



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



# Consultation guide

## Amendments to the Health and Safety at Work (Adventure Activities) Regulations 2016

**13 March 2023**

**Call for submissions on proposed drafting**

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We will use the information you provide in submissions to inform MBIE's policy development process, and to inform advice to Government about health and safety at work regulatory reform. We may contact you directly if we require clarification of any matters you raise.

Submissions remain subject to requests under the Official Information Act 1982. Please clearly indicate in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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# What is this consultation about?

## Background: the adventure activities review

Following the 2019 Whakaari/White Island tragedy, the Minister for Workplace Relations and Safety directed the Ministry of Business, Innovation and Employment (MBIE) to undertake a targeted review of the adventure activities regulatory regime. This review found that, while overall the regime was improving safety in the sector, there were several areas that could be improved, such as strengthening WorkSafe's regulatory leadership role and increasing the focus on natural hazards.<sup>1</sup>

In 2021 MBIE consulted on a range of possible changes to the adventure activities system to address these issues.

In September 2022, Cabinet agreed to a number of changes to the adventure activities regime.<sup>2</sup> Key changes were:

- introducing specific requirements for how adventure activity operators must assess and manage natural hazard risks
- strengthening requirements for operators to communicate risks to prospective participants
- stronger operator registration and notification requirements
- reviewing and updating adventure activity safety guidance.

## What are we seeking feedback on?

A number of the changes agreed by Cabinet involve amendments to the *Health and Safety at Work (Adventure Activities) Regulations 2016* (the Regulations). We have now developed draft wording for these changes to the Regulations.

We want to hear your views on whether these draft amendments will achieve the changes Cabinet has agreed to, and any practical issues you see in how new requirements are worded.

Note we are not seeking feedback on whether you agree with the changes Cabinet has decided. Instead, we want to know if you think these draft regulations will achieve Cabinet's policy intent.

Your feedback will assist us to refine and finalise these draft amendments to the Adventure Activities Regulations.

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<sup>1</sup> The report from this review is available at [www.mbie.govt.nz/assets/targeted-review-of-the-adventure-activities-regulatory-regime-report.pdf](http://www.mbie.govt.nz/assets/targeted-review-of-the-adventure-activities-regulatory-regime-report.pdf).

<sup>2</sup> The Minister's press release about these changes is available [here](#) and the Cabinet paper outlining these decisions [here](#).

## What's in this consultation document?

The next section of this document provides a brief overview and commentary of what is in the draft amendment regulations. It also provides questions to guide your feedback on whether the draft regulations are workable and meet the policy intent agreed upon by Cabinet.

The draft amendment regulations should be read together with the current *Health and Safety at Work (Adventure Activities) Regulations 2016*. In many areas these amendments will add to or change the existing requirements in the Regulations, rather than replacing a regulation in full. You can access the current Adventure Activities Regulations [here](#).

## How to have your say

We want to hear your views on whether these draft regulations will effectively achieve the intended changes.

### Submissions process

The Ministry of Business, Innovation & Employment is seeking written submissions on these draft regulations by **18 April 2023**.

This document includes a number of questions to guide submissions. Your submission may respond to any or all of these questions. We also encourage your input on any other relevant issues.

Please include your name and (if applicable) the name of your organisation in your submission. Please include your contact details in the cover letter or e-mail accompanying your submission.

You can provide feedback by:

- **emailing it** as a PDF or Word document to [HSWregs@mbie.govt.nz](mailto:HSWregs@mbie.govt.nz)
- by **posting your submission** it to:

*Health and Safety Policy Team  
Labour, Science and Enterprise  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140*

If you have any questions about the submissions process, please direct these to [HSWregs@mbie.govt.nz](mailto:HSWregs@mbie.govt.nz).

# Overview of the amendments

In this section we provide a brief overview and commentary on the main areas covered in the amendment regulations.

Alongside changes to the Regulations, changes are also being made to the Safety Audit Standard for Adventure Activities 2017 (the Safety Audit Standard) and guidance materials published by WorkSafe New Zealand (WorkSafe). Some of the changes agreed by Cabinet, such as the introduction of specific requirements for assessing natural hazard risks, are being made through these instruments rather than the regulations.

## 1. Introducing a risk communication duty

A new duty is being introduced in the regulation on operators to communicate risks to people seeking to participate in an adventure activity. This duty will expand upon existing requirements on operators to communicate risks in the Safety Audit Standard.

This change is intended to emphasise the importance of effective risk communication and support more sector-wide consistency in risk communication.

This duty in regulation will be supported by changes to the Safety Audit Standard and WorkSafe guidance for operators on good practice for when and how to inform participants of risks.

The new **regulation 8A** provides this new duty. Key features to note include:

- The duty requires operators to take “all reasonable steps” to inform people of the serious risks they may be exposed to by participating in an activity.<sup>3</sup>
- This information about risks must be provided to “a person seeking to participate in an adventure activity”. The intention is to require that the information is communicated *before* a person commits to taking part in an activity (eg before the customer buys their ticket).

The suggested penalties for not meeting this duty are discussed in section 5 below.

1

Do you consider this duty requiring operators to have processes in place to communicate risks will be effective and workable for operators? If not, please explain why.

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<sup>3</sup> What steps are reasonable for an operator will depend on the particular circumstances, but may, for example, include ensuring information about risks is included on their website or advertising and communicating it at the point of sale.

## 2. New registration process

A new process is being introduced for operators to directly register with the Registrar of Adventure Activities. WorkSafe is both the regulator and Registrar of Adventure Activities. As the Registrar, WorkSafe makes decisions about operator registrations and maintains a public register of operators.

Changes to the registration process include requiring operators to directly register with the Registrar (rather than via their auditor) and provide some additional details on registration. The Registrar will also be able to add conditions on registrations.

There are also several changes to modernise how the Regulations set out the registration process and to strengthen operators' rights. These include creating more detailed requirements for licence renewals and establishing processes providing for operators to request that decisions be reviewed by WorkSafe, or to appeal to the District Court.

The new registration process is provided for by new **regulations 6A-6B** and **7-7M**. The new processes providing for operators to request that decisions be reviewed or to appeal to the District Court are provided for in **regulations 18A-18D**.

Key features to note include:

- Once an operator has obtained a safety audit certificate, they will be required to fill in an application form and pay the application fee to WorkSafe directly, rather than the auditor.
- Operators will need to provide some additional information in applications, such as an indication of the number of customers taking part in activities with the operator each year.
- WorkSafe will be able to make registration subject to conditions, where conditions are considered necessary in the interests of safety. Failing to follow these conditions can result in the operator having their registration suspended or cancelled by WorkSafe.
- Operators that are affected by a range of decisions, such as having their registration refused, cancelled or suspended, or having conditions applied to their registration, can request this decision is reviewed by WorkSafe. If they continue to disagree with the decision following this review, they can appeal the decision to the District Court.

2

Do you consider that the new registration process will be effective and workable for operators? If not, please explain why and any potential issues you see in this new process.

3

Do you consider the proposed rights for operators to request decisions by the Registrar be reviewed and to appeal are appropriate? If not, please explain why.

### 3. Powers to suspend, cancel and refuse registration

The grounds under which the Registrar is able to cancel, suspend and refuse registrations are being expanded. A new power for the Registrar has also been introduced to suspend registrations immediately (without needing to meet usual notice requirements) in cases of serious risk.

These changes are intended to provide WorkSafe as the Registrar more options to intervene through operator registrations where serious safety risks arise.

These changes are provided for in new **regulations 7H-7J** and **7(3)**. Key features to note include:

- WorkSafe may suspend or cancel a registration, or refuse to accept an application to be registered, where it is satisfied on reasonable grounds the operator may not provide the activities safely, so far as is reasonably practicable.<sup>4</sup>
- The wording “may not provide activities safely” is intended to ensure it is clear that WorkSafe may suspend or cancel a registration even if no incident has occurred yet.
- WorkSafe may suspend an operator immediately where their providing an adventure activity “may pose an imminent serious risk” to health and safety.<sup>5</sup>
- Such immediate suspensions may last up to 14 days. If WorkSafe intends to extend the suspension beyond 14 days, it is required to give notice and give the operator a reasonable opportunity to respond, following the rules for suspensions under Regulation 7I.
- Following a suspension, WorkSafe may place conditions on an operator’s registration. The process for this is set out in **regulations 7K-7L**.

WorkSafe’s decisions on suspensions, cancellations and refusals of registration (including immediate suspensions) will be subject to operator requests for reviews and appeals, as discussed in the section above.

4

Do you consider these changes to where the Registrar can cancel, suspend and refuse registrations will be effective and workable? If not, please explain why.

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<sup>4</sup> In deciding whether it is “satisfied on reasonable grounds” the Registrar is able to consider all relevant information that it has available regarding an operator. This may include, for example, information like their past conduct and safety record, compliance with any conditions placed on their audit certificate or registration, and actions taken in response to safety concerns being raised.

<sup>5</sup> An “imminent serious risk” is where there is a high risk of significant harm to a person or people, and a need for immediate action to eliminate or mitigate that risk.

## 4. Sector-specific notifiable incidents

New requirements are being introduced for operators to notify WorkSafe when certain near-miss incidents occur.

Adventure activity operators, like all New Zealand businesses, are already required to notify WorkSafe of deaths and serious injuries, along with certain incidents giving rise to serious risk such as fires and structures collapsing, under the “notifiable event” requirements in the *Health and Safety at Work Act 2015*.

These existing notifications requirements are being expanded upon by also requiring operators to notify WorkSafe of near-misses from serious risks associated with adventure activities. This reflects the distinct risks experienced in the sector.

These changes are provided for in new **regulations 3, 8B-8D and 19A-19B**. Key points to note are:

- **Regulation 8B** requires operators to notify WorkSafe of near-miss natural hazard events. **Regulation 3** defines what is a “near-miss natural hazard event”. To be notifiable, these events must have a sudden and significant impact on a location, not be routinely encountered in the activity, and to occur at a location the operator provides or intends to provide activities (eg along a planned route).
- **Regulations 8C and 8D** set requirements for how operators should notify WorkSafe of these near-misses and for operators to keep records. These requirements are designed to be similar to the requirements for other types of notifiable events under the Health and Safety at Work Act.
- **Regulation 19A** provides a proposed list of incidents that operators must notify to WorkSafe where they expose a person to serious risk. These include where a person is placed at serious risk by a natural hazard event, failure of safety critical equipment and a range of incidents involving vehicles or vessels.
- **Regulation 19B** requires operators to notify WorkSafe where an injury or illness requires the operator to implement their emergency plans.

Note Regulation 19A needs to be read together with **section 24 of the Health and Safety at Work Act** (available [here](#)). Regulation 19A specifies that the listed incidents are notifiable incidents under section 24. This means the listed incidents are only notifiable where:

- A person is exposed to serious risk to their health and safety from imminent or immediate exposure to one of the specified hazards, and
- the incident was unplanned or uncontrolled.

For example, this combination means item (c) of regulation 19A(1) should be read as:

*“an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person’s health or safety arising from an immediate or imminent exposure to a fall from a height.”*



5

Do you consider the definition of near-miss natural hazards events in **Regulation 3** to be sufficiently clear to require operators to notify WorkSafe only where there has been a serious risk from a natural hazard? Do you consider that this wording may cause events that are not serious to be notified?

6

Do you consider that the list of notifiable incidents and injuries in **Regulations 19A** and **19B** accurately reflects the key risks in adventure activities? Are there any incidents or injuries that you consider should be removed or added to the list? If so, please explain why.

## 5. Offences and penalties

These changes will require the introduction of new offences and penalties in three areas where operators fail to meet requirements. These are:

- Failing to communicate risk to prospective participants under **regulation 8A**.
- Failure to notify of near miss natural hazard events under **regulation 8B**.
- Failure to keep records of near miss natural hazard events under **regulation 8D**.

The Health and Safety at Work Act 2015 has an established framework for setting the amount of fines for failing to meet duties set in regulation. This framework is set out below:

Type of regulatory offence	Maximum penalty on conviction:	
	Individuals	Non-individuals such as companies
<b>Category One:</b> <ul style="list-style-type: none"> <li>• Offences which may have very serious consequences, ie risk of death or serious injury</li> <li>• Offences relating to risk assessment and hazard identification</li> <li>• Significant administration-related offences</li> <li>• Emergency procedures</li> </ul>	\$10,000	\$50,000
<b>Category Two:</b> <ul style="list-style-type: none"> <li>• Other offences which may have serious consequences</li> <li>• Information and training-related offences</li> <li>• Notification and administration-related offences</li> <li>• Licence offences</li> </ul>	\$6,000	\$30,000
<b>Category Three:</b> <ul style="list-style-type: none"> <li>• Duties placed on workers</li> <li>• Record-keeping offences</li> </ul>	\$2,000	\$10,000

In addition, some offences can be deemed “infringement offences”. Infringement offences are enforceable by the regulator issuing an “on the spot” fine, rather than needing to go through a court prosecution for fines to be applied, as for regulatory offences.

Infringement offences can be created for failures that are relatively less serious, warranting more than a warning but less than a full conviction, and where whether the person has failed to meet their duty is a straightforward issue of fact.

Type of infringement offence	Infringement fees for offences in the HSW Act and regulations	
	Individuals	Non-individuals such as companies
<b>Category One:</b> Infringement offences where there is a direct link between the failure and the risk to someone’s health and safety (eg no control of risks or provision of training)	\$2,000	\$9,000
<b>Category Two:</b> Infringement offences where there is an indirect link between the failure and the risk to someone’s health and safety (eg provision of information)	\$1,000	\$6,000
<b>Category Three:</b> Infringement offences which negatively impact on the efficiency of the health and safety system (eg record keeping)	\$300	\$1,500

Under this framework we consider that breaches of regulations 8A and 8B are **category two regulatory offences**, and so should have maximum penalties of \$6,000 for individuals and \$30,000 for non-individuals such as companies.

We consider breaches of regulation 8D are **category three regulatory offences**, and so should have maximum penalties of \$2,000 for individuals and \$10,000 for non-individuals such as companies.

We also consider breaches of regulation 8D can be deemed a **category three infringement offence**. This means, instead of seeking a regulatory penalty through a court process, WorkSafe may penalise breaches by issuing an “on the spot” fine of \$300 for individuals and \$1,500 for non-individuals such as companies.

7

Do you agree with the proposed offences and penalties for the adventure activity regulations? If not, what would you consider the appropriate amount and why?

## 6. Implementation timing

The final area we are seeking feedback on is the timing for these changes to come into effect.

We propose a **three-month period** between these changes getting final confirmation and their coming into effect. We expect this will mean changes come into effect in approximately September 2023.

We anticipate most operators will not need to make significant changes to meet new requirements. Rather, they will need to review their existing processes to make sure they comply and make minor adjustments, as well as familiarising themselves with new processes such as the changes to registration. Given this, we think a three-month transition period is reasonable.

A significant number of currently registered operators are due to be re-audited in late 2023. These changes coming into effect around September 2023 will allow these audits to consider operators' updated processes and for these operators' registration renewals to follow the new registration process.

Once these regulations receive final confirmation we will notify operators to ensure they are aware of the new requirements and when they will take effect.

8

Do you agree with the proposed three-month period before changes take effect? Are there particular requirements that may need a longer implementation time?

# Summary of questions

1	Do you consider this duty requiring operators to have processes in place to communicate risks will be effective and workable for operators? If not, please explain why.
2	Do you consider that the new registration process will be effective and workable for operators? If not, please explain why and any potential issues you see in this new process.
3	Do you consider the proposed rights for operators to request decisions by the Registrar be reviewed and to appeal are appropriate? If not, please explain why.
4	Do you consider these changes to where the Registrar can cancel, suspend and refuse registrations will be effective and workable? If not, please explain why.
5	Do you consider the definition of near-miss natural hazards events in <b>Regulation 3</b> to be sufficiently clear to require operators to notify WorkSafe only where there has been a serious risk from a natural hazard? Do you consider that this wording may cause events that are not serious to be notified?
6	Do you consider that the list of notifiable incidents and injuries in <b>Regulations 19A</b> and <b>19B</b> accurately reflects the key risks in adventure activities? Are there any incidents or injuries that you consider should be removed or added to the list? If so, please explain why.
7	Do you agree with the proposed offences and penalties for the adventure activity regulations? If not, what would you consider the appropriate amount and why?
8	Do you agree with the proposed three-month period before changes take effect? Are there particular requirements that may need a longer implementation time?