



## COVERSHEET

<b>Minister</b>	Hon Carmel Sepuloni	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of briefing</b>	Adventure activities amendment regulations – briefings & reports	<b>Date to be published</b>	28 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
10 Feb 2022	2122-2499 WorkSafe-MBIE report on Independent Review Actions Jan 2022	MBIE, WorkSafe
11 March 2022	2122-2819 WorkSafe-MBIE report on Independent Review Actions Feb 2022	MBIE, WorkSafe
12 April 2022	2122-3215 WorkSafe-MBIE report on Independent Review actions Mar 2022	MBIE, WorkSafe
12 May 2022	2122-4261 WorkSafe- MBIE report on Independent Review actions April 2022	MBIE, WorkSafe
21 June 2022	2122-4680 WorkSafe- MBIE report on Independent Review actions May 2022	MBIE, WorkSafe
1 September 2022	2223-0565 WorkSafe- MBIE report on Independent Review actions June 2022	MBIE, WorkSafe
15 December 2021	2122-2154 Public consultation on proposed adventure activities changes	MBIE
21 April 2022	2122-3038 Recommended changes to adventure activities regime	MBIE
14 September 2022	2223-0949 Changes to the adventure activities regime - final Cabinet paper and talking points	MBIE
11 August 2022	2223-0073/2223-0216 Draft Cabinet paper - changes to the adventure activities regime	MBIE
23 February 2023	2223-2277 Adventure Activities release of exposure draft	MBIE
11 July 2023	2223-4320 Amendments to the Adventure Activities Regulations – Updated LEG paper for secondary Ministerial consultation	MBIE
6 June 2023	2223-3994 Adventure Activities - draft LEG paper for ministerial consultation	MBIE
26 July 2023	2324-0161 Adventure Activities Amendment Regulations – final Cabinet paper and talking points for LEG	MBIE

**Information redacted****YES**

Any information redacted in this document is redacted in accordance with MBIE's and MFAT'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.

Privacy of natural persons  
Legal professional privilege  
Free and frank  
Publicly available  
Under active consideration



## Independent Review Actions: Joint Update January 2022

<b>Date:</b>	10 February 2022	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-2499

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Note</b> the current progress towards your expectations.  <b>Agree</b> to actions being closed and <b>note</b> any further changes you wish to make to actions.	24 February 2022

## Summary

In October 2021 you wrote to the Chair of WorkSafe regarding the findings of the Independent Review of WorkSafe in relation to Whakaari/White Island. In your letter you requested responses to three questions and for assurance that WorkSafe would take actions in six further areas.

To monitor progress towards these expectations, you requested that MBIE and WorkSafe provide joint monthly updates.

Annex One provides the first monthly update covering actions taken up to the close of January 2021.

The report notes that work has begun towards most expectations and governance arrangements have been established. However, further work is needed to confirm the scope of action in several areas and to confirm deliverable dates. We anticipate that we will be able to provide more detail about risks, actions and deliverable dates in the February monthly update.

We recommend that you note current progress towards your expectations outlined in the report and agree to close Action 01 based on WorkSafe's comment.



## Recommended actions

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WorkSafe New Zealand and the Ministry of Business, Innovation and Employment recommends that you:

a **Note** the current progress towards your expectations outlined in the report.

*Noted*

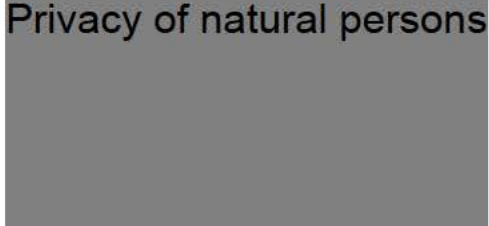
b **Agree** to close Action 01.

*Agree / Disagree*

c **Note** any further changes you wish to make to the expectations or their status.

*No changes / Changes noted*

### Privacy of natural persons



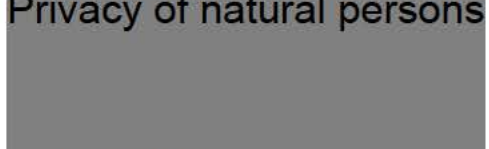
Mike Hargreaves  
**GM, Regulatory Effectiveness and Legal,  
WorkSafe**

10 / 2 / 22

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

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### Privacy of natural persons



Lisa Collins  
**Manager, Health and Safety Policy,  
MBIE**

10 / 02 / 22



## Independent Review Actions: January 2022

### Overall Status

WorkSafe summary	MBIE summary
<p><b>WorkSafe have completed the following Milestones:</b></p> <ul style="list-style-type: none"> <li>✓ Progress against actions 01-15 as set out in the Status Report.</li> <li>✓ Established Steering Committee (Governance) for Ngā Paiaka (strategic deliverable under the Hoe Nuku strategy),</li> <li>✓ Reformed Core Project team that will be implementing all scoped deliverables in accordance with WorkSafe Aide Memoire Update to the Minister dated 14 July 21 and the expectations set by the Minister in light of the Laurenson review,</li> <li>✓ Steering Committee meetings scheduled fortnightly,</li> <li>✓ Core Project team meetings/workshops scheduled twice weekly.</li> </ul>	<p>We note the progress achieved in a range of areas. Some items may require further discussion between MBIE and WorkSafe to confirm and agree on the scope of action. We anticipate these will be resolved in coming weeks and will update you in the February report.</p>

### Items for noting

Action #ID	Point(s) to note
WS A01	As indicated in the Status Report, whilst progress has been made against all action items, most deliverable dates are yet to be confirmed. We will provide more information about deliverable dates in our February Status Report.
MB A02	WorkSafe and MBIE are developing our combined governance approach. We anticipate providing more insight into project risks and the scope of actions at the next project update.

### Risks and issues

#ID	Risk or Issue	Impact(s)	Mitigation(s)
WS R01	WorkSafe have established a set of risks/issues (WorkSafe specific) that are detailed in the fortnightly Project Steering Committee Status Report.	WorkSafe and MBIE will monitor the progress of the project to ensure all risks and issues are identified and controlled.	Will liaise with MBIE monthly and discuss any joint risks and issues that will affect both parties.
MB R02	Whether all tasks can be completed by 1 July (per Ministerial expectations) is unclear given current resourcing pressures upon WorkSafe and the need to work with other organisations on some expectations.		We will confirm deliverable dates and monitor progress against these. We will continue to regularly update you about progress.

# Monthly Status: January 2022

Key: ■ On track ■ Off track ■ Behind schedule ■ Recommend agree to close ■ Closed/completed

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
01	Minister	Is the Board satisfied it undertook appropriate governance over WorkSafe's regulatory risks and prioritisation choices that were made by WorkSafe in relation to these risks?	18 Oct 2021		<ul style="list-style-type: none"> <li>Please refer to the Chair Letter to Minister dated 18 October 2021, pages 1 – 4.</li> </ul>	<ul style="list-style-type: none"> <li>The Chair's Letter indicates the Board is satisfied it provides appropriate governance of WorkSafe and its prioritisation choices. We recommend you note the Board's position and agree to this action being considered complete.</li> </ul>	
02	Minister	How has the Board reviewed WorkSafe's prioritisation decision-making, particularly in relation to its highest risks, and were these risks managed appropriately?	18 Oct 2021		<ul style="list-style-type: none"> <li>Please refer to the Chair Letter to Minister dated 18 October 2021. Pages 1 – 4.</li> </ul>	<ul style="list-style-type: none"> <li>The Chair's Letter provides an overview of the steps the Board and WorkSafe's management goes through to make effective prioritisation decisions and allocate resources appropriately. While this response partially answers your question, it does not fully explain the framework or model used for these decisions.</li> <li>MBIE anticipate the SageBush review will provide more insight into WorkSafe's prioritisation and resource allocation processes. MBIE recommend you determine whether you would like more information from WorkSafe in this area once you have considered the SageBush review.</li> </ul>	
03	Minister	Is the Board aware of any other non-compliance across WorkSafe's regulatory functions which have not been acted on?	18 Oct 2021		<ul style="list-style-type: none"> <li>Please refer to the Chair Letter to Minister dated 18 October 2021, pages 1 – 4.</li> </ul>	<ul style="list-style-type: none"> <li>The Chair's Letter notes that WorkSafe is not resourced to fully address all known risk areas and that WorkSafe was aware of "consequential duty-holder non-compliance" it has not been able to act upon.</li> <li>In your 1 February response letter you requested more information about the risk/prioritisation model used by WorkSafe to underpin this enforcement approach. We will support WorkSafe as they develop an approach to complete this action.</li> </ul>	
04	Minister	Audit the credentials of recognised adventure activities safety auditors immediately in order to ensure they have the necessary technical expertise to provide proper assurance for the activities they are auditing and to report back on the results of this work.	This will be confirmed in the Feb 22 Report.		<ul style="list-style-type: none"> <li>WorkSafe has obtained details of the qualifications and experience of the technical experts (TEs) engaged by the two recognised safety auditors together with a copy of the process and standard operating procedure each safety auditor uses for managing its TEs. WorkSafe is currently assessing the competence and management of TEs against the requirements of the New Zealand Adventure Activities Certification Scheme; and reviewing the findings of JAS-ANZ's assessments where they are relevant to TEs.</li> </ul>		
05	Minister	Following the audit of the credentials of auditing bodies involved in adventure activities, take immediate and appropriate action to remedy any adventure activity that is registered based on a safety audit carried out without the appropriate technical expertise	This will be confirmed in the Feb 22 Report.		<ul style="list-style-type: none"> <li>Based on its assessment of the qualifications, experience, and management of TEs (following completion of action 05) WorkSafe will take immediate and appropriate action where an adventure activity operator has been registered based on a safety audit carried out without the appropriate technical expertise.</li> </ul>		

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
06	Minister	In consultation with JAS-ANZ, complete a review of the Adventure Activities Certification Scheme and, as part of this work, ensure the Technical Competency Table for audit team personnel is up-to-date and fit-for-purpose	This will be confirmed in the Feb 22 Report.		<p><b>To date we have:</b></p> <ul style="list-style-type: none"> <li>• Considered if the Scheme is still needed and fit for purpose.</li> <li>• Created issues log to identify technical, legal, policy or operational issues with the Scheme, from our (WorkSafe's) perspective. This includes the issues identified in the Minister's expectations 7 and 10-12.</li> <li>• Identified things that could be clarified, in terms of expectations or to make the wording clearer.</li> <li>• Contacted JAS-ANZ, to determine their availability to contribute to the Scheme's review. We are awaiting their response.</li> </ul> <p><b>Next steps are to:</b></p> <ul style="list-style-type: none"> <li>• Discuss the issues and what changes should be made to the Scheme to address these. We need to reach a view internally and will then discuss with JAS-ANZ. We expect this will take around 3-4 months to complete.</li> <li>• Confirm the review process with JAS-ANZ, then follow that process through. We cannot yet confirm how long the review will take. We will provide an estimate of this once we've discussed with JAS-ANZ and have confirmation of their availability. It is likely to take a number of months as the process will: <ul style="list-style-type: none"> <li>◦ involve working closely with JAS-ANZ</li> <li>◦ include consultation with safety auditors</li> <li>◦ deliver against Minister's expectations (7 and 10-12) and resolve the issues we have identified.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• MBIE's current review of the broader adventure activities regulatory regime may also suggest changes are needed to the certification scheme. We will continue to coordinate with WorkSafe regarding these changes and look for opportunities to align these consultation and amendment processes.</li> </ul>	
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	This will be confirmed in the Feb 22 Report.		WorkSafe has identified 348 coronial cases between 1 Nov 2014 and 31 Dec 21 where death occurred whilst the deceased was engaging in an adventure activity. Work to identify WorkSafe investigations and prosecutions/court decisions involving adventure activities is continuing. We will then analyse the recommendations and actions from these.		
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any	This will be confirmed in the Feb 22 Report.		<ul style="list-style-type: none"> <li>• Please refer to the Chair Letter to Minister dated 18 October 2021, page 6: <ul style="list-style-type: none"> <li>➤ In March 2021 WorkSafe completed an in-depth review across authorisation schemes, using the Adventure Activities health check as a model. The purpose of this work was to identify areas for improvement to ensure that WorkSafe has appropriate processes and procedures in place across the different regimes; consistency of approach; transparency and efficiency of decision-making; and that we are meeting our legislative obligations. The following authorisation schemes were considered:</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• While we note WorkSafe's assurance that work is occurring in this area, to date little supporting detail about this work programme has been provided. This makes it difficult to determine if the weaknesses identified in the review are being addressed. MBIE will seek more information regarding this work programme and continue to monitor its progress.</li> </ul>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		<p>problems identified, specifically:</p> <ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>			<p>Asbestos Licensing, Amusement Devices, Occupational Diving, Scaffolding, Pressure Equipment, Cranes and Passenger Ropeways 'PECPR', Pipelines, Transhipments of Hazardous Substances, Forklifts and Powder-Actuated Tools.</p> <ul style="list-style-type: none"> <li>➤ This work identified several strengths in how we administer the different schemes, but also identified the scale of responsibilities that WorkSafe is responsible for and the work ahead of the regulator to address weaknesses in the system. The priority areas for improvement are being shaped into improvement programmes. A further briefing can be provided to you if desired.</li> <li>➤ Separate work programmes are underway to respond to regulatory risks in other areas, including:</li> </ul> <p><b>Hazardous Substances Certification:</b> two independent reviews recently commissioned and are being finalised  <b>Refrigeration Licencing:</b> joint work with MBIE is progressing  <b>Plant and Structures:</b> progressed within regulations development.</p>		
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	This will be confirmed in the Feb 22 Report.		<p><b>To date we have:</b></p> <ul style="list-style-type: none"> <li>• Considered if the Scheme is still needed and fit for purpose.</li> <li>• Created issues log to identify technical, legal, policy or operational issues with the Scheme, from our (WorkSafe's) perspective. This includes the issues identified in the Minister's expectations 7 and 10-12.</li> <li>• Identified things that could be clarified, in terms of expectations or to make the wording clearer.</li> <li>• Contacted JAS-ANZ, seeking to determine their availability to contribute to the Scheme's review. We are waiting to hear back.</li> </ul> <p><b>Next steps are to:</b></p> <ul style="list-style-type: none"> <li>• Discuss the issues and what changes should be made to the Scheme to address these. We need to reach a view internally and will then discuss with JAS-ANZ. We expect this will take around 3-4 months to complete.</li> <li>• Confirm the review process with JAS-ANZ, then follow that process through. We cannot yet confirm how long the review will take. We will provide an estimate of this once we've discussed with JAS-ANZ and have confirmation of their availability. It is likely to take a number of months as the process will: <ul style="list-style-type: none"> <li>○ involve working closely with JAS-ANZ</li> <li>○ include consultation with safety auditors</li> <li>○ deliver against Minister's expectations (7 and 10-12) and resolve the issues we have identified.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• We note that WorkSafe do not specifically confirm whether some of these actions recommended by the Laurenson report will be implemented.</li> <li>• As suggested in your 1 February response to the WorkSafe Chair, MBIE will work with WorkSafe to clarify the recommendations and agree on best way to to address the recommendations. We will advise you of progress in the next monthly report.</li> </ul>	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the risks and hazards to which those involved in the activity are exposed as a result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.	This will be confirmed in the Feb 22 Report.				
11	Review	Include this adventure activity and the necessary experience/qualifications to audit it on the "technical competency table", which is used by auditors to plan audits and identify the expertise needed in their audit team.	This will be confirmed in the Feb 22 Report.				
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications,	This will be confirmed in the Feb 22 Report.				



Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		and make sure that they are available to be engaged as technical experts when required.					
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.	This will be confirmed in the Feb 22 Report.		This will be incorporated in the update of the Registration Function Standard Operating Procedures (SOPs). Currently the SOPs are being updated to reflect the internal Health check and the WorkSafe Phase 2 project.		
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	This will be confirmed in the Feb 22 Report.		<p>WorkSafe note that Activity Safety Guidelines (ASGs) relate to an adventure activity rather than a geographical place.</p> <p>We will consider whether to produce an ASG for 'Walking Tours on a Live Volcano' or 'Adventure Activities in Active Volcanic Areas' which, whilst covering activities on Whakaari, would also include activities in the Tongariro National Park.</p> <p>We should note that DOC has developed management plans and procedures for managing volcanic risk [<a href="#">DOC's role in managing volcanic risk at Tongariro National Park</a>].</p> <p>This work, based on Volcanic Alert Levels (VALs), could form a good basis for an ASG for adventure activities in a volcanic area.</p> <p>WorkSafe has undertaken to manage the development of new ASGs and the revision of existing ASGs starting in 2022.</p> <p>We will add the safety guidelines for activities in active volcanic areas to the list of proposed new ASGs. We will be guided by industry bodies such as Tourism Industry and technical experts as to the priority this should be given.</p>	<ul style="list-style-type: none"> <li>We agree that a coordinated and consistent approach should be adopted to the content of ASGs. Given the limits of the ASG format, we will discuss with WorkSafe on whether a different type of guidance regarding volcanic hazards may be more appropriate and advise you of the agreed approach in the next monthly report.</li> </ul>	



## Independent Review Actions: Joint Update February 2022

<b>Date:</b>	11 March 2022	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-2819

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Note</b> the current progress towards your expectations.  <b>Note</b> any further changes you wish to make to actions.	4 April 2022

## Summary

This report provides the February 2022 progress update from WorkSafe and MBIE on actions taken in response to the Independent Review of WorkSafe in relation to Whakaari/White Island.

The report notes that work has now commenced and deliverable dates have been confirmed in most areas. Two items are now noted as off-track, due to further work being needed to provide the additional information you have requested about risk/prioritisation modelling. However, we anticipate these actions will be closed off within the next three months.

We do not recommend any further actions are considered closed at this time, but all other items remain on track to be completed by 1 July. We recommend that you note current progress towards your expectations and the deliverable dates that have been confirmed for each item.



## **Recommended actions**

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WorkSafe New Zealand and the Ministry of Business, Innovation and Employment recommends that you:

a **Note** the current progress towards your expectations outlined in the report.

*Noted*

b **Note** any further changes you wish to make to the expectations or their status.

*No changes / Changes noted*

Privacy of natural persons

Mike Hargreaves  
**GM, Regulatory Effectiveness and Legal,  
WorkSafe**

11 / 03 / 2022

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

..... / ..... / .....

Privacy of natural persons

Lisa Collins  
**Manager, Health and Safety Policy,  
MBIE**

11 / 03 / 2022



# Independent Review Actions: February 2022

## Overall Status

<b>WorkSafe summary</b> <b>WorkSafe have completed the following Milestones:</b> <ul style="list-style-type: none"> <li>✓ Established a Milestone Tracker against the Minister's Expectations and key internal WorkSafe deliverables</li> <li>✓ Continue to work collaboratively with MBIE on regulatory proposals to review and strengthen the adventure activities regime</li> <li>✓ Reviewing and scoping the requirements to ensure robust Change Management process is applied and scoping the requirements to establish the benefits and measures for the overall Authorisations regime.</li> </ul>
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## Items for noting

Action #ID	Point(s) to note
WS A01	<p>The Ngā Paiaka- Strengthen Regulatory Foundations programme is one of WorkSafe's six organisational priorities (Hoe Nuku). In delivering on the Ngā Paiaka programme, WorkSafe will be delivering improvements to three key areas of its regulatory framework: Exemptions, Delegations, and Authorisations.</p> <p>The Adventure Activities project has been integrated to sit within the Authorisations Workstream. Whilst Phase 3 of this project will continue to be delivered at pace to meet the Laurenson Report Recommendations, it is important that Adventure Activities is not delivered in isolation of Ngā Paiaka and that the changes we make will support and strengthen WorkSafe's other authorisations work, as well as the overall regulatory framework. A gap analysis is currently underway across these programmes to identify and confirm any outstanding issues and actions, and map work that is already completed, underway, or still required. An update on the outcome of this analysis will be provided in the next report.</p>

## Risks and issues

#ID	Risk or Issue	Impact(s)	Mitigation(s)
WS R01	WorkSafe have established a set of risks/issues (WorkSafe specific) that are detailed in the fortnightly Programme Steering Committee Status Report.	WorkSafe continues to monitor the progress of the programme to ensure all risks and issues are identified and controlled.	Regular engagement with MBIE, including intending to invite MBIE as a member of the Steering Committee from April, liaison with MBIE monthly and discussion of any joint risks and issues that will affect both parties.
MB R02	Whether all tasks can be completed by 1 July (per Ministerial expectations) is unclear given current resourcing pressures upon WorkSafe and the need to work with other organisations on some expectations.		We will confirm deliverable dates and monitor progress against these. We will continue to regularly update you about progress.

# Monthly Status: February 2022

Key: ■ On track ■ Off track ■ Behind schedule ■ Recommend agree to close ■ Closed/completed

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
01	Minister	Is the Board satisfied it undertook appropriate governance over WorkSafe's regulatory risks and prioritisation choices that were made by WorkSafe in relation to these risks?	Completed		<ul style="list-style-type: none"> <li>Please refer to the Chair Letter to Minister dated 18 October 2021, pages 1 – 4.</li> <li>Referring to the January Joint MBIE Report to the Minister it has been recommended that this deliverable be closed off as COMPLETE.</li> </ul>		
02	Minister	How has the Board reviewed WorkSafe's prioritisation decision-making, particularly in relation to its highest risks, and were these risks managed appropriately?	1 July 22		<ul style="list-style-type: none"> <li>We have previously advised the Minister and MBIE that there is consequential duty holder non-compliance which we have not been able to act on. Sustainable funding conversations continue and, in the interim, trade-offs between risk and activity are required – meaning risk needs to be constantly monitored</li> <li>As outlined in the Chair's letter of (17 February 2022) WorkSafe will provide a separate briefing to the Minister on its risk/prioritisation model and approach</li> </ul>	<ul style="list-style-type: none"> <li>In addition to WorkSafe's upcoming briefing, we anticipate the SageBush review will provide information about WorkSafe's prioritisation and resource allocation models. After reviewing this information, you can determine if any further information/action is required.</li> <li>These items are noted as off-track as further work is needed for WorkSafe to provide the additional information you have requested about risk/prioritisation modelling. We expect this information will be provided within the next three months.</li> </ul>	
03	Minister	Is the Board aware of any other non-compliance across WorkSafe's regulatory functions which have not been acted on?	1 July 22		<ul style="list-style-type: none"> <li>As outlined in the Chair's letter of (17 February 2022) WorkSafe will provide a separate briefing to the Minister on its risk/prioritisation model and approach</li> </ul>		
04	Minister	Audit the credentials of recognised adventure activities safety auditors immediately in order to ensure they have the necessary technical expertise to provide proper assurance for the activities they are auditing and to report back on the results of this work.	TBC		<ul style="list-style-type: none"> <li>WorkSafe has completed its initial assessment of the competence and management of TEs against the requirements of the New Zealand Adventure Activities Certification Scheme. Overall, the safety auditors are meeting the requirements of the scheme.</li> <li>However, WorkSafe will raise several observations with the safety auditors to promote better practice in some areas e.g., record keeping.</li> </ul>	<ul style="list-style-type: none"> <li>Further work now occurring to assess whether the qualifications of technical experts being used by auditors meet competency expectations. Once this work is completed WorkSafe will be able to provide advice on whether there are any broader issues with auditors' use of technical experts.</li> </ul>	
05	Minister	Following the audit of the credentials of auditing bodies involved in adventure activities, take immediate and appropriate action to remedy any adventure activity that is registered based on a safety audit carried out without the appropriate technical expertise	TBC		<ul style="list-style-type: none"> <li>WorkSafe retains the option to act as noted in this expectation. However, currently WorkSafe has not identified any adventure activity operator that requires such an intervention.</li> </ul>		
06	Minister	In consultation with the JAS-ANZ, complete a review of the NZAACS and, as part of this work, ensure the Technical Competency Table for audit team personnel is up-to-date and fit-for-purpose	1 July 22		<ul style="list-style-type: none"> <li>An internal review of the Scheme has been completed.</li> <li>Updating of the Technical Competency Table for audit personnel is currently underway.</li> </ul>	<ul style="list-style-type: none"> <li>MBIE and WorkSafe will discuss the outcome of the Scheme review and update you about any further actions required to meet your expectations in the next report.</li> </ul>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	1 July 22		<ul style="list-style-type: none"> <li>WorkSafe has identified 348 coronial cases between 1 Nov 2014 and 31 Dec 21 where death occurred whilst the deceased was engaging in an 'adventure activity'</li> <li>Work has begun cross checking coronial cases against internal WorkSafe files, cross referencing against the Adventure Activity policies and confirming if cases meet the definition of an Adventure Activity. This is a time-consuming activity and resourcing is being scaled up to ensure this completed in a timely manner.</li> <li>Work continues to identify WorkSafe investigations and prosecutions/court decisions involving adventure activities.</li> </ul>		
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any problems identified, specifically: <ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>	1 July 22		<ul style="list-style-type: none"> <li>All authorising regimes under two different business areas were reviewed in a two stage Authorisations Process Review Oct 20-Sept 21.</li> <li>A number of areas were identified within the reviews requiring actions to improve our regulatory performance in authorisations management.</li> </ul> <p>Work has begun in the following areas:</p> <ul style="list-style-type: none"> <li>SOP and Operational Guidance review and updating/developing (Occupational Diving, Asbestos, Adventure Activities).</li> <li>Initial discussions with other agencies to establish an Interagency Authorisations Community of Practice.</li> <li>Recruitment of resource to commence 28 Feb 21 to continue with the development and updating of all Authorisation regime documentation.</li> <li>Working closely with the WorkSafe Digital Transformation team to ensure the successful onboarding of sound regulatory processes and practices for the pilot Occupational Diving digital platform</li> </ul>	<ul style="list-style-type: none"> <li>MBIE understand the identified areas for improvement in the Authorisations Review include improving assurance systems for third party assessors and improving intelligence and proactive monitoring of duty-holders. WorkSafe consider that their current programme of work will address these and other identified areas for improvement.</li> <li>The Authorisations Review did not find any general issues across similar systems in the other areas noted in your question, such as lack of access to qualified technical experts or responsiveness to non-compliances.</li> </ul>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	1 July 22		<ul style="list-style-type: none"> <li>An internal review of the Scheme has been completed.</li> <li>Recommendations from this review are currently in the process of being developed into an implementation plan.</li> <li>Updating of the Technical Competency Table for audit personnel is currently underway.</li> </ul>	<ul style="list-style-type: none"> <li>WorkSafe have confirmed that as part of their update to the technical competency table they plan to add a category for experts that can be used to assess volcanic hazards. We consider this process will suitably address the recommendations in items 9 to 11.</li> </ul>	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the risks and hazards to which those involved in the activity are exposed as a result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.	1 July 22				
11	Review	Include this adventure activity and the necessary experience/qualifications to audit it on the “technical competency table”, which is used by auditors to plan audits and identify the expertise needed in their audit team.	1 July 22				
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications, and make sure that they are available to be engaged as technical experts when required.	1 July 22		<p>WorkSafe has now completed the work to:</p> <ul style="list-style-type: none"> <li>identify the appropriate experience and qualifications required to audit adventure activities carried out on Whakaari/White Island; and</li> <li>identify appropriate persons who could act as Technical Experts with respect to volcanic activity on Whakaari/White Island.</li> </ul>	<ul style="list-style-type: none"> <li>MBIE and WorkSafe will discuss whether any further actions are needed to meet the review recommendations and update you in the next report.</li> </ul>	
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.	1 July 22		<p>Next steps:</p> <ul style="list-style-type: none"> <li>If and when Whakaari/White Island adventure activities recommence: the appropriate persons and organisations (as identified) will need to be approached to confirm that they will act as TEs.</li> <li>When the technical experts competency table is revised: technical experts’ competency requirements for tours on Whakaari/White Island will be added.</li> <li>A system needs to be put in place for WorkSafe to advise an audit provider of appropriate technical experts for Whakaari/White Island adventure activities. Note that we intend to make changes to the SOPs for our AA registration function to provide for this.</li> </ul>		

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	1 July 2022		<ul style="list-style-type: none"> <li>WorkSafe is currently collaborating with MBIE to work on the requirements for Activity Safety Guidelines and Natural Hazards Guidelines. A number of joint workshops have been held in the last fortnight, both WorkSafe and MBIE are working together to further develop the recommendations from these workshops.</li> </ul>	<ul style="list-style-type: none"> <li>WorkSafe and MBIE have discussed options to provide guidance to operators working in areas with volcanic and geothermal hazards. We intend to have further discussions with technical experts and the industry to investigate which approach to guidance will work best for the industry.</li> </ul>	





## Independent Review Actions: Joint Update March 2022

<b>Date:</b>	12 April 2022	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-3215

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Note</b> the current progress towards your expectations.  <b>Agree</b> to close items 4, 5 and 10  <b>Note</b> any further changes you wish to make to actions.	29 April 2022

## Summary

This report provides the March 2022 progress update from WorkSafe and MBIE on actions taken in response to the Independent Review of WorkSafe in relation to Whakaari/White Island.

Items 2 and 3 (regarding whether the WorkSafe Board is aware of non-compliance across its regulatory functions and the review of their risk prioritisation/decision making model) are now on track to be completed by 1 July 2022.

WorkSafe has now completed the audit of the credentials of adventure activity safety auditors and auditing bodies (items 4 and 5) and the review of the experience and qualifications required to audit adventure activities (item 10). These items can now be closed.

We recommend that you note current progress towards your expectations for each item and agree to close items 4, 5 and 10.



## Recommended actions

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WorkSafe New Zealand and the Ministry of Business, Innovation and Employment recommends that you:

- a **Note** the current progress towards your expectations outlined in the report.

*Noted*

- b **Agree** to close items 4, 5 and 10

*Agree/Disagree*

- c **Note** any further changes you wish to make to the expectations or their status.

*No changes / Changes noted*

Privacy of natural persons



Mike Hargreaves  
**GM, Regulatory Effectiveness and Legal,  
WorkSafe**

12 / 04 / 2022

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

..... / ..... / .....

Privacy of natural persons



Lisa Collins  
**Manager, Health and Safety Policy,  
MBIE**

12 / 04 / 2022



## Independent Review Actions: March 2022

### Overall Status

WorkSafe summary
<ul style="list-style-type: none"> <li>A gap analysis was undertaken to identify any outstanding issues and actions to ensure we meet the expectations for you by 30 June 2022. The analysis was done by doing a deep dive into the recommendations from the Laurenson Review, WorkSafe's internal Health Check and what was already in scope as part of Phase 3 for Adventure Activities. A mapping of work was completed to identify work that is already completed, underway, or still required. The outcomes from this analysis will inform the work programme moving forward and ensure nothing remains uncompleted.</li> <li>A proposal to establish an overall Programme team for Ngā Paiaka with a broader work plan (that encapsulates Adventure Activities) will be put forward to the Steering Committee for consideration and approval by end April.</li> </ul>

### Items for noting

Action #ID	Point(s) to note
WS 01	As a result of the gap analysis, WorkSafe are reviewing the phasing of deliverables and accountabilities, and will revisit resourcing requirements to ensure timely delivery of the work programme.

### Risks and issues

#ID	Risk or Issue	Impact(s)	Mitigation(s)
MB R02	Whether all tasks can be completed by 1 July (per Ministerial expectations) is unclear given current resourcing pressures upon WorkSafe and the need to work with other organisations on some expectations.		While current delivery dates are on track, MBIE and WorkSafe are jointly monitoring progress against these. We will continue to regularly update you about progress, if any of these dates require a change.

# Monthly Status: March 2022

Key: ■ On track ■ Off track ■ Behind schedule ■ Recommend agree to close ■ Closed/completed

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
01	Minister	Is the Board satisfied it undertook appropriate governance over WorkSafe's regulatory risks and prioritisation choices that were made by WorkSafe in relation to these risks?	Completed				
02	Minister	How has the Board reviewed WorkSafe's prioritisation decision-making, particularly in relation to its highest risks, and were these risks managed appropriately?	1 July 2022		<ul style="list-style-type: none"> <li>We have previously advised the Minister and MBIE that there is consequential duty holder non-compliance which we have not been able to act on. Sustainable funding conversations continue and, in the interim, trade-offs between risk and activity are required – meaning risk needs to be constantly monitored.</li> <li>As outlined in the Chair's letter of (17 February 2022) WorkSafe will provide a separate briefing to the Minister on its risk/prioritisation model and approach. This work has been initiated and will be delivered by 1 July.</li> </ul>	<ul style="list-style-type: none"> <li>In addition to WorkSafe's upcoming briefing, we anticipate the SageBush review will provide information about WorkSafe's prioritisation and resource allocation models. After reviewing this information, you can determine if any further information/action is required.</li> </ul>	
03	Minister	Is the Board aware of any other non-compliance across WorkSafe's regulatory functions which have not been acted on?	1 July 2022				
04	Minister	Audit the credentials of recognised adventure activities safety auditors immediately in order to ensure they have the necessary technical expertise to provide proper assurance for the activities they are auditing and to report back on the results of this work.	8 April 2022		<ul style="list-style-type: none"> <li>WorkSafe engaged with the safety auditors to consider the qualifications and experience of some 51 technical experts. Thirty-seven technical experts hold an accepted qualification listed in the Technical Competency Table; and 14 have demonstrated their qualifications and experience through attestation. The safety auditors have access to technical expertise appropriate to their accreditation by JAS-ANZ, and audits have been conducted by audit teams appropriate to the adventure activity being audited.</li> </ul>	<ul style="list-style-type: none"> <li>MBIE notes the progress made against items 4 and 5 and recommend closing.</li> </ul>	
05	Minister	Following the audit of the credentials of auditing bodies involved in adventure activities, take immediate and appropriate action to remedy any adventure activity that is registered based on a safety audit carried out without the appropriate technical expertise	8 April 2022		<ul style="list-style-type: none"> <li>WorkSafe has raised observations about the way in which safety auditors manage the process of attestation - there are no safety concerns arising from these observations. Generally, the observations are administrative matters that have been raised with the appropriate safety auditor and process improvements have been discussed also with the relevant safety auditor. Overall, the safety auditors manage their technical experts in accordance with their own process and with the New Zealand Adventure Activities Certification Scheme ('the Scheme') - but they can improve.</li> <li>The key areas for improvement WorkSafe found in the Audit include:                             <ul style="list-style-type: none"> <li>The general administration of attestations must improve.</li> <li>The safety auditors should require technical experts to submit the appropriate attestation form, which must be signed by the safety auditor</li> </ul> </li> </ul>		

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
					<p>to ensure an appropriate and objective decision is made about competence.</p> <ul style="list-style-type: none"> <li>○ Records of technical expert's qualifications should be improved.</li> <li>○ Safety auditors need to consider criteria for recognising technical competence gained through completing scheme audits.</li> </ul> <ul style="list-style-type: none"> <li>• These matters present an opportunity for safety auditors to improve their processes, documentation and record keeping.</li> </ul>		
06	Minister	In consultation with the JAS-ANZ, complete a review of the NZAACS and, as part of this work, ensure the Technical Competency Table for audit team personnel is up-to-date and fit-for-purpose"	30 June 2022		<ul style="list-style-type: none"> <li>• Updating of the Technical Competency Table for audit personnel is currently underway. This will be completed at the completion of the overall work with JAS-ANZ currently scheduled for 30 June 2022.</li> <li>• WorkSafe have met with JAS-ANZ with a further meeting scheduled for later in March.</li> <li>• The intended outcomes of the meetings are to determine <ul style="list-style-type: none"> <li>○ Can standard 17021 be applied with exceptions?</li> <li>○ Do JASANZ still wish to be the accredited provider of the scheme?</li> <li>○ Can additional standards (specifically ISO 2110 Adventure Tourism - Safety management - systems - requirements) be incorporated into the scheme?</li> </ul> </li> <li>• An update on these meetings will be provided in the April report.</li> </ul>	<ul style="list-style-type: none"> <li>• MBIE and WorkSafe have met to discuss the Certification Scheme review and how adventure activities form part of a broader programme of work. WorkSafe have confirmed they will complete the review of the NZ Adventure Activities Certification Scheme by 1 July 2022.</li> </ul>	
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	1 July 22		<ul style="list-style-type: none"> <li>• An external contractor has been engaged to cross check coronial cases against internal WorkSafe files, cross referencing against the Adventure Activity policies and confirming if cases meet the definition of an Adventure Activity. This work is scheduled to be completed by 16 May.</li> </ul>		
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any problems identified, specifically:	1 July 22		<ul style="list-style-type: none"> <li>• All authorising regimes under two different business areas were reviewed in a two stage Internal Authorisations Process Review (Oct 20-Sept 21).</li> <li>• A few areas were identified within the reviews requiring actions to improve our regulatory performance in authorisations management.</li> <li>• Specific task progression includes: <ul style="list-style-type: none"> <li>○ Adventure Activity SOP and Operational Guidance review and updating/developing.</li> <li>○ Initial discussions with other agencies to establish an Interagency Authorisations Community of Practice.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• MBIE understand the identified areas for improvement in the Authorisations Review include improving assurance systems for third party assessors and improving intelligence and proactive monitoring of duty-holders. WorkSafe consider that their current programme of work will address these and other identified areas for improvement.</li> <li>• The Authorisations Review did not find any general issues across similar systems in the other areas noted in your question, such as lack of access to qualified technical experts or responsiveness to non-compliances.</li> </ul>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		<ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>			<ul style="list-style-type: none"> <li>o Successful recruitment of resource (commenced 14 March 22) to continue with documentation development and updates.</li> </ul>		
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	1 July 22		<ul style="list-style-type: none"> <li>• An internal review of the Scheme has been completed.</li> <li>• Recommendations from this review are currently in the process of being developed into an implementation plan.</li> </ul>	<ul style="list-style-type: none"> <li>• WorkSafe have confirmed that as part of their update to the technical competency table they plan to add a category for experts that can be used to assess volcanic hazards. We consider this process will suitably address the recommendations in items 9 to 11 and will be completed with amended certification scheme is in place.</li> </ul>	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the risks and hazards to which those involved in the activity are exposed as a result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.	Completed		<ul style="list-style-type: none"> <li>• WorkSafe has now completed the work to identify the appropriate experience and qualifications required to audit adventure activities carried out on Whakaari/White Island.</li> </ul>	<ul style="list-style-type: none"> <li>• MBIE notes the progress made against item 10 and recommend closing.</li> </ul>	
11	Review	Include this adventure activity and the necessary experience/qualifications to audit it on the “technical competency table”, which is used by auditors to plan audits and identify the expertise needed in their audit team.	1 July 22		<ul style="list-style-type: none"> <li>• Updating of the Technical Competency Table for audit personnel is currently underway. This will be completed at the completion of the overall work with JAS-ANZ currently scheduled by 30 June 2022.</li> </ul>		
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications, and make sure that they are available to be engaged as technical experts when required.	1 July 22		<p>WorkSafe has now completed the work to:</p> <ul style="list-style-type: none"> <li>• identify appropriate persons who could act as Technical Experts with respect to volcanic activity on Whakaari/White Island.</li> </ul> <p>Ongoing:</p> <ul style="list-style-type: none"> <li>• When Whakaari White Island adventure activities recommence the appropriate persons and organisations (as identified) will need to be approached.</li> <li>• When the technical expert’s competency table is revised technical expert’s competency requirements for tours on Whakaari White Island need to be added.</li> </ul>	<ul style="list-style-type: none"> <li>• MBIE and WorkSafe will discuss whether there are any further actions required to meet the expectations of items 12 and 13 at our scheduled meeting on 14 April.</li> </ul>	
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being	1 July 22		<ul style="list-style-type: none"> <li>• When the technical expert’s competency table is revised technical expert’s competency requirements for tours on Whakaari White Island need to be added.</li> </ul>		

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.					
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	1 July 2022		<ul style="list-style-type: none"> <li>Confirmed with MBIE two options – to develop a Volcanic Activities ASG or a fact sheet as part of natural hazards guidance. Will put to Working Group for further advice.</li> </ul>	<ul style="list-style-type: none"> <li>MBIE and WorkSafe have previously discussed options to provide guidance to operators working in areas with volcanic and geothermal hazards. We understand WorkSafe intends to have further discussions with technical experts and the industry to investigate which approach to guidance will work best for the industry.</li> </ul>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	16 May 22		<ul style="list-style-type: none"> <li>An external contractor is continuing work to cross check coronial cases against internal WorkSafe files, cross referencing against the Adventure Activity policies and confirming if cases meet the definition of an Adventure Activity. This work is scheduled to be completed by 16 May.</li> </ul>		
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any problems identified, specifically: <ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>	1 July 22		<ul style="list-style-type: none"> <li>Initial reviews of other regulatory functions requiring an authorisation by WorkSafe, completed prior to this specific question being asked, have identified a range of improvement opportunities, some which pertain to areas specified in the question. A prioritised Programme Plan (Nga Paiaka programme) has been developed which will deliver the identified improvements and involve a deeper analysis of certain areas. This programme will run over the next 18 months to 2 years with progress tracked through our project management system. Implementation of any additional findings from item 7 will be added into this plan.</li> </ul>	MBIE are aware of the wider programme of work on authorisations that will impact on adventure activities. MBIE and WorkSafe expect to provide a recommendation on the completion of this action in the next report.	
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	1 July 22		<ul style="list-style-type: none"> <li>The information at both 9 and 11 has been reflected in the Technical Competency Table in the revised Certification Scheme, which was recently consulted on with key stakeholders.</li> </ul>	WorkSafe have previously confirmed that the technical competency table will include a category for experts that can be used to assess volcanic hazards. We will be able to comment further on this item once we have visibility of the revised Certification Scheme.	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the	Completed				



Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		risks and hazards to which those involved in the activity are exposed as a result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.					
11	Review	Include this adventure activity and the necessary experience/qualifications to audit it on the "technical competency table", which is used by auditors to plan audits and identify the expertise needed in their audit team.	1 July 22		<ul style="list-style-type: none"> <li>The information at both 9 and 11 has been reflected in the Technical Competency Table in the revised Scheme, which was recently consulted on with key stakeholders.</li> </ul>		
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications, and make sure that they are available to be engaged as technical experts when required.	1 July 22		<ul style="list-style-type: none"> <li>WorkSafe has completed the work to identify appropriate persons who could act as Technical Experts with respect to volcanic activity on Whakaari/White Island.</li> <li>When Whakaari White Island adventure activities recommence the appropriate persons and organisations (as identified) will need to be approached.</li> </ul>	MBIE and WorkSafe met in March for an initial discussion about whether there any further actions required to meet the Minister's expectations. We are scheduled to meet again on 10 May.	
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.	1 July 22		<ul style="list-style-type: none"> <li>This will be provided for in the Standard Operating Procedures are currently being reviewed and improved for Adventure Activities, as referred to at 8.</li> </ul>		
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	1 July 2022		<ul style="list-style-type: none"> <li>Guidance on volcanic hazards has been proposed and will be built into the natural hazards guidance programme of work.</li> </ul>	MBIE and WorkSafe have previously discussed options to provide guidance to operators working in areas with volcanic hazards. We understand that WorkSafe will confirm the best guidance approach with the Ngā Paiaka Steering Group shortly.	



## Independent Review Actions: Joint Update April 2022

<b>Date:</b>	12 May 2022	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-4261

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Note</b> the current progress towards your expectations.  <b>Note</b> any further changes you wish to make to actions.	26 May 2022

## Summary

This report provides the April 2022 progress update from WorkSafe and MBIE on actions taken in response to the Independent Review of WorkSafe in relation to Whakaari/White Island.

To date, four of the 14 actions have been completed. All remaining actions are on track for delivery by 1 July 2022.

We recommend that you note current progress towards your expectations for each item.



## Recommended actions

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WorkSafe New Zealand and the Ministry of Business, Innovation and Employment recommends that you:

- a **Note** the current progress towards your expectations outlined in the report.

*Noted*

- b **Note** any further changes you wish to make to the expectations or their status.

*No changes / Changes noted*

Privacy of natural persons



Mike Hargreaves  
**GM, Regulatory Effectiveness and Legal,  
WorkSafe**

10 / 05 / 2022

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

..... / ..... / .....

Privacy of natural persons



Lisa Collins  
**Manager, Health and Safety Policy,  
MBIE**

11 / 05 / 2022



## Independent Review Actions: April 2022

### Overall Status

WorkSafe summary
<ul style="list-style-type: none"> <li>The proposal to establish an overall Programme team for Ngā Paiaka with a broader work plan (that encapsulates Adventure Activities) has been approved with recruitment already commencing and expected to be completed by the end of May 2022. The roles are made up of workstream leads and an overall programme manager.</li> <li>Work on remaining expectations continues to progress and are expected to be delivered by 1 July 2022.</li> </ul>

### Items for noting

Action #ID	Point(s) to note
WS 01	As a result of the gap analysis, WorkSafe are continuing to prioritise resources and the phasing of deliverables to ensure that these expectations are delivered by 1 July.

### Risks and issues

#ID	Risk or Issue	Impact(s)	Mitigation(s)
WS R01	Legal professional privilege		
MB R02	Whether all tasks can be completed by 1 July (per Ministerial expectations) is unclear given the current resourcing pressures upon WorkSafe and the need to work with other organisations on some expectations.		While current delivery dates are on track, MBIE and WorkSafe are jointly monitoring progress against these. We will continue to regularly update you about progress, if any of these dates require a change.

# Monthly Status: April 2022

Key: ■ On track ■ Off track ■ Behind schedule ■ Recommend agree to close ■ Closed/completed

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
01	Minister	Is the Board satisfied it undertook appropriate governance over WorkSafe's regulatory risks and prioritisation choices that were made by WorkSafe in relation to these risks?	Completed				
02	Minister	How has the Board reviewed WorkSafe's prioritisation decision-making, particularly in relation to its highest risks, and were these risks managed appropriately?	1 July 2022		<ul style="list-style-type: none"> <li>Sustainable funding conversations continue and, in the interim, trade-offs between risk and activity are required – meaning risk needs to be constantly monitored.</li> <li>As outlined in the Chair's letter of 17 February 2022, WorkSafe will provide a separate briefing to the Minister on its risk/prioritisation model and approach. This Deliverable is on track and expected to be delivered by 1 July.</li> </ul>	In addition to WorkSafe's upcoming briefing, we anticipate the SageBush review will provide information about WorkSafe's prioritisation and resource allocation models. After reviewing this information, you can determine if any further information/action is required.	
03	Minister	Is the Board aware of any other non-compliance across WorkSafe's regulatory functions which have not been acted on?	1 July 2022				
04	Minister	Audit the credentials of recognised adventure activities safety auditors immediately in order to ensure they have the necessary technical expertise to provide proper assurance for the activities they are auditing and to report back on the results of this work.	Completed				
05	Minister	Following the audit of the credentials of auditing bodies involved in adventure activities, take immediate and appropriate action to remedy any adventure activity that is registered based on a safety audit carried out without the appropriate technical expertise	Completed				
06	Minister	In consultation with the JAS-ANZ, complete a review of the NZAACS and, as part of this work, ensure the Technical Competency Table for audit team personnel is up-to-date and fit-for-purpose"	30 June 2022		<ul style="list-style-type: none"> <li>On 31 March, WorkSafe agreed in principle to retain JAS-ANZ as accrediting body and for WorkSafe to play a greater role in monitoring the Certification Bodies. The details of this change will be worked through with JAS-ANZ as part of implementation planning for the Scheme and will need to be reflected in the MOU with JAS-ANZ.</li> <li>WorkSafe is continuing to work on the revised Scheme, following our targeted consultation process.</li> <li>The Technical Competency Table was updated as part of the work to develop the revised draft Scheme following engagement with key stakeholders/SMEs in the sector.</li> </ul>	MBIE and WorkSafe met to discuss the Certification Scheme review on 24 March and how adventure activities form part of a broader programme of work. We will be able to comment further on this item once we have visibility of the draft revised Certification Scheme.	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	16 May 22		<ul style="list-style-type: none"> <li>An external contractor is continuing work to cross check coronial cases against internal WorkSafe files, cross referencing against the Adventure Activity policies and confirming if cases meet the definition of an Adventure Activity. This work is scheduled to be completed by 16 May.</li> </ul>		
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any problems identified, specifically: <ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>	1 July 22		<ul style="list-style-type: none"> <li>Initial reviews of other regulatory functions requiring an authorisation by WorkSafe, completed prior to this specific question being asked, have identified a range of improvement opportunities, some which pertain to areas specified in the question. A prioritised Programme Plan (Nga Paiaka programme) has been developed which will deliver the identified improvements and involve a deeper analysis of certain areas. This programme will run over the next 18 months to 2 years with progress tracked through our project management system. Implementation of any additional findings from item 7 will be added into this plan.</li> </ul>	MBIE are aware of the wider programme of work on authorisations that will impact on adventure activities. MBIE and WorkSafe expect to provide a recommendation on the completion of this action in the next report.	
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	1 July 22		<ul style="list-style-type: none"> <li>The information at both 9 and 11 has been reflected in the Technical Competency Table in the revised Certification Scheme, which was recently consulted on with key stakeholders.</li> </ul>	WorkSafe have previously confirmed that the technical competency table will include a category for experts that can be used to assess volcanic hazards. We will be able to comment further on this item once we have visibility of the revised Certification Scheme.	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the	Completed				

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		risks and hazards to which those involved in the activity are exposed as a result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.					
11	Review	Include this adventure activity and the necessary experience/qualifications to audit it on the "technical competency table", which is used by auditors to plan audits and identify the expertise needed in their audit team.	1 July 22		<ul style="list-style-type: none"> <li>The information at both 9 and 11 has been reflected in the Technical Competency Table in the revised Scheme, which was recently consulted on with key stakeholders.</li> </ul>		
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications, and make sure that they are available to be engaged as technical experts when required.	1 July 22		<ul style="list-style-type: none"> <li>WorkSafe has completed the work to identify appropriate persons who could act as Technical Experts with respect to volcanic activity on Whakaari/White Island.</li> <li>When Whakaari White Island adventure activities recommence the appropriate persons and organisations (as identified) will need to be approached.</li> </ul>	MBIE and WorkSafe met in March for an initial discussion about whether there any further actions required to meet the Minister's expectations. We are scheduled to meet again on 10 May.	
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.	1 July 22		<ul style="list-style-type: none"> <li>This will be provided for in the Standard Operating Procedures are currently being reviewed and improved for Adventure Activities, as referred to at 8.</li> </ul>		
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	1 July 2022		<ul style="list-style-type: none"> <li>Guidance on volcanic hazards has been proposed and will be built into the natural hazards guidance programme of work.</li> </ul>	MBIE and WorkSafe have previously discussed options to provide guidance to operators working in areas with volcanic hazards. We understand that WorkSafe will confirm the best guidance approach with the Ngā Paiaka Steering Group shortly.	



## Independent Review Actions: Joint Update May 2022

<b>Date:</b>	21 June 2022	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-4680

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Note</b> the current progress towards your expectations.  <b>Agree</b> to close actions 8, 9, 11, 12, 13 and 14.  <b>Note</b> any further changes you wish to make to actions.	1 July 2022

## Summary

This report provides the May 2022 progress update from WorkSafe and MBIE on actions taken in response to the Independent Review of WorkSafe in relation to Whakaari/White Island.

We recommend closing six actions: 8, 9, 11, 12, 13 and 14. This will leave four actions outstanding.

The completion of the review of the New Zealand Adventure Activities Certification Scheme (Action 6) is now not going to be completed by 1 July 2022 due to an issue raised by the certification body on the revised Scheme. WorkSafe are seeking advice on this matter, and we will meet with soon to discuss.

We recommend that you note current progress towards your expectations for each item and agree to close actions 8, 9, 11, 12, 13 and 14.



## Recommended actions

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WorkSafe New Zealand and the Ministry of Business, Innovation and Employment recommends that you:

- a **Note** the current progress towards your expectations outlined in the report.

*Noted*


- b **Agree** to close items 8, 9, 11, 12, 13 and 14

*Agree / Disagree*

- c **Note** any further changes you wish to make to the expectations or their status.

*No changes / Changes noted*

Privacy of natural persons




Mike Hargreaves  
**GM, Regulatory Effectiveness and Legal,  
WorkSafe**

21 / 06 / 2022

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

..... / ..... / .....

Privacy of natural persons



Lisa Collins  
**Manager, Health and Safety Policy,  
MBIE**

21 / 06 / 2022



# Independent Review Actions: May 2022

## Overall Status

WorkSafe summary
<ul style="list-style-type: none"> <li>A new workstream lead for the Exemptions and Delegations components of the Ngā Paiaka work programme has been appointed and will start early June. WorkSafe is currently commencing the interview process for a Project Manager.</li> <li>Work on remaining expectations continues to progress and are expected to be delivered by 1 July 2022 (with the exception of Action 6).</li> </ul>

## Items for noting

Action #ID	Point(s) to note
WS 01	WorkSafe continue to prioritise resources and the phasing of deliverables to ensure that these expectations are delivered by 1 July.
WS 02	The implementation of the recommendations of the Authorisation Process Reviews (under the Ngā Paiaka Programme) will require a more detailed analysis of some functional areas. This may uncover issues that were not apparent in the initial review across all authorisations (other than Adventure Activities). If these arise and pertain to the specific questions in expectation 8, they will be given priority.

## Risks and issues

#ID	Risk or Issue	Impact(s)	Mitigation(s)
MB R02	Whether all tasks can be completed by 1 July (per Ministerial expectations) is unclear given the current resourcing pressures upon WorkSafe and the need to work with other organisations on some expectations.		All but one deliverable is expected to be complete in time. MBIE and WorkSafe will update you on the proposed approach to delivering Action 6 in the next monthly report.

# Monthly Status: May 2022

Key: ■ On track ■ Off track ■ Behind schedule ■ Recommend agree to close ■ Closed/completed

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
01	Minister	Is the Board satisfied it undertook appropriate governance over WorkSafe's regulatory risks and prioritisation choices that were made by WorkSafe in relation to these risks?	Completed				
02	Minister	How has the Board reviewed WorkSafe's prioritisation decision-making, particularly in relation to its highest risks, and were these risks managed appropriately?	1 July 2022		<ul style="list-style-type: none"> <li>Sustainable funding conversations continue and, in the interim, trade-offs between risk and activity are required – meaning risk needs to be constantly monitored.</li> <li>As outlined in the Chair's letter of 17 February 2022, WorkSafe will provide a separate briefing to the Minister on its risk/prioritisation model and approach. This paper is in progress and this Deliverable is expected to be delivered by 1 July.</li> </ul>		
03	Minister	Is the Board aware of any other non-compliance across WorkSafe's regulatory functions which have not been acted on?	1 July 2022				
04	Minister	Audit the credentials of recognised adventure activities safety auditors immediately in order to ensure they have the necessary technical expertise to provide proper assurance for the activities they are auditing and to report back on the results of this work.	Completed				
05	Minister	Following the audit of the credentials of auditing bodies involved in adventure activities, take immediate and appropriate action to remedy any adventure activity that is registered based on a safety audit carried out without the appropriate technical expertise	Completed				
06	Minister	In consultation with the JAS-ANZ, complete a review of the NZAACS and, as part of this work, ensure the Technical Competency Table for audit team personnel is up-to-date and fit-for-purpose"	TBC		<p style="font-size: 24px; margin: 0;">Legal professional privilege</p>	<p>WorkSafe shared the draft revised NZ AA Certification Scheme with MBIE last month.</p> <p>MBIE and WorkSafe met to discuss the issue raised by the certification body on 31/05/22. We will await WorkSafe's advice on the matter and update you on implications and timing in the June report.</p>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	1 July		<ul style="list-style-type: none"> <li>WorkSafe commissioned Allen + Clarke to identify cases of deaths arising from registered Adventure Activities, and to examine recommendations and actions arising from closed cases of coronial data. This work has now been completed and is going through the final stages of WorkSafe's sign off process.</li> <li>Evaluation of prosecutions and court decisions are on track to be complete by 1 July.</li> </ul>	MBIE will review the information when it is available.	
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any problems identified, specifically: <ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third-party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>	Completed		<ul style="list-style-type: none"> <li>Initial reviews of other regulatory functions requiring an authorisation by WorkSafe, completed prior to this specific question being asked, have identified a range of improvement opportunities.</li> <li>A prioritised programme plan has been developed which will deliver the identified improvements and require a deeper analysis of certain areas. This programme will run over the next 18 months to 2 years with progress tracked through our project management system.</li> <li>Implementation of any additional findings from Ministerial Requirement No. 7 will be added into this plan so approval is sought from WorkSafe and MBIE to cease reporting on this expectation in favour of the longer-term programme reporting that will be set up under Ngā Paiaka.</li> </ul>	<p>MBIE and WorkSafe recommend closing this action.</p> <p>As noted in previous reports, initial work has been completed to review other authorisations systems and have identified several general improvement areas. As this work is of broader scope than just the adventure activities system, it has now been incorporated to WorkSafe's wider authorisations work programme.</p> <p>WorkSafe will continue to report on progress in this area through their standard reporting mechanisms.</p>	
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	1 July 22		<ul style="list-style-type: none"> <li>The information at both expectations 9 and 11 has been reflected in the Technical Competency Table in the revised Scheme, which is being finalised following consultation with key stakeholders.</li> <li>WorkSafe suggests the closure of item 9 as the work is deemed complete as a task. Item 6 tracks the review of the Certification Scheme.</li> </ul>	<p>MBIE agree the revised NZ AA Certification Scheme, which includes a competency category specific to activities on Whakaari, will address these items.</p> <p>Although the completion of the revised NZ Certification Scheme has been delayed (Action 6), we consider these actions can be closed as they are discrete items in the draft Scheme which will be finalised and published in the future.</p>	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the risks and hazards to which those involved in the activity are exposed as a	Completed			Ongoing updates on the progress of the Certification Scheme will be provided through WorkSafe's standard reporting mechanisms.	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.					
11	Review	Include this adventure activity and the necessary experience/qualifications to audit it on the "technical competency table", which is used by auditors to plan audits and identify the expertise needed in their audit team.	1 July 22		<ul style="list-style-type: none"> <li>The information at both expectations 9 and 11 has been reflected in the Technical Competency Table in the revised Scheme, which is being finalised following consultation with key stakeholders.</li> <li>WorkSafe suggests the closure of item 11 as the work is deemed complete as a task.</li> </ul>		
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications, and make sure that they are available to be engaged as technical experts when required.	1 July 22		<ul style="list-style-type: none"> <li>WorkSafe have completed the work to identify the appropriate experience and qualifications required to audit Adventure Activities carried out on Whakaari/White Island; and identify appropriate persons who could act as Technical Experts with respect to volcanic activity on Whakaari/White Island.</li> <li>When Whakaari White Island Adventure Activities recommence the appropriate persons and organisations (as identified) will be approached.</li> </ul>		
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.	1 July 22		<ul style="list-style-type: none"> <li>WorkSafe will be making a change to our Adventure Activities registration function Standard Operating Procedures to provide for this.</li> </ul>	MBIE recommend this action is closed as WorkSafe have confirmed will be reflected in WorkSafe's Standard Operating Procedures.	
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	1 July 2022		<ul style="list-style-type: none"> <li>WorkSafe has agreed a Guidance approach on 27/05/22.</li> </ul>	MBIE understands that WorkSafe agreed to provide guidance to operators working in areas with volcanic hazards, which will incorporate any future activities happening on Whakaari/White Island. We understand this guidance will be produced as part of a broader package of natural hazards guidance by late 2023. This item is now recommended for closure.	



## Independent Review Actions: Joint Update June 2022

<b>Date:</b>	1 September 2022	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0565

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<p><b>Note</b> the progress towards your expectations.</p> <p><b>Agree</b> to close Actions 2, 3 and 7.</p> <p><b>Note</b> that this is the final monthly report in the Independent Review series.</p> <p><b>Agree</b> to WorkSafe's proposed approach to reporting on the progress of the Certification Scheme via their weekly report.</p> <p><b>Agree</b> to the proposed communications approach to update Whakaari victims and whānau on the implementation of the Independent Review findings and Adventure Activities Targeted Review decisions.</p>	16 September 2022

## Summary and next steps

This report provides the June 2022 progress update from WorkSafe and MBIE on actions taken in response to the Independent Review of WorkSafe in relation to Whakaari.

We recommend closing Actions 2 and 3 (regarding WorkSafe's prioritisation decision making and issues of non-compliance) and Action 7 (regarding recommendations relating to improving the adventure activities regime from WorkSafe investigations, coronial inquiries, and prosecutions/court decisions).

The completion of the review of the New Zealand Adventure Activities Certification Scheme (Action 6) remains outstanding. This delay is due to the issue regarding the powers of auditors arising from WorkSafe's review of the current Certification Scheme, which we briefed you about on 11 August [2223-0216 refers].

This is the final report in the Independent Review series. WorkSafe's broader authorisations programme will continue to take account of the review findings and make improvements as required. Updates on the progress of the Certification Scheme will be provided through WorkSafe's weekly report, and the publication of the final Certification Scheme will also see the implementation of Actions 9-12 (which were closed in the last report).

Following Whakaari, MBIE undertook an action to keep victims and whānau updated on our work regarding the Independent Review and the targeted review of the adventure activities regulatory regime before information was made public. On your agreement, we propose to reconnect with the Police Liaison Officer to communicate the implementation of the Independent Review's findings, as well as the decisions on the adventure activities regulatory regime proposals following their approval by Cabinet. We expect to do this in early October 2022.

We recommend that you note progress towards your expectations for each item and agree to close Actions 2, 3 and 7. We also recommend you agree to WorkSafe's proposed approach to reporting on the progress of the Certification Scheme, and to the proposed approach to communicate the implementation of the findings of the Independent Review and decisions from the Adventure Activities Targeted Review to Whakaari victims and whānau.

## Recommended actions

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WorkSafe New Zealand and the Ministry of Business, Innovation and Employment recommends that you:

- a **Note** the progress towards your expectations outlined in the report.

*Noted*

- b **Agree** to close Actions 2, 3 and 7.

*Agree/Disagree*

- c **Note** that this is the final report in the Independent Review series.

*Noted*

- d **Agree** to WorkSafe's proposed approach to reporting on the progress of the Certification Scheme via their weekly report.

*Agree/Disagree*

- e **Agree** to the proposed communications approach on the implementation of Independent Review findings and the Adventure Activities Targeted Review decisions to Whakaari victims and whānau.

*Agree/Disagree*

Privacy of natural persons

Mike Hargreaves  
**GM, Regulatory Effectiveness and Legal,  
WorkSafe**

30 / 08 / 2022

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

..... / ..... / .....

Privacy of natural persons

**Manager, Health and Safety Policy,  
MBIE**

31 / 08 / 2022



## Independent Review Actions: June 2022

### Overall Status

WorkSafe summary
<ul style="list-style-type: none"> <li>• A new Programme Manager has been recruited for the Ngā Paiaka programme of work and started at the beginning of July.</li> <li>• A new workstream lead for the Compliance Certifier Regime has been appointed and started at the beginning of July.</li> <li>• Work on remaining expectations is now proposed to be closed by WorkSafe (with the exception of Action 6).</li> </ul>

### Items for noting

Action #ID	Point(s) to note
WS 02	The implementation of the recommendations of the Authorisation Process Reviews (under the Ngā Paiaka Programme) will require a more detailed analysis of some functional areas. This may uncover issues that were not apparent in the initial review across all authorisations (other than Adventure Activities).

### Risks and issues

#ID	Risk or Issue	Impact(s)	Mitigation(s)
MB 06	The completion of the revised Adventure Activities Certification Scheme is still outstanding (Action 6) due to the issue regarding auditing powers.	The delay of the Certification Scheme impacts on the final delivery of actions 9-12 (closed in the May report). While we have recommended these items are closed due to being included in the draft Scheme, note that these changes will only take effect once the revised Scheme is published.	WorkSafe will keep MBIE updated on their progress resolving this matter and on the publication of the final Certification Scheme. WorkSafe have advised they will keep you updated on key updates via their weekly report.



# Monthly Status: May 2022

Key: ■ On track ■ Off track ■ Behind schedule ■ Recommend agree to close ■ Closed/completed

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
01	Minister	Is the Board satisfied it undertook appropriate governance over WorkSafe's regulatory risks and prioritisation choices that were made by WorkSafe in relation to these risks?	Completed				
02	Minister	How has the Board reviewed WorkSafe's prioritisation decision-making, particularly in relation to its highest risks, and were these risks managed appropriately?	1 July 2022		<ul style="list-style-type: none"> <li>A briefing covering items 2 and 3 was provided to the Ministers office on the 28 July.</li> <li>WorkSafe recommends closing this action.</li> </ul>	MBIE recommends closing this action if you are comfortable the aide memoir responds to your questions.	
03	Minister	Is the Board aware of any other non-compliance across WorkSafe's regulatory functions which have not been acted on?	1 July 2022				
04	Minister	Audit the credentials of recognised adventure activities safety auditors immediately in order to ensure they have the necessary technical expertise to provide proper assurance for the activities they are auditing and to report back on the results of this work.	Completed				
05	Minister	Following the audit of the credentials of auditing bodies involved in adventure activities, take immediate and appropriate action to remedy any adventure activity that is registered based on a safety audit carried out without the appropriate technical expertise	Completed				
06	Minister	In consultation with the JAS-ANZ, complete a review of the NZAACS and, as part of this work, ensure the Technical Competency Table for audit team personnel is up-to-date and fit-for-purpose"	16 Dec 2022 (to progress an interim solution)		Legal professional privilege	<p>MBIE has been working with WorkSafe over the past month on this issue arising from their review of the Adventure Activities Certification Scheme. We briefed you as part of our briefing on the draft Cabinet paper <i>Changes to the adventure activities regulatory regime [2223-0216]</i> that we do not consider this issue requires urgent amendment to the Adventure Activity Regulations.</p> <p>We understand WorkSafe is currently working through options to identify a solution, which WorkSafe need to decide upon. While a decision on their preferred approach is expected in September, we understand it will take further time for implementation. They have</p>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
					<p>Legal professional privilege</p> <p>[Redacted]</p> <ul style="list-style-type: none"> <li>Any possible regulatory change regarding the suspension or withdrawal of safety audit certificates has been deferred until the full review of the Adventure Activities Regulations scheduled to begin in 2026, rather than delaying the current package of regulatory changes to address this issue.</li> <li>Legal professional privilege</li> <p>[Redacted]</p> <li>We will keep MBIE informed of this work as it continues and will provide key updates to the Minister once a decision has been made on longer term options for the Scheme and once the revised Scheme has been approved and is ready to issue.</li> </ul>	<p>indicated that a possible option, which involves minimal changes to the Scheme, could be implemented by 16 December.</p> <p>WorkSafe have advised that they will keep MBIE informed of their progress and, once decisions are made, they will provide updates to you in their weekly report.</p>	
07	Minister	Identify and review any recommendations relating specifically to improving adventure activities since the adventure activity regime came into effect that may have arisen out of WorkSafe investigations, coronial inquires, prosecutions/court decisions, and report back to me describing the recommendations and actions WorkSafe took in response to these recommendations.	1 July 2022		<ul style="list-style-type: none"> <li>WorkSafe commissioned Allen + Clarke to identify cases of deaths arising from registered Adventure Activities, and to examine recommendations and actions arising from closed cases of coronial data. This report was shared with MBIE.</li> <li>Regarding coronial data, seven cases were identified where deaths associated with adventure activities were investigated. In six of these cases no recommendations were made. In the remaining case the coroner endorsed recommendations made by the NZ Mountain Guides Association. These recommendations related to industry practices and did not have any direct implications for WorkSafe.</li> <li>Regarding investigations/prosecutions, 12 relevant investigation reports were identified. Of these, two contained recommendations: <ul style="list-style-type: none"> <li>Investigation 5732875 recommended to amend guidance that suggests sea kayaking within 100m of shore is not covered by Adventure Activity Regulations. In response, WorkSafe updated and replaced the guidance in that was in place at the time of the investigation.</li> <li>Investigation 5768215 recommendations were for WorkSafe to work with Tourism industry supply chains to determine what improvements could be made to ensure better communication and flow of information between supply chain parties, and to consider adopting the Adventure Tourism ISO Standards in the WorkSafe New Zealand Safety</li> </ul> </li> </ul>	<p>WorkSafe shared the coronial report with MBIE on 27 July 2022. There are few relevant recommendations and WorkSafe has made good progress on implementing them. MBIE recommend this action is closed.</p>	

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
					Audit Standards in relation to SMS and the provision of information to participants. WorkSafe is yet to action this recommendation but continues to work closely with the Tourism Industry.		
08	Minister	Having prioritised the above actions within a reasonable time period complete reviews of your other regulatory functions with similar regulatory features as the adventure activities regime within WorkSafe such as diving and amusement devices, to determine whether they are affected by the types of problems the review found and take action to address any problems identified, specifically: <ul style="list-style-type: none"> <li>- Availability of technical expertise</li> <li>- Integrity of third-party verification/assurances</li> <li>- Effective operation of authorisation-type functions</li> <li>- Integrity of registration and or certification activities</li> <li>- Timeliness and integrity of its response to non-compliance</li> </ul>	Completed				
09	Review	Recognise activities carried out on Whakaari/White Island as a discrete adventure activity (rather than a subcategory of trekking/mountaineering activities)	Completed			As noted in the May report, the revised Adventure Activities Certification Scheme will address actions 9-12 once published. WorkSafe have advised that they will keep MBIE informed of their progress on the Scheme and provide updates to you in their weekly report (refer to Risks and Issues section).	
10	Review	Identify the appropriate experience and qualifications required to carry out an audit of those activities –to ensure that the measures put in place by the operators to address the risks and hazards to which those involved in the activity are exposed as a result of being in close proximity to a live volcano satisfy the safety audit standard good practice requirement.	Completed				
11	Review	Include this adventure activity and the necessary	Completed				

Action ID #	Arising from	Expectation(s)	Expected Completion Date	This month			Last month
				Status	WorkSafe Comment	MBIE Comment	Status
		experience/qualifications to audit it on the "technical competency table", which is used by auditors to plan audits and identify the expertise needed in their audit team.					
12	Review	If so, the reviewer recommends WorkSafe or an appropriate industry body should identify the experts with appropriate experience and qualifications, and make sure that they are available to be engaged as technical experts when required.	Completed				
13	Review	WorkSafe puts in place a system that ensures that, whenever WorkSafe is informed about an audit being planned for any activities on Whakaari White Island, it tells the auditor of the need to use an appropriate technical expert and provides the details of those technical experts available.	Completed				
14	Review	WorkSafe, in partnership with the identified technical experts, should consider whether it is appropriate to develop activity safety guidelines for any activities on Whakaari/White Island.	Completed				



## AIDE MEMOIRE

### Public consultation on proposed adventure activities changes

<b>Date:</b>	15 December 2021	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-2154

#### 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	<small>Privacy of natural persons</small>	✓

#### The following departments/agencies have been consulted

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#### Minister's office to complete:

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| <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

## Public consultation on proposed adventure activities changes

<b>Date:</b>	15 December 2021	<b>Priority:</b>	Low
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-2154

### Purpose

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This aide memoire updates you on the results of the Ministry of Business Innovation and Employment's (MBIE's) consultation on proposed changes to the adventure activities regime.

Privacy of natural persons

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

15/ 12 / 2021

### Background

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1. In August 2021, Cabinet agreed to release the document titled *Adventure Activities – keeping it safe* (the consultation document) for public consultation (DEV-21-MIN-0174).
2. The consultation document presented a package of proposed changes to the adventure activities regime, including:
  - o strengthening WorkSafe New Zealand's regulatory leadership role
  - o introducing a risk classification system to improve the assessment of natural hazards and activity-based technical risks
  - o making explicit requirements on landowners and operators to improve the management of natural hazards
  - o improving risk disclosures for participants
  - o improving the safety audit standard, the audit process, guidance, and information to support the sector.
3. We initially planned to consult between August and October 2021. However, COVID disruptions delayed this by just over a month. As a result, the consultation period opened on 24 September 2021 and closed on 5 November 2021.
4. In its original decision, Cabinet also invited you to report back to DEV in December 2021 on the outcome of the consultation and seeking final decisions on the proposed changes to the adventure activities regime. However, due to delayed consultation, you agreed to defer the report back to Cabinet with policy options until March 2022.

## Public consultation

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5. MBIE supported the consultation process by:
  - providing a consultation page on [www.mbie.govt.nz](http://www.mbie.govt.nz) with links to online versions of the consultation document and other supporting material (a 16-page summary of the proposals and a 2-page brochure)
  - emailing registered operators and other stakeholders involved in the adventure activities sector about the consultation and linking to the consultation webpage
  - setting up an online submission tool
  - advertising on social media
  - directing people to a monitored email address ([HSWRegs@mbie.govt.nz](mailto:HSWRegs@mbie.govt.nz)).
6. MBIE initiated a social media advertising campaign promoting the consultation process. This campaign reached approximately 60,000 people within New Zealand and a further 1.3 million overseas. Of these, a respective 1500 and 9500 people clicked through to the consultation webpage. This social media campaign cost \$300.
7. During the consultation period, MBIE officials met about 13 people/groups face-to-face (mostly via online meetings). We also hosted three one-hour webinars, which were attended by about 100 people. MBIE officials also presented to an online webinar organised by Tourism Industry Aotearoa attended by just over 100 people/companies involved in the tourism industry and subsequently downloaded by just over 40 people/companies.
8. By the close of consultation, MBIE had received 328 submissions — 230 via the online submission tool and 98 emailed directly.

## About submitters

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9. Of the 328 submissions, approximately 79% came from people or organisations directly involved in the adventure activities industry such as operators (108), participants (69), workers (37), industry groups (28), and organisations supporting the industry (16). This is a significant response given the industry has approximately 320 registered adventure activity operators.
10. The remaining submitters were made up of members of the public (22), tourism/recreational sector (14), a small number of expert/academics (7), landowners (4), and others (23). No responses were received from iwi despite MBIE's repeated efforts to connect with iwi with strong adventure activity interests.
11. We asked for demographic information from online submitters. About 160 responded and told us:
  - three quarters of submitters were male
  - almost all (around 99%) were New Zealand-based
  - a large proportion (around 85%) were involved in year-round (rather than seasonal) adventure activities
  - submitters' activities were occurring in almost all New Zealand regions and split evenly between the North and South islands
  - about a third of submitters said they were involved in activities that catered primarily for international clients, with the rest split between domestic participants (around 24%),

recreational participants (about 20%), school groups (around 15%), business groups and others (around 11%).

## What the consultation told us

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### General feedback

12. Common sentiment expressed through the face-to-face conversations and written submissions, included:

- the adventure activities sector is generally safe and well-regulated (or, in the view of some submitters, over-regulated)
- operators and their staff are highly trained and experienced, and the judgment of these qualified staff should be trusted
- regulating the industry in response to the Whakaari/White Island disaster is an over-reaction, as the disaster resulted from a unique confluence of events that would not occur in other adventure activities
- COVID has significantly impacted the industry and it cannot easily absorb additional compliance costs
- risk is an inherent part of this industry
- natural hazards are difficult to manage, and systemic risk-management approaches are unlikely to be successful — the best way is to leave it to professional judgements and adventure activity expertise
- additional compliance burdens on duty-holders could result in them leaving the industry. A particular concern frequently noted was that landowners would deny access to their land for adventure activities and other recreational activities if requirements upon them increase.

13. Submitters involved in the industry seemed to have a good understanding of the adventure activity regulatory framework. However, some comments appeared to indicate a more limited understanding of parties' obligations under the broader health and safety regulatory framework. There appeared to be a lack of understanding among parts of the sector that PCBU landowners have existing duties to consult and cooperate with operators and other PCBUs to manage risks associated with the workplace.

### Responses to proposals for change

14. Of the package of proposals presented, submitters were:

- **Moderately supportive** of introducing explicit requirements for operators to manage natural hazards and have formal Stop-Go policies in place.
- **Strongly opposed** to placing any additional duties on landowners to support the management of natural hazards.
- **Evenly split** on whether a risk classification system should be introduced. Many operators also noted they were unsure of this proposal and/or commented they were unsure of the viability of the classification system. However, submitters were **strongly**



**supportive** of setting the frequency operators must be audited based on the risk level of the operation if a risk measure was introduced.

- **Moderately supportive** of measures to provide more information and strengthen the role of WorkSafe. However, some submitters noted concerns about the capacity of WorkSafe to be more engaged in the sector.
- **Strongly supportive** of more guidance to the sector, particularly the resumption of support for the sector-led “activity safety guidelines” programme.

15. While not specifically included as a proposal, submitters were also **strongly supportive** of introducing strengthened requirements for qualifications in the sector.

## **Summarising consultation feedback**

16. The Consultation Document asked submitters 32 questions grouped under 10 topic areas in the Consultation Document. A summary of the key feedback in each of these topic areas is provided below.

17. A more detailed breakdown of the responses to each question is provided in the Submissions Analysis attached as Annex One.

### *Management of natural hazards*

18. A strong majority of submitters considered the sector already manage natural hazards well or very well.

19. Submitters considered management of natural hazards could be further improved by more training for staff about hazards, additional government data (eg weather or geological information), and better information sharing between operators.

20. There was limited support for Māori perspectives adding to the natural hazard assessment process.

### *Duties for operators in managing natural hazards*

21. Submitters supported imposing explicit duties on operators to manage natural hazards and to have formal Stop-Go policies in place. Many thought these new duties would capture current good practice and provide greater certainty.

### *Duties for landowners in managing natural hazards*

22. Submitters thought operators and landowners were already working well together and strongly opposed placing a new duty on landowners in respect of managing natural hazards. Many submitters expressed concerns that any additional requirements on landowners would lead to landowners restricting access to their land for both adventure activity operators and recreational groups.

23. If a duty were to be imposed on landowners, there was a strong preference for this to be limited to providing information about natural hazards on their land, rather than requiring landowners to take a more active management role.

### *Risk classification system*

24. Submitters were evenly split on whether introducing a risk classification system would support better assessment and communication of the risks involved in activities.
25. Most considered that the benefit of introducing a risk classification system would be providing a basis for low-risk operations to be audited less frequently. There was also support for the idea that a risk classification system could help participants understand the relative risk associated with an adventure activity.
26. Several submitters noted the risk identification and management process was inherently difficult and hard to standardise and expressed concerns about whether any classification system could accurately reflect risks in the sector.
27. While the submissions were split on whether a classification system should be introduced, there was broad in-principle support for the frequency of audits being determined by an adventure operator's risk profile. The consensus was for a two-year audit cycle for high-risk operations, a three-year cycle for medium risk operations, and a five-year cycle for low-risk operations.

### *Risk disclosure to participants*

28. There was strong support for disclosures to participants to include general information about the activity and the hazards and risks associated with it, and the mitigations in place to address these risks.
29. Other commonly suggested inclusions in disclosures were providing participants with information about consequences (what could go wrong) and emergency responses.
30. Several submitters commented that operators have difficulties with participants either understanding risks or complying with rules/systems designed to keep them safe.

### *Acceptable levels of risk*

31. There were strong negative reactions to the idea of government playing a more active role in defining acceptable risk or getting involved in saying when adventure activities should be stopped. However, some submitters thought there might be a role for government cancelling certain activities during civil defence type emergencies.

### *Strengthening the role of WorkSafe*

32. There was strong support for the sector to provide more information to WorkSafe, particularly audit reports and additional details about the nature of their activities. There was some support for requiring additional near-miss events/incidents to be notified to WorkSafe.
33. There was moderate support for WorkSafe to have greater powers to cancel or suspend registration. However, some submitters noted concerns about whether WorkSafe had the necessary expertise to make judgements about whether operators had appropriate safety systems in place.

### *Guidance and audit changes*

34. There was a strong interest in enabling auditors to provide coaching to the entities they are auditing. We also heard a strong message about reducing the compliance burden and costs associated with audits. The feedback indicates a reasonably strong desire for the audit standard to set certain mandatory or minimum training or qualifications for industry workers.
35. The industry clearly has an appetite for more guidance across a wide range of topics, with support noted for more and/or updated sector led “activity safety guidelines”.
36. Strong support was also noted for publishing data and information about accidents and incidents.

### *Other changes*

37. Through the submission process and our engagements with the industry, other changes were suggested such as:
  - implementing some sort of qualifications framework across the industry
  - addressing the viability of the duopoly of safety auditors (this is out-of-scope for this work, and will be considered as part of the planned first-principles review)
  - clarifying the adventure activities definition (out-of-scope for this work and will be considered as part of the planned first-principles review)
  - lifting the industry’s understanding of current health and safety legal requirements
  - supporting the establishment of an industry-wide peak body that would represent all registered entities but also act as a single conduit for working with government on improvement initiatives. It would also create a useful vehicle for industry self-improvement/self-regulation.

### *Cost implications of proposals*

38. Submitters viewed the proposed changes as having a negative impact on the adventure activity sector and leading to increased costs.
39. In response to a question about how much more participants would be willing to pay for enhanced safety in the adventure activities sector the weighted average across all 111 submitters (which included a mix of industry people, participants, and other interested parties) was \$5.65 per activity — with almost half of submissions saying they were not prepared to pay any more (ie \$0).

## **Next steps**

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40. MBIE has completed its preliminary analysis of the consultation feedback.
41. We intend to continue working closely with WorkSafe New Zealand and other key stakeholders, such as the Department of Conservation, to confirm policy recommendations and administrative/operational changes which take into account the consultation feedback we have received.
42. We are on-track to provide you with a Cabinet briefing in March 2022 on proposed changes the government can make to the adventure activities regime including changes to the regulatory framework.

**Annexes**

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Annex One: Submissions analysis



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# Submissions analysis

## Managing natural hazards

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Chapter 4 of the discussion document asked two general questions about the management of natural hazards in the adventure activities regime:

- how well are natural hazards currently managed in the adventure activities regime?
- can mātauranga Māori support good management of natural hazards within the adventure activities regime and should we consider other perspectives on how natural hazards should be managed?

### Current management of natural hazards

241 submitters made a comment on this topic:

- About 85% of submitters thought natural hazards were managed 'well' or 'really well'.
- Only a small percentage (2.5%) thought the industry managed natural hazards poorly, with the remaining around 12% being either unsure or neutral.

Adventure activity operators and employees had the most positive views with over 90% of both groups saying natural hazards were managed 'well' or 'really well', and with no operators or employees saying natural hazards were not well managed.

### *Other perspectives including mātauranga Māori*

194 submitters commented on other perspectives, such as mātauranga Māori, supporting good management of natural hazards within the adventure activities regime.

Among the leading ideas for other perspectives to support the industry were:

- additional education and training for operators and staff
- government information from agencies such as GNS and the MetService
- greater collaboration and information sharing within the industry.

There was some support for mātauranga Māori being used to identify and help manage natural hazards. Several submissions from the diving sector suggested they already worked closely with Māori. A few submissions expressed concern about how mātauranga Māori might be practically applied.

## **Duties for operators in managing natural hazards**

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Chapter 4 of the discussion document asked four questions about duties on operators to manage natural hazards:

- Whether an explicit requirement for operators to assess and manage natural hazard risks would improve safety in the adventure activities regime?
- Whether introducing an explicit requirement for operators to have clear, pre-set policies and processes for when activities will be called off would improve safety in the adventure activities regime?
- What key elements might operators consider when making the decision to call off activities?
- Are there any other ways you think adventure activities operators could improve the management of natural hazards?

### **Explicit requirement for operators to manage natural hazards**

We received 259 submissions on whether an explicit duty on operators to, so far as is reasonably practicable, assess and manage hazards and risks would affect their activities.

- Almost half (around 46%) of the submissions considered an explicit requirement on operators would improve safety in the sector.
- 37% of submissions considered such a provision would *not* improve safety.
- 17% were unsure.

There were no significant correlations between the type of submitter (eg. operator, participant or worker in the sector) and their support or opposition to this proposal, with even splits between support or non-support across most submitter types.

A large percentage of submissions (46%) noted that managing natural hazards was already standard practice among operators. A significant proportion of these considered some sort of explicit requirement might help standardise existing good practice. In contrast, others argued that such requirement was unnecessary because it was already good practice but that an explicit regulatory requirement might increase administrative burden or compliance costs.

### **Explicit requirement for operators to have pre-set no-go policies in place**

We received 241 submissions on whether there should be an explicit requirement for operators to have pre-set processes in place to call activities off when risks are unacceptable.

- A majority (54%) of submissions supported this proposal
- 37% opposed the idea.

Almost all submitter types supported the idea, except industry/advocacy groups.

A large percentage of submissions (43%) noted that having stop-go policies was already standard good practice in the industry. While a significant proportion of submitters thought an explicit requirement could help standardise/reinforce existing good practice, another, almost

equally sized group, argued such requirement would be unnecessary and could increase compliance costs for little to no benefit.

### **Good practice for no-go policies**

We received 178 submissions on the elements operators should consider in deciding whether to call activities off. The most common themes were:

- 51% referred to environmental conditions, such as weather, the site activities occurred and surrounding natural hazards
- 22.5% referred to the competency and number of participants, including the ratio of operator staff/participants
- 12.4% referred the experience and qualifications of guides or operator staff
- 5% referred to the availability of emergency assistance.

### **Other improvements in operator practice**

We received 105 submissions on other ways operators could improve their management of natural hazards.

There were a broad range of suggestions, but common themes were:

- 22% of submitters considered that supporting better access to expertise, through either access to experts or resources, would improve safety. Many noted that the government could provide better resources to assess hazards like weather and geothermal/volcanic hazards and/or agencies like GNS and MetService could make advice more accessible.
- 14% of submitters considered additional training for staff about natural hazards could improve safety. Some of these submitters suggested government should provide funding for such training and/or support the development of qualifications for the sector.
- 13% of submitters considered that operators could better share information about hazards between themselves, at both the local and national level. Some of these submitters suggested the development of resources like online forums could support better information sharing between operators.

## **Duties for landowners in managing natural hazards**

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We asked four questions about new duties for landowners:

- How do operators and landowners currently work together to manage hazards?
- Would explicit requirements for landowners or land managers to work with registered operators to manage natural hazards help improve safety in the adventure activities regime?
- If a specific duty was introduced for landowners and managers, should it be:
  - provide information to operators about natural hazard risks on their land; or
  - assess and actively manage the risk of natural hazards on their land. What are the benefits and costs you see under each approach?
- What other ways landowners/land managers could improve the management of natural hazards to support adventure activities operators when accessing their land?

### **Landowners and operators current work together on natural hazards**

We received 207 submissions on how well landowners and operators were currently working together to manage natural hazards.

- Just over half (52%) thought landowners and operators were operating well or very well together.
- Only about 9% of submissions thought landowners and operators were currently working not well or not very well.
- The remaining 39% were neutral or did not express a strong preference.

Submitters involved in the industry such as operators, employees, and participants, of adventure activities were significantly more likely to view the current working relationship positively. Landowners were neutral to positive with no landowner taking a negative view.

### **Explicit requirement on landowners**

We received 254 submissions on whether there should be an explicit requirement on landowners to work with adventure activity operators to manage natural hazards. 72% of the submissions were opposed this type of requirement on landowners.

Operators made up over a third of the submitters on this question. Over 60% of operator submissions opposed an explicit requirement being placed on landowners.

After operators, the second biggest group of submissions came from adventure activity participants. 52 submitted on this question and, of those, over 80% were opposed to an explicit requirement. Industry/advocacy groups had the strongest reaction with over 90% opposing the idea and none supporting it.

Very few landowners submitted on this question.



## **Landowner duty proposals: providing information or assessing and actively managing natural risks**

We received 196 submissions on what type of specific duty might be applied to landowners. We asked for submitters to express a preference on two proposals:

- Proposal One – a duty on landowners to provide information on natural hazards to adventure activity operators
- Proposal Two – a duty on landowners to assess and actively manage the risk of natural hazards on their land.

73% of the submissions that commented on this matter supported Proposal One. However, a few submitters noted that, while they were opposed to imposing this type of duty, they preferred Proposal One as the least burdensome requirement.

## **Risk classification system**

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We asked five questions about a risk classification system:

- Whether a risk classification system would be useful to help participants and others better understand the risks involved in adventure activities?
- What are the benefits and issues created by introducing a risk classification system?
- Whether scoring activities based on their environmental and technical risks would provide a fair indication of the risks involved? Are there other factors that should be included in any risk classification system?
- Would setting how often operators are audited based on their activities risk classification (eg the lower the risk the longer length of time between safety audits)?
- What would be the optimal length of time between on-site safety audits for low-risk activities, medium risk activities and high-risk activities?

## **Whether a risk classification system would be useful**

We received 230 submissions on whether a risk classification system would be useful to help participants and others to better understand the risks involved in adventure activities.

- 42% of submissions supported the idea
- 38% opposed the idea
- 20% of submitters neither supported nor specifically opposed the proposal.

A number of comments argued that this was already a feature of the system (operators disclosing 'riskiness' to participants).

## **The benefits of a risk classification system create**

We received 181 submissions on the benefits created by a risk classification system.

Some broad benefits identified in the submissions were:

- less frequent audits for lower risk operations and the possibility of driving high-risk/poor performers out of the industry
- it can help participants to understand the risks associated with the activity and therefore make an informed choice about participation
- potentially it could create a consistent basis for participants to compare various activities/operators

However, many submissions pushed back on the idea of there being any benefits associated with a risk classification (other than potentially lightening the audit burden on lower-risk entities). Common negative themes included:

- the industry already manages risk well and the classification system proposals do little to add to current practice
- the industry is already heavily regulated and adding further compliance burdens will negatively impact on the industry
- a 'one size fits all' approach is too crude and will not enhance safety

## **Risk scoring**

We received a reasonable number of submissions (150+) on whether risk scoring on technical and environmental risks provided a fair indication of risks and whether there were other factors that could be included. It is difficult to be precise of the numbers of responses because submissions were split over a couple of questions. It is also difficult to break submissions' sentiment down due to the variety of non-standardised responses. However, some broad themes are obvious:

- risk identification and management is inherently difficult and varies a lot between the nature of the activities, the operators, and locations
- people in the industry generally have a high level of experience and training which provides a high degree of expertise when it comes to managing the risks associated with the activity
- there are a range of factors that the industry could utilise to bolster risk identification and assessment steps
- human factors of various forms should be added to any risk system
- a "static" measure of risk is of limited value, as risks in adventure activities are dynamic and highly changeable due to factors like weather conditions

## **Auditing frequency based on risk classification**

We received 222 submissions on whether the frequency of safety audits of operators should be informed by a risk classification.

- About 51% of the submissions supported auditing based on a risk classification.
- A third of submissions opposed this approach
- around 15% of submissions were unclear or did not have a strong preference.

There was reasonably even support for a risk classification being based on some sort of framework versus basing a classification on an assessment of the operator's performance.

Between 162 and 166 submitters submitted on the optimal frequency for safety audits for operations classified as high, medium, or low risk. Preferred frequencies were:

- "High risk" – 2 years (46% support)
- "Medium risk" – 3 years (50% support)
- "Low risk" – 5 years (40% support).

It is worth noting that a safety auditor has stated its belief that going beyond the three-year cycle of audits would be contrary to the current, applicable ISO standard. We are seeking further advice on this point.

## Risk disclosures to participants

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We asked one question about risk disclosure to participants:

- What types of information is useful to help participants and others understand the risks involved in adventure activities?

We received 214 submissions in response. Of these, nearly half (around 44%) thought general information about the activities, hazards, risks, and mitigations should be disclosed to participants.

Many submissions (around 11%) thought information about consequences (should things go wrong), previous occurrences (of eruptions etc) and worst-case scenarios. Several submissions (around 7%) thought it was important to convey the expectations of participants (the level of fitness, experience, age, etc) was important. A similar number (~5%) felt it was important to provide information to participants about the skills and qualifications of the staff conducting the activity.

Other suggestions included:

- emergency response plans (including what's expected of participants) and the realities of emergency responses (how long it will take to be evacuated if things go wrong)
- standardised disclosures and consent forms to participants
- some sort of consistent danger rating for activities.

About 12% of submissions made the point that risk disclosures were already made to participants.

A few submitters talked about the power of comparative information and incidence levels to convey risks to participants.

A few submitters made comments about the difficulties associated with participants, such as participants':

- poor understanding of risk concepts
- low regard for rules and systems designed to keep them safe.

## **Acceptable levels of risk**

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We asked two questions about risk acceptability:

- Whether the government should have a more active role in defining acceptable levels of risk in the adventure activities regime?
- What situations could the government prevent activities going ahead?

### **Defining acceptable risk**

We received 216 submissions on whether the government should have a more active role in defining acceptable levels of risk.

We received a very strong negative response (around 73%) of submissions opposing this idea. Operators and participants were particularly notable in their opposition to this question.

Only one submitter preferred a strong government role in defining risk acceptability. Of the minority of submissions that supported the government playing an active role, a significant proportion (about half) envisioned the government having a role only in extreme circumstances (such as a civil defence disaster).

### **Preventing activities going ahead**

We received 174 submissions on whether the government should prevent activities from going ahead. Although not as strongly expressed as the risk acceptability question, many submissions did not support government being involved in preventing activities.

Several submissions provided practical suggestions about how government could play a more active role (other than defining risk acceptability or preventing activities in certain circumstances), including:

- targeting monitoring and enforcement towards high risk or non-registered operators
- more accessible data about weather and other natural hazards events and risks (such as potential slips)
- guidance and guidelines (on a range of topics)
- supporting training and education
- improving WorkSafe to be a more effective regulator.

## **Strengthening the role of WorkSafe**

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We asked five questions about strengthening WorkSafe's role as regulator:

- What information should adventure activity operators provide WorkSafe about their operation?
- The best process for operators to provide information to WorkSafe?
- The types of incidents (in addition to existing HSWA notification requirements) adventure activities operators should notify WorkSafe about?
- What types of situation could WorkSafe cancel, suspend, or decline an operator's registration to provide an adventure activity?
- Other changes to support WorkSafe to take a stronger role in the sector?

### **Information to WorkSafe**

We received 179 submissions on what information should adventure activity operators provide WorkSafe about their operation.

There was strong support (around 81%) for operators to provide more information to WorkSafe such as a copy of the safety auditor's report and/or more information about the activities provided by an operator (such as number of participants, size of activity groups, the number of accompanying guides, etc.).

### **How information should be shared with WorkSafe**

We received 81 online submissions on how information from the sector could be shared with WorkSafe.

- 41% of these submissions favoured providing information through an online forum/database or email system directly with WorkSafe.
- 33% considered information should continue to be provided through the audit provider or another accredited body.

Most submitters who said something 'other' used this opportunity to signal their preference for WorkSafe to take over auditing of adventure activity operators rather than articulating a channel for communicating information.

## Additional notifications

We received a range of submissions about what information operators could share with WorkSafe (refer Table One). Support was received for most of the list of potential events listed in the Consultation Document being notifiable.

<b>Table One: Event</b>	<b>Number of submissions supporting<sup>1</sup></b>
Workers or participants stranded in a cave, gully, or other enclosed space by rising water	97
Any incident requiring workers or participants to be rescued	95
Volcanic eruption occurring in the area adventure activities regularly take place	89
A participant or worker suffering frostbite	83
Significant Landslide occurring in the area adventure activities regularly take place	78
Significant rock fall occurring in the area adventure activities regularly take place	76
A participant or worker falling from a height over 2 metres	74
A participant or worker suffering hypothermia	73
Other	77

We received several submissions suggesting incidents involving serious injuries should be notified to WorkSafe. Given this is already a requirement under the Health and Safety at Work Act, this may suggest more could be done to reinforce existing legal obligations when it comes to notifications to people involved with the sector.

## Expanding WorkSafe's powers

We received 151 submissions on whether WorkSafe's powers should be expanded. There was some support (around 53%) for WorkSafe having the power to either cancel or suspend the registration of adventure activities operations. However, a significant proportion of these (around 13%) qualified their support with wanting this power restricted to matters involving serious performance matters or suggesting WorkSafe should have additional powers in this area only if it had staff or advice with in-depth information about the sector.

## Other suggested changes

91 online submitters commented on other changes that WorkSafe could make to support the industry. There was strong support for additional guidance. Other key themes included WorkSafe:

- having experienced/knowledgeable staff working with the sector
- improving its communications and relationship with the industry

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<sup>1</sup> Not expressed as a percentage as some individual submissions suggested multiple topics.

- taking over the safety audit function from the current third-party audit model
- hosting/enabling risk good practice workshops
- improving its incident reporting systems
- providing operator safety management systems and implementation training

## **Guidance and audit changes**

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We proposed six possible changes to the current audit process and guidance:

- changing the current audit process to improve safety standards
- changing the current audit standard to improve safety standards
- addressing administrative problems with the current audit process
- types of guidance most useful to support safety in adventure activities
- types of information about managing natural hazard risks that would be most useful to include in guidance to operators
- types of data and information that 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

### **Changing the Safety Audit process**

We received 97 submissions on changes to improve the current safety audit process in the adventure activity sector. The bulk of comments came from operators.

A major theme of these submissions was that auditors should be allowed to coach operators. It should be noted that auditor providers were not as comfortable with this suggestion.

Submissions also wanted to reduce the burden of audits by:

- reducing the frequency of audits based on the operator's performance and history
- reducing paperwork

Other suggestions included:

- taking the size of businesses into account in the audit requirements (i.e. not taking a one-size-fits-all approach)
- using a mystery shopper type test as a form of operator monitoring (testing whether the operators are doing what they are supposed to be doing and operating in accordance with their audited safety systems)

### **Changes to the audit standard**

We received 89 submissions on changes to the audit standard. About half of these were operators.



Of these, most submitters (around 53%) wanted qualification requirements for workers to become a mandatory part of the safety audit standard. Although it should be noted that a small number of submitters actively opposed the introduction of mandatory training or qualification requirements.

### **Administrative issues**

We received 55 submissions on administrative issues with the audit process.

Major themes in this feedback are:

- flexibility around audit timing to better accommodate seasonal operators and allow for a more even distribution of audits during the three-year cycle
- concerns about the duopoly and the lack of competition
- the government supporting the development of technical experts
- WorkSafe taking over the audit function.

The single largest issue raised about audits across a range of responses (ie not just in response to this question), was the cost of audits.

### **Types of guidance and types of information**

We received 127 suggestions about types of guidance and information. There was broad support for additional and more up-to-date safety guidance. There was a diverse range of suggestions which is difficult to distil the variety of feedback into categories. Although several thought guidance about where to find information useful for identifying, monitoring, and managing natural hazards would be useful.

#### *What types of information is useful to publish and share*

We received 140 submissions about types of information that would be useful to publish and share. The most common suggestion was to publish incident and accident data as well as investigation outcomes/learnings.

### **Other comments**

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We received or heard a range of submissions and comments about possible other changes to the adventure activities regime. We also made our own observations on potential changes based on our interactions with the sector through the consultation process.

### **Qualifications**

Submissions and the sector people we spoke to spoke a lot about qualifications. It is clear to us that this sector placed a lot of stock on qualifications—and some were justifiably proud of possessing highly prestigious, globally-sought-after qualifications. However, several submissions and commenters expressed support for mandatory qualifications within the industry or supporting staff having some sort of qualification requirements. It should be noted that these views did not come from industry operators but rather from a broad range of

people involved in the industry such as adventure activity workers, industry groups, and experts.

### **Viability of the audit model**

We also heard a lot of concerns about the long-term viability of the third-party audit model. We heard concerns about there being a duopoly of auditors and the risk of there being a monopoly. Related to this, we heard a lot of support for WorkSafe taking over the audit role (but we did not hear any specifics about an alternative mechanism to provide the level of independent assurance that third-party verification provides).

### **Clarifying the adventure activities definition**

Although out-of-scope for this consultation process, we heard a lot of comments and confusion about the current definition of adventure activities. There was confusion about why some activities were in the regime (such as guided walks in volcanically active areas) and yet other, similar activities (such as guided walks in geothermally active areas) were not adventure activities.

### **Peak body**

Through our engagement with the sector, we were struck by the diverse range of industry bodies speaking on behalf of some aspect or sub-set of the total industry. These were all highly competent and effective representatives of their areas of interest. However, there is no single body representing the entire adventure activities sector, as a sector. While there this is a very small sector by some measures (around 320 registered operators), we could see an opportunity for a single peak body to help lead the sector in terms of working with government but also leading self-regulatory improvements and initiatives.

### **Legal requirements**

We heard comments and read several submissions that strongly suggested that some duty-holders did not understand current statutory requirements.

Two issues stood out:

- Comments on the proposal for a new explicit duty on landowners indicated an unwillingness to engage with landowners because of landowners' lack of understanding of the adventure activities or the impact natural hazards could have on adventure activities.

However, a landowner is generally a person conducting business or undertaking (PCBU) as is the adventure activity operator. Both are technically sharing a workplace (the area owned by the landowner being used for adventure activities). Contrary to these comments made about leaving landowners alone, section 34 of the Health and Safety at Work Act requires PCBUs with overlapping duties to consult, co-operate, and co-ordinate with other PCBUs in relation to the same matter.

- Comments on the proposal for additional notifications for serious incidents seemed to miss the fact that Section 56 of the Health and Safety at Work Act currently places a duty on PCBUs to notify WorkSafe of notifiable events such as a notifiable injury or incident.

## **Cost implications**

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We asked three questions on the cost implications of change:

- What cost implications will the different proposals have on adventure activities? And we asked submitters to provide as much detail as possible in responding to this question.
- What are the benefits of implementing these proposals?
- Whether the submitter is willing to pay more to take part in adventure activities, if it meant safety standards were strengthened? We also asked submitters to comment on the amount they would be prepared to pay.

### **Cost implications**

We received 160 submissions on the cost implications of the proposed changes.

About two thirds (66%) expressed concern that the changes would increase costs to some extent with some believing the cost increases would be significant. Nearly half of these submissions noted that the industry was unable to absorb further costs due, in part, because of the current high compliance costs and the impact of COVID. While 18% thought the cost implications would be minimal, a similar number (around 15% of submitters) had other views including a small proportion arguing the Government should pay for any increased costs.

### **Benefits**

We received 129 submissions on the benefits of the proposed changes. About a third of submitters (around 27%) thought the changes would have a positive impact. By contrast, about 60% of submissions thought the proposed would have a negative impact on the adventure activities sector.

### **Willingness to pay**

We received 111 online submissions with specific responses on how much more they were prepared to pay for enhanced safety in the adventure activities sector (refer Table Two).

The responses ranged from \$0 through to \$70. Nearly half of the 111 submitters who provided specific amounts were prepared to pay no extra money (ie \$0). The group (n=3) willing to pay the most were members of the public who indicated they were willing to pay an additional average of around \$37 for enhanced safety. By contrast, adventure activity operators were prepared to pay an average of \$2.77.

The weighted average of all these averages is \$5.65.

<b>Table Two: The amount online submitter groups said they were willing to pay (on average)</b>	<b>(n)</b>	<b>Average</b>
Members of the public	3	\$36.67
Other	5	\$13.00
Someone who works for an adventure activities operation	13	\$6.77
Landowner	2	\$6.50
Someone who takes part (or is considering taking part) in adventure activities	30	\$5.66
Organisation/individual who is involved in the implementation of the adventure activities regime (eg technical advisor/expert, certifying body, safety auditor etc)	9	\$5.11
Part of the wider tourism or recreation sector	4	\$4.00
An adventure activities operator	43	\$2.77
Industry/advocacy group	2	\$0
<b>Total</b>	111	

## Summary of questions

<b><i>Managing Natural Hazards</i></b>	
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?
<b><i>Duties for operators in managing natural hazards</i></b>	
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?
<b><i>Duties for Landowners in managing natural hazards</i></b>	
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 landowners and managers, do you think they should be required to: 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?
<b><i>Risk classification system</i></b>	
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"> <li>• Environmental risks from where the activity occurs (for instance, does it go through avalanche or landslide prone areas).</li> <li>• 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).</li> </ul> <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	Do you support setting how often operators are audited based on their activities risk classification (eg the lower the risk the longer length of time between safety audits)? What benefits and issues do you see with this approach? 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?
<b><i>Risk disclosure</i></b>	
Q15	What types of information is useful to help participants and others understand the risks involved in adventure activities?
<b><i>Acceptable levels of risk</i></b>	
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?
<b>Strengthening the role of WorkSafe</b>	
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"> <li>• a volcanic eruption, landslide or significant rockfall occurring in the area adventure activities regularly take place</li> <li>• workers or participants being stranded in a cave, gully or other enclosed space by rising water</li> <li>• any incident that requires workers or participants to be rescued</li> <li>• a participant or worker falling from a height over 2 metres</li> <li>• a participant or worker suffering hypothermia.</li> <li>• Others?</li> </ul>
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?
<b>Guidance and audit changes</b>	
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"> <li>• Where to get information about different types of hazards</li> <li>• The types of steps an operator is expected to go through to manage different hazards</li> <li>• Examples of what good management of hazards looks like Excluding guidance on natural hazards, are there any other gaps in current guidance?</li> </ul>
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?
<b>Other changes</b>	
Q29	Are there any other issues or potential improvements in how adventure activities are regulated you would like to comment on?
<b>Cost implications of proposals</b>	
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?



## BRIEFING

### Recommended changes to the adventure activities regulatory regime

<b>Date:</b>	21 April 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-3038

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace, Relations and Safety</b>	<b>Agree</b> to the recommended changes to the adventure activities regulatory regime.  <b>Note</b> MBIE will provide you with a draft Cabinet paper for you to present to Cabinet in July on the proposed changes.	5 May 2022

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

The following departments/agencies have been consulted
WorkSafe New Zealand

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

## Recommended changes to the adventure activities regulatory regime

<b>Date:</b>	21 April 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-3038

### Purpose

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To provide you with recommendations to improve the adventure activities regulatory regime. If you agree to these changes, officials will provide you with a draft Cabinet paper for you to take to Cabinet in July.

### Executive Summary

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As part of the response to the 2019 Whakaari tragedy, the then Minister for Workplace Relations and Safety in 2020 directed the Ministry of Business, Innovation and Employment (MBIE) to do a targeted review of the adventure activities regime.

The targeted review found that risks from natural hazards are pervasive in the adventure activities sector and that the regime required strengthening in relation to the management of natural hazards, the audit process, and the role of the regulator.

MBIE consulted on proposals to strengthen the regime in these areas in late 2021 and have been working closely with WorkSafe New Zealand (WorkSafe) to develop recommendations for changes to the regulatory regime.

We consider there are three key areas that can be improved to reduce the risks of harm and provide greater assurance that the sector is consistently managing safety well: increasing the focus on natural hazards risks, improving risk communication to participants, and supporting the regulator to have a stronger role.

We recommend four changes to the adventure activities regime to address these three key areas:

- (i) strengthening audit standard requirements for natural hazard risk management
- (ii) introducing a regulatory duty and more detailed standards for risk communication
- (iii) strengthening the regulator's monitoring and enforcement powers
- (iv) reviewing and updating the Activity Safety Guidelines.

Introducing this package will involve amendments to the Adventure Activities Regulations by MBIE, updates to the Audit Standard led by WorkSafe, and revisions to guidance materials for the sector by WorkSafe. We expect this package could be implemented by late-2023.

We consider that if this package of changes is implemented there will be a reduction in fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic events associated with natural hazards occurring in the sector over time.

WorkSafe is also undertaking a broader programme of work that will support the changes recommended. This will include reviews to ensure the adventure activities certification scheme, the safety audit standard, and guidance materials are fit for purpose.



## Recommended action

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MBIE recommends that you:

- a **Note** that MBIE and WorkSafe have worked together to develop recommendations to improve the adventure activities regulatory regime, following consultation in late 2021.  
*Noted*
- b **Agree** to the recommended suite of improvements to the adventure activities regulatory regime.  
*Agree / Disagree*
- c **Note** if you agree to recommendation (b), MBIE will provide you with a draft Cabinet paper for you to present to Cabinet in July to seek Cabinet's approval to the proposed regulatory changes.  
*Noted*
- d **Note** that WorkSafe are undertaking further work to support the recommended improvements to the adventure activities regulatory regime, as contained in this briefing.  
*Noted*

### Privacy of natural persons

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

21 / 04 / 2022

Hon Michael Wood  
**Minister of Workplace Relations and Safety**

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## Background

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1. In 2020, as part of the response to the 2019 Whakaari tragedy, the then Minister for Workplace Relations and Safety directed MBIE to conduct a targeted review of the adventure activities regulatory regime (the targeted review) [2048 19-20 refers]. The review examined whether weaknesses existed in the regulatory regime where activities took place in naturally hazardous environments.
2. Findings from this targeted review were released in December 2020. The review found several weaknesses in the regime in relation to the management of natural hazards, the audit process, and the role of the regulator.
3. Following the targeted review, you directed MBIE to begin a second phase of work to develop proposals to strengthen the adventure activities regime in these areas [2021-1155 refers]. This second phase of work examined whether there were immediate improvements that could be made to the regime to address risks of catastrophic harm.<sup>1</sup>
4. In August 2021, Cabinet agreed to the release of a discussion document on proposals to strengthen the adventure activities regulatory regime. Public consultation was conducted between September and November 2021.
5. In December 2021 we reported back to you on consultation findings [2122-2154]. Themes from the feedback included that:
  - The adventure activities sector (including operators, workers, and industry bodies) considers itself to be generally safe and well regulated. No significant regulatory change is considered necessary.
  - The Whakaari tragedy resulted from a unique confluence of events and should not be taken as indicative of safety issues in the broader sector.
  - Changes that are most likely to reduce harm are those that will reinforce existing good practice in the sector and provide additional guidance to operators about what good risk management is.
  - The COVID-19 pandemic has significantly impacted the adventure activities industry and it cannot easily absorb additional compliance costs.
6. Since December 2021, we have been working closely with WorkSafe to consider the consultation feedback and develop our recommendations for changes to the adventure activities regime.

## How the current regulatory system works

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7. Safety in adventure activities is primarily regulated through the health and safety at work system. The core requirement of the *Health and Safety at Work (Adventure Activities) Regulations 2016* (the Adventure Activities Regulations) is that all adventure activities operators must undergo a full safety audit at least once every three years and register their operation with WorkSafe.<sup>2</sup>

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<sup>1</sup> A full review of the adventure activities regime is scheduled to begin in 2026 to examine system-level issues identified, such as the long-term sustainability of the current audit system.

<sup>2</sup> Auditors are also required to monitor the performance of operators between full audits, generally done through yearly “surveillance audits” of records and documentation.

8. The requirements operators must meet to pass safety audits are set by the Safety Audit Standard for Adventure Activities 2017 (the Audit Standard), which is developed and published by WorkSafe. Audits are conducted by independent audit providers that have been recognised by WorkSafe (based on JAS-ANZ accreditation) as having the appropriate expertise and systems to conduct adventure activities safety audits.
9. Regulatory requirements are supported by a range of guidance materials for operators and others involved in the adventure activities system. This guidance includes the “Activity Safety Guidelines”, which were co-developed by WorkSafe and industry and provide detailed, technical information about safety management in specific adventure activities.

## **There are opportunities to strengthen the regime in three key areas**

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10. Consultation indicated that the sector feels that significant changes to the current adventure activities regime are not needed and that any changes risk increasing the compliance burden without materially improving safety.
11. We agree that a major overhaul of the regulatory system is not needed at this time. Overall, the introduction of the current regulatory regime appears to have lifted safety standards in the sector. While recent harm rates remain high, this is due to the extreme amount of harm caused by the Whakaari tragedy.<sup>3</sup> The consistent view of the sector, auditors, participants, and others is that safety outcomes have improved under the regime,<sup>4</sup> and the frequency of incidents causing deaths has notably decreased.<sup>5</sup> However, the Whakaari tragedy demonstrates that there continues to be an ongoing risk of catastrophic events occurring in the sector.
12. We do consider there are several key weaknesses in the regime that should be addressed to reduce risks of harm and provide greater assurance that safety is consistently being managed well in the sector. We have identified three key areas for improvement:

### **1) *Increasing the focus on natural hazard risks***

Natural hazards (such as floods, avalanches, and eruptions) are associated with most of the harm that occurs in the sector – both from isolated incidents and catastrophic events.<sup>6</sup> While operators consider they manage natural hazard risks well, these risks continue to be a persistent source of harm.

The adventure activities regime does not currently set any detailed requirements for operators to assess and manage natural hazard risks.<sup>7</sup> There is an opportunity to set clearer, consistent standards for how this category of risks are managed and to reduce the variation in practices across different operations.

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<sup>3</sup> Between 2014 (when the regime was fully implemented) and 2019, there were 31 fatalities in adventure activities - twenty-two of which resulted from the Whakaari tragedy. Prior to the regime’s introduction (2004-2009), there were 29 fatalities in adventure activities.

<sup>4</sup> This was also the findings of an independent 2016 performance study of the regime.

<sup>5</sup> Between 2004 and 2009, there were more than 15 separate incidents causing fatalities. Between 2014 and 2019, this decreased to nine.

<sup>6</sup> Natural hazards are associated with 26 of the 31 fatalities that occurred in the sector between 2014 and 2019, and with all five catastrophic or near catastrophic events that have occurred in the sector since 2000.

<sup>7</sup> Operators do have legal obligations to manage risks as part of their general duties to identify and manage risks under the Health and Safety at Work Act and Audit Standard, but these are generic requirements and are not specific to natural hazards.

## **2) Risk communication to participants**

Statements made by participants suggest they are not always given enough information about the risks for them to then give informed consent to take part in activities. Consultation findings suggest that operators have differing views of what “good practice” risk communication looks like.

The current regulatory system does not provide detailed requirements regarding risk communication. While the Audit Standard requires operators to have procedures to communicate “relevant safety information” to participants, no direction is provided about what risk information should be communicated or how communications should be made. There is an opportunity to create clearer, consistent minimum standards for risk communication.

## **3) Supporting the regulator**

One of the key findings of the 2020 targeted review was that WorkSafe’s limited engagement with the sector was exacerbating other weaknesses in the regime (such as inconsistent practices towards natural hazards). Consultation findings also reinforced that the sector has not felt well supported by the regulator.

WorkSafe is continuing its programme of operational improvements to refocus on the sector and strengthen its administration of the adventure activities regime. While these changes are the primary way this issue will be addressed, there are also several regulatory adjustments that can be made to support a stronger monitoring, engagement, and enforcement role for WorkSafe.

## **We recommend a package of regulatory and non-regulatory changes to address these areas**

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13. The package of changes we recommend has four main pillars:
  - strengthening audit standard requirements for natural hazard risk management
  - introducing a regulatory duty and more detailed standards for risk communication
  - strengthening the regulator’s monitoring and enforcement powers
  - reviewing and updating the Activity Safety Guidelines.
14. Introducing this package will involve amendments to the Adventure Activities Regulations by MBIE, updates to the Audit Standard led by WorkSafe, and revisions to guidance materials for the sector by WorkSafe. We expect this package could be implemented by late-2023.
15. We consider that implementing this package of proposals would result in a reduction in fatalities and injuries linked to natural hazards and a reduced likelihood of catastrophic events associated with natural hazards occurring in the sector over time.
16. A summary of the recommended changes and how they will be implemented is provided in Annex One.

## Strengthening requirements for natural hazard risk management

17. We recommend introducing specific requirements for operators to identify, assess and manage natural hazard risks in the Audit Standard. Requirements could include that operators must:
  - have systematic processes to identify natural hazards, including having regard to information provided by other parties such as landowners and technical advisors
  - consider ways natural hazard risks can be eliminated or minimised, such as alternative routes to minimise time in hazardous areas
  - have pre-set policies for the conditions under which activities would not go ahead or would be called off.<sup>8</sup>
18. Alongside strengthened requirements, additional guidance will be provided to operators about what good practice for managing natural hazard risks looks like. WorkSafe is currently developing such guidance materials (funded in Budget 21). New materials are expected to be completed by late 2023.

### *Stakeholder views*

19. Adventure activity operators and industry groups generally consider that the sector already manages natural hazard risks well, and therefore these changes would have limited effect. However, most operators were supportive of these changes as they would reflect and reinforce existing good practices in the sector and were unlikely to significantly increase compliance costs.
20. Audit providers were similarly divided on whether these changes would materially impact safety. One audit provider noted that the effectiveness of these changes would likely be determined by the effectiveness of supporting guidance materials, rather than the direct Audit Standard requirements.

### *Overall assessment*

21. We consider these requirements are best placed in the Audit Standard, rather than regulations, as the Audit Standard allows more operational detail about how requirements must be met.
22. WorkSafe agree with this proposal and have agreed to add these requirements to the Audit Standard in their upcoming review of the Audit Standard. The review is due to begin in Q3 2022 and will be completed by late 2023.
23. These changes may improve safety by embedding and distributing good practice risk management practice. Specific requirements will ensure operators focus on natural hazards as part of their safety management systems, and that the management of these risks is a specific focus of audits.
24. While some costs to operators are likely to result from this change (as audits expand to assess these additional requirements), we expect the costs to be minor. Any cost increases are also unlikely to be persistent, as operators become familiar with the evidence they will need to demonstrate to meet the new requirements.

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<sup>8</sup> Such a requirement would also likely include factors beyond natural hazards, such as the availability and readiness of staff.

## **Improving risk communication**

25. We recommend the following changes to support better risk communication to participants:
- Introducing a regulatory duty for operators to have processes in place to communicate the risks of activities to participants (including regulatory offence provisions).
  - Introducing more detailed requirements in the Audit Standard for what risk information must be provided to participants and how communication should occur.

### *Stakeholder views*

26. Adventure activity operators generally considered that they were communicating risks well. However, they had different views about what types of information were good practice to provide to participants about risks.
27. Several operators noted that communicating risks to participants was often difficult, as participants often did not understand risk concepts, and/or listen to risk and safety information.
28. Views from activity participants about whether current risk communication practices were effective were mixed. While many participants considered current risk communication practices were adequate, a significant minority indicated that being provided with more information about matters such as emergency scenarios would be valuable.

### *Overall assessment*

29. Effective risk communication is a crucial part of risk management in adventure activities. As these activities inherently involve some degree of risk, it is essential participants are given enough information about risks to make sure the activity aligns with their expectations and capabilities. Given this importance, it is appropriate that the regulatory regime sets clear minimum requirements for how risk communication occurs.
30. We consider that introducing a regulatory duty and changes to the Audit Standard will work together to elevate the importance of risk communication. The changes will ensure there is sector-wide consistency in how risks are communicated to participants and allow the public to make informed decisions on their participation in adventure activities.
31. WorkSafe agree with this proposal and agreed to add these requirements to the Audit Standard in their upcoming review of the Audit Standard. The review is due to commence in Q3 2022 and will be completed by late 2023.
32. We expect these changes will result in minor costs to adventure activity operators, as they will only need to adjust existing information and practices to align with the new requirements.

## **Strengthening the role of the regulator**

33. We recommend the following changes to the Adventure Activity Regulations to support strengthening the role of the regulator:
- Requiring adventure activity operators to register directly with WorkSafe (rather than indirectly via the auditor) and to provide more information upon registration (such as audit reports).
  - Expanding WorkSafe's powers to decline, suspend, cancel or add conditions to adventure activity registrations, where this is necessary for safety.
  - Developing a list of sector-specific near-miss incidents that must be notified to WorkSafe, reflecting the major sources of risk in the sector (consistent with the regulation of other high-risk sectors such as mining and petroleum extraction).

### *Stakeholder views*

34. Adventure activity operators, industry associations and auditors generally supported these changes to strengthen WorkSafe's role. Where reservations were noted, these focused on whether WorkSafe had the necessary resources to effectively use the additional information and powers provided (rather than concerns with the substance of changes).
35. The sector also indicated that as part of WorkSafe's expanded role, they should provide more information back to the sector, particularly regarding incidents.

### *Overall assessment*

36. While these changes are unlikely to directly impact on rates of harm in the sector, we consider these changes will:
  - provide greater assurance that safety trends in the sector are being monitored and enable the regulator to intervene when it needs to do so
  - help build more direct relationships between adventure activity operators and WorkSafe
  - provide WorkSafe with additional information about operator performance and risks in the sector, helping to build up a picture over time of emerging issues and where they can focus their engagement and compliance monitoring efforts
  - align the adventure activities regime with other more modern authorisations systems overseen by WorkSafe.
37. WorkSafe agree with this proposal and will work with us to identify what specific incidents should become notifiable.
38. We do not expect any significant costs from these changes. Operators will need to adjust to new registration processes, but this will be a minor additional administrative task. Costs to WorkSafe to adjust processes for registrations will be managed within baselines.
39. WorkSafe are also considering how existing processes, such as Safety Alerts, can be used to provide more information about incidents to the sector as stakeholders suggested. We will work with WorkSafe to investigate the use of existing risk communication mechanisms.

### **Reviewing and updating adventure activity safety guidelines**

40. We recommend reviewing and updating the adventure activity safety guidelines to incorporate content on the risks associated with natural hazards.
41. Activity safety guidelines are a package of guidance materials (developed by WorkSafe and industry) that provide detailed, technical information about hazards and how safety should be managed in particular activities. Twelve activity safety guidelines currently exist.
42. Several guidelines have not been reviewed since their original publication in 2016. Current guidelines also cover only twelve activity types, and coverage could be expanded.

### *Stakeholder views*

43. Feedback from the adventure activity operators, industry associations, and auditors is that the guidelines are crucial tools for the sector, and a key reference used by operators and auditors to determine what good practice safety management looks like for their activities.
44. Industry bodies and audit providers indicated that reviewing activity safety guidelines was the single action most likely to improve safety standards in the sector.

45. Adventure activity operators, industry associations and auditors indicated existing activity safety guidelines were a highly useful tool but could be strengthened by guidelines being developed for more activities and content being updated. Some stakeholders also noted some current guidelines were of variable quality and should be reviewed.

#### *Overall assessment*

46. We agree reviewing and updating these guidelines will support adventure activity operators to better manage safety, given these are the primary reference materials used by the sector. As these guidelines are developed in close collaboration with industry, they also promote industry ownership of standards.
47. WorkSafe agree with this proposal. They intend to review and update the activity safety guidelines over the next two years to incorporate content on natural hazards. The costs of this review will be funded from the allocation WorkSafe received for developing adventure activity guidance in Budget 21. WorkSafe expects this work to be completed by end-2023.

## **We do not recommend progressing some proposals that were consulted on**

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#### *Landowner/manager duties*

48. This proposal was to introduce a regulatory requirement for landowners and managers who allow adventure activities operators access to their land to either provide information to operators about natural hazards on their land or manage the risks of natural hazards when providing access to activities.
49. This change would provide an additional source of information to identify risks as it is recognised that, in some cases, landowners may have better information about hazards than operators.
50. Stakeholders were strongly opposed to this change, noting there were serious risks landowners would deny adventure activities (and other recreational activities) access to their land rather than risk potential liability or incur costs to identify hazards. Operators and industry groups also noted that the circumstances where landowners would have more information about hazards than operators would be rare.
51. We do not recommend this change, as we agree the costs of this change to landowners (and operators, as costs are passed on) and risk of adventure activities being denied access to land are disproportionate to any safety gains that would result.
52. Comments made during consultation suggest there may be a lack of understanding in the sector that landowners have existing duties under the Health and Safety at Work Act (as PCBUs with control of workplaces) and must coordinate with operators to ensure these obligations are met. However, we consider this issue can be addressed through guidance to the sector.

#### *Risk classification system*

53. This proposal suggested the development of a risk classification framework, where operators assess their activities against classification criteria to assign each activity a risk score.
54. A risk classification system would provide a simple and understandable way to communicate the relative risk of different activities. This could support effective risk communication to participants, assist WorkSafe in recognising high-risk areas of the sector, and prompt more comprehensive risk assessments and minimisations by operators. Over time, risk classifications could also be used to develop a more targeted auditing system, where high risk operations are audited more frequently than low risk operations.



55. Feedback on this proposal was unclear. Many operators were unwilling to provide a view on the proposal in the absence of more detailed information about how it would be implemented. Where operators indicated they did support the proposal, this was largely due to the suggestion that they may require less frequent audits. Several key stakeholders, such as industry associations and audit providers, commented that while they did not oppose a risk classification in principle, they did not believe a viable system could be developed for the sector.
56. We do not recommend this change, as there would be significant costs in developing such a system and whether it would result in any material improvements in safety is unclear. A risk classification system would only be effective if it is able to accurately represent the relative risk of different activities, and given the wide range of adventure activities and different risks faced it is unclear if this would be possible. Significant further work would be needed with industry and scientific experts to develop classification criteria, and it is unlikely such a system would be implementable within the next two-three years.

## **Broader programme of work that includes adventure activities**

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57. WorkSafe is undertaking a broader programme of work that will support the changes recommended in this package. This programme includes three main elements.

### **Reviewing the Adventure Activities Certification Scheme**

58. The Adventure Activities Certification Scheme (the Scheme) sets requirements for how safety audits are conducted of adventure activity operations (including matters such as audit team personnel, sampling, and monitoring between audits). WorkSafe has reviewed the Scheme and has proposed changes needed to address issues, including those identified in the independent review of WorkSafe in relation to Whakaari. A targeted consultation with key industry stakeholders is currently underway.
59. The review is due to be completed by 30 June 2022.

### **Reviewing the Audit Standard**

60. WorkSafe are planning to review the Audit Standard from Quarter 3 2022. This review will implement changes to the Audit Standard agreed in this package, as well as examine more broadly whether the current audit standard remains fit for purpose. Part of the review will also investigate further suggestions for changes to the standard made by stakeholders in consultation, such as whether more detailed qualifications requirements are needed for key adventure activity operator personnel (such as technical staff).
61. This review is expected to be completed by late 2023.

### **Reviews of guidance materials**

62. WorkSafe received funding in Budget 21 to develop guidance on natural hazard risk management. They have agreed to carry out the following work as part of their guidance work programme:
  - Development of risk management guidance specific to natural hazard risks (work has commenced).
  - Strengthening existing guidance on landowner duties in the management of natural hazards.
  - Developing an activity safety guideline (or other guidance) on managing volcanic and geothermal hazards.
63. This work is expected to be completed by late 2023.

## Key risks

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64. We consider there is a low risk that the package of changes will not be well received by the sector, resulting in complaints and the sector being reluctant to comply with new requirements. However, this risk is limited as recommended changes do not include proposals that the sector strongly opposed in consultation as unviable or creating disproportionate costs (such as landowner duties). To manage this risk, our communications with the sector will emphasise the purpose of the changes and note that operators already following good practice will only require minor adjustments to their operation.
65. There also is a low risk that this package of changes is not perceived as significant enough to address safety issues in the sector, particularly given the association of this review with the Whakaari tragedy. However, as feedback in consultation indicated only minor adjustments to the regime were needed, this risk does not appear significant. The package of changes recommended includes the elements key stakeholders have indicated will have the most practical impact on safety.
66. There is also a low risk that changes will not be fully implemented by late 2023, when many operators' registrations expire. Between September 2023 and December 2023 approximately 40% of currently registered operators are due to be audited and re-register their operations. If this timeframe is not met, some operators falling in this group will not have their operations fully audited against new requirements until 2026. To manage this risk, we will continue to liaise with WorkSafe to ensure delivery remains on track and that adventure activities continues to be a priority project.

## Next steps

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67. If you agree with the recommended package of changes, we will provide you with a draft Cabinet paper for your consideration in June. We expect these proposals will be able to be presented to Cabinet in July 2022.
68. If Cabinet agrees to these changes, we will begin drafting amendments to the Adventure Activities Regulations, and WorkSafe will commence their review of the Audit Standard. We anticipate changes will be able to be implemented by late 2023.

## Annexes

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Annex One: Summary of proposed changes to the adventure activities regime.

## Annex One: Summary of proposed changes to the adventure activities regime

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Mechanism	Proposal
<b><i>Change to regulations</i></b>	Require adventure activity operators to register directly with the regulator and to provide more information upon registration.
	Expand the regulators powers to decline, suspend and cancel adventure activity registrations, where this is necessary for safety.
	Introduce a regulatory duty for operators to have processes in place to communicate the risks of activities to participants.
	Introduce sector-specific notifiable incidents that must be reported to WorkSafe to reflect the major sources of risk in the sector.
<b><i>Changes to the Safety Audit Standard</i></b>	Introduce more detailed requirements in the Audit Standard for what risk information must be provided to participants and how risk communication should occur.
	Implement systematic processes and policies to identify, assess and manage natural hazard risks, including having regard to information provided by other parties such as landowners and technical advisors.
	Add requirements for pre-set policies for the conditions under which activities would not go ahead or would be called off.
<b><i>Guidance changes</i></b>	Develop specific guidance on natural hazard risk management.
	Review the Activity Safety Guidelines and updating to add specific content on natural hazards associated with each activity.



## AIDE MEMOIRE

### Changes to the adventure activities regime – final Cabinet paper and talking points

<b>Date:</b>	14 September 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0949

<b>Information for Minister(s)</b>
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>

<b>Contact for telephone discussion (if required)</b>				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Policy	Privacy of natural persons	Privacy of natural persons	
Kathryn Holdsworth	Principal Policy Advisor, Health and Safety Policy	Privacy of natural persons	Privacy of natural persons	✓

<b>The following departments/agencies have been consulted</b>

**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

### Changes to the adventure activities regime – final Cabinet paper and talking points

<b>Date:</b>	14 September 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0949

#### Purpose

To provide you with the final Cabinet paper *Changes to the adventure activities regulatory regime* and talking points and supporting information to support your discussion at the Cabinet Economic Development Committee (DEV) on 21 September 2022.

Hayden Fenwick  
**Manager, Health and Safety Policy**  
Labour, Science and Enterprise, MBIE

14 / 09 / 2022

#### Background

1. On 11 August the Ministry of Business, Innovation & Employment (MBIE) provided you a draft Cabinet paper [Briefing 2223-0216] to seek Cabinet's agreement to a package of changes to the adventure activities regulatory regime.
2. We have now finalised the Cabinet paper following Ministerial consultation. Subject to your approval, we will lodge this paper for consideration at the DEV meeting on 21 September.

#### Some minor adjustments have been made to wording and the structure of the paper following Ministerial consultation

Free and frank

Free and frank we have made some minor adjustments to the paper.  
Notable changes are:

- Inserting a paragraph confirming the recommended changes align with feedback from the industry and others about changes that would be effective while avoiding excessive costs (paragraph 38).
- Inserting a paragraph confirming that planned implementation timeframes include a transitional period of 3-4 months for operators to adjust their systems before the new requirements take effect (paragraph 59).
- Simplifying the description of changes in the executive summary and providing a clearer statement that changes will support the minimisation of harm (paragraphs 6-7).
- Amending Recommendation 10 to require you to consult with the Minister of Tourism and other relevant portfolio Ministers before releasing an exposure draft of the regulations.

## **Annexes**

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Annex One: Final Cabinet paper – Changes to the adventure activities regulatory regime

Annex Two: Key talking points

IN CONFIDENCE  
Publicly available





## BRIEFING

### Draft Cabinet paper – changes to the adventure activities regime

<b>Date:</b>	11 August 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0073

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Provide feedback</b> on the draft Cabinet paper <i>Changes to the adventure activities regime</i> .  <b>Agree</b> to begin Ministerial consultation on the draft paper, subject to any changes you request.	18 August 2022

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

The following departments/agencies have been consulted
WorkSafe New Zealand

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

## Draft Cabinet paper – changes to the adventure activities regime

<b>Date:</b>	11 August 2022	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-0073

### Purpose

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This briefing:

- 1) Attaches the draft Cabinet paper *Changes to the adventure activities regulatory regime* and MBIE's associated regulatory impact statement for your consideration.
- 2) Provides you with information and advice about the issue with the Adventure Activities Certification Scheme recently identified by WorkSafe.

### Executive Summary

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The draft Cabinet paper *Changes to the adventure activities regulatory regime* and associated regulatory impact statement are attached for your consideration. As previously agreed, the paper recommends a package of regulatory and non-regulatory changes to strengthen the adventure activities system.

The Ministry of Business, Innovation and Employment (MBIE) have been working with WorkSafe New Zealand (WorkSafe) on the issue arising from their review of the Adventure Activities Certification Scheme (the Scheme) regarding whether auditors can withdraw or suspend safety certificates in the current Adventure Activities Regulations.

The current Scheme does not align with the Adventure Activities Regulations. It states that auditors have the power to withdraw or suspend audit certificates that they have issued to adventure activity operators. However, the Adventure Activities Regulations do not specify that auditors have a function to withdraw or suspend certificates.

This discrepancy has been present since the Scheme was first established in late 2015 but has recently been highlighted as a potential issue in WorkSafe's current review of the Scheme. WorkSafe considers that the current position in the Scheme presents risk to auditors, operators, participants and WorkSafe.

We have considered options to resolve the misalignment between the Scheme and regulations, such as amending the Scheme to remove the ability of auditors to withdraw certificates or expanding the current package of adventure activity regulatory changes. We consider neither option is viable due to the views of the third-party system actors and the impact of any delay to the current package of regulatory changes.

MBIE recommend any amendments regarding auditor powers are deferred until the full review of the Adventure Activities Regulations scheduled to begin in 2026, rather than delaying the current package of regulatory changes to address this issue.

We request you consider on the attached paper for Cabinet and Ministerial consultation and recommend that the draft Cabinet paper is lodged for consideration at the DEV meeting of 14 September. There are risks to the delivery of the adventure activity changes before the pre-election period if we cannot meet the planned date of 14 September.

## Recommended action

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MBIE recommends that you:

- a **Consider and provide any feedback** on the attached draft Cabinet paper *Changes to the adventure activities regulatory regime*.

*No feedback / Feedback noted*

- b **Agree** to your Office beginning Ministerial consultation on the attached draft Cabinet paper, subject to any changes you request.

*Agree / Disagree*

- c **Note** that WorkSafe has identified a misalignment between the Adventure Activities Certification Scheme and Adventure Activities Regulations that it considers poses risk to the integrity of the regime.

*Noted*

- d **Note** MBIE does not consider that this issue requires urgent amendment to the Regulations.

*Noted*

Privacy

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

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Hon Michael Wood  
**Minister for Workplace Relations and Safety**

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## Background

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1. As part of the response to the 2019 Whakaari tragedy, MBIE conducted a targeted review of the adventure activities regulatory regime. This targeted review found that, while overall the regime was supporting improved safety standards, there were several areas that should be strengthened.
2. In late 2021 MBIE publicly consulted on possible changes to strengthen the adventure activities regime. We briefed you on the findings of this public consultation in December [2122-2154], and in April you agreed to progress MBIE's recommended package of changes [2122-3038].
3. This briefing provides you with a draft Cabinet paper (Annex One) and MBIE's regulatory impact statement (Annex Two) for this package of changes.
4. Alongside MBIE's regulatory review, WorkSafe have been undertaking work to review and strengthen its implementation of the adventure activities regime. One aspect of this programme of work has been a review of the New Zealand Adventure Activities Certification Scheme (the Scheme). The Scheme sets the standards organisations must meet to be recognised as safety auditors and the requirements for how safety audits are conducted.
5. In June, as part of the monthly reporting on the delivery of actions following the Independent Review of WorkSafe regarding activities on Whakaari, WorkSafe advised you of an issue identified in their review of the Scheme that would not be resolved by 1 July [2122-4680 refers]. WorkSafe also approached MBIE to advise that it considered a regulatory amendment was required to address this issue and requested MBIE consider adding these amendments to the package of regulatory changes being progressed.

## The draft Cabinet paper attached presents your previously agreed package of changes

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6. MBIE recommends you progress the package of changes previously agreed. Further discussion on the issue with the Scheme identified by WorkSafe is below.
7. The draft Cabinet paper *Changes to the adventure activities regulatory regime* is attached for your feedback (Annex One). As you agreed in April, the paper recommends a package of regulatory and non-regulatory changes to strengthen the adventure activities system:
  - Introducing specific requirements for operators to have processes to identify, assess and manage risks from natural hazards into the Safety Audit Standard for Adventure Activities.
  - Creating a specific regulatory duty for adventure activity operators to have processes in place to communicate risks to participants.
  - Adjusting the registration process and expanding the information operators are required to report to WorkSafe, both when registering and when near-miss incidents occur.
  - Providing WorkSafe expanded powers to refuse, suspend, cancel and add conditions to operator registrations where serious safety concerns arise.
  - Reviewing and updating guidance on good practice safety management in adventure activities.

8. MBIE consider these changes will provide clearer, more consistent standards for operators and support WorkSafe to take a stronger monitoring and enforcement role towards the sector, while avoiding any disproportionate new administrative or audit costs for operators.
9. The attached Regulatory Impact Statement (Annex Two) confirms that this package of changes is MBIE's recommended option.
10. We have consulted on the draft Cabinet paper with several agencies (including Treasury, MBIE Tourism Policy, the Ministry of Justice, NEMA, GNS Science and Maritime NZ) and no significant concerns with these proposals were noted.
11. In our April briefing on recommended changes, you asked whether we were confident that WorkSafe has robust processes in place to follow up and enforce in cases where operators refuse to register. WorkSafe has confirmed that it has developed new processes to take action when operators fail to register as required, which will ensure WorkSafe takes timely enforcement action. We have included in the Cabinet paper a brief section on WorkSafe's operational changes since the Whakaari eruption to help address any questions about WorkSafe's systems.

## **The Certification Scheme does not align with the Adventure Activities Regulations and WorkSafe consider this creates risk to the integrity of the regime**

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12. The current Scheme states that auditors have the power to withdraw or suspend audit certificates that they have issued to adventure activity operators. Under the Scheme, an auditor may withdraw or suspend a certificate where, for instance, the auditor becomes aware that the operator is seriously failing to meet the audit standard or to follow the conditions of their audit certificate.
13. However, the Adventure Activities Regulations do not specify that auditors have a function to withdraw or suspend certificates. This discrepancy has been present since the Scheme was first established in late 2015 but has been highlighted as a potential issue in WorkSafe's current review of the Scheme.
14. Audit certificates have a limited, specific role under the Adventure Activities Regulations. A party is required to have obtained an audit certificate to be eligible to be registered as an adventure activity operator. However, it is whether a party holds a current registration, not a current audit certificate, that determines if they are legally able to provide adventure activities. This means only WorkSafe as the Registrar has the power to cancel a business's registration to provide adventure activities. An auditor withdrawing an audit certificate does not have a legal effect under the Adventure Activities Regulations.
15. 

Legal professional privilege

[Redacted]

  - Legal professional privilege

[Redacted]

[Redacted]

[Redacted]

- Legally privileged  
[Redacted]
- [Redacted]
- [Redacted]

16. MBIE consider there is an additional risk with the current position. That is, if an auditor was to withdraw or suspend an audit certificate, but WorkSafe did not take action to restrict an operator’s activity, and a subsequent safety incident occurred, it could bring the Certification Scheme into disrepute as the auditor’s decision would have no legal consequence.
17. We also note that the Adventure Activity Regulations provide for a penalty for offering an adventure activity while an operation is not registered. This means that any operator misleading participants into believing the operator is legally able to operate adventure activities can be held to account by WorkSafe.

## Options considered to resolve the issue

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18. The misalignment between the Scheme and regulations could be resolved by either amending the Scheme to remove the provision that auditors can withdraw and suspend audit certificates, or by amending the Adventure Activities Regulations to specifically provide this function. From a regulatory framework perspective, both options are viable and would maintain a workable audit and registration framework. However, as discussed below, practical difficulties arise with both approaches.

*Amending the Certification Scheme to remove the ability of auditors to withdraw certificates is not viable due to the views of other system actors*

19. The current adventure activities regime relies on third-party system actors. Two independent companies (AdventureMark and Qualworx) perform the safety audits of adventure activity operators that are the central requirement of the regime. Assurance that auditors are conducting audits to an appropriate standard is provided by these audit providers being accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).
20. MBIE and WorkSafe have discussed with JAS-ANZ and audit providers their views, and likely response, if the power for auditors to withdraw and suspend certificates was removed from the Scheme.

21. JAS-ANZ consider the ability of auditors to withdraw and suspend audit certificates is integral to the Scheme. It believes that the removal of this provision from the Scheme would be a significant departure from the international audit standards upon which the Scheme is based, and which set best practice for auditing of management systems. JAS-ANZ have advised that if the power is removed it will no longer be prepared to act as the accreditation body for safety auditors.
22. Audit providers have indicated they would likely be prepared to continue providing adventure activity audits if their power to withdraw certificates was removed, noting that they had other options like cancelling their contracts with operators in cases of operator non-compliance. However, they consider the potential withdrawal of JAS-ANZ would be a major change that would require them to reconsider their risks and how adventure activity audits align with their business model (which are built around holding multiple JAS-ANZ accreditations).
23. Both audit providers indicated they strongly valued the independence of the current accreditation model. They considered that any alternative to JAS-ANZ accreditation would need to maintain the current standards of auditing quality and assurance, provide similar levels of technical capability and support for auditors, and to have minimal or no costs to them. The auditors did not consider WorkSafe to be a suitable alternative to JAS-ANZ due to their other roles as Registrar and regulator.
24. MBIE consider the adventure activities regime could continue functioning without JAS-ANZ involvement. JAS-ANZ accreditation is how WorkSafe has operationally chosen to assess and monitor the performance of safety auditors, rather than being a regulatory requirement. This means WorkSafe can instead elect to directly assess and monitor audit providers to provide assurance. The timeframes and resources that would be required for WorkSafe to develop the necessary systems are yet to be fully assessed. However, shifting to this model will place significant pressure upon WorkSafe and would be very difficult to achieve in the short to medium term (in part due to the need to build processes and practices similar to JAS-ANZ and to bring additional technical expertise inhouse).
25. Any WorkSafe-led accreditation system would also need to address the concerns raised by the safety audit providers, as the withdrawal of either of the two current safety audit providers would likely mean a significant number of operators would be unable to access the audits they require to legally operate. Developing a system acceptable to all parties may be difficult.
26. This option is not recommended due to the anticipated practical complexity and lengthy timeframe required to implement.

*Expanding the current package of regulatory changes to address this issue will result in significant delays*

27. As noted above, MBIE completed consultation on changes to the adventure activities regime in late 2021 and has prepared a draft Cabinet paper with recommended changes. Subject to any feedback from yourself and other Ministers, we consider this paper is ready to be lodged for Cabinet consideration.
28. As the discrepancy between the Scheme and Adventure Activities Regulations has not previously been raised by WorkSafe or any other party as an issue, MBIE have not consulted on options or included consideration of this matter in our impact analysis. As a result, the attached draft Cabinet paper does not include any recommended changes related to this matter.

29. Adding additional amendments to address this issue will result in significant delays before this package of regulatory change can be considered by Cabinet. Because withdrawing an authorisation will stop a business from operating, providing such a power to a third party (such as auditors) will need to be carefully considered. The significant effect of an authorisation being withdrawn also means there should be a high level of certainty and consistency in such decisions and opportunities for operators to challenge decisions.
30. While we have not yet done detailed planning, MBIE estimate at least two months would be required for MBIE to fully meet the consultation and impact analysis requirements of the Health and Safety at Work Act and Cabinet Manual before recommending regulatory change.
31. Such a delay may mean Cabinet Legislation Committee approvals will not be able to be obtained prior to the pre-election standdown period next year. This may require the implementation of new requirements to be delayed to mid to late 2024.
32. Having these new requirements in place by late 2023 is important as roughly 40 percent of currently registered operators are due to be audited between September and December 2023. Missing this timing would mean this group of operators will not be fully audited against new requirements for a further three years.

## **MBIE consider the Scheme issue identified by WorkSafe is best addressed in the full review of the Adventure Activities Regulations beginning in 2026**

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*MBIE agree there is some risk in the status quo, but do not consider there is an urgent need for amendment that would justify this delay*

33. [REDACTED] Legal professional privilege [REDACTED] We also agree that addressing this issue through amending the Scheme does not appear viable, given JAS-ANZ's position. However, we do not consider there is an urgent need for this issue to be resolved by legislative change.
34. Both JAS-ANZ and auditing providers indicated they were satisfied with the current status quo regarding auditors being able to withdraw certificates and did not see a need for change. Audit providers indicated they clearly understood that withdrawing a certificate did not stop operators from providing adventure activities and that, where they observed serious issues in operator's performance, they were required to escalate these concerns to WorkSafe for action.
35. Audit providers also noted the power to withdraw certificates was rarely used. One audit provider reported they currently had two operator certificates suspended, while the other provider reported they had not suspended any certificates for at least a year (with the exception of businesses voluntarily in hibernation).
36. MBIE also note the misalignment between the Scheme and Regulations has existed since late 2015, and we are unaware of any concerns raised by operators about auditors withdrawing audit certificates.
37. MBIE agree that, ideally, the Adventure Activities Regulations should more clearly specify the powers of auditors and provide a clear legal consequence for an audit certificate being suspended or withdrawn. However, these changes are not critical to the audit and registration system being able to function.
38. MBIE recommend any amendments regarding auditor powers are deferred until the full review of the Adventure Activities Regulations scheduled to begin in 2026, rather than delaying the current package of regulatory changes to address this issue. This will allow the consideration of this issue to be made in the context of a full examination of the role of third-

party auditors in the regime. It will also allow the current package of changes to address the weaknesses in the regime identified in MBIE's 2020 targeted review to be implemented by late 2023, as intended [2122-2154].

39. [REDACTED] Legal professional privilege [REDACTED]  
[REDACTED]  
[REDACTED] MBIE consider this to be tenable.

## WorkSafe comment

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40. WorkSafe have provided the following comment:

- [REDACTED] Legal professional privilege [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- While the situation we're seeking to resolve is difficult, we appreciate the importance of the package of amendments MBIE is progressing. We support these amendments, and we want them to proceed.
- [REDACTED] Under active consideration [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] We will keep MBIE informed as this work as it continues and will provide you with a further update once the matter has been resolved.

## Next steps

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41. We suggest you consider and provide any feedback on the draft Cabinet paper by 18 August. MBIE will adjust the paper as required and provide an updated version for your Office to begin Ministerial consultation on 22 August.
42. We recommend that this paper is lodged for consideration at the DEV meeting of 14 September.
43. Obtaining policy decisions in mid-September will allow us to keep our existing timetable with PCO for an exposure draft to be completed by December. This will allow us to begin consulting with stakeholders on the draft amendments to the Adventure Activities Regulations this year. However, if DEV consideration is delayed more than a week, the exposure draft consultation will likely need to be delayed until 2023. This will place pressure on whether we can obtain LEG approvals before June 2023.



44. Our timeline for delivery is outlined below:

<b>Milestone</b>	<b>Current timeframe</b>
Ministerial consultation on draft Cabinet paper	22 Aug – 5 Sept
Cabinet policy decisions	14 Sept
Drafting of regulations	19 Sept – 2 Dec
Consultation on exposure draft of regulations	5 Dec – 17 Feb 2023
Finalise drafting	20 Feb – 6 Mar
Cabinet LEG decisions	Apr 2023
Revised Safety Audit Standard published (WorkSafe)	Apr 2023
Changes come into effect	Aug 2023

## **Annexes**

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Annex One: Draft Cabinet paper *Changes to the adventure activities regulatory regime*.

Annex Two: Regulatory Impact Statement *Changes to the adventure activities regulatory regime*.



## BRIEFING

### Adventure Activities: release of exposure draft

<b>Date:</b>	23 February 2023	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-2277

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Agree</b> to consult with the Minister of Tourism and Prime Minister's Office on releasing the attached exposure draft of adventure activities regulations for public consultation  <b>Agree, subject to Ministerial consultation,</b> to the release of the draft regulations for public consultation	2 March 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Policy	Privacy of natural persons	Privacy of natural persons	✓
Izzy Tarawa-Bailey	Graduate Policy Advisor, Health and Safety Policy	Privacy of natural persons	-	

The following departments/agencies have been consulted
WorkSafe New Zealand, MBIE Tourism Policy

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

**Comments**



# BRIEFING

## Adventure Activities: release of exposure draft

Date:	23 February 2023	Priority:	High
Security classification:	In Confidence	Tracking number:	2223-2277

### Purpose

This briefing seeks your agreement to release an exposure draft of amendments to the *Health and Safety at Work (Adventure Activities) Regulations* and associated commentary for public consultation, subject to ministerial consultation.

### Executive summary

In September 2022 Cabinet agreed to introduce a package of regulatory and non-regulatory changes to the adventure activities regulatory regime. These changes include a number of amendments to the *Health and Safety at Work (Adventure Activities) Regulations 2016*.

To support the development of these amendments Cabinet authorised you to, following consultation with the Minister of Tourism and other relevant portfolio Ministers, approve the release of an exposure draft of the amendment regulations for public feedback.

The Ministry of Business, Innovation and Employment (MBIE) and the Parliamentary Counsel Office (PCO) have now developed a draft of the regulations we consider appropriate for public consultation. The exposure draft will allow the sector to provide feedback on the workability of new regulatory requirements before they are finalised, to help ensure the draft amendments will meet the policy intent.

Legal professional privilege

We consider that there is likely to be limited public interest in this consultation given the limited attention the announcement of these policy changes received in October 2022. We expect that only parties directly involved in the adventure activities regime, such as activity operators and auditors, are likely to submit. However, given the association of the adventure activities review with the Whakaari tragedy, the consultation may receive broader attention. We have attached a communications approach as Annex One that includes key messages in response to questions that may arise.

In addition to the Minister of Tourism we recommend your office consults on the public release of this exposure draft with Prime Minister's Office. We consider this sufficient to meet Cabinet expectations about consulting relevant portfolio Ministers.

Subject to your approval, we suggest releasing the exposure draft for consultation on 6 March, with consultation running until 3 April. We consider a four-week period sufficient given the small package of amendments, the targeted sector, and that parties were extensively consulted on the policy proposals in 2021. We expect a final version of these amendments will be ready for Cabinet LEG consideration in early June 2023.

## Recommended action

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

- a **Note** that in September 2022 Cabinet agreed to a package of regulatory and non-regulatory changes to the adventure activities regulatory regime  
*Noted*
- b **Note** that, to support the development of regulatory amendments, Cabinet authorised you to approve and release an exposure draft of the regulations and related commentary for public consultation, following consultation with the Minister of Tourism and other relevant portfolio Ministers  
*Noted*
- c **Note** that MBIE and Parliamentary Counsel Office have developed an exposure draft of amendment regulations to give effect to Cabinet's decisions, and MBIE recommend this draft is released for public consultation  
*Noted*
- d **Agree** to consult with the Minister of Tourism and Prime Minister's Office on the proposed release of the exposure draft for consultation  
*Agree / Disagree*
- e **Agree, subject to this consultation**, to the release of the adventure activities draft regulations and the associated consultation guide as attached in Annex Two and Three, for public consultation in March 2023.  
*Agree / Disagree*

Hayden Fenwick  
**Manager, Health and Safety Policy**  
Workplace Relations and Safety, MBIE

23 / 02 / 2023

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

..... / ..... / .....

## Cabinet has agreed to a package of regulatory and non-regulatory changes to the adventure activities regime

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1. The 2019 Whakaari tragedy called into question whether New Zealand's current system for regulating safety in adventure activities is both fit for purpose and providing assurance that safety is consistently being managed well.
2. Following the tragedy the MBIE conducted a targeted review of the regulatory regime for adventure activities. This review found that, while overall the regime was working to improve safety standards, there were opportunities to strengthen the regime to improve:
  - how risks from natural hazards were managed
  - the process for auditing adventure activity operators' safety systems
  - the role of the regulator.
3. In late 2021 MBIE publicly consulted on possible changes to the adventure activities regime to address these areas.
4. In September 2022 Cabinet agreed to several changes to the adventure activities regime, informed by the public consultation [DEV-22-MIN-0222 refers]. Key changes agreed were to:
  - introduce specific requirements for natural hazard risk management
  - strengthen requirements to communicate risks
  - strengthen registration and notification requirements
  - review and update adventure activity safety guidance.
5. These changes require a number of amendments to the *Health and Safety at Work (Adventure Activities) Regulations 2016*, as well as changes to the Adventure Activities Safety Audit Standard and guidance materials published by WorkSafe.
6. To support the development of regulatory amendments, Cabinet authorised you to, following consultation with the Minister of Tourism and other relevant portfolio Ministers, approve and release an exposure draft of regulations giving effect to Cabinet's decisions and related commentary for public consultation.
7. Consulting on an exposure draft will allow MBIE to get public feedback on matters of technical wording in the regulations before they are finalised. This will help ensure the workability of final requirements and that the amendments will achieve their policy intent. We consider this feedback will be of particular value in this package of change given some amendments require describing technical information specific to the sector, such as identifying high-risk incidents.
8. Consulting on an exposure draft is also consistent with the high public transparency approach that has been applied to the review of the adventure activities regime and other work associated with the Whakaari tragedy.

## The draft regulations are ready for consultation

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9. MBIE and PCO have completed a draft of the amendment regulations for release for consultation.

### Content of the draft amendment regulations

10. A copy of our draft consultation guide and the exposure draft of the amendment regulations are attached as Annexes Two and Three.
11. The draft regulations make amendments in five main areas:
- a. Creating a **new regulatory duty that operators must take all reasonable steps to communicate the serious risks** associated with an activity to prospective participants (new regulation 8A).
  - b. Establishing **new processes for registration** that require operators to register directly with the Registrar (rather than indirectly through auditors) and to provide more detailed information upon registration (regulations 7-7G).
  - c. Giving the **Registrar greater powers to decline, suspend, cancel and add conditions** to adventure activity operators' registrations where serious safety concerns arise (regulation 7 and 7H-7L).
  - d. Providing **operators rights to request reviews of and appeal** Registrar decisions about their registration (regulations 18-18D).
  - e. Introducing **new requirements for operators to notify WorkSafe of near-misses** from natural hazards and other high-risk incidents in adventure activities (regulations 8B-8D and 19A-19B).
12. In addition, the amendment regulations make a number of minor changes to modernise requirements and update language.

### *Feedback from the sector and technical experts will benefit key areas*

13. Key areas that we intend to request feedback on are whether:
- our suggested **descriptions of “notifiable incidents”** accurately capture key examples of near-miss incidents where people have been put at serious risk, and do not require operators to unnecessarily notify WorkSafe of situations that are not high risk
  - our suggested **penalty fines** for new offences are appropriate, such as failing to take reasonable steps to inform prospective activity participants of serious risks and failing to notify WorkSafe of near misses from natural hazard events. These suggested penalties have not previously been consulted on, however, these have been developed within the Health and Safety at Work offence and penalty framework previously agreed by Cabinet
  - the suggested **three-month commencement period** is workable for operators. We have proposed requirements come into effect in September 2023 to allow for the new requirements to be in effect when approximately 40 per cent of operators are due to be reaudited in late 2023, obtaining operator feedback will be valuable in confirming this timeframe is viable
  - the **new registration process** is workable for operators and auditors, and whether the wording of the expanded Registrar powers and new operator duties is appropriate.

## The risks of releasing this draft for consultation are low

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### Legal professional privilege

*These changes will only cause minor costs to most operators*

16. The overall costs of these regulatory changes will be low for most adventure activity operators. Changes are largely administrative or focus on clarifying and reinforcing existing obligations, rather than representing a significant expansion of requirements.
17. Operators will incur some minor costs in adjusting their administrative systems to meet new requirements, such as ensuring their risk communication practices meet the requirements of the new regulatory duty, familiarising themselves with the strengthened registration process and adjusting their reporting systems to meet notification requirements. We also expect there will be some minor increases in audit costs due to audits assessing operator's risk communication and natural hazard monitoring in more detail, which have been estimated to be in the range of a 5-15 per cent increase in current audit costs (an increase of approximately \$400-\$1200 per year for an average operator).
18. The package of changes being progressed in these amendment regulations does not include options consulted on in 2021 that the sector indicated would create costs grossly disproportionate to any safety gains, such as proposals to impose additional duties on landowners.

*While broad public interest is unlikely, the link with the Whakaari tragedy could generate some attention*

19. Given this consultation focuses on the technical wording of regulations, we consider it unlikely any broad public interest will be generated. We expect parties providing comment will be limited to adventure activity operators, auditors and other technical experts. We note that the announcement of these changes in October 2022 received relatively little public attention.
20. However the association of the adventure activities regulations with the Whakaari tragedy means some media attention may arise regarding this consultation, particularly as WorkSafe's prosecutions in July regarding activities on Whakaari approach.
21. **Annex One** provides our intended communications approach, including key messages in response to questions regarding this work. Topics that may come up, addressed in the key messages, include whether this package of changes suggests the regulatory regime in place at the time of the Whakaari tragedy was deficient, whether these changes are sufficient to support safety in the sector, and why a Royal Commission of Inquiry into the Whakaari tragedy has not occurred.

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<sup>1</sup> Per Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown (CO (19) 2).



## **Consulting with the Minister of Tourism and Prime Minister's Office**

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22. As part of the September 2022 decisions Cabinet authorised you to, following consultation with the Minister of Tourism and other relevant portfolio Ministers, approve the release of an exposure draft of the amendment regulations for public feedback.
23. We do not consider there are any relevant portfolios other than Tourism likely to have an interest in this exposure draft release and requiring consultation. However, we recommend that you consult with the Prime Minister's Office prior to release, given it has previously indicated an interest in the progress of this work. The offices of the Minister of Tourism and Prime Minister were the only parties that provided comment during Ministerial consultation on the Cabinet policy paper regarding these changes in September.
24. The version of the regulations in **Annex Three** is still subject to ongoing drafting refinements, and final quality checks from PCO. As a result, there may be minor changes not related to substantive policy issues. We do not anticipate any issues from using this version for Ministerial consultation.

## **WorkSafe is continuing work to strengthen the adventure activities regime**

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25. As part of the package of changes agreed by Cabinet WorkSafe is developing and updating guidance materials and updating the Safety Audit Standard for Adventure Activities. This work is necessary to support regulatory changes and the components of the package will work together to support better health and safety outcomes within the Adventure Activities sector. Updates on key elements of this work are provided below.

*An updated version of the Audit Standard is expected to be released in April*

26. WorkSafe consulted on proposed changes to the Safety Audit Standard for Adventure Activities from 19 October to 25 November 2022. The main changes proposed focused on introducing specific requirements to assess and manage natural hazard risks, and to provide detailed requirements for what information about risks should be provided to prospective participants and how this risk communication should occur.
27. WorkSafe received a total of 30 submissions from industry peak bodies and associations, safety audit bodies, operators, and technical advisors/consultants. Submission analysis was completed in late January.
28. Work is now underway to finalise the revised Audit Standard with a view to securing approval for release in April 2023.

*Work on new Activity Safety Guidelines and Guidance is due to begin in March*

29. WorkSafe's Guidance Products team is working in collaboration with industry to identify the priority list for updating the Activity Safety Guidelines. Substantive work on these guidelines will begin in March 2023.
30. Other guidance products to support this change, such as guidance on good practice management of natural hazard risks, is being worked on at the same time.

*A new version of the Adventure Activities Certification Scheme has now been published*

31. A new version of the New Zealand Adventure Activities Certification Scheme, which sets requirements relating to the recognition of auditors and the auditing process, was issued by WorkSafe on 30 January.

32. This new version of the Scheme aims to ensure the technical competency table for audit team personnel is up-to-date and fit-for-purpose, which will ensure several of the recommendations in the 2021 Independent Review of WorkSafe regarding activities on Whakaari are addressed.
33. Audit bodies have until 28 April 2023 to return a signed self-declaration to the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) attesting they have taken a range of actions to fully comply with the transition.<sup>2</sup> JAS-ANZ will then verify their implementation as part of their next scheduled assessments of the audit organisations.

## Next steps

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34. If you agree to proceed with consultation on the exposure draft, we intend to begin consultation immediately.
35. We intend for consultation to run for four weeks, from approximately 6 March to 3 April. While this is a short timeframe for consultation, we consider it is workable given the relatively small amount of content in the amendment regulations and that parties were extensively consulted on policy proposals in 2021.
36. Our intention is to have a final version of the amendment regulations ready to be presented to Cabinet LEG Committee by early June, allowing, subject to the feedback received in this consultation, changes to come into effect in September 2023. A timeline of this process is provided below:

Milestone	Date
Ministerial consultation	23 February - 2 March
Exposure draft released	6 March – 3 April
Regulations finalised	3 – 18 April (if necessary, can be extended and run in parallel with consultation)
Agency consultation on LEG paper	19 April – 4 May
Ministerial consultation	9 – 23 May
Consideration by the Cabinet Legislation Committee	1 June
Cabinet decision	6 June
Implementation	September 2023

<sup>2</sup> JAS-ANZ supports WorkSafe's recognition of auditing bodies by accrediting auditors' against the Certification Scheme and monitoring their compliance with its requirements.



## BRIEFING

### Amendments to the Adventure Activities Regulations – Updated LEG paper for secondary Ministerial consultation

<b>Date:</b>	11 July 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-4320

Action sought		
	Action sought	Deadline
Hon Carmel Sepuloni <b>Minister for Workplace Relations and Safety</b>	<b>Agree</b> that the Amendment Regulations should commence in April 2024  <b>Agree</b> to circulate the attached draft LEG paper and the Amendment Regulations for secondary Ministerial consultation  <b>Agree</b> to lodge the finalised Amendment Regulations and LEG paper on 20 July for consideration by LEG on 27 July	18 July 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Policy	Privacy of natural persons	Privacy of natural persons	✓
Izzy Tarawa-Bailey	Policy Advisor, Health and Safety Policy	Privacy of natural persons		

The following departments/agencies have been consulted
WorkSafe New Zealand

- 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

## Amendments to the Adventure Activities Regulations – Updated draft LEG paper for secondary Ministerial consultation

<b>Date:</b>	11 July 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-4320

### Purpose

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To provide you with advice on the commencement date for the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023* (Amendment Regulations). This paper also attaches an updated LEG paper and the Amendment Regulations for Ministerial consultation.

### Recommended action

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

- a **Note** in September 2022 Cabinet agreed to a package of changes to the adventure activities regulatory regime, and the attached Amendment Regulations will implement the regulatory parts of this agreed package  

*Noted*
- b **Note** the 2022 DEV Cabinet decisions authorised the Minister for Workplace Relations and Safety to make changes to decisions, consistent with the proposals in the recommendations, on any issues that arise during the drafting process  

*Noted*
- c **Agree** that the Amendment Regulations should commence in April 2024  

*Agree / Disagree / Discuss*
- d **If you agree to recommendation c, agree** to circulate the updated draft LEG paper “*Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*” and the Amendment Regulations to your Ministerial colleagues for secondary consultation  

*Agree / Disagree*
- e **Note**, subject to feedback from Ministerial consultation, MBIE and the Parliamentary Counsel Office will finalise the Cabinet paper and Amendment Regulations and provide an updated version to your office  

*Noted*

f **Agree, subject to minor changes as identified in e**, to lodge the finalised Amendment Regulations and LEG paper on 20 July for consideration by LEG on 27 July

*Agree / Disagree*

Hayden Fenwick  
**Manager, Health and Safety Policy**  
Labour, Science and Enterprise, MBIE

11 / 07 / 2023

Hon Carmel Sepuloni  
**Minister for Workplace Relations and Safety**

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## **Cabinet has agreed to changes to the adventure activities regulatory regime, in response to reviews following the Whakaari tragedy**

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1. Following the 2019 Whakaari tragedy a number of reviews were undertaken of the system for regulating safety in adventure activities. These included a targeted review of the regulatory regime by MBIE, focusing on whether there were weaknesses existing in the system for management of natural hazard risks and whether targeted changes could strengthen the system.<sup>1</sup>
2. The key finding of this targeted review was that, while the implementation of the adventure activities regulatory system in 2014 was working to improve safety outcomes, there were several key weaknesses in the system that should be addressed.

### *Safety in adventure activities is primarily regulated through the Health and Safety at Work system*

3. Sector-specific requirements for adventure activities are provided through the *Health and Safety at Work (Adventure Activities) Regulations 2016* (the Adventure Activities Regulations). The key requirement of these regulations is that all adventure activities operators must undergo a safety audit at least once every three years and register their operations with WorkSafe.
4. The “adventure activities” that are subject to these regulations are educational or recreational activities that are provided for payment, involve the participant being guided or assisted in the activity and deliberately expose participants to some serious risk (such as dangerous terrain or waters). This definition includes activities like guided mountaineering, diving, kayaking and canyoning. There are a number of exclusions to this definition, including activities provided by schools to their students, and activities regulated under the maritime or aviation safety systems (eg jetboating and skydiving).
5. Operators and other parties involved in activities (such as landowners) also have general responsibilities under the *Health and Safety at Work Act 2015*. This includes the primary duty to ensure, so far as is reasonably practicable, the health and safety of their workers and other persons (such as customers) is not placed at risk by their work.

### *Cabinet in September agreed to a package of changes to address issues identified in the adventure activities regime*

6. In September 2022, Cabinet agreed to a package of changes to address the issues identified by MBIE’s targeted review [DEV-22-MIN-0222 refers]. The key aspects of this package were:
  - a. Introducing specific requirements for adventure activity operators to monitor and assess risks from natural hazards
  - b. Strengthening requirements for operators to communicate risks to prospective activity participants
  - c. Strengthening registration and notification requirements
  - d. Reviewing and updating adventure activity safety guidance.

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<sup>1</sup> Other notable reviews were an Independent Review of WorkSafe’s performance of its functions regarding activities on Whakaari conducted by David Laurenson KC in 2021, and internal reviews by WorkSafe of its operational systems regarding adventure activities. The recommendations of the Independent Review have all been implemented by WorkSafe, and WorkSafe has implemented an ongoing programme of work to strengthen its operationalisation of authorisation regimes including adventure activities.

7. Implementing these changes involves both changes to the Adventure Activities Regulations (to implement the new registration, notification and risk communication requirements) and changes to non-regulatory instruments by WorkSafe, like the Safety Audit Standard for Adventure Activities and guidance materials (including the introduction of specific natural hazard assessment requirements).

## **The attached Amendment Regulations implement the regulatory aspects of this package of change**

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8. Since September 2022, MBIE has been working with Parliamentary Counsel Office to draft Amendment Regulations that will implement the regulatory aspects of the package agreed by Cabinet.

### **Content of the Amendment Regulations**

9. The attached draft regulations consist of four main parts:
  - a. **New regulations 6A-7V** establish the new registration process and expanded powers for the Registrar to decline, suspend, cancel and add conditions to registrations, where serious safety issues arise
  - b. **Regulation 8A** establishes a duty for adventure activities operators to take all reasonable steps to communicate to people seeking to take part in an activity the serious risks that they may be exposed to
  - c. **Regulations 18-18D** introduce rights for operators to request reviews and appeal to the District Court decisions by the Registrar
  - d. **Regulations 19A-19B** expands the definition of notifiable incident, injuries and illnesses that are required to be notified to WorkSafe under the Health and Safety at Work Act, to include where a person is exposed to serious risk associated with hazards when participating in an adventure activity, such as risks associated with natural hazards or failures of safety critical equipment.
10. Further minor changes are being made to finalise the Amendment Regulations. The Amendment Regulations will additionally need to complete PCO's quality assurance process. We expect these final steps to be completed prior to lodgement on 20 July.

### **Previous consultation on the Amendment Regulations**

11. A public consultation targeted towards the adventure activities sector on an exposure draft of these regulations was conducted in March-April this year. Only minor adjustments were required to drafting as a result of this feedback.
12. In May we circulated a draft Cabinet paper and regulations to the Ministry of Justice, MBIE Tourism Policy, MBIE Small Business Policy, and the Department of the Prime Minister and Cabinet (DPMC) for comment. No significant feedback was received.
13. Ministerial consultation on the LEG paper only was conducted by the previous Minister for Workplace Relations and Safety's Office from 12 to 21 June. No comments were received.

## **A change has been required to our recommended commencement date since Ministerial consultation**

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14. Our previous intention was for these changes to the Adventure Activities Regulations, along with WorkSafe’s corresponding changes to the Safety Audit Standard, to commence in September this year. This planned timing was referred to in the previous version of the draft LEG paper circulated for Ministerial consultation.
15. A large proportion (approximately 40 percent) of currently registered adventure activity operators are due to have their operations re-audited and re-registered between September and December this year. The proposed September commencement was intended to ensure that these re-audits included assessing operators against the new requirements introduced in this package.
16. However, further information from discussions between safety auditors and WorkSafe has indicated that this intended implementation will not be workable. In response to this upcoming surge in workload, safety audit providers have begun preparing and conducting audits for this group of operators from June, earlier than previously anticipated. This means it is no longer viable for changes to be introduced as part of this audit cycle, as it will not allow sufficient time for safety auditors and operators to familiarise themselves with the updated requirements and operators to make the necessary changes to their systems.

### *We recommend moving commencement of these changes to April 2024*

17. Given this feedback, we recommend shifting the commencement date for these changes to April 2024. This will place commencement after the peak summer season for operators, avoiding creating a new administrative burden on operators while they are already under business pressure.
18. Operators also undergo an interim “surveillance” audit (generally a paper-based, rather than on-site audit) a year following their full re-registration audit. While the large group of operators re-registering this year cannot be assessed against the new requirements as part of their re-registration audits, under an April 2024 commencement timing they will still have their systems proactively checked for compliance with the new requirements by auditors as part of surveillance audits in mid-late 2024.
19. WorkSafe has indicated that shifting to an April 2024 commencement date is its preferred option. WorkSafe will publish the revised version of the Safety Audit Standard for Adventure Activities in August 2023 to commence in April 2024, alongside these amendments.
20. MBIE has discussed the shift of commencement date with your office, which has signalled a preference to run a secondary truncated Ministerial consultation with the updated LEG paper and the Amendment Regulations, should you agree to this amendment.

### *Continuing with a 11 September 2023 commencement is not preferred*

21. Alternatively, we could continue to progress the Amendment Regulations for a September 2023 commencement, but this option is not preferred. As noted above, most operators due to re-register this year will now reportedly be audited prior to this date, meaning the previously projected compliance benefits of this earlier commencement will not arise. While operators could be required to re-register under the new registration process being introduced, this would be a solely administrative change rather than having any substantive safety impacts.
22. Additionally, this shorter commencement would place some administrative pressure upon operators to make updates to their systems and safety management plans to ensure they comply with new requirements. Public consultation on the draft regulations earlier this year



proposed operators would have around three months after the regulations were passed to comply, which was seen as acceptable to most submitters. However, due to the extensions to consultation and delays to drafting that have since occurred, a September commencement would now mean operators only have five to six weeks to comply.

## Risks and mitigations

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23. Overall, we consider the risks associated with progressing this package to be low, including the proposed change to the commencement date. These changes have been well signalled, with policy decisions announced last year, and have been extensively consulted on (including an exposure draft being released earlier this year). However, recent and upcoming events associated with adventure activities mean some media attention may be given to these changes.

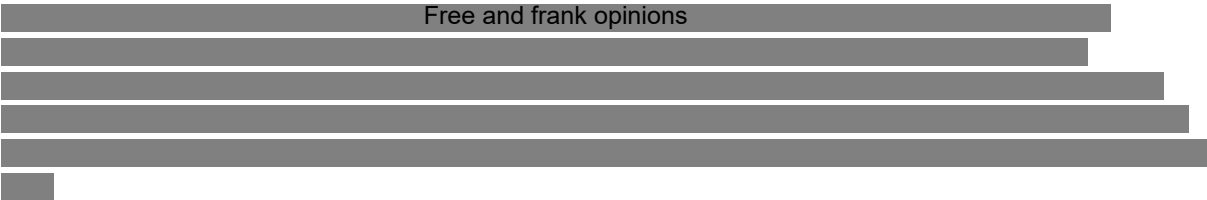
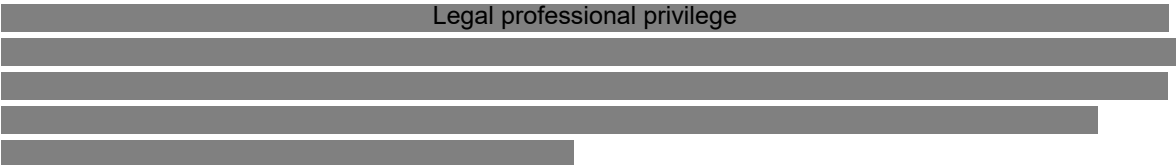
### Abbey Caves tragedy

24. On 9 May a Whangarei Boy's High School student died during a caving expedition at Abbey Caves.
25. While guided caving expeditions can be subject to the Adventure Activities Regulations, based on current information it does not appear the group involved in the Abbey Caves tragedy were within the scope of the regulations<sup>2</sup>. This is because activities provided by a registered school to their students are excluded from the definition of an "adventure activity" that is subject to these Regulations (and so the school was not subject to requirements to undergo safety audits and register their operations with WorkSafe).
26. However, the school Board of Trustees is a Person Conducting a Business or Undertaking (PCBU) subject to the general requirements of the Health and Safety at Work Act. Notably this includes the primary duty to ensure, so far as is reasonably practicable, their work does not put the health and safety of their workers or other persons (including their students) at risk.
27. These amendments will not have any direct relevance to the Abbey Caves tragedy as the changes only affect businesses and operations that are already subject to the Adventure Activities Regulations. Changes to the definition of "adventure activities" that fall under the regulations was specifically excluded from the scope of this review when it began in 2020.
28. Investigations into the Abbey Caves tragedy are underway by WorkSafe and the Police (on behalf of the Coroner). WorkSafe has up to 12 months to complete an investigation and determine if charges will be laid. WorkSafe also issued Whangarei Boy's High School Board of Trustees both an improvement notice, requiring the school to review its outdoor education systems (the initial compliance date was by 14 June 2023, the due date has subsequently been amended to 14 July 2023), and a prohibition notice, prohibiting activities defined in the school's Education Outside the Classroom (EOTC) management procedures as occurring in higher-risk environments until WorkSafe is satisfied that risks can be safely managed. WorkSafe is engaging with Whangarei Boys High School Board of Trustees as they work towards compliance. Currently the improvement notice and the prohibition notice remain in place.

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<sup>2</sup> Note: the non-technical caving activity undertaken by the school (NZQA 448) does not appear to be an Adventure Activity as specified by the Adventure Activities Regulations 2016 due to the following exclusion:  
"An adventure activity does not include an activity provided by a registered school or a tertiary education provider to—  
a student of the school or provider"

## Whakaari prosecutions

29. WorkSafe laid charges against 13 parties regarding activities on Whakaari in November 2020. Since then, three helicopter tour operators (Volcanic Air Safaris Ltd, Aerious Ltd, and Kahu NZ Ltd, July 2023), and two operators that took tourists to the island (Inflite Charters Ltd. in March 2022 and White Island Tours Ltd. in June 2023) have pleaded guilty. Charges against NEMA were dismissed in May 2022, and GNS Science in October 2022 had one charge dismissed (with WorkSafe’s consent) and plead guilty to the remaining charge in May 2023.
30. The substantive trials for the six remaining defendants being prosecuted by WorkSafe regarding activities on Whakaari began on 10 July, and have been set down for four months.
31. The Adventure Activities Regulations are not directly engaged by these prosecutions, as all parties are solely being prosecuted for alleged breaches of the Health and Safety at Work Act, not the regulations.
32.  Free and frank opinions
33.  Legal professional privilege
34. Some media attention may be applied to these regulatory changes as a result of broader coverage relating to the prosecutions, either if parties make reference to the review of the adventure activities regulatory regime or generally from these changes being part of the Government’s programme of work triggered by the 2019 Whakaari tragedy.

## These changes will only incur minor costs to most operators

35. The overall costs of these regulatory changes will be low for most adventure activity operators. Changes are largely administrative or focus on clarifying and reinforcing existing obligations, rather than representing a significant expansion of requirements.
36. Operators will incur some minor costs in adjusting their administrative systems to meet new requirements, such as ensuring their risk communication practices meet the requirements of the new regulatory duty, familiarising themselves with the strengthened registration process and adjusting their reporting systems to meet notification requirements. We also expect there will be some minor increases in safety audit costs due to audits assessing operator’s risk communication and natural hazard monitoring in more detail, which have been estimated to be in the range of a 5-15 percent increase in current audit costs (an increase of approximately \$400-\$1200 per year for an average operator).
37. The package of changes does not include options consulted on in 2021 that the sector indicated would create costs grossly disproportionate to any safety gains, such as proposals to impose additional duties on landowners.

## Next steps

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38. Following the proposed second round of Ministerial consultation, MBIE will amend the LEG paper and Amendment Regulations to incorporate any feedback received ahead of lodgement on Thursday, 20 July 2023.
39. The paper and regulations will then be considered by LEG on Thursday, 27 July 2023, and by Cabinet and Executive Council on Monday, 31 July 2023.
40. If there are delays and this is not considered by LEG on 27 July the timing for this would have to be shifted, potentially until after the election. There is risk in this being pushed to August and not making the LEG agenda, this also will not meet the criteria to be considered by CBC in September.

Milestone	Timing
Lodge Cabinet LEG paper	20 July
Considered by LEG	27 July
Cabinet and Executive Council decisions	31 July
Gazetted	4 August
Come into force	1 April 2024

41. The previous Minister's Office indicated a press release would not be required for these regulations being approved. If this is also your preferred approach, MBIE and WorkSafe will communication with the adventure activities sector advising them of these changes.
42. Reactive messaging and talking points for the LEG meeting will be provided to your office closer to the time.

## **Annexes**

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Annex One: Draft updated LEG paper – *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*

Annex Two: *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*



## BRIEFING

### Adventure activities – draft LEG paper for ministerial consultation

<b>Date:</b>	6 June 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-3994

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Agree</b> to circulate the attached draft LEG paper and regulations for Ministerial consultation	7 June 2023

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Policy	Privacy of natural persons	Privacy of natural persons	✓
Nick Mercer	Senior Policy Advisor, Health and Safety Policy	Privacy of natural persons		

The following departments/agencies have been consulted
WorkSafe New Zealand

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

**Comments**



# BRIEFING

## Adventure activities – draft LEG paper for ministerial consultation

<b>Date:</b>	6 June 2023	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2223-3994

### Purpose

To provide you with a draft Cabinet Legislation Committee (LEG) paper *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023* and draft Regulations for Ministerial consultation.

### Recommended action

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

- a **Agree** to circulate the draft LEG paper “*Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*” and draft regulations to your Ministerial colleagues for consultation

*Agree / Disagree*

- b **Note** that we intend these regulations to be presented to LEG for consideration on 29 June

*Noted*

- c **Note**, subject to feedback from Ministerial consultation, MBIE and the Parliamentary Counsel Office will finalise the Cabinet paper and amendment regulations

*Noted*

Hayden Fenwick  
**Manager, Health and Safety Policy**  
Workplace Relations and Safety, MBIE

06 / 06 / 2023

Hon Michael Wood  
**Minister for Workplace Relations and Safety**

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## In September Cabinet agreed to a package of changes to the adventure activities regulatory regime

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1. In September 2022 Cabinet agreed to a package of changes to the Adventure Activities regulatory regime. These changes aim to address some of the weaknesses identified in the regulatory regime in reviews conducted following the 2019 Whakaari tragedy.
2. The key changes agreed were to:
  - introduce specific requirements for how adventure activity operators must assess and manage natural hazard risks
  - strengthen requirements for operators to communicate risks to activity participants
  - introduce stronger registration and notification requirements
  - review and update adventure activity safety guidance.
3. Implementing this package of change requires both
  - a. amendments to the *Health and Safety at Work (Adventure Activities) Regulations 2016*, to adjust registration and notification requirements and introduce a risk communication duty, and
  - b. changes to non-regulatory instruments such as the New Zealand Safety Audit Standard for Adventure Activities and guidance materials published by WorkSafe, to introduce natural hazard risk management requirements and update adventure activity guidance.

### Content of the regulations

4. The attached draft regulations consist of four main parts:
  - a. **New regulations 6A-7Q** establish the new registration process and expanded powers for the Registrar to decline, suspend, cancel and add conditions to registrations, where serious safety issues arise
  - b. **Regulation 8A** establishes a duty for adventure activities operators to take all reasonable steps to communicate to people seeking to take part in an activity the serious risks that they may be exposed to
  - c. **Regulations 18-18D** introduce rights for operators to request reviews and appeal to the District Court decisions by the Registrar
  - d. **Regulations 19A-19B** expands the definition of notifiable incidents and injuries that are required to be notified to WorkSafe under the Health and Safety at Work Act, to include where a person is exposed to serious risk in an adventure activity by some of the key hazards in the sector, such as natural hazards or failures of safety critical equipment.
5. Further minor changes are still necessary to finalise these regulations, with some minor issues relating to definitions and the Registrar's power to amend registrations (reg 7F) still to be resolved and Parliamentary Counsel Office quality assurance processes yet to be completed. However, we consider that this version of the regulations provides an effective overview of the intended changes for consultation.

## Exposure draft consultation

6. MBIE conducted a public consultation on an exposure draft of the amendment regulations between 14 March and 18 April. 21 submissions were received (with two late submissions). Submissions were predominantly from operators and industry associations, with one each received from a tourism business advisor and safety audit provider.
7. Only minor adjustments to drafting were required as a result of this feedback. Key themes that emerged were:
  - a. **Several questions were raised about how the risk communication duty** would function in practice, particularly where operators sold packages to participants via third parties. We consider the current drafting that operators must take “all reasonable steps” to communicate serious risks is sufficiently flexible to allow for operators to adapt to their particular sales mechanisms, and intend to provide further practical guidance in implementation communications to the industry about what is expected.
  - b. **The registration process was generally considered appropriate.** Some concerns were noted about WorkSafe internally reviewing decisions as the first step when operators wish to challenge a registration decision, but a WorkSafe internal review as a first point of challenge is a well-established process in the health and safety regulatory system and we do not consider any change is needed. Submitters also made general points similar to previous consultations that consideration should be given to the administrative burden being placed on operators.
  - c. **Proposed offences and penalties were largely considered acceptable.** While some submitters opposed any penalties being introduced, the suggested fine amounts for failing to meet the risk communication duty was considered acceptable by most.
  - d. **Some adjustments to the proposed notifiable incidents were required** to ensure these were only capturing incidents that represent serious risks. In response to feedback, we have removed one of the proposed new incidents that was considered unworkable, and revised the threshold of our proposed notifiable injury to only require notification where the injury requires (or would usually require) medical treatment within 48 hours. In implementation communications we also intend to reinforce the threshold that only incidents placing one or more persons at *serious risk* need to be notified.
  - e. **There were mixed views on implementation timing** but a majority of submitters considered an approximately three-month timeframe to be appropriate.

## Agency consultation

8. We have circulated the attached draft Cabinet paper and regulations to the Ministry of Justice, MBIE Tourism Policy, MBIE Small Business Policy, and DPMC for comment. No significant feedback was received.

## Progress of non-regulatory changes

9. Alongside work on these amendment regulations, WorkSafe has been working to implement the non-regulatory aspects of the package agreed by Cabinet.

### *Updates to the Safety Audit Standard for Adventure Activities*

10. The Safety Audit Standard sets the requirements for safety management systems that operators must meet to pass a safety audit and be registered under the regulations. Several aspects of Cabinet’s agreed package of changes are being implemented through the Safety Audit Standard, such as the introduction of specific requirements for the management of risks from natural hazards.



11. Following consultation in late 2022, WorkSafe has developed and approved in principle an updated version of the Standard. The Standard will be finalised following the Amendment Regulations being confirmed, with the intention of the updated Standard being published in early July and commencing in September alongside the regulatory changes.

#### *The Adventure Activities Certification Scheme*

12. The Certification Scheme sets requirements for how adventure activities safety auditors plan and conduct their audits. Several changes to the Scheme were recommended in the 2021 Independent Review of WorkSafe regarding activities on Whakaari, with other improvements identified following internal reviews by WorkSafe and feedback from the Joint Accreditation System of Australia and New Zealand, who endorses the Scheme.
13. A new version of the Certification Scheme was published on 30 January 2023, with safety auditors given until late April to provide a self-declaration that they understood the revised Scheme and had provided training on the changes to their audit team personnel. Further minor changes will be made following the Amendment Regulations being approved to align the Scheme with the new registration process (where the operator registers with WorkSafe directly, rather than auditors applying on their behalf).

#### *Guidance materials*

14. Cabinet's agreed package of changes also included providing new guidance materials for the sector on management of natural hazard risks and reviewing and updating activity-specific safety guidelines. Updated and new guidelines was highlighted by the sector as the single change they considered would most support improved safety.
15. WorkSafe is collaborating with a group of adventure activities specialists to update the activity safety guidelines, with this work is expected to be completed by the end of 2024. Work on the natural hazard risks guidance has been delayed due to difficulties in recruiting a contractor with the required specialist expertise, and this product is now also expected to be completed by late 2024.
16. WorkSafe has also drafted an explanatory guide on these changes to the Adventure Activities Regulations to support operators to understand the effects of these amendments. This guide will be completed when the regulations are finalised, and published ahead of their commencement in September.

## **Risks and mitigations**

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17. Overall, we consider the risks associated with progressing this package to be low. These changes have been well signalled, with policy decisions were announced last year, and have been extensively consulted on including earlier this year. However, recent and upcoming events associated with adventure activities mean some media attention may be given to these changes.

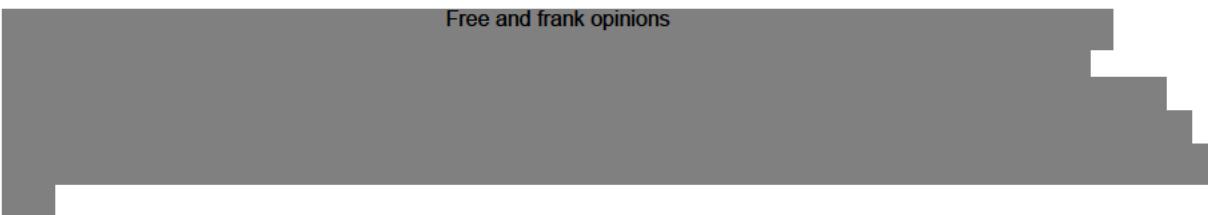
### **Abbey Caves tragedy**

18. On 9 May a Whangarei Boy's High student died during a caving expedition at Abbey Caves.
19. While guided caving expeditions can be subject to the Adventure Activities Regulations, based on current information it does not appear the group involved in the Abbey Caves tragedy were within the scope of the regulations. This is because activities provided by a registered school to their students are excluded from the definition of an "adventure activity" that is subject to these Regulations (and so the school was not subject to requirements to undergo safety audits and register their operations with WorkSafe).

20. However, the school Board of Trustees is a Person Conducting a Business or Undertaking (PCBU) subject to the general requirements of the Health and Safety at Work Act. Notably this includes the primary duty to ensure, so far as is reasonably practicable, their work does not put the health and safety of their workers or other persons (including their students) at risk.
21. These amendments will not have any direct relevance to the Abbey Caves tragedy as the changes only affect businesses and operations that are already subject to the Adventure Activities Regulations. Changes to the definition of “adventure activities” that fall under the regulations was specifically excluded from the scope of this review when it began in 2020.
22. Investigations into the Abbey Caves tragedy are underway by WorkSafe and the Police (on behalf of the Coroner). WorkSafe has up to 12 months to complete an investigation and determine if charges will be laid. WorkSafe has also issued Whangarei Boy’s High School Board of Trustees both an improvement notice, requiring the school to review its outdoor education systems by 14 June, and a prohibition notice, prohibiting activities defined in the school’s EOTC management procedures as occurring in higher-risk environments until WorkSafe is satisfied that risks can be safely managed.

### **Whakaari prosecutions**

23. The substantive trials for the 10 remaining defendants<sup>1</sup> being prosecuted by WorkSafe regarding activities on Whakaari are due to begin on 10 July.
24. The Adventure Activities Regulations that are subject to these changes are not directly engaged by these prosecutions, as all parties are solely being prosecuted for alleged breaches of the Health and Safety at Work Act, not the regulations.

25.  Free and frank opinions

26. We do not consider that there are any significant risks to the prosecutions by continuing to progress these regulations. As noted above, previous information releases such as the consultation document in 2021 were a more explicit admission of the problems of the current system, while these amendments are another step in providing remedies to some of those issues.
27. Some media attention may be applied to these regulatory changes as a result of broader coverage relating to the prosecutions, either if parties make reference to the review of the adventure activities regulatory regime or generally from these changes being part of the Government’s programme of work triggered by the 2019 Whakaari tragedy.

### **These changes will only cause minor costs to most operators**

28. The overall costs of these regulatory changes will be low for most adventure activity operators. Changes are largely administrative or focus on clarifying and reinforcing existing obligations, rather than representing a significant expansion of requirements.
29. Operators will incur some minor costs in adjusting their administrative systems to meet new requirements, such as ensuring their risk communication practices meet the requirements of the new regulatory duty, familiarising themselves with the strengthened registration process

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<sup>1</sup> WorkSafe laid charges against 13 parties regarding activities on Whakaari in November 2020. Inflight Charters Ltd. pleaded guilty in March 2022 and charges against NEMA were dismissed in May 2022. GNS Science in October 2022 had one charge dismissed (with WorkSafe’s consent) and plead guilty to the remaining charge in May 2023.

and adjusting their reporting systems to meet notification requirements. We also expect there will be some minor increases in audit costs due to audits assessing operator's risk communication and natural hazard monitoring in more detail, which have been estimated to be in the range of a 5-15 per cent increase in current audit costs (an increase of approximately \$400-\$1200 per year for an average operator).

30. The package of changes does not include options consulted on in 2021 that the sector indicated would create costs grossly disproportionate to any safety gains, such as proposals to impose additional duties on landowners.

## Next steps

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31. The intended timeframe for ministerial consultation is from 7 to 21 June. Provided no major changes are needed, this will allow us to lodge the paper on 22 June, for LEG consideration the following week.
32. As discussed in the attached draft Cabinet paper, we propose that these regulations come into force on 11 September. This will allow operators approximately 10 weeks to make the necessary adjustments to their systems, and will ensure the large group of operators due to re-register between September and December this year do so under these new requirements.
33. Note that the LEG meeting on 29 June is the last meeting prior to recess. If the paper is unable to be considered at this meeting this will therefore result in a delay of three weeks. If this occurs a decision will be needed between either deferring the commencement of changes until next year (following the peak operating season) or providing operators a significantly shorter implementation period (likely to be approx. 7 weeks).

Milestone	Timing
Considered by LEG	29 June
Cabinet and Executive Council decisions	3 July
Gazetted	6 July
Come into force (10 week commencement)	11 September

## Annexes

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Annex One: Draft LEG paper *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*

Annex Two: Draft *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*



## AIDE MEMOIRE

### Adventure Activities Amendment Regulations – final Cabinet paper and talking points for LEG

<b>Date:</b>	26 July 2023	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-0161

#### Information for Minister(s)

Hon Carmel Sepuloni  
**Minister for Workplace Relations and Safety**

#### Contact for telephone discussion (if required)

Name	Position	Telephone		1st contact
Hayden Fenwick	Manager, Health and Safety Policy	Privacy of natural persons	Privacy of natural persons	✓
Izzy Tarawa-Bailey	Policy Advisor, Health and Safety Policy	Privacy of natural persons	-	

#### The following departments/agencies have been consulted

WorkSafe New Zealand

#### 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 Amendment Regulations – final Cabinet paper and talking points for LEG

<b>Date:</b>	26 July 2023	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2324-0161

#### Purpose

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To provide you with the final Cabinet paper '*Health and Safety at Work (Adventure Activities) Amendment Regulations 2023*' and talking points to support your discussion at the Cabinet Legislation Committee (LEG) meeting at 9.15am on Thursday, 3 August 2023.

Hayden Fenwick  
**Manager, Health and Safety Policy**  
Labour, Science and Enterprise  
Ministry of Business, Innovation and Employment

26/ 07/ 2023

#### Background

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1. On 11 July 2023, the Ministry of Business, Innovation and Employment (MBIE) provided you with an updated draft Cabinet paper seeking LEG approval to submit the *Health and Safety at Work (Adventure Activities) Amendment Regulations 2023* (Amendment Regulations) to the Executive Council.
2. Alongside the draft Cabinet paper, MBIE provided you with a briefing which sought approval for a shift in commencement date for the Amendment Regulations, from September 2023 to 1 April 2024 [Briefing 2223-4320 refers]. You have since agreed to shift the commencement date.
3. Your office indicated that if approval was given to the shift in commencement, their preference was to run a second, shorter, ministerial consultation, given the change. This has been undertaken.
4. As the second ministerial consultation on the new commencement date of 1 April 2024 yielded no feedback or comments, the Cabinet paper is now considered final.
5. The Cabinet paper has been lodged for the LEG Committee meeting on Thursday, 3 August 2023.

## Adjustments to the Amendment Regulations following further advice from WorkSafe New Zealand

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6. Upon further advice received from WorkSafe New Zealand (WorkSafe) there have been changes made to the Amendment Regulations.
7. The changes arose from adjustments to the Registrar's powers, to now be able to impose or vary conditions on the registration at any time where serious safety concerns arise, as opposed to only upon suspension and grant of application to the operator. This has been balanced by additional rights for the operators to appeal or request reviews.
8. MBIE agreed that the Registrar should be able to impose or amend conditions at any time without the consent of the operator, we concluded that there should be a procedural fairness provision included, whereby when new conditions are identified outside of the application/suspension context they should be able to be varied by the Registrar with the right of reply from the operator.
9. The power to vary or impose conditions will still be directed at matters that involve safety where these matters are proactively identified by the Registrar rather than arising out of an application/suspension context. The change to the Amendment Regulations accommodates this.
10. Rather than broadening regulation 7V(1)(c), the Amendment regulations were shifted back to a model where there is a single generic power that allows for the Registrar to impose or vary conditions at any time, and operators are provided with rights to appeal and request reviews of decisions where these powers are exercised. This is because the ability to impose or vary conditions at any point in the process means the Registrar does not also need a power to impose or vary conditions – on the same basis – at specific points in the process. These changes are reflected largely in the change in the structure of the Amendment Regulations.
11. The changes that have been made are consistent with the September 2022 policy decisions that Cabinet agreed upon [DEV-22-MIN-0222 refers].
12. Any further drafting changes have arisen from PCO's quality assurance process, these were made for clarity.

## **Annexes**

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Annex One: Final Cabinet paper – Health and Safety at Work (Adventure Activities) Amendment Regulations 2023

Annex Two: Talking points and reactive QAs for Cabinet Legislation Committee, 9.15am Thursday, 3 August 2023.