



# COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Adventure Activities Consultation Document	Date to be published	29/10/2021

List of documents that have been proactively released			
Date	Title	Author	
11 August 2021	Adventure Activities Consultation Document	Office of the Minister for Workplace Relations and Safety	
11 August 2021	Cabinet Economic Development Committee Minute of Decision DEV-21-MIN-0174	Cabinet Office	

# Information redacted

NO

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In Confidence

Office of the Minister of Workplace Relations and Safety

Chair, Cabinet Economic Development Committee

# **Adventure Activities Consultation Document**

# Proposal

1 This paper seeks the Cabinet Economic Development Committee's approval to publish the attached workplace relations and safety Government consultation document *Adventure Activities – keeping it safe*. Feedback from the consultation document will be used to help reform the adventure activities regulatory regime.

## **Executive Summary**

- 2 On 9 December 2019 Whakaari/White Island erupted while there were adventure activity tour groups on the Island. The disaster left 22 people dead, and 25 people with serious life-long injuries. This event triggered a range of work across government, including a targeted review of the adventure activities regulatory regime (the regime).
- 3 The targeted review found that risks from natural hazards are pervasive in the adventure activities sector and that the regime required strengthening in a number of areas, including; improving how natural hazards are managed, strengthening the role of the regulator and the improving the safety audit process.
- I informed you at Cabinet on Monday 14 December 2020 of my intention to release the findings from the targeted review and that I intended to return to Cabinet in 2021 with a draft consultation document with proposals for change to the regime to address these areas of concern.
- 5 The consultation document attached presents a range of regulatory and non-regulatory change proposals to strengthen the regime in these areas.
- 6 To support the development of policy proposals included in the consultation document I directed MBIE to establish an expert reference group made up of key stakeholders and relevant experts. This group supports the proposed public consultation.
- 7 Everyone taking part in adventure activities deserves to know their safety is being managed well. This is why the adventure activities regulatory regime is important and why we need to ensure safety standards are strong. A strengthened adventure activities regulatory regime will help New Zealand recover from COVID-19 by enhancing New Zealand's reputation as a world-class tourist destination that values the safety of both its domestic and international visitors. A strengthened regime will also support New Zealanders to explore their natural environment and stay safe, healthy, fit and connected through participation in adventure activities.

8 I expect that if the package of proposals are implemented there would be a reduction in fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic natural hazard events<sup>1</sup> occurring in the sector over time.

# Background

- 9 There is too much work-related harm occurring in New Zealand. This places a considerable burden of harm on workers and their families, businesses, and the economy as a whole.
- 10 The Whakaari/White Island disaster is an example of this. On 9 December 2019 Whakaari/ White Island erupted while adventure activity tour groups were on the Island. The disaster left 22 people dead, and 25 people with serious life-long injuries.
- 11 This Government responded to the disaster by instigating a range of work across government. The previous Minister for Workplace Relations and Safety directed the Ministry of Business, Innovation and Employment (MBIE) officials to undertake a targeted review of the adventure activities regulatory regime (the regime).
- 12 The targeted review took place in 2020, it found that the regime has largely worked effectively since it was introduced in 2014. However, there were a number of weaknesses in the regime in relation to the management of natural hazards, the role of the regulator and the safety audit process.
- 13 I informed you at Cabinet on Monday 14 December 2020 of my intention to release the findings from the targeted review and that I intended to return to Cabinet in 2021 with a draft consultation document with proposals to address these areas of concern.
- 14 An expert reference group (ERG) was established to provide strategic direction and technical input into the development of policy proposals. The ERG was convened between March and June 2021 and was made up of key stakeholders and relevant experts<sup>2</sup>.
- 15 Alongside this work, I have directed MBIE to provide me with independent advice whether WorkSafe has carried out its obligations appropriately in relation to Whakaari/White Island. I will be provided advice on this in the coming months.

## Comment

## The adventure activities sector

- 16 Adventure activities are a key part of New Zealand's tourism and recreation offering. These outdoor activities are a way in which New Zealanders and our international visitors enjoy the natural environment, challenge themselves and seek new experiences.
- 17 Everyone, including guides and customers, taking part in these diverse activities deserves to know their safety is being managed well. This is why the adventure activities regulatory regime is important and why we need to ensure safety standards are strong.

<sup>&</sup>lt;sup>1</sup> A natural hazard event with more than five fatalities

<sup>&</sup>lt;sup>2</sup> ERG members include representatives from: Tourism Industry Aotearoa, Recreation Aotearoa, NZ Māori Tourism, Department of Conservation, GNS Science, JAS-ANZ, Victoria University of Wellington, MBIE and WorkSafe. The members either represented industry groups or were experts in management of natural hazards, regulatory design, risk management and tourism.

- 18 Prior to the COVID-19 pandemic, international tourism has been an important export earner for New Zealand, contributing \$17.2 billion, or 20 per cent of export earnings in 2019. The impact of COVID-19 on the tourism sector has been deeply felt, and the sector's recovery is expected to be slower than that of the rest of the economy.
- 19 The revival of our tourism sector is contingent on the continued appeal of New Zealand to international and domestic visitors, and the measures proposed in this initiative will contribute to a safer adventure tourism and recreation experience for participants, and build our system's capability to reduce the likelihood of catastrophic events, like Whakaari White Island, occurring in the future.

## The adventure activities regulatory regime

- 20 Safety in the adventure activities sector is regulated through the Health and Safety at Work Act 2015 (the HSW Act) and the Health and Safety at Work (Adventure Activities) Regulations 2016. The HSW Act imposes legal obligations, primarily upon Persons Who Conduct Businesses or Undertakings (PCBUs).<sup>3</sup>
- 21 The core principle of the HSW Act is that workers and other people should be given the highest level of protection against harm to their health, safety and welfare. Under the HSW Act both workers and customers are provided the same level of protection from workplace harm.
- 22 Health and Safety at Work Regulations are used to expand on the general duties in the HSW Act and set risk and industry specific requirements.
- 23 Currently, the Adventure Activities Regulations are limited to requiring operators to pass a safety audit and register their operations with WorkSafe. The regulations also make it an offence for operators to provide or offer to provide an adventure activity unless registered.
- Adventure activities are inherently risky, this is acknowledged by their regulatory definition which recognises adventure activities are designed to expose participants to a serious risk to their health and safety that must be managed by the provider of the activity. The registration process was established as a way to check that operators' general duties under the HSW Act are being met.

## Managing natural hazard risks in the adventure activities sector

- 25 Almost all registered adventure activities involve some risk from natural hazards. The targeted review found 311 of 312 operators registered in November 2020 manage natural hazards as part of their activities.
- A significant part of the harm that occurs in adventure activities comes from natural hazards, around half of the fatalities. Many natural hazards present a risk of catastrophic harm, where if a major incident occurs it can cause multiple deaths or serious injuries.
- 27 While strengthening safety standards in the regime will help decrease natural hazard risks, the risk of catastrophic harm cannot be eliminated entirely.

#### Government funding for changes to the adventure activities regime

<sup>&</sup>lt;sup>3</sup> The HSW Act also imposes separate duties on Officers of PCBUs. Ministers of the Crown are specifically excluded from the definition of officers under HSWA, when acting in the course of their duties.

- 28 WorkSafe received \$2.22m funding through Budget 2021 to implement operational changes to the regime to improve the management of natural hazards. Funded activities include:
  - 28.1 operational policy work by WorkSafe to support any regulatory changes to the regime
  - 28.2 development of natural hazard guidance materials led by WorkSafe to support operators and landowners to manage natural hazards
  - 28.3 natural hazard expertise to support WorkSafe's organisational understanding of natural hazard risk
  - 28.4 education and engagement activities by WorkSafe to support operator awareness and compliance with any regulatory change.

The consultation document presents a package of regulatory and non-regulatory change proposals

- 29 The consultation document presents a package of regulatory and non-regulatory change proposals to the regime that are intended to:
  - 29.1 support a strengthened role for WorkSafe
  - 29.2 clarify and strengthen requirements for how operators, landowners and WorkSafe manage natural hazards
  - 29.3 improve risk disclosures to participants
  - 29.4 improve the safety audit standard, audit process and guidance and information for the sector.
- 30 The expected outcome from this package is reduced fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic harm events related to natural hazards occurring in the sector over time.
- 31 This package of measures, includes the following key features:

Proposals to support a strengthened role for WorkSafe

- Require operators to register directly with WorkSafe.
- Increase the information operators are required to provide WorkSafe when registering.
- Require operators to report key indicator information to WorkSafe on an annual basis.
- Create a list of "notifiable incidents" specific to the adventure activities sector.
- Expand WorkSafe's powers to decline to register/suspend/cancel registrations.

Risk classification system to improve the management of natural hazards

- Require government to develop a risk classification system, including operational framework and criteria that draws on industry expertise and scientific advice about natural hazards.
- Risk classification criteria would group operators and activities into low, medium and high risk categories based on their risk assessment.
- Introduce a specific requirement for operators to include a risk assessment in their safety management plan, where operators would assess risk.
- The risk classification system would set audit requirements that reflect these different

categories of risk including variations in length between on-site audits. Activities that are high risk would have more frequent on-site audits.

Specific requirements on **landowners** and **operators** to improve the management of natural hazards

Requirements on **operators** 

- Specific requirement for **operators** to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities.
- Specific requirements for **operators** to have processes in place to consider when risks may be unacceptable and call activities off.

Requirements on landowners (two options available)

- Require **landowners** to provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about).
- OR
  - Require **landowners** to assess and manage the risks of natural hazards on their land when granting permission for adventure activity operators to operate on their land.
- Improved risk disclosures for participants
  - Require additional prescription on the level of risk disclosure to participants in regulations or the Safety Audit Standard, this could link to an operators risk assessment as part of the risk classification system.

Non regulatory changes to support improvements to the regime

- 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.
- 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.
- Updating guidance materials to fill identified gaps around the management of natural hazards agreed in response to the targeted review and funded through Budget 2021.
- 32 The consultation document signals there will be future work on the regime; including a first principles review starting in 2026 and further evaluation and research.

The package of proposals present a number of ways to manage natural hazard risks

- 33 The package of regulatory change proposals presented in the consultation document can work together to achieve safety outcomes. Within this package of proposals there are two viable regulatory approaches available to achieve improved safety outcomes, which taken individually will have lower compliance costs for operators and the government. Both approaches require regulatory change to support WorkSafe's strengthened leadership role. However, the two approaches present different ways to manage natural hazards. The first uses a risk classification system and the second imposes requirements on operators and landowners.
- 34 The **risk classification system** shifts responsibility for some aspects of risk management from the operator to the government by requiring government to define risk levels. This proposal recognises that the risk profile of the adventure activities sector can be more volatile than traditional workplaces due to the intersection with natural hazards. It can be difficult to expect an adventure activity operator to make decisions around risk when the viability of their business is at stake. By comparison, government is better resourced, has a system level perspective and access to government-wide scientific advice so is in a better position to make these risk assessments.

- 35 MBIE and WorkSafe, along with other relevant government agencies (such as GNS Science, Department of Conservation and the National Emergency Management Agency (NEMA)) will continue to work together on this proposal through the next phase of work. This will include understanding how the proposal could be implemented, the cost implications associated with it, and ensuring it aligns with other regulatory approaches for managing natural hazards.
- 36 Proposals to introduce clear **requirements on operators and landowners** to manage natural hazards offers a more traditional approach to managing risk but it could be more costly for landowners and operators and may reduce access to land. With around 60 per cent of adventure activities taking place on public conservation land, the Department of Conservation (DOC) is most impacted by the introduction of these duties. Land Information New Zealand (LINZ) and territorial local authorities are also likely to be impacted.
- 37 MBIE and DOC will continue to work together to understand the implications of introducing landowner requirements on DOC's operations. MBIE will also work with LINZ and territorial local authorities through the consultation process.

# The package of proposals draws on acceptable levels of risk when managing natural hazards

- 38 In developing proposals for consultation, my officials have considered how to support adventure activities to proceed with some level of risk, while ensuring these risks remain at acceptable levels. The consultation document introduces this concept in a number of proposals including, the risk classification system, landowner and operator requirements and expanded powers for WorkSafe to cancel and suspend registrations.
- 39 To give operators clarity on how to apply acceptable levels of risk to their operations, 'bright lines' could be developed. This will shift some decision making for risk management from operators to government. Government involvement could range from published guidance setting acceptable levels of risk for natural hazards to Cabinet-led decision making where some activities or locations could be prohibited under certain natural hazard conditions. Scientific advice would be an input to any decision making.
- 40 MBIE and WorkSafe, along with other relevant government agencies (such as GNS Science, DOC and NEMA) will to work together to apply acceptable levels of risk to proposals included in the consultation document through the next phase of work.

# An Expert Reference Group was established to support the development of change proposals

- 41 An ERG was established to provide strategic direction and technical input into the development of policy proposals. The ERG was convened between March and June 2021 and was made up of key stakeholders and relevant experts. WorkSafe and MBIE collaborated closely on the development of policy proposals presented to the ERG for discussion.
- 42 The Chair of the ERG noted that while there was not unanimous support from members of the Group for all of the regulatory change proposals included in the package<sup>4</sup>, there

<sup>&</sup>lt;sup>4</sup> ERG views are split on the risk classification system proposal with natural hazard experts and regulatory design experts favouring it, while industry groups considering it complex and difficult to implement. Views on landowner duties to manage natural hazards are also varied across the ERG. The proposal may lead to some landowners withdrawing access to land or associated costs being passed on to operators.

was agreement that a full range of proposals should be consulted on to enable the sector and the wider public to consider which ones are most beneficial.

### Timings for public consultation on changes to the adventure activities regime

- 43 Public consultation on the changes to the adventure activities regime will take place between August and October 2021. The approach to consultation will be both broad and targeted, ensuring both public and key stakeholder perspectives are captured and specific feedback is received.
- 44 Stakeholders who will be invited to take part in the targeted consultation include registered adventure activity operators, certifying bodies, other workers in the adventure activities sector (including tour guides, technical advisors and safety auditors), adventure activity participants, recreation and tourism industry groups and their members and key landowners (including Department of Conservation, LINZ and territorial local authorities).
- 45 My officials will make themselves available to discuss the proposals with those who have been directly impacted by the Whakaari/White Island disaster.
- 46 ERG members representing industry groups will be supporting public consultation by ensuring the consultation document is circulated to their members for comment.
- 47 Consultation with stakeholders will take various forms, including emails and Facebook advertising inviting all stakeholders to take part in the consultation, face-to-face interviews and workshops with key stakeholders.
- 48 The qualitative data gathered through MBIEs face-to-face interviews and workshops will be used to shape our approach to the submissions analysis. Survey submission forms and other written forms of submission sent to MBIE will be used to develop final policy advice.

The consultation document will be of interest to a range of groups

- 49 I expect the consultation document will be of interest to a range of adventure activity sector participants, as well as members of the public:
  - 49.1 People and groups who have been impacted by the Whakaari White Island disaster.
  - 49.2 Adventure activity operators will have an interest in how a range of proposals will affect their businesses and the wider sector, operationally and financially.
  - 49.3 Guides and other employees of operators will be interested in how increased requirements and duties will affect their work.
  - 49.4 Adventure activity participants may face increased costs to take part in adventure activities as operators pass on their higher operating costs associated with changes to the regime and have an interest in being assured their safety is managed well.
  - 49.5 Safety auditors will be interested in changes to the Safety Audit Standard that operators are assessed against, and the increased requirements on operators.

- 49.6 JAS-ANZ, as the accreditation body for safety auditors, will be interested in changes to the Safety Audit Standard and audit process.
- 49.7 Industry bodies, including Tourism Industry Aotearoa, Recreation Aotearoa, New Zealand Māori Tourism and Local Government New Zealand will be interested in how a range of policies will affect their communities of interest.
- 49.8 Landowners, including the Department of Conservation, territorial local authorities, LINZ and private landowners will be interested in proposals to introduce health and safety duties on landowners.
- 49.9 Others indirectly affected by the regime, including the New Zealand Principals' Federation, as spokes-body for schools who take part in adventure activities, insurance bodies who develop business and holiday insurance and natural hazard experts.

#### Risks

- 50 The scope of the consultation is limited to changes to the adventure activities regulatory regime. The proposals do not address directly the Whakaari/White Island disaster or future access to Whakaari/White Island. However, some of the proposals included in the consultation document may limit adventure activities taking place on the Island in future or change the way these activities are offered.
- 51 The Minister of Local Government is leading the group of Ministers responsible for matters relating to the economic and social recovery following the Whakaari/White Island eruption on 9 December 2019.
- 52 Government agencies have, in the past, worked together to consider the legislative and regulatory responsibilities of commercial and private activity on Whakaari/White Island. Consideration will be given to beginning discussions with the private landowner and other key stakeholders to understand their views around any potential future access to the island following the outcome of Worksafe's prosecutions into the Whakaari/White Island event.
- 53 The adventure activities sector has been hit hard by COVID-19 border restrictions and alert levels. Any increase in operating costs will be felt keenly. Some of the proposals included in the consultation document are likely to increase costs for adventure activities operators. However, I consider these to be marginal costs on top of the costs of complying with their existing general health and safety duties under the HSW Act. My officials will explore the impact of costs on operators' through the consultation process.

## Agency Consultation

- 54 The Civil Aviation Authority, the Department of the Prime Minister and Cabinet, the Department of Conservation, the Department of Internal Affairs, GNS Science, Land Information New Zealand, the Ministry for Culture and Heritage, the Ministry of Education, the Ministry of Transport, the National Emergency Management Agency, Sport New Zealand, Tourism NZ, the Treasury, Waka Kotahi NZ Transport Agency and, WorkSafe NZ were consulted.
- 55 There was broad agency support for the package of proposals in the consultation document. The majority of agencies who gave feedback on the proposals have

expressed an interest in being involved or informed as policy advice develops. My officials will continue to involve relevant agencies throughout the next stage of work.

## **Financial implications**

- 56 There are no financial implications expected from releasing the consultation document, however there will likely be financial implications in implementing some of the proposals included in the document. The consultation process will support more detailed financial analysis to be undertaken. Preliminary estimates suggest:
  - 56.1 Operators may incur increases in safety audit costs by between 5-15 per cent (around \$500-\$1,500 over a three-year period) depending on the size and nature of the operation.
  - 56.2 WorkSafe will have increased operating costs associated with a more active regulatory leadership role in the regime.
  - 56.3 The risk classification system could require additional funding for government to develop and WorkSafe to implement and administer.
  - 56.4 Landowners (including DOC, LINZ and individual TLAs) are likely to face increased costs to identify and manage the risks associated with natural hazards and may require additional funding.
- 57 WorkSafe received additional funding through budget decisions in Budget 2021 to support changes to the regime in relation to natural hazards. Any additional costs for WorkSafe could be funded from WorkSafe's baselines or may require additional Crown or Health and Safety at Work Levy funding. MBIE periodically reviews the Health and Safety at Work Levy rate. The cost-benefit analysis from the adventure activities work will be used as an input into any future Levy review.

## Legislative implications

58 Public consultation will assist the Government in deciding how to amend the Regulations. Following consultation I will seek Cabinet approval to draft amendments to the Regulations.

## Human rights

59 The options contained in the discussion paper do not appear at this stage to be inconsistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Further analysis of human rights issues will be undertaken following public consultation and prior to final policy decisions.

## **Gender implications**

60 There are no specific gender implications arising from the proposals in this paper.

#### **Disability implications**

61 There are no specific disability considerations arising from the proposals in this paper.

## **Climate implications**

62 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.

## **Regulatory impact statement**

63 MBIE's Quality Assurance panel has reviewed the Adventure Activities consultation document and confirms that it substitutes as an interim Regulatory Impact Statement. The consultation document is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions. This view is supported by assurances that MBIE will also release a summary document alongside the full consultation document to aid consultation and it will hold face to face interviews and workshops encouraging open feedback.

## Publicity

- 64 I intend to make an announcement about the adventure activities consultation process encouraging stakeholders to contribute feedback once its publication is approved by Cabinet, with public consultation taking place between August and October 2021.
- 65 This consultation document will attract media and public attention due to the appeal of adventure activities to the wider public, and the relationship between this work and the Whakaari/White Island disaster.
- 66 MBIE and WorkSafe will also use a range of channels to promote consultation, including websites, social media, stakeholder alerts, newsletters and speech materials.
- 67 MBIE may use Facebook advertising to ensure that members of the general public are aware of the consultation process. Facebook advertising will target New Zealand members who are more likely to participate in adventure activities. Facebook channels will also be used to targeted international members who have travelled to New Zealand and taken part in adventure activities.

#### **Next Steps**

- 68 Consultation on the adventure activities consultation document will take place between August and October 2021.
- 69 By December 2021 I will seek Cabinet approval for changes to the adventure activities regime.
- 70 Subject to Cabinet approval any regulatory changes will be introduced in 2022.

## **Proactive release**

71 I propose to release this Cabinet paper and relevant Minute proactively, subject to redactions as appropriate under the Official Information Act 1982.

## Recommendations

- 72 I recommend that Cabinet:
  - 72.1 **Note** that a targeted review of the adventure activities regulatory regime took place in 2020 in response to the Whakaari/White Island disaster.

- 72.2 **Note** the Minister for Workplace Relations and Safety informed Cabinet of his intention to release the findings of the targeted review and develop a consultation document with proposals for change to the adventure activities regulatory regime.
- 72.3 **Note** WorkSafe received \$2.22 million funding through Budget 2021 to implement operational changes to the regime to improve the management of natural hazards. Operational changes include:
  - 72.3.1 development of natural hazard guidance materials
  - 72.3.2 natural hazard expertise to support WorkSafe's organisational understanding of natural hazard risk
  - 72.3.3 education and engagement activities by WorkSafe to support operator awareness and compliance with any regulatory change
- 72.4 **Note** the adventure activities consultation document presents a package of change proposals to the adventure activities regulatory regime. The proposals cover:
  - 72.4.1 a strengthened regulatory leadership role for WorkSafe
  - 72.4.2 a risk classification system to improve the management of natural hazards and activity-based technical risks
  - 72.4.3 specific requirements on landowners and operators to improve the management of natural hazards
  - 72.4.4 improved risk disclosures for participants
  - 72.4.5 improvements to the safety audit standard, the audit process, guidance and information to support the sector.
- 72.5 **Note** that some of the regulatory change proposals included in the consultation document may require additional government funding to implement.
- 72.6 **Note** MBIE and WorkSafe, alongside other relevant government agencies, will continue to work together to understand how a risk classification system could be implemented in practice, the cost implications associated with it, and ensuring it aligns with other regulatory approaches for managing natural hazard risks.
- 72.7 **Note** MBIE and Department of Conservation will continue to work together to understand implications of introducing landowner requirements on the Department of Conservation's operations.
- 72.8 **Note** MBIE and WorkSafe, along with other relevant government agencies, will work together to understand how to apply acceptable levels of risk to proposals included in the consultation document through the next phase of work
- 72.9 **Authorise** the Minister for Workplace Relations and Safety to make minor editorial changes to the *Adventure Activities Keeping it Safe* document before release.

- 72.10 **Agree** to publicly release the attached Government consultation document *Adventure Activities – Keeping it safe*, subject to any changes made pursuant to recommendation 72.9 above).
- 72.11 **Agree** to delegate decisions on announcements of the adventure activities consultation process to the Minister for Workplace Relations and Safety.
- 72.12 **Note** that consultation on proposed change to the adventure activities regulatory regime will take place between August and October 2021.
- 72.13 **Note** that in December 2021 the Minister for Workplace Relations and Safety will submit to Cabinet a paper that outlines his preferred set of changes to the adventure activities regime.

Authorised for lodgement

Hon Michael Wood Minister for Workplace Relations and Safety