



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
4 August 2021	<i>2122-0308 Adventure Activities consultation – final Cabinet paper and talking points</i>	<i>MBIE</i>
22 July 2021	<i>2122-0224 Adventure activities update</i>	<i>MBIE</i>
1 July 2021	<i>2021-4207 Adventure activities consultation document and Cabinet paper</i>	<i>MBIE</i>
18 February 2021	<i>2021-1956 Adventure Activities review - update on process and timings for phase two work</i>	<i>MBIE</i>
17 June 2021	<i>MBIE Health and Safety Weekly Report 17 June</i>	<i>MBIE</i>
13 May 2021	<i>MBIE Health and Safety Weekly Report 13 May</i>	<i>MBIE</i>
25 March 2021	<i>MBIE Health and Safety Weekly Report 25 March</i>	<i>MBIE</i>
18 March 2021	<i>MBIE Health and Safety Weekly Report 18 March</i>	<i>MBIE</i>

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.



BRIEFING

Adventure activities regulation review: update on process and timings for phase two work

Date:	18 February 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2021-1956

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	<p>Note the proposed scope of issues to be examined in phase two of work</p> <p>Note MBIE and WorkSafe will collaborate in developing proposals for public consultation</p> <p>Note options are available to support the timing of public consultation</p> <p>Agree to the commissioning of an expert reference group to support the development of policy proposals</p> <p>Agree to the proposed updated timeline for phase two work that involves the expert reference group</p>	26 February 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Lisa Collins	Manager, Health and Safety Policy	Privacy	✓
Privacy	Policy Advisor, Health and Safety Policy	Privacy	

The following departments/agencies have been consulted
WorkSafe NZ, DPMC

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Adventure activities regulation review: update on process and timings for phase two work

Date:	18 February 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2021-1956

Purpose

To confirm the scope and timing for work to develop policy proposals and public consultation on changes to the adventure activities regulatory regime, and seek your agreement to commissioning an expert reference group to support this work.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** the proposed scope of issues to be examined in phase two work on changes to the adventure activities regulatory regime
Noted
- b **Note** MBIE and WorkSafe will collaborate closely in developing proposals for public consultation and subsequent advice
Noted
- c **Note** there are two options for the timing of public consultation
 - a. Option 1 – involving an expert reference group in the policy development process and starting public consultation in mid-July
 - b. Option 2 – a fast-track process without extensive input from experts and starting public consultation in mid-June*Noted*
- d **Agree** to MBIE commissioning an expert reference group to support the development of proposals for change to the adventure activities regime
Agree / Disagree
- e **Agree** to the proposed updated timeline for phase two work that involves the expert reference group (option 1)
Agree / Disagree

Privacy

Lisa Collins
Manager, Health and Safety Policy
MBIE

18 / 02 / 2021

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

A range of work is happening in response to the 2019 Whakaari/White Island eruption, including a second phase of policy work to strengthen the adventure activities regulatory regime

1. As part of the response to the 2019 Whakaari/White Island eruption, between July and November 2020 MBIE conducted a targeted review into the adventure activities regulatory regime (the targeted review). Findings from this review were presented to you in November [2021-1155 refers] and released to the public in December.
2. In response to the findings of MBIE's targeted review, you agreed to MBIE undertaking a second phase of work to develop detailed policy and implementation options to strengthen the adventure activities regime's requirements for management of natural hazard risks, the leadership role of the regulator, and the safety audit process [2021-1155].
3. In December you requested MBIE provide you with advice on whether WorkSafe carried out its obligations appropriately in the events leading up to the Whakaari/White Island eruption. An independent review on this question is being conducted by David Laurensen QC and is expected to report to you in May.
4. Between June and September 2020 WorkSafe independently conducted an internal health check on its administration of the adventure activities regime. Findings from this health check were publically released in December. WorkSafe developed a programme of work to address the findings of their health check by implementing a number of changes to the regime.
5. This briefing seeks your agreement to the scope, process and timeframes for the second phase of the targeted review.

Working relationship between MBIE and WorkSafe

The phase two targeted review will require close collaboration between MBIE and WorkSafe

6. Both MBIE's targeted review and WorkSafe's internal health check identified a number of similar actions to strengthen the adventure activities regime, including improved regulatory leadership by the regulator, and reviews and/or changes to the audit safety standard, certification scheme and guidance materials. MBIE and WorkSafe have agreed to work together to strengthen the regime where there is overlap in our respective work programmes.
7. MBIE and WorkSafe will work together to develop a discussion document for public consultation on potential changes to the regime. We will develop and present policy options for consultation and, following consultation, will coordinate in developing advice on any proposed regulatory and implementation changes to the regime.
8. While agencies will collaborate in the development of proposals and subsequent advice, we consider it appropriate that MBIE acts as the lead agency for public consultation. As this work includes examining the role of WorkSafe in the system, we consider the credibility of this process will be supported by MBIE acting as the consultation lead. Having MBIE as lead will also reduce the risk of stakeholders being reluctant to engage in consultation due to incorrectly associating this process with prosecutions being undertaken by WorkSafe.
9. Both agencies have committed to providing resourcing to support this process and a joint governance group to oversee this project has been established. The governance group has agreed to a number of underlying working assumptions including prompt and agile decision making to support the development of policy options, and coordinated and transparent working arrangements between agencies.

This integrated approach may delay some aspects of WorkSafe's health check

10. WorkSafe's programme of work to address findings from their internal health check was intended to be completed by June 2021. Integrating areas of overlap into the phase two targeted review will require WorkSafe to defer some actions until policy recommendations from the phase two review are finalised. For example, the technical review of the audit safety standard and their operational approach to enforcement.
11. We consider such delays to be justified, as linking the projects in these overlapping areas will streamline work and improve outcomes from WorkSafe's programme. It will also allow WorkSafe's actions to be informed by public consultation. WorkSafe has indicated it is open to deferring work in these areas of overlap until policy recommendations have been developed.
12. WorkSafe's actions to address health check recommendations that fall outside the scope of the targeted review, such as internal administrative and operational changes, will continue to progress independently.

Scope of the targeted review phase two work

13. The specific areas we intend to consider in phase two of the targeted review are:
 - a. **Clarifying and strengthening requirements for how operators manage natural hazard risks.** This will involve identifying what good practice is for managing natural hazard risks is and how we can use the available regulatory levers (such as guidance, audits and duties in regulations) to support operators to adopt good practices.
 - b. **Reviewing audit standards and/or guidance materials.** Operator safety audits are the main way the regime provides assurance risks being are managed properly. This topic will involve outlining a high-level direction to support the review of the standard operators are audited to and guidance materials. It will help identify gaps and inform the direction a technical review would take.
 - c. **Examining WorkSafe's regulatory leadership role.** This will involve assessing whether WorkSafe currently has the tools it needs to effectively monitor the regime and enforce compliance, and how these tools can be best implemented to support improving safety standards.
 - d. **Reviewing how the regime is funded.** Currently, operators pay the costs of their audits and a fee to be registered as an authorised operator. Other regulator activities are covered by WorkSafe's general funding. This topic will consider whether this distribution of costs continues to be appropriate, and how any additional costs from changes to the regime will be borne.
 - e. **Public transparency and performance.** This will involve considering what information about the regime should be collected and published to provide public assurance that adventure activities are effectively regulated and to support future evaluations of the regime's performance.
14. The detailed project scope, outlining WorkSafe's participation, is attached in **Annex 1**.
15. **Areas out of scope** for phase two work are:
 - a. **Long-term issues related to the sustainability and optimisation of the regime.** These include the scope of "adventure activities" subject to the regime and the continued effectiveness and commercial viability of the third-party auditor model. These issues will be examined in MBIE's first principles review of the adventure activities regime beginning in 2023.

- b. **WorkSafe’s regulatory role in relation to Whakaari/White Island.** WorkSafe’s regulatory performance in this context will be examined in the independent review being conducted by David Laurenson QC.
 - c. **Internal operational changes being made by WorkSafe.** WorkSafe’s internal health check identified opportunities to strengthen internal policies and processes, develop new administrative systems and review team structures. As these changes are internal organisational matters it is appropriate for WorkSafe to progress such changes independently of this phase two work.
16. A key part of the phase two review is public consultation on proposed changes to the regime. Given the high level of public interest in safety in the adventure activities sector, we consider it appropriate that broad public consultation is undertaken on these issues, rather than targeted consultation with just operators and expert groups. Broad public consultation will ensure the review process is transparent and provide the general public an opportunity to input into decision-making, providing a greater level of assurance that the regime is properly regulated and learnings are being taken from past concerns.

Commissioning an expert reference group

An expert reference group would provide strategic direction and technical input into the development of policy options and strengthen the process

17. Officials consider that the phase two review would be supported by commissioning an expert reference group support the development of proposals to be included in the public discussion document.
18. An expert reference group would assist in identifying potential changes to the regime and provide initial feedback on proposals. The use of such a group would help ensure that the proposals presented for public consultation reflect a range of viewpoints on how the regime should function, are informed by industry best practice and are credible to stakeholders.

Our preferred option is to involve an expert reference group, however, this will require delaying public consultation and later actions by approximately a month

19. During the release of MBIE’s targeted review into the adventure activities regime in December, media statements and the review report signalled that consultation on changes to the regime would occur in the first half of 2021. Involving an expert reference group will require additional time to develop the discussion document, delaying public consultation until mid-July.
20. On balance, officials consider that this delay of approximately one month is justified. MBIE consider that involving an expert reference group will add value to proposals and will offer a valuable early opportunity to socialise proposals with key stakeholders.

The role of the reference group is multi-faceted and will add significant value to the process

21. The reference group would be designed to support officials with expertise on:
 - The natural hazards that participants in adventure activities are exposed to, and how the risks from such hazards may be managed
 - Best practice audit and risk management processes
 - The views and interests of the adventure tourism and adventure recreation sectors
22. Draft terms of reference for an expert reference group are provided in Annex 2.

Reference group members would be natural hazard, tourism and risk management experts, many of whom supported the development of the original regime

23. Parties that would be invited to participate in the reference group are:

- Lead industry bodies: Tourism Industry Aotearoa, Recreation Aotearoa and New Zealand Māori Tourism
- The Joint Accreditation System of Australian and New Zealand
- GNS Science
- Department of Conservation
- Academics with expertise in risk management, tourism management, and risk perceptions

24. The group could be expanded to include major industry operators (for instance, Tourism Holdings Ltd. or Ngai Tahu Holdings) or union representatives. However, we consider operators will be adequately represented by lead industry bodies and the consultation process will target worker and participant views. It is desirable to keep the reference group highly targeted to ensure it provides clear feedback and can operate efficiently.

Timeframes for further work

25. A full outline of our revised timeframes for phase two work is below. This shows potential timelines both if an expert reference group is commissioned and if a faster track without a reference group is preferred.

26. Officials had previously suggested a discussion document may be available to present to Cabinet in March [2021-1155]. However, given delays in confirming the scope of the phase two review this will no longer be viable under either approach.

Action	Reference group track	Fast track
Development of discussion document	25 February – 17 June (16 weeks)	25 February – 18 May (11 weeks)
Commissioning of expert reference group	10 March	N/A
You receive draft consultation document and Cabinet paper	14 June	17 May
Ministerial and political consultation on document	14 June – 28 June	17 May – 31 May
Take discussion document to Cabinet	Lodge 1 July for consideration at DEV on 7 July	Lodge 3 June for consideration at DEV on 9 June
Public consultation	16 July – 3 September (7 weeks)	18 June – 6 August (7 weeks)
You receive initial report on consultation findings	7 October	9 September
Cabinet considers policy changes	Early December 2021	Early November 2021

Action	Reference group track	Fast track
LEG process for any regulatory change	Early-mid 2022	Early-mid 2022
Implementation of changes to the regime	<p>Lower order implementation/operational changes immediately post Cabinet decisions</p> <p>Implementation change requiring regulations mid-late 2022</p>	<p>Lower order implementation/operational changes immediately post Cabinet decisions</p> <p>Implementation change requiring regulations mid-late 2022</p>

Annex 1: Targeted review project scope

Key issues	Topics	Agency responsibility for options and advice
Management of natural hazards within the regime	Conceptual considerations around appropriate regulatory response, best practice and behavioural management of natural hazards	MBIE
	Where management of natural hazards fit within the regime including regulatory or implementation options	MBIE with WorkSafe's expertise in the development of implementation options
	Impact of change on the regulator, operators and customers	MBIE
Changes to the safety audit standard and/or guidelines	High level direction to support review of, and potential change to, the safety audit standard and/or activity safety guidelines.	WorkSafe with support from MBIE
The role of the regulator	Conceptual considerations around appropriate regulatory response for design of 3 rd party authorisation including best practice	MBIE
	Regulatory roles in regime. Use of feedback loops including monitoring and reporting. Enforcement activities.	MBIE and WorkSafe
Funding the regime	Appropriate level of funding to support the regime	MBIE
	Funding options and ways to source and protect funding	MBIE with WorkSafe's expertise in the development of funding options
	Impact of change on the regulator, operators and customers	MBIE
Public transparency and performance	Appropriate level of transparency in the regime and best practice	MBIE
	Public transparency options	MBIE with WorkSafe's expertise in the development of options relating to their engagement and enforcement activity
	Evaluation of the regime's performance	MBIE

Annex Two: Draft terms of reference for expert reference group

Terms of Reference

Context

As part of the Government response to the 2019 Whakaari/White Island tragedy, between July and November 2020 the MBIE conducted a targeted review into the adventure activities regulatory regime. This targeted review focused on whether weaknesses exist in the regime where activities intersect with natural hazards. Findings from this review were presented to the Minister for Workplace Relations and Safety in November 2020.

In addition to the targeted review, between June and September 2020 WorkSafe independently conducted an internal health check of their administration of the adventure activities regime.

Findings from both reviews were publically released in December 2020.

In response to the findings of MBIE's targeted review, the Minister for Workplace Relations and Safety has agreed to MBIE undertaking a second phase of work to develop detailed policy and implementation options to strengthen the adventure activities regime's requirements for management of natural hazard risks, the safety audit process and leadership role of WorkSafe as regulator

This work will include the development of policy options for changes to the regime and public consultation on those proposals. Both regulatory and implementation change will be considered.

Scope

The key areas for consideration in this phase of the work are:

- Natural hazard identification and management in the regime
- Strengthened regulatory leadership role of WorkSafe
- Funding the regime
- Public transparency and evaluation of performance
- High level direction to support review of, and potential change to, the safety audit standard and/or activity safety guidelines.

Areas considered out of scope are:

- Specific areas of the regime that are out of scope for immediate investigation
 - Intersection with transport regimes
 - Definition of Adventure Activities
 - The fundamental design of the regime, including the use of third party authorisation, and its commercial sustainability over the long term.
- Elements of WS health check which are not directly relevant to the Targeted Review
 - Administrative and operational system changes and allocation of operational resource that have no impact on the design or the funding of the regime
 - Systems and strategies around operational enforcement activities

- Detailed content development for the standard, scheme and guidelines
- MBIE's independent review of WorkSafe in relation to Whakaari
- WorkSafe prosecutions relating to the Whakaari event

The Functions of the Expert Reference Group

In the context of developing proposals for regulatory or other change, the functions of the Expert Reference Group are to:

- Provide officials with access to expert and independent strategic and subject-matter advice
- Indicate that proposals wherever possible meet international best practice, moderated as necessary for New Zealand conditions
- Provide independent and transparent scrutiny of regulatory proposals
- Assist in strengthening the credibility of proposals released for public consultation and presented to the Government for decision.

Consistent with the Minister's expectations for the development of proposals, the Expert Reference Group is expected to function until Cabinet decisions regarding proposals are sought in June 2021, with face to face meetings expected to be held monthly throughout the first half of the year, and with additional communications as required. It is envisaged that more intense engagement will be required of Expert Reference Group members between the months of March and May.

Members of the Expert Reference Group

Representatives will be selected for their ability to support officials with expertise on:

- The natural hazards that participants in adventure activities are exposed to, and how the risks from such hazards may be managed
- Best practice risk management and audit processes
- Academic perspectives on tourism, regulatory stewardship and the management of natural hazards
- The strategic interests and sector view of the tourism and recreation sectors

The perspectives of other interested parties, such as operators, workers and participants in adventure activities, will be obtained through public consultation. Consultation will be designed to target these groups.

The group will comprise of senior representatives from:

- MBIE
- WorkSafe
- The Joint Accreditation System of Australian and New Zealand
- Tourism Industry Aotearoa
- NZ Māori Tourism
- Recreation Aotearoa

- GNS Science
- Department of Conservation
- Regulatory stewardship expert
- Tourism destination management expert
- Natural hazard behavioural expert
- Risk management expert

The Expert Reference Group will select their own Chair who will be responsible for the leadership of the Group and the conducting of meetings.

Governance, oversight and reporting

Primary responsibility for governance and delivery of the work programme rests with the Ministry of Business, Innovation and Employment.

The Expert Reference Group will advise the Ministry whether proposals meet international best practice, moderated as necessary for New Zealand conditions.

The views of the Expert Reference Group will be reported to Ministers when making their decisions.

The work of the Expert Reference Group will be supported, and administrative services provided by MBIE.

The development of proposals will be overseen by a senior officials group from WorkSafe New Zealand and MBIE.

The work of the Expert Reference Group will be reported to the senior officials' group.



BRIEFING

Adventure activities update

Date:	22 July 2021	Priority:	Medium
Security classification:	Sensitive	Tracking number:	2122-0224

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister of Workplace Relations and Safety	Note Crown Law's advice on the consultation document and MBIE's response Agree that the consultation document is amended to address Crown Law advice	27 July 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Lisa Collins	Manager, Health and Safety Policy		✓

The following departments/agencies have been consulted
Crown Law

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Adventure activities update

Date:	22 July 2021	Priority:	Medium
Security classification:	Sensitive	Tracking number:	2122-0224

Purpose

To provide you with Crown Law advice on the adventure activities consultation document and the Ministry of Business, Innovation and Employment's (MBIE) response to it.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** Crown Law have provided advice on whether the adventure activities consultation document will impact the Whakaari White Island prosecution

Noted

Legally privileged information

Privacy

Lisa Collins
Manager, Health and Safety Policy
Workplace Relations and Safety, MBIE

22/07/2021

Hon Michael Wood
Minister for Workplace Relations and Safety

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Background

1. You received a package of advice from MBIE officials on 1 July 2021 to support public consultation on changes to the adventure activities regulatory regime as part of the Government's response to the Whakaari White Island event. The advice included a consultation document outlining proposals for regulatory change, a draft Cabinet paper seeking agreement for its publication and MBIE's regulatory impact assessment [briefing 2021-4207 refers].
2. The advice noted that there was some risk that the proposals included in the consultation document could be seen to cut across WorkSafe's Whakaari White Island prosecutions. MBIE officials noted they would seek Crown Law advice on this and report back to you on the matter.
3. You subsequently agreed to lodge the Cabinet paper and consultation document on 29 July 2021 for consideration at the Economic Development Committee on 4 August. MBIE officials understand ministerial consultation on the documents is currently taking place. The MBIE regulatory impact assessment (RIS) panel (the panel) are currently reviewing the consultation document and the RIS.

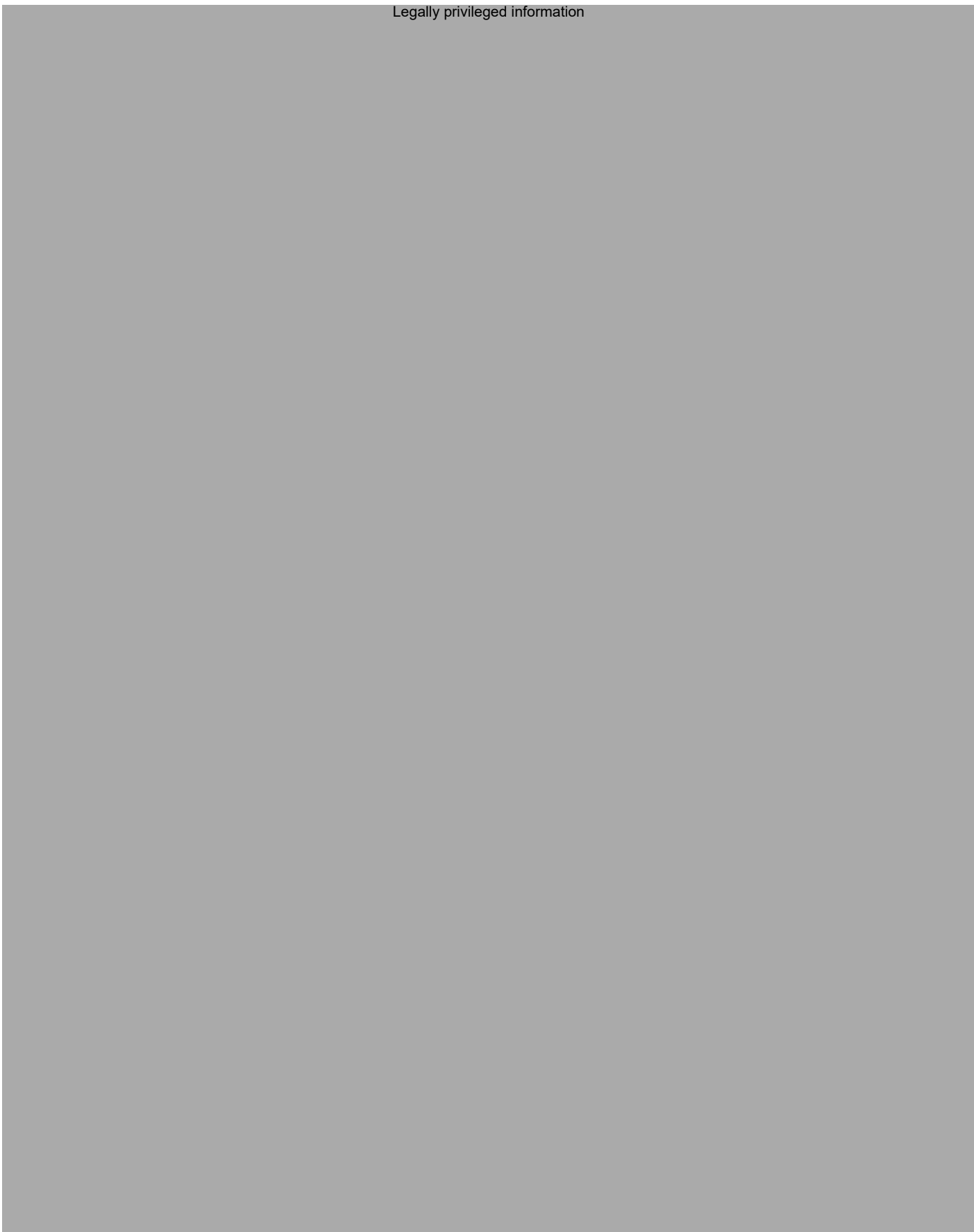
Context leading to Crown Law advice

4. In response to the Whakaari White Island event, MBIE was directed by the previous Minister for Workplace Relations and Safety to undertake a targeted review (the review) of the adventure activities regime. The review and subsequent policy work is limited to reviewing the adventure activities regulations, with the general duties under the Health and Safety at Work Act 2015 (the Act) out of scope.
5. MBIE's review of the adventure activities regulatory regime identified areas that require strengthening including; the management of natural hazards, the role of the regulator and the safety audit process. The review was published in December 2020, and formed the basis for the second stage of work to develop regulatory change proposals now included in the adventure activities consultation document.
6. Some of the proposals included in the consultation document address these deficiencies with significant policy change for example by introducing a new approach to risk management (including a risk classification system and risk disclosure statements), while other proposals have been put forward to make existing law more explicit (including making it explicit that operators and landowners are required to manage natural hazards).
7. Perceived deficiencies in the safety audit standard have also been raised through a judicial review application lodged by Dr Wislang in August 2020. This application was declined in October 2020. The judgement noted that changes to the regulation of adventure activities may occur as a result of the Whakaari White Island event, such as the development of new audit standards or changes to WorkSafe's role, but that these were matters for government policy and legislation rather than the court.¹
8. WorkSafe has previously recommended waiting until the outcome of any potential court proceedings before embarking on a regulatory change process, as there would be benefit from considering the application of the law by the courts [briefing 2021-1155 refers].

¹ *Wislang v Attorney-General & Ors* [2020] NZHC 2588

9. The following sections outline Crown Law's advice and MBIE response. These sections are legally privileged. WorkSafe are aware that MBIE sought Crown Law advice on this matter but they have not been consulted in the development of this advice.

Legally privileged information





Next steps

22. The updated adventure activities consultation document is attached in **Annex One** with recommended changes marked in red. In order to brief your Cabinet colleagues on this matter MBIE will supply you with talking points prior to discussion at the Economic Development Committee on 4 August 2021.
23. The MBIE panel have reviewed the draft consultation document and RIS. The panel have suggested, with a number of structural changes to the consultation document that it could serve as an interim RIS. Structural changes include:
 - Strengthening the case for change by articulating the level of harm that could come from not addressing identified deficiencies in the regime
 - Including content that further highlights the objectives involved and the criteria that will be used for assessment
 - Group the proposals to better align with the deficiencies articulated under the case for change
 - Expand the cost implications of proposals to solicit broader feedback
 - Open out some of the questions to solicit broader feedback on proposals put forward.
24. Having a single document for the public to refer to would be preferable as it removes duplication and supports accessibility. The RIS that is currently drafted could then be used to form the basis of the RIS required to accompany MBIE's final policy advice on changes to the regime.

25. Based on the panel feedback, officials are amending the consultation document to serve as an interim RIS. Officials will provide you with an updated document, which also includes any changes in response to Ministerial consultation, by 27 July 2021.

Annexes

Annex One: Updated adventure activities consultation document



AIDE MEMOIRE

Adventure Activities consultation – final Cabinet paper and talking points

Date:	4 August 2021	Priority:	Medium
Security classification:	Sensitive	Tracking number:	2122-0308

Information for Minister(s)
Hon Michael Wood Minister for Workplace Relations and Safety

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Lisa Collins	Manager, Health and Safety Policy	Privacy [redacted]	✓

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



AIDE MEMOIRE

Adventure Activities consultation – final Cabinet paper and talking points

Date:	4 August 2021	Priority:	Medium
Security classification:	Sensitive	Tracking number:	2122-0308

Purpose

To provide you with the final Cabinet paper seeking the release of the consultation document *Adventure Activities – keeping it safe* and talking points to support your DEV discussions.

Privacy



Lisa Collins
Manager, Health and Safety Policy
Labour, Science and Enterprise, MBIE

04 / 08 / 2021

Background

1. On 1 July the Ministry of Business, Innovation & Employment (MBIE) provided you a draft Cabinet paper [briefing 2021-4207] to seek Cabinet's agreement to release the consultation document *Adventure Activities – Keeping it Safe*.
2. MBIE officials have now finalised the Cabinet paper. Subject to your approval, we will lodge this paper for consideration at the DEV meeting on 11 August.

Minor adjustments have been made to the structure and wording of the documents following Ministerial consultation and other feedback

3. Since providing you the draft Cabinet paper and consultation document on 1 July, MBIE officials have made a number of changes to reflect feedback from Ministerial consultation, MBIE's Regulatory Impact Analysis Panel (RIAP) and Crown Law.
4. One minor change has been made to the Cabinet paper to clarify that Ministers of the Crown are excluded from having obligations under the Health and Safety at Work Act as officers of a business or undertaking (para [20]). In addition, a regulatory impact statement is included reflecting MBIE's RIAP position, the paper also notes that there are no climate implications to the work.
5. In response to MBIE RIAP feedback MBIE officials have made some structural changes to the consultation document [briefing 2122 0224]. These are highlighted in red in the document attached as Annex Three. Notable changes are:
 - Explaining in more detail the case for change, objectives of proposed changes and the criteria that will be used to determine which changes are made (pg 20-22)
 - Rephrasing proposals associated with operator and landowner duties to avoid making statements about the current law that may be contested in WorkSafe prosecutions relating to the Whakaari eruption (chapter 4)
 - Adding your Ministerial foreword (pg 3)
 - Restructuring parts of the document to make clearer and reduce repetition (e.g. chapter 5).
6. This restructure now means the consultation document serves as an interim regulatory impact statement for the work. The drafted RIS document will form the basis of the RIS accompanying MBIE's final policy advice on any changes to the regime.
7. To support the consultation process, officials are developing a summary consultation document and survey form, to outline the proposals for change in a more concise and accessible form.

Timing for public consultation

8. Following discussion with your office, officials understand your intention is to publically announce the release of this consultation document on the week beginning 23 August (subject to Cabinet approval).

9. Public consultation will run for seven weeks from when the consultation is announced. Our current expectation is that consultation will close on 15 October.
10. Tourism Industry Aotearoa, New Zealand Maori Tourism and Recreation Aotearoa have indicated that consultation between August and October will be optimal for many recreation and tourism operators as this is their off-peak season and they will have time and resource available to engage in the process.

Timing of related work

11. The next hearing for the WorkSafe prosecution regarding Whakaari is scheduled for 13 September in Whakatāne. The 12 defendants who have not yet entered pleas regarding the prosecution are required to do so by 24 August.
12. The independent review by David Laurenson QC into whether WorkSafe carried out its obligations appropriately regarding activities on Whakaari is due to report back to MBIE in September.

Annexes

Annex One: Final Cabinet paper - Adventure Activities Consultation Document

Annex Two: Talking points on DEV paper - Adventure Activities Consultation Document

Annex Three: *Adventure Activities – keeping it safe: Consultation Document* [changes marked]



MBIE Health and Safety Policy Weekly Report

For the period 12 March – 18 March 2021

Date:	18 March 2021	Priority:	Routine
Security classification:	In Confidence	Tracking number:	2021-2801

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Discuss at the weekly officials' meeting	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	
Lisa Collins	Manager, Health & Safety Policy	Privacy	

Privacy

Lisa Collins
Manager, Health & Safety Policy
Ministry of Business, Innovation, and Employment

1. ACTIONS FROM OFFICIALS MEETING

Out of scope

2. HEALTH & SAFETY POLICY UPDATE

2.1. Adventure activities project update

To support the second phase of the targeted review of the adventure activities regulatory regime, we have established an Expert Reference Group (ERG). The ERG will meet four times from March to May, and will consider issues papers prepared by officials. These papers will cover a range of policy issues outlined below. The intent of these meetings is to seek input from experts in a range of academic fields and industry bodies, to help refine policy options for inclusion in the public discussion document.

Meeting	Coverage of meeting	Date
Introductory meeting	Introduction to the project and members of the expert reference group. Project scope and timings. Purpose of the group. Selection of Chair.	23 March 2021
Workshop 1	Discussion of the best regulatory response for the management of natural hazards within the adventure activities regime & high-level discussion on the direction of a technical review of the safety audit standard and/or the activity safety guidelines.	7 April 2021
Workshop 2	An outline of third party design best practice and discussion of how to strengthen the role of the regulator within the regime.	20 April 2021
Workshop 3	The appropriate level of public transparency within the regime and evaluation of its performance. Discussion on funding the regime currently or in future.	5 May 2021

Confirmed members of the ERG are listed below. Some of these stakeholders may have conflicts of interest with the work being undertaken. MBIE will ensure these are acknowledged and managed consistent with standard operating practice.

Member	Position and organisation	Area
Chris Roberts	CEO, Tourism Industry Aotearoa	Industry
Andrew Leslie	Chief Executive, Recreation Aotearoa	
Sam Newtown	Advocacy Manager, Recreation Aotearoa	
Hoki-Mai Chong	Chief Advisor, NZ Māori Tourism	

Member	Position and organisation	Area
Gill Jolly	Manager, Earth Structure and Processes Department, GNS Science	Natural hazard risk management expert
Don Bogie	Principal Advisor Visitor Risk, Department of Conservation	
Peter Mumford	Policy Director, Science, Innovation and International, MBIE	Regulatory design expert
Simon Bannock	Sector Manager, Joint Accreditation System of Australia and New Zealand (JAS-ANZ)	Accreditation and international standards
Kathryn Lockyer	General Manager Services, JAS-ANZ	
Dr John McClure	Emeritus Professor, School of Psychology, Victoria University of Wellington	Academic
Douglas Pearce	Emeritus Professor, School of Management, Victoria University of Wellington	
Chris Peace	Lecturer, School of Health, Victoria University of Wellington	
Kelly Hanson- White	Manager, Regulatory Frameworks, WorkSafe New Zealand	Government
Lisa Collins	Manager, Health and Safety Policy, MBIE	

Officials will keep you informed as the work progresses.

Out of scope



MBIE Health and Safety Policy Weekly Report

For the period 19 March – 25 March 2021

Date:	25 March 2021	Priority:	Routine
Security classification:	In Confidence	Tracking number:	2021-2921

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Discuss at the weekly officials' meeting	N/A

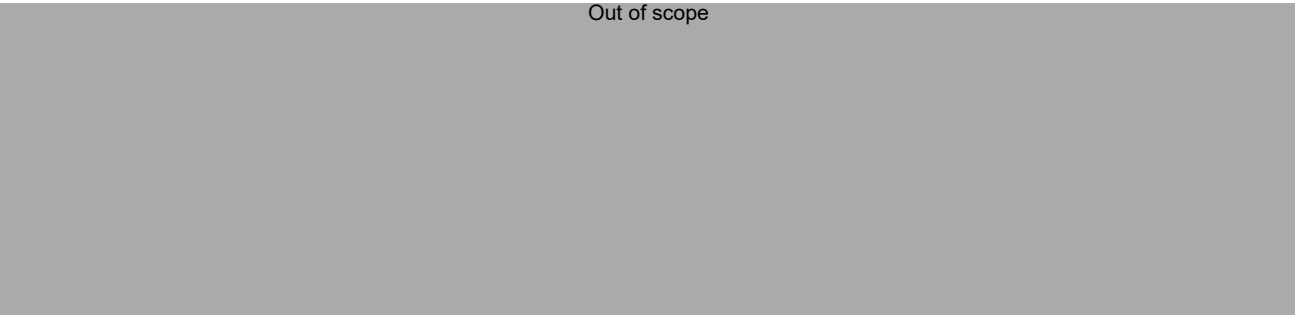
Contact for telephone discussion (if required)		
Name	Position	Telephone
Lisa Collins	Manager, Health & Safety Policy	Privacy [Redacted]

Privacy

Lisa Collins
Manager, Health & Safety Policy
Ministry of Business, Innovation, and Employment

1. ACTIONS FROM OFFICIALS MEETING

Out of scope



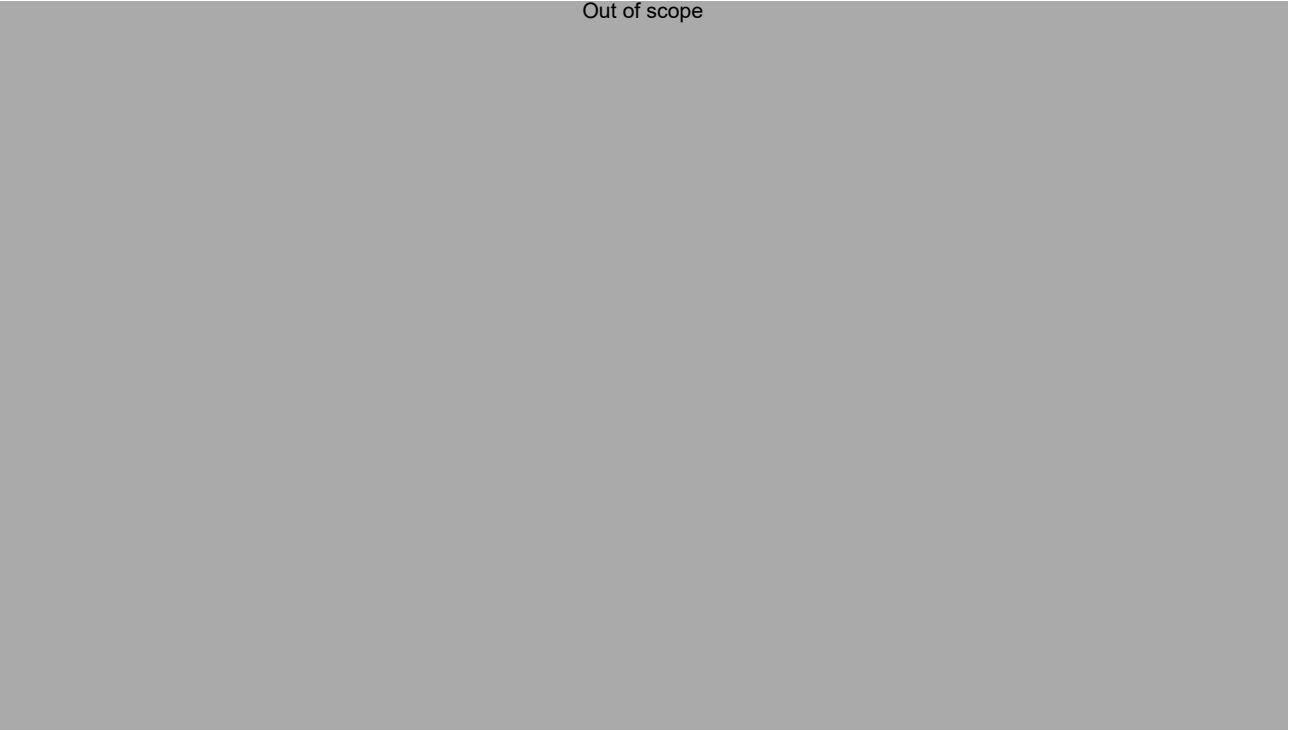
2. HEALTH & SAFETY POLICY UPDATE

2.1. Adventure activities project update

The Expert Reference Group (ERG), established to support the development of policy options, met for the first time on 23 March. The ERG selected Chris Roberts Chief Executive, Tourism Industry Aotearoa as Chair; with Andrew Leslie, Chief Executive of Recreation Aotearoa as deputy Chair. The group regarded it appropriate for industry to lead the ERG because of the sector leadership role they have in the adventure activities regime. The ERG will meet again on 7 April to discuss appropriate regulatory responses to the management of natural hazards.

The MBIE Health and Safety Policy team have regular meetings with our tripartite partners (Business NZ, CTU and WorkSafe). MBIE officials will be meeting with CTU on 7 April 2021. The targeted review of adventure activities will be discussed at this meeting, including testing CTU's level of interest in the work and potential timings for their participation in the consultation process.

Out of scope





MBIE Health and Safety Policy Weekly Report

For the period 7 May – 13 May 2021

Date:	13 May 2021	Priority:	Routine
Security classification:	In Confidence	Tracking number:	2021-3618

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Discuss at the weekly officials' meeting	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	
Lisa Collins	Manager, Health & Safety Policy	Privacy	

Privacy

Lisa Collins
Manager, Health & Safety Policy
Ministry of Business, Innovation, and Employment

1. ACTIONS FROM OFFICIALS MEETING

Out of scope

2. HEALTH & SAFETY POLICY UPDATE

2.1. Adventure activities project update

Officials have now completed consultation with the Expert Reference Group (ERG), and are drafting a public discussion document and regulatory impact statement informed by the ERG's advice. While a range of options will be presented to the public for consultation, officials' preferred draft package of initiatives at this stage is as follows:

1. **Regulatory change to improve the management of natural hazards**
 - a. Establish obligations on registered adventure activity operators to manage natural hazards in their operations.
 - b. Introduce specific duties for landowners to monitor and inform operators about natural hazards on their land, and consider when granting permissions whether there is an unacceptable level of risk involved.

2. **Regulatory change to allow WorkSafe NZ to monitor the sector and intervene when unsafe activities occur**
 - a. Improve information flows to WorkSafe, so they can track the health of the adventure activity sector and act decisively when unsafe activities occur by:
 - i. Creating a list of "notifiable incidents" specific to the adventure activities sector.
 - ii. Requiring operators to register directly with WorkSafe on an annual basis.
 - iii. Expanding WorkSafe's powers to decline to register operators/suspend registrations, so they can better intervene where risks are not being sufficiently managed to enable safe participation.

3. **Regulatory change to establish a risk based approach to improve regulatory oversight and operator practice**
 - a. Develop a risk classification system to identify and classify the level of risk involved in adventure activity operations, including activity based risk and risks from natural hazards.
 - b. Operators will also be required to have good processes in place to assess and make decisions on whether risks are acceptable, e.g. whether to proceed with an activity in potentially dangerous conditions.
 - c. Require operators to develop disclosure standards to ensure participants are fully aware of the risks they face when undertaking adventure activities.

Officials still need to consult other agencies and the ERG on this package. We expect to provide the draft discussion document to you on 14 June, followed by consideration by DEV in July.



MBIE Health and Safety Policy Weekly Report

For the period 11 June – 17 June 2021

Date:	17 June 2021	Priority:	Routine
Security classification:	In Confidence	Tracking number:	2021-4171

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Discuss at the weekly officials' meeting	N/A

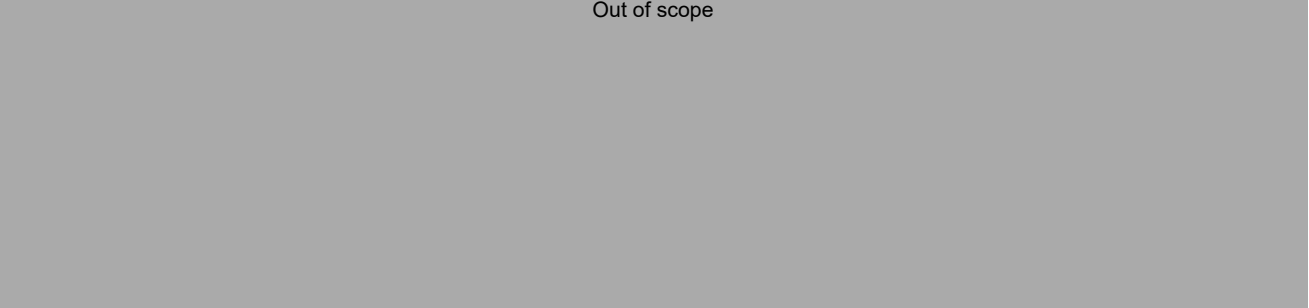
Contact for telephone discussion (if required)			
Name	Position	Telephone	
Lisa Collins	Manager, Health & Safety Policy	Privacy	

Privacy

Lisa Collins
Manager, Health & Safety Policy
Ministry of Business, Innovation, and Employment

1. ACTIONS FROM OFFICIALS MEETING

Out of scope



2. HEALTH & SAFETY POLICY UPDATE

2.1. Adventure activities project update

The adventure activities consultation document is drafted. The change proposals included in the document were outlined in MBIEs Health and Safety Weekly Report on 13 May 2021 and then discussed with officials.

The consultation document presents a package of regulatory and non-regulatory change proposals to the regime that are intended to:

- Support WorkSafe’s strengthened regulatory leadership role
- Clarify and strengthen requirements for how operators, landowners and the regulator manage natural hazard risks
- Improve risk disclosures to participants
- Improve the safety audit standard, audit process and guidance and information for the sector.

The consultation document has been circulated to the Expert Reference Group (ERG) for comment. MBIE and WorkSafe officials met the ERG on 10 June to gather their final feedback on the proposals for change. The ERG support that the full range of proposals included in the document be presented for public consultation.

MBIE has now circulated the consultation document and the supporting package of advice (cover brief, draft Cabinet paper and regulatory impact statement) for agency consultation. MBIE officials expect to deliver this package of advice to your office by 1 July 2021, with Ministerial consultation taking place thereafter.

Out of scope

