



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

Adventure Activities – keeping it safe

SUMMARY OF PROPOSALS





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

Ministry of Business, Innovation and Employment (MBIE)

Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MBIE combines the former Ministries of Economic Development, Science + Innovation, and the Departments of Labour, and Building and Housing.

More information

**www.mbie.govt.nz
0800 20 90 20**

Information, examples and answers to your questions about the topics covered here can be found on our website www.mbie.govt.nz or by calling us free on 0800 20 90 20.

Disclaimer

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

Online: ISSN 978-1-99-100863-3

Print: ISBN 978-1-99-100864-0

August 2021

©Crown Copyright

The material contained in this report is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or media without requiring specific permission. This is subject to the material being reproduced accurately and not being used in a derogatory manner or in a misleading context. Where the material is being published or issued to others, the source and copyright status should be acknowledged. The permission to reproduce Crown copyright protected material does not extend to any material in this report that is identified as being the copyright of a third party. Authorisation to reproduce such material should be obtained from the copyright holders.

WHY ARE WE PROPOSING CHANGES TO THE ADVENTURE ACTIVITIES REGIME?

On 9 December 2019 Whakaari/White Island erupted. Forty-seven people were present on the island as part of guided adventure tours. The eruption resulted in 22 people being killed and 25 left with serious, life-long injuries.

As part of the response to this tragedy, the Minister for Workplace Relations and Safety directed the Ministry of Business, Innovation and Employment (MBIE) to undertake a targeted review of how we regulate safety in adventure activities in New Zealand. The targeted review found that while the adventure activities regulatory regime was performing reasonably well, there were several areas that could be improved, including the management of natural hazards, the role of the regulator and the audit process.

Adventure activities are an important part of New Zealand's tourism and recreation environment. Prior to COVID-19, as many as one in three international tourists to New Zealand took part in at least one adventure activity. Adventure activities are also an important way in which many New Zealanders access the outdoors, explore the natural environment and stay healthy, fit and connected. Everyone taking part in these activities deserves to know their safety is being managed well. Key issues we have found through this work are:

- › There is a high rate of harm in adventure activities from natural hazard events, and this rate does not appear to be decreasing over time. On average, six people die in adventure activities per year, four of these are caused by natural hazard events.
- › Natural hazard related catastrophic events (more than five deaths) occur at least every ten years in the sector. Each event has around 8 deaths and 7 serious injuries.
- › The current regulatory regime does not explicitly address the risks that come from natural hazards. This means we do not have enough assurance that all operators are managing these risks well.
- › The full range of risks that occur in the sector do not seem well recognised or understood. This weakens the effectiveness of the regulator and could lead to gaps in operator practice.
- › The regulator lacks a full suite of information and enforcement tools to understand the health of the sector and act quickly when unsafe activities occur, to prevent harm, or to regulate effectively.
- › Fatalities and serious injuries in the sector impose significant costs to New Zealand's public health and ACC¹ systems and reduce public confidence in the safety of the adventure activities sector.

This consultation targets improvements in the following areas:

- › strengthening requirements for how operators, landowners and the regulator manage natural hazard risks
- › improving how risk is monitored, assessed and communicated
- › strengthening WorkSafe's regulatory leadership role
- › improving the safety audit standard, audit process and guidance and information for the sector.

¹ For example, the Whakaari/White Island eruption led to \$14 million in hospital costs.

WHAT DO WE WANT ANY CHANGES TO DO?

Our key goal is to **reduce harm** in the adventure activities sector. We want to reduce the number of injuries and deaths that occur in adventure activities, particularly those related to natural hazard events.

Adventure activities also often have a risk of **catastrophic harm**, where if an incident occurs it can result in a number of deaths or serious injuries. While it is unlikely we will be able to eliminate these risks entirely, we want to reduce how often catastrophic harm events occur.

We also want to ensure as far as possible changes are made in a way that will avoid having a chilling effect on the adventure activities sector or unnecessarily restricting public access to outdoors and recreation activities.

We want to know if the costs of these changes are **balanced and proportionate** to the increases in safety they will create, and will not unnecessarily restrict people's access to taking part in outdoors and recreation activities.

The consultation document presents a package of change proposals that could work together, individually, or in combination to achieve these objectives. This document is a summary of proposals. The full consultation document with supporting information for the package can be found on [MBIE's website](#)

HOW ARE ADVENTURE ACTIVITIES REGULATED CURRENTLY?

Safety in the adventure activities sector is mainly regulated through the *Health and Safety at Work Act 2015* (the HSW Act) and the *Health and Safety at Work (Adventure Activities) Regulations 2016*.

Under the HSW Act, adventure activity operators and all other people conducting a business or undertaking are required to ensure, so far as reasonably practicable that their work does not put at risk the safety of their workers or other persons. This includes, for example, ensuring the equipment provided is safe and that workers have the necessary training to manage the risks of their operation.

The Adventure Activities Regulations require all adventure activity operators to be registered with WorkSafe and pass a safety audit at least once every three years. Audits are conducted by independent safety auditors against a specialised safety audit standard for adventure activities published by WorkSafe.

In addition to these health and safety requirements, transport legislation establishes safety requirements for the land, air and marine transport aspects of operations. Certain activities, such as adventure aviation and jet boating, are regulated under transport rules rather than the Adventure Activities Regulations.



PROPOSALS TO SUPPORT BETTER MANAGEMENT OF NATURAL HAZARDS

Natural hazards are physical, quick-onset natural events with a degree of localised impact that have the potential to cause fatalities. These include risks of extreme weather, water surges and flooding, rockfalls, landslides and avalanches, and eruptions. Because most adventure activities take part in the natural environment, almost all need to manage risks from natural hazards.

Requirements for operators

Operators have an obligation to manage natural hazard risks as part of their general duties under the HSW Act. While many registered adventure activities manage these natural hazards well, others may not be considering the full range of natural hazards encountered as part of their activities. Greater awareness, understanding and increased attention of natural hazards may be required by some operators.

In addition, neither the Adventure Activities Regulations nor the safety audit standard have specific requirements that operators have clear, pre-set policies and processes in place for when activities will be cancelled due to conditions being too risky. This lack of specific requirements in the regulations and audit standard means it is left up to each operator to work out what the appropriate systems are for their particular situation.

To address these issues, we are proposing introducing explicit requirements in regulation that:

- › **Operators are required to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities.**
- › **Operators to have clear policies and processes in place to consider when risks may be unacceptable and call activities off.**

These will require operators to:

- › Make reasonable efforts to identify what natural hazards may affect their activities and how much risk the hazards pose.
- › Manage activities to minimise these risks so far as reasonably practicable (for instance, taking routes to avoid natural hazards).
- › Have clear, pre-set policies in their safety management systems for what conditions under which they will call activities off.
- › Have processes to regularly check conditions continue to be acceptable both before and during activities.
- › Set clear roles and responsibilities for which staff members (including both managers and frontline staff) are responsible for calling activities off both before activities go ahead and during activities.

We expect many operators will already have policies and processes in place that will meet these requirements. However, by making these requirements explicit in regulation we think we can help ensure all operators are following these good practices.

Requirements on land owners and land managers

We are also suggesting introducing more specific requirements for land owners and land managers to work with operators to manage natural hazards. In some cases, land owners will be better placed than operators to be aware of and get information about certain hazards – for instance, if there is a part of the land that often has landslides or is flood-prone.

We have heard some land owners and managers take a hands-off approach to the management of natural hazards and regard the management of risks as largely the responsibility of operators.

To address this, we propose an explicit requirement for landowners and land managers who provide adventure activity operators access to their land to be involved in the management of natural hazards that may affect these activities.

Land owners and managers could be required to either:

- › Provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about).

OR

- › Assess and manage the risks of natural hazards when granting permission for adventure activity operators to operate on their land (for instance, having in terms of access that operators cannot access particularly hazardous areas or that only a certain number of people can be in a hazardous area at once).

In many cases, the owners or managers of land where adventure activities occur will be the Department of Conservation or local councils. However, these requirements may also affect some private land owners who permit adventure activity operators to use their land.

WHAT ARE “REASONABLE EFFORTS”?

Under either proposed option, we expect land owners and managers to make “reasonable efforts”. What reasonable efforts are will vary across different situations, based on factors like the type of hazard and whether the risk arises from a feature of the land they control.

For instance, for general weather hazards such as high winds or lightning strikes, reasonable efforts from a landowner to assess and manage risks may be checking that operators are accessing relevant weather forecasting services.

However, if a landowner permits an operator to access a dangerous canyon system on their land, reasonable efforts may include providing the operator records of previous flood levels, noting any unstable cliff areas and getting expert advice on the likelihood of collapse, and working with the operator to develop emergency plans.



PROPOSALS TO CHANGE HOW RISK IS MONITORED, ASSESSED & COMMUNICATED

Introducing a risk classification system

Not all adventure activities carry the same level of risk. Both the type and degree of risk faced by participants and workers can vary greatly across different activities.

We think there is an opportunity to better recognise, communicate and act on these differences in risk level through introducing a risk classification system.

Under a classification system, operators and auditors would assess each of their activities against an assessment criteria to provide each activity a “risk score”.

This risk score could be used to:

- › Set how often activities needed to be audited – with lower risk activities able to be audited less often than high risk activities. **For example, operators offering low risk activities might have a safety audit at least once every four years, while operators offering high risk activities might be required to have a safety audit at least once every two years.**
- › Help explain to participants the risk levels of different activities as part of advertising.
- › Help WorkSafe build a profile of risks in the sector and identify where higher risk activities are occurring.

How would this classification work?

WorkSafe and other government agencies would work together to develop a criteria for adventure activities to be assessed against, drawing on industry expertise and scientific advice about hazards. This classification system would then be established either through regulation or by another legal instrument.

Operators would be expected to apply this criteria to their operations and assign each activity they offer an overall “risk score”. This risk score would be part of the information recorded in the operator’s safety management plans. As part of existing safety audits, auditors and technical experts would confirm whether an operator’s activities have been assigned an appropriate risk score.

Key factors that would determine an activity’s score would be how likely a hazard event is to occur, how well we can predict when such a hazard event may occur, and the level of harm that could result.

A risk classification score would measure the risks that are involved in an activity before the steps the operator takes to manage them are taken into account. Whether an operator has passed their safety audit would then confirm whether the operator has safety systems in place that manage these risks to acceptable levels.

Where an operator offers a range of activities, or a range of different trips within an activity that have different risks (for instance, offering both beginner and advanced journeys) each activity would receive its own risk score.

Improving risk disclosures to participants

A key part of how we ensure risks are acceptable in the adventure activities sector is through participants making informed decisions.

We have heard that participants do not always feel that the information they are given by operators provides them a good understanding of the risks involved in adventure activities. We think more detailed standards will help support more consistent approaches towards risk disclosures among operators and spread good practices.

We propose introducing more detailed requirements for how and when risk disclosures to adventure activity participants should be made, and what they should include.

Acceptable levels of risk

Adventure activities are inherently risky. In most cases, operators are able to manage these risks to acceptable levels by adopting good safety management practices. However, we think there may be some circumstances where it is too risky for adventure activities to go ahead, regardless of how an operator attempts to manage risks.

In most cases, we think leaving these decisions about whether operators can manage the risks of activities to operators is appropriate. Operators are the parties with staff on the ground to dynamically assess conditions, and will often have staff or advisors with high levels of expertise in their activities. However, operators do have commercial incentives to keep operating even in situations of heightened risk. Given the incentives on operators, and the high levels of harm that can result from natural hazard events, we think it is also useful to consider if there are occasions when the government should be more involved to ensure risks are kept to acceptable levels.

There are a range of ways the government could further support decision making about acceptable risk levels.

- › Use WorkSafe’s expanded powers to cancel or suspend operators operating beyond an acceptable level of risk. WorkSafe would be required to draw on scientific advice when making these decisions.
- › The Minister for Workplace Relations and Safety could cancel or suspend certain activities, or types of activity, operating in certain circumstances or under certain conditions, where the risks of this activity are beyond what is acceptable.
- › Cabinet with reference, to an expert authority, could prohibit certain activities, or types of activity operating under certain conditions where the risks of this activity are considered unacceptable. Like under the Minister-led approach, all operators would be required to follow Cabinet’s decision and not offer activities in the circumstances Cabinet has identified as presenting unacceptable risks.

To support any of these situations, WorkSafe would be required to develop clear guidance for operators, drawing on scientific advice, identifying bright lines and how to apply them in practice. Under these scenarios, scientific advice would be used as an input into any decision making. This could be formalised as part of the regulatory process.

We would like to hear your thoughts on what the appropriate involvement of government is to ensure risks in adventure activities are kept at acceptable levels.



PROPOSALS TO STRENGTHEN THE ROLE OF WORKSAFE

For the adventure activities regime to work well and improve safety standards it needs to be supported by a strong regulator. One of the key findings of the 2020 targeted review was that the adventure activities sector was not always well supported by WorkSafe, and that there were gaps in the way WorkSafe was performing its roles.

Adjusting the registration process and increasing the information operators provide to WorkSafe

We propose adjusting the operator registration process so that:

- › Operators register their operation with WorkSafe directly, rather than through their auditor
- › Operators provide more information to WorkSafe when they register
- › Operators review the information they provide to WorkSafe each year and update information as necessary

We think these are relatively simple changes that will increase the amount of information WorkSafe receives about the sector and build a more direct relationship between operators and WorkSafe.

The increased information we suggest operators provide or registration could include a copy of the auditor's report; more information about activities run by the operator (such as the number of participants each year, size of activity groups, and the number of guides accompanying groups); and information about the technical advisers inputting into the development of operators' health and safety plans.

Developing notifiable incidents for the adventure activities sector

All businesses and other operations are required to notify WorkSafe if certain incidents occur in their work. These include deaths, serious injuries and certain near-miss incidents.

However, the types of near-miss incidents that must be reported to WorkSafe are not well suited to adventure activities. Near-misses needing to be notified do not necessarily cover the types of incidents that occur in adventure activities – such as risks from natural hazard events.

We suggest developing a list of near miss incidents operators are required to report to WorkSafe specifically for the adventure activities sector. This will be useful to help WorkSafe understand the types of problems that are occurring in the sector and help operators correct problems before any serious accidents occur.

Expanding WorkSafe's powers to cancel or suspend registrations

WorkSafe currently has several powers that can be used to stop activities going ahead. These current powers can be difficult for WorkSafe to use in some cases. For instance, it can be difficult in some situations to show that a person is immediately going to be exposed to a serious risk, or that a person's life has in fact been endangered.

To allow WorkSafe more flexibility in when they are able to intervene, we propose expanding the situations in which WorkSafe can cancel or suspend an operator's registration, or decline to accept an operator for registration. This will allow WorkSafe to intervene and stop activities going ahead in more situations where operators have failed to ensure risks are kept at acceptable levels.

NON-REGULATORY PROPOSALS TO GUIDANCE AND AUDIT PROCESS

Wider changes to guidance materials, the audit standard or the audit process could also be made alongside or instead of the particular proposals we have discussed. In particular these proposals include:

- › Changes to the safety audit standard to improve safety standards e.g. specify qualification requirements for particular staff.
- › Changes to the audit process e.g. tighten safety checks on operators.
- › Updating guidance materials to fill identified gaps around the management of natural hazards.

We would like to hear what changes you think should be made to these instruments to help improve safety in the adventure activities sector.

More general information and data about risks in adventure activities could also be useful to help operators improve their practices and for the public to understand how safety is being managed and regulated.

We propose developing online databases to publish information about incidents in the adventure activities sector. This information could be published on the WorkSafe website, the SupportAdventure website or both.

Information could include:

- › Introduce an online log of notifiable events the adventure activities sector can access.
- › Publish specific WorkSafe data for the adventure activities sector, including injury and fatality rates and enforcement activity undertaken by WorkSafe.

Cost implications of proposals

Some of these proposals will have cost implications for operators, landowners and participants. At this stage, we do not expect these cost increases will be significant compared to an operator's or landowner's existing costs of meeting their duties under the HSW Act and current Adventure Activities Regulations. However, we want to test this through the consultation process and to explore if other costs might be involved in these changes.

Increased costs on operators may be passed on to participants through increased ticket prices. It may be that some participants are willing to pay increased ticket prices to support strengthened safety standards.

Other proposals are more likely to have cost implications for the regulator or government more generally.



Consultation questions

We want to hear your feedback on which of the proposals introduced in the consultation document will help meet our objectives, and what you think the benefits and costs of each of these changes may be. We also want to hear any other changes you suggest should be made to help reduce the amount of harm that occurs in the adventure activities sector.

Managing Natural Hazards	
Q1	In your experience, how well do you think natural hazards are currently being managed in the adventure activities regime?
Q2	How do you think we can use mātauranga Māori to support good management of natural hazards within the adventure activities regime? Are there other perspectives on how natural hazards should be managed that should be considered?
Duties for operators in managing natural hazards	
Q3	Do you think an explicit requirement for operators to assess and manage natural hazard risks will improve safety in the adventure activities regime? Why/why not?
Q4	Do you think introducing an explicit requirement for operators to have clear, pre-set policies and processes for when activities will be called off will improve safety in the adventure activities regime? Why/why not?
Q5	If this requirement was introduced, what are the key elements operators should consider when making the decision to call off activities?
Q6	Are there any other ways you think adventure activities operators could improve the management of natural hazards?
Duties for Landowners in managing natural hazards	
Q7	In your experience, how do operators and landowners currently work together to manage hazards?
Q8	Do you think explicit requirements for landowners or land managers to work with registered operators in order to manage natural hazards will help improve safety in the adventure activities regime? Why/why not?
Q9	If a specific duty was introduced for land owners and managers, do you think they should be required to: <ul style="list-style-type: none"> a) provide information to operators about natural hazard risks on their land; or b) assess and actively manage the risk of natural hazards on their land. What are the benefits and costs you see under each approach?
Q10	Are there any other ways landowners/land managers could improve the management of natural hazards to support adventure activities operators when accessing their land?

Risk classification system	
Q11	Do you think a risk classification system would be useful to help participants and others better understand the risks involved in adventure activities? Why/why not?
Q12	What are the benefits and issues of introducing a risk classification system?
Q13	<p>We consider a risk classification system could assess the risks of an adventure activity under two broad categories:</p> <ul style="list-style-type: none"> › Environmental risks from where the activity occurs (for instance, does it go through avalanche or landslide prone areas). › Activity technical risks that arise from the type of the activity being provided (such as reliance on equipment and the technical skill participants need to take part safely). <p>Do you think scoring activities based on their environmental and technical risks will provide a fair indication of the risks involved? Are there other factors that should be included in any risk classification system?</p>
Q14	<p>Do you support setting how often operators are audited based on their activities risk classification (e.g. the lower the risk the longer length of time between safety audits)? What benefits and issues do you see with this approach?</p> <p>If so, what do you think is the optimal length of time between on-site safety audits for low risk activities, medium risk activities and high risk activities?</p>
Risk disclosure	
Q15	What types of information is useful to help participants and others understand the risks involved in adventure activities?



Acceptable levels of risk	
Q16	Do you think the government should have a more active role in defining acceptable levels of risk in the adventure activities regime? Why/why not?
Q17	Are there situations when the government should prevent activities going ahead (for instance, in certain high risk areas or when certain alerts are in place)? Why/why not? And if so, in what types of situations?
Strengthening the role of WorkSafe	
Q18	What information would be useful for operators to provide WorkSafe about their operation?
Q19	What would be the best process for operators to provide information to WorkSafe?
Q20	What types of incidents (in addition to deaths and serious injuries) do you think all adventure activities operators should be required to notify WorkSafe of? For example: <ul style="list-style-type: none"> › a volcanic eruption, landslide or significant rockfall occurring in the area adventure activities regularly take place › workers or participants being stranded in a cave, gully or other enclosed space by rising water › any incident that requires workers or participants to be rescued › a participant or worker falling from a height over 2 metres › a participant or worker suffering hypothermia. › Others?
Q21	In what types of situation would you expect WorkSafe to cancel, suspend or decline an operator's registration to provide an adventure activity?
Q22	Are there any other changes you think are needed to support WorkSafe to take a stronger role in the sector?
Guidance and audit changes	
Q23	Are there any ways you think the current audit process should be changed to improve safety standards?
Q24	Are there any changes you think should be made to the current audit standard to improve safety standards?
Q25	What types of guidance are most useful to support safety in adventure activities? Are there any gaps in current guidance?
Q26	What types of information would be useful to include in guidance to operators about managing natural hazard risks? For instance: <ul style="list-style-type: none"> › Where to get information about different types of hazards › The types of steps an operator is expected to go through to manage different hazards › Examples of what good management of hazards looks like

	Excluding guidance on natural hazards, are there any other gaps in current guidance?
Q27	Are there any administrative problems in the audit process you would like to comment on? How do you think these problems could be addressed?
Q28	What types of data and information would be useful to publish to help share information about safety issues in the adventure activities sector, regulator involvement and good safety management in the sector?
Other changes	
Q29	Are there any other issues or potential improvements in how adventure activities are regulated you would like to comment on?
Cost implications of proposals	
Q30	What cost implications will the different proposals have on you or your business? Please be as detailed as possible and provide any supporting evidence.
Q31	What benefits are there in implementing these proposals for you or on your business?
Q32	Would you be willing to pay a higher price to take part in adventure activities, if it meant safety standards were strengthened? Why/why not? If so, how much more?

HOW TO HAVE YOUR SAY

We want to know what options you think will help continue to improve safety for participants and workers in adventure activities.

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) is seeking written submissions on the issues raised in this document by 5pm on 5 November 2021.

You can use the consultation questions above to guide your submission. 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 make your submission:

- › Through the online survey available on [MBIE's website](#)
- › By sending your submission as a Microsoft Word document to HSWregs@mbie.govt.nz.
- › By mailing your submission to:

Health and Safety Policy Team

Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

If you have any questions about the submissions process please contact HSWregs@mbie.govt.nz.



