 per cent of currently registered operators are due to be audited between September and December 2023. Missing this timing would mean this group of operators will not be fully audited against new requirements for a further three years.
- 59 This timeframe will allow operators several months to make any necessary adjustments to their systems before new requirements come into effect and they are audited. I expect auditors will work with operators in their assessments to address any minor non-conformities with the new standards.
- 60 Changes to guidance materials will be progressively rolled out over the next two years. I expect the guidance to support effective management of natural hazard risks will be in place by late 2023, and updates to activity safety guidelines will be completed by late 2024.
- 61 A full review of the Adventure Activity Regulations is scheduled to begin in 2026. This full review will provide an opportunity to review the effectiveness of these changes, as well as consider wider issues beyond the scope of the targeted review, such as the coverage of the regime and long-term sustainability of the auditing system.

Financial Implications

- 62 WorkSafe was allocated \$2.22m of funding in Budget 21 to support changes to adventure activities operational policies, develop guidance, and conduct education and engagement activities to support policy changes. WorkSafe have indicated that the costs of this package of changes can be met under this existing funding.

Legislative implications

- 63 Introducing a regulatory duty for operators to have processes to communicate risks to participants and to strengthen registration and notification requirements will require amendments to the *Health and Safety at Work (Adventure Activities) Regulations 2016*.

Impact Analysis

Regulatory Impact Statement

- 64 A Regulatory Impact Statement (RIS) has been prepared for this package of changes and is attached.
- 65 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment

- 66 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 67 The package of proposals will benefit those who work and participate within the adventure activities sector. These changes will not have any wider population impacts.

Human Rights

- 68 These proposals are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 69 The following agencies have been consulted on these proposals: the Department of Internal Affairs, MBIE Science Policy, MBIE Tourism Policy, the Treasury, the Ministry of Justice, the Department of the Prime Minister and Cabinet, the National Emergency Management Agency, GNS Science, Maritime New Zealand, and WorkSafe New Zealand. Agencies were either supportive of the proposals or did not have any significant concerns.
- 70 The *Health and Safety at Work Act 2015* requires consultation with all appropriate persons and organisations before I make recommendations for changes to regulations. In 2021 MBIE released a public consultation document and conducted a series of webinars and interviews regarding proposals for change. Three hundred and twenty-eight submissions were received from adventure activity operators, participants, workers, industry groups, auditors, and others with an interest in the proposals.
- 71 Submitters considered that adventure activities are generally safe and well regulated, and therefore significant regulatory change is not required.

- 72 Operators and industry associations expressed moderate support for changes that would formalise and embed good practices for the management of natural hazard risks and communication of risks, and support WorkSafe to have a stronger role, provided such changes would not increase compliance costs.
- 73 Activity participants generally considered safety was being managed well in the sector. Participant views on current risk communication practices are mixed (likely reflecting personal experiences), with many considering participants are adequately informed of risks, but a significant minority considering more information would be of value.
- 74 Audit providers considered that clearer requirements in some areas, such as natural hazard risk management, would be beneficial and that more significant regulatory changes were unlikely to be more effective or viable. Audit providers generally indicated that non-regulatory improvements, such as guidance materials and audit focus areas, would be the changes most likely to lead to improved safety practices.
- 75 These views have helped inform the proposals indicated above.

Communications

- 76 MBIE and WorkSafe will communicate Cabinet's decisions to stakeholders.
- 77 Subject to Cabinet's agreement, I will authorise MBIE to release an exposure draft of the regulations to implement these decisions for public consultation later this year.

Proactive Release

- 78 I intend to release the Cabinet paper proactively in whole within 30 business days, subject to redaction as appropriate under the *Official Information Act 1982*.

Recommendations

I recommend that the Committee:

- 1 **Note** that reviews of the adventure activities regulatory regime following the 2019 Whakaari tragedy have identified several areas for improvement that should be addressed.
- 2 **Note** that in August 2021 Cabinet approved the release of a consultation document on potential changes to the adventure activities regulatory regime and invited the Minister for Workplace Relations and Safety to report back seeking decisions on changes to the regime [CAB-21-MIN-0318].

Proposals for change

- 3 **Agree** to amend the *Health and Safety at Work (Adventure Activities) Regulations 2016* to:

I N C O N F I D E N C E

- 3.1 introduce a duty requiring operators to have processes in place to communicate risks to participants
 - 3.2 expand the registrar's powers to decline, suspend, cancel, and add conditions to adventure activity operator registrations, where justified on safety grounds, and provide operators with rights to appeal and request reviews of decisions where these powers are exercised
 - 3.3 require adventure activity operators to register directly with the registrar and provide more detailed information upon registration
 - 3.4 introduce sector-specific notifiable incidents that must be reported to WorkSafe.
- 4 **Authorise** the Minister for Workplace Relations and Safety to develop an appropriate offence and penalty for the new risk communication duty referred to in 3.1, in line with Ministry of Justice guidance and based on the established framework for regulatory offences and penalties made under the *Health and Safety at Work Act 2015* [CAB-15-MIN-0118 refers].
- 5 **Note** that WorkSafe will make changes to the Safety Audit Standard for adventure activities to:
- 5.1 introduce specific requirements for operators to assess and manage risks associated with natural hazards
 - 5.2 provide detailed requirements for what information about risks must be provided to participants and how risk communication should occur.
- 6 **Note** that WorkSafe will also:
- 6.1 develop specific guidance for adventure activity operators and others on good practice management of natural hazard risks
 - 6.2 review and update the adventure activities Activity Safety Guidelines, including reviewing content on managing risks from natural hazards associated with activities.
- 7 **Note** a full review of the *Health and Safety at Work (Adventure Activities) Regulations 2016* is scheduled to begin in 2026.

Drafting and consultation on exposure draft

- 8 **Invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations.
- 9 **Authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the proposals in these recommendations, on any issues that arise during the drafting process or as a result of consultation on the exposure draft.

- 10 **Authorise** the Minister for Workplace Relations and Safety, following consultation with the Minister of Tourism and other relevant portfolio Ministers, to approve and release an exposure draft of the regulations and related commentary for public consultation.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety