



## COVERSHEET

<b>Minister</b>	Hon Carmel Sepuloni	<b>Portfolio</b>	Workplace Relations and Safety Policy
<b>Title of Cabinet paper</b>	Health and Safety at Work (Adventure Activities) Amendment Regulations 2023	<b>Date to be published</b>	24 November 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2023	Health and Safety at Work (Adventure Activities) Amendment Regulations 2023	Office of the Minister for Workplace Relations and Safety
3 August 2023	LEG-23-MIN-0131 Minute	Cabinet Office

### Information redacted

**NO** (*please select*)

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Office of the Minister for Workplace Relations and Safety  
Chair, Cabinet Legislation Committee

## Health and Safety at Work (Adventure Activities) Amendment Regulations 2023

### Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*.

### Policy

*Cabinet in 2022 agreed to a package of changes to the adventure activities regulatory regime*

- 2 As part of the response to the 2019 Whakaari tragedy, the Ministry of Business, Innovation and Employment (MBIE) conducted a targeted review of the adventure activities regulatory regime. This review found that, while the introduction of the adventure activities regime in 2014 had improved safety standards in the sector overall, there were several key weaknesses in the system that should be addressed.
- 3 In September 2022 Cabinet agreed to a package of regulatory and non-regulatory changes to address the identified issue areas [DEV-22-MIN-0222 refers]. The four key changes in this package were:
  - 3.1 introducing specific requirements for how adventure activity operators must assess and manage natural hazard risks;
  - 3.2 strengthening requirements for operators to communicate risks to activity participants;
  - 3.3 stronger registration and notification requirements; and
  - 3.4 reviewing and updating adventure activity safety guidance.
- 4 The *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023* (the Amendment Regulations) make the regulatory amendments needed to implement these changes.
- 5 Specifically, these Amendment Regulations amend the *Health and Safety at Work (Adventure Activities) Regulations 2016* to:
  - 5.1 Introduce a new duty for adventure activity operators to take all reasonable steps to inform persons seeking to participate in adventure

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activities of any serious risks they may be exposed to, and a corresponding offence;

- 5.2 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;
  - 5.3 Establish a new registration process that requires adventure activity operators to register directly with the registrar (rather than indirectly via their safety auditor) and provide more detailed information upon registration; and
  - 5.4 introduce sector-specific notifiable incidents, requiring activity operators to report near-misses associated with hazards in the sector to WorkSafe.
- 6 In parallel with these amendments, non-regulatory changes (such as changes to the Safety Audit Standard for Adventure Activities and guidance materials) are being made by WorkSafe New Zealand. These non-regulatory changes will implement other aspects of the package agreed by Cabinet, such as introducing requirements regarding natural hazard risks and updating activity guidance.

### *Implementation*

- 7 I intend that the Amendment Regulations will commence in April 2024. This will mean that commencement occurs after the peak summer season for operators, reducing the administrative pressure upon them to review and update their systems while many are in their busiest business season.
- 8 This commencement date differs from that previously referred to at the time of the 2022 policy decisions. A large proportion (approximately 40 percent) of currently registered adventure activity operators are due to re-register their operations between September and December this year. Previously, these changes to the regulations and corresponding changes to the Safety Audit Standard for Adventure Activities were intended to be implemented in September, with the aim that audits being conducted for these operators would include assessing compliance with the updated requirements.
- 9 However, further information regarding the upcoming audit cycle has indicated that it is not viable to introduce changes to the regulations (and corresponding changes to the Safety Audit Standard) for compliance to be checked as part of this audit cycle. Safety auditors have commenced their preparations for these audits already, earlier than anticipated. Any implementation period that will allow safety audits of the operators re-registering this year to include these amendments will not allow operators and auditors sufficient time to familiarise themselves with the new requirements and make the necessary adjustments to their systems.

- 10 Commencing these regulations in April 2024 will mean operators will not be required to review and update their administrative systems to align with new requirements during the summer season, which for many is their peak business time. This timing will also still allow auditors to proactively check operators are complying with these new requirements, as operators are generally required to undergo a secondary “surveillance” audit of their safety management systems approximately a year after their full re-registration audit.
- 11 WorkSafe intends to also publish a revised version of the Safety Audit Standard for Adventure Activities in August 2023 to commence in April 2024, alongside these amendments. Changes to activity guidance materials will be progressively introduced over the next one to two years.

### Timing and 28-day rule

- 12 A waiver of the 28-day rule is not sought. The Amendment Regulations will take effect on 1 April 2024, which is eight months after they will be notified in the *New Zealand Gazette*.

### Compliance

- 13 The Amendment Regulations comply with each of the following:
- 13.1 the principles of the Treaty of Waitangi;
  - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 13.3 the principles and guidelines set out in the Privacy Act 2020
  - 13.4 relevant international standards and obligations; and
  - 13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

### *Compliance with the Health and Safety at Work Act 2015*

- 14 The Health and Safety at Work Act 2015 establishes two requirements relevant to the making of these regulations:
- 14.1 Section 217 requires consultation with persons and organisations I consider appropriate before recommending the making of regulations; and
  - 14.2 Section 219 requires before making regulations defining notifiable incidents, that I have regard to the purpose of that Act and be satisfied these modifications are not broader than reasonably necessary to address the matters giving rise to the proposed change.
- 15 I consider section 217 has been met through the extensive public consultation undertaken on policy proposals in 2021 and on an exposure draft of these amendments earlier in 2023. Feedback in these consultations included the

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views of adventure activity operators and industry associations, activity participants, audit providers and others with an interest in the sector.

- 16 I consider section 219 has also been met. The creation of new notifiable incidents requiring operators to inform WorkSafe of near-misses associated with hazards in the sector is consistent with the purposes of the Act, as this information will support WorkSafe's education and enforcement roles. The details of which incidents, injuries and illnesses must be notified have been designed with the input of the sector and technical experts, to ensure they capture relevant serious risk incidents without being broader than reasonably necessary.

### **Regulations Review Committee**

- 17 I do not consider there to be any grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 18 The draft Health and Safety at Work (Adventure Activities) Amendment Regulations 2023 has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet

### **Impact Analysis**

- 19 A Regulatory Impact Assessment was prepared and submitted to Cabinet in 2022 to support policy decisions [DEV-22-MIN-0222].

### **Publicity**

- 20 I will issue a press release to inform the public of the revised regulations. The regulations will be notified in the Gazette. MBIE and WorkSafe will communicate the approval of these regulations to the sector.

### **Proactive release**

- 21 This paper will be published on the Ministry of Business, Innovation & Employment's website, subject to redactions as appropriate under the Official Information Act 1982.

### **Consultation**

- 22 WorkSafe New Zealand, the Ministry of Justice, MBIE Tourism Policy, and MBIE Small Business Policy were consulted on this paper. The Department of the Prime Minister and Cabinet was informed.
- 23 The following additional agencies were consulted on the policy decisions that informed this paper: the Department of Internal Affairs, MBIE Science Policy, the Treasury, the Department of Conservation, the National Emergency Management Agency, Maritime New Zealand and GNS Science.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 21 September 2022 the Cabinet Economic Development Committee (DEV) agreed to a package of regulatory and non-regulatory changes to strengthen the adventure activities regulatory regime [DEV-22-MIN-0222];
- 2 note that the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023* will give effect to the regulatory changes referred to in paragraph 1 above;
- 3 note that:
  - 3.1 section 217 of the Health and Safety at Work Act 2015 requires consultation with persons and organisations the Minister for Workplace Relations and Safety considers appropriate before recommending the making of an Order in Council
  - 3.2 section 219 of the Health and Safety at Work Act 2015 requires the Minister for Workplace Relations and Safety to, before recommending an Order in Council altering or expanding the definition of notifiable incidents, to have regard to the purpose of the Act and be satisfied that the modification is not broader than reasonably necessary
- 4 note the advice of the Minister for Workplace Relations and Safety that these requirements have been met;
- 5 note that in September 2022, DEV authorised the Minister for Workplace Relations and Safety to make changes to decisions, consistent with the proposals agreed by DEV, on any issues that arise during the drafting process [DEV-22-MIN-0222];
- 6 note that the Minister of Workplace Relations and Safety approved an extension to the commencement date of the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*;
- 7 note that the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023* will come into force on 1 April 2024;

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- 8 authorise the submission to the Executive Council of the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Workplace Relations and Safety

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