



**Submission to**  
**Ministry of Business, Innovation and Employment**  
**Health & Safety Policy**  
**Adventure Activities – Keeping it Safe**

**Date: 5 November 2021**



Tourism Industry Aotearoa (TIA) welcomes the opportunity to comment on the Ministry of Business, Innovation and Employment's Consultation Document 'Adventure Activities – keeping it safe' (the Document).

## **EXECUTIVE SUMMARY**

TIA is concerned that the proposals to better manage natural hazards in the consultation document do not adequately reflect the complexities of adventure activities undertaken in areas of natural hazards. Some of these proposals, if implemented, will likely lead to a significant chilling effect on the outdoor sector.

Some sensible improvements to natural hazard management can be made, but broad changes are not required.

TIA supports a strengthened WorkSafe presence and involvement in adventure activities. In particular, the creation of guidance documentation in consultation with the sector.

TIA supports the establishment of an ACC register of notifiable incidents, with input from the sector.

TIA supports the recognition of industry-led qualifications, particularly when they include ongoing personal development opportunities for qualified members.

TIA is concerned that making Natural Hazard Management the responsibility of landowners/managers will result in significantly diminished access to recreation land and/or permanent closure of lands. This affects not only adventure activity operators but the New Zealand public.

TIA opposes any proposal to have a 'go - no go' authority based outside the individual business unit (PCBU). Individual businesses are best placed to make safety decisions for their staff and customers.

TIA is not in favour of the creation of a risk classification system.

TIA is opposed to any changes to the current audit regime that will result in increased costs to operators.

TIA disputes many of the definitions and statistics provided in the consultation document. These concerns are noted in the minutes of the Expert Reference Group advisory meetings.

## **INTRODUCTION**

1. Tourism Industry Aotearoa (TIA) is the peak body for the tourism industry in New Zealand. With more than 1,200 members, TIA represents a range of tourism-related activities including hospitality, accommodation, adventure and other activities, attractions and retail, airports and airlines, transport, as well as related tourism services.

2. The primary role of TIA is to be the voice of the tourism industry. This includes working for members on advocacy, policy, communication, events, membership, and business capability. The team is based in Wellington and is led by Chief Executive, Chris Roberts.
3. TIA's Vision is 'Leading the world's most sustainable tourism industry *Kōkiritia ngā mahi tāpoi ki te ao.*' Management of natural hazard risks is important to the sustainability of the industry and the outcomes of this consultation will contribute to supporting all four areas of the [Tourism Sustainability Commitment](#) (TSC) - Economic, Visitor, Host Community, and Environmental.
4. Any enquiries relating to this paper should in the first instance be referred to Lori Keller, TIA Industry Advocate by email at [lori.keller@tia.org.nz](mailto:lori.keller@tia.org.nz) or by phone on 021 0868 5356.

## OUR UNDERSTANDING OF THE PAPER

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

As part of the response to this tragedy, the Minister for Workplace Relations and Safety directed the Ministry of Business, Innovation and Employment (MBIE) to undertake a Targeted Review of how safety is regulated in adventure activities in New Zealand.

The Targeted Review found that while the adventure activities regulatory regime was performing reasonably well, there were several areas that could be improved, including the management of natural hazards, the role of the regulator and the audit process.

In May 2021, MBIE formed an Expert Reference Group - a mixed panel of government, industry, and academic contributors - to gather feedback about the targeted review and to gain insight about the adventure activity regime. Both TIA and Recreation Aotearoa, each with two attendees, represented the outdoor sector. Chris Roberts, TIA Chief Executive, was elected Chair of the group, and Andrew Leslie, Chief Executive of Recreation Aotearoa, was elected Deputy Chair.

In days after the release of this consultation paper, the "*Summary – Independent review of WorkSafe New Zealand's performance regarding adventure activities on Whakaari/White Island*" – written by David Laurensen QC, was released. This paper makes several observations and recommendations regarding improved performance standards for WorkSafe and the management of Adventure Activities in general.

It must be noted that volcanic risk is a highly specific natural hazard. The management of volcanic risk may not be applicable or appropriate when applied across the rest of the adventure activity sector. TIA's reflections and recommendations are noted under the "Strengthening the Role of WorkSafe" section of our submission.

## STAKEHOLDER CONSULTATION

In preparing this submission, TIA has engaged with its members in the adventure activity sector. Other consulted parties included the Department of Conservation and Recreation Aotearoa.

## OUR FEEDBACK

We have grouped our feedback under each of the four sections outlined in the Consultation Paper:

- 1) Supporting better management of natural hazards
- 2) Changing how we monitor, assess, and communicate risks
- 3) Strengthening the role of WorkSafe
- 4) Guidance and audit changes and published reporting information.

### **A. Supporting better management of natural hazards**

The existing Health and Safety at Work (Adventure Activities) Regulations 2016 acknowledge there are inherent risks associated with participation in adventure activities, and that these risks are an integral part of the activity. These risks may be due to the nature of the activity, the environment in which the activities are undertaken, or more commonly a combination of both.

It is important to note that the Health and Safety at Work Act 2015 is the primary legal requirement to be met by all businesses including the providers of adventure activities, whilst the Adventure Activity Regulations are a refinement, placing additional requirements on named businesses on a register.

It should also be acknowledged that only a very small proportion of the outdoor recreation community (approximately 300 providers) are captured by the existing Adventure Activity legislation. The regulations do not apply to private recreationalists. An unintended consequence of these regulatory changes may be that inexperienced users of the outdoors may, as a consideration of costs, choose to undertake activities for which they lack experience and/or skill rather than utilise the support or guidance of professional providers.

#### ***Proposals:***

*An explicit requirement to assess and manage natural hazard risks*

TIA holds the view that natural hazards have been and are currently reasonably well assessed and managed by PCBU's. We believe that improvements to natural hazard management could be made, but broad changes are not required. We would like to emphasise the point made on page 8 of the Document that MBIE '*wants to ensure as far as possible changes are made in a way that will avoid having a chilling effect on the adventure activities sector or unnecessarily restricting public access to outdoors and recreation activities.*'

Operators already manage natural hazards within their businesses as part of their day-to-day operations. There is an explicit requirement to do so within the existing Safety Audit Standard. The Safety Audit Standard is used by auditors as part of the audit process. Any further requirement to manage natural hazard beyond this is likely to be a duplication of current requirements and is unlikely to improve safety outcomes. However, an improvement in the way operators document this management may need improvement. Change recommendations could include:

- a) the inclusion of specific natural hazard management measures into existing SOP's (Safe Operating Procedures).
- b) detailing specific management actions undertaken to understand/determine risk e.g., daily printing or reading of wind/rain/weather reports; trip debriefs/notes; guide and client feedback regarding safety and including these operational procedures into SOP's.

Operators are intrinsically motivated to improve the management of natural hazards in their businesses. Good management of natural hazards decreases risk for their clients and employees and increases the viability of their businesses. TIA would strongly support the sharing of resources and research gathered by government agencies (particularly DOC/GNS) with operators and the public. The more information made available to operators, the greater their ability to improve their understanding of natural hazards, and their ability to best manage the natural hazards in their businesses.

#### *Pre-set policies for when activities should be called off*

Many operators already utilise 'cut off' limits in their businesses. These limits include water volumes, wind speeds, and snow-pack stability measurements. TIA supports the concept of a written policy that outlines factors to consider when assessing whether to proceed as planned, including alternative sites or activities. We believe that a simple "no go" rule is too simplistic for many types of adventure activity operations. For example, it is not practicable to have a 'no go' limit applied to an operation where the operator has the choice of offering activities in a widespread geographic area – i.e., the hazard in one area of their operational territory (e.g., a National Park) may be high, but in another, there may be negligible risk.

#### *Requirements on land owners and managers that provide access*

While TIA supports the proposal that landowners could be more involved in managing risk, we are concerned about any proposals that would make them responsible for natural hazard management on their land. We believe this could unnecessarily result in the closure of lands to adventure activity operators and the public. This scenario was demonstrated with the implementation of the HSAW Act (2015) and its subsequent interpretation by landowners of onerous responsibility, resulting in recreational access issues, particularly around cycle trails and recreational fishing.

The relationship between landowners and operators is varied and complex. The Department of Conservation, New Zealand's largest land manager, has 80% of registered adventure activity operators utilising the DOC estate. Good communication between parties is the single most critical component to ensuring continued land access for adventure activities.

TIA is supportive of operators and landowners working together to define areas of responsibility as related to the management of natural hazards. We believe that memorandums of understanding (MOU) between parties, with special mention of natural hazard management, would enhance relationships. We do not see this as a mandatory requirement; however, it may become industry best practice over time. An MOU could define such things as: who is taking responsibility for monitoring natural hazards; how frequently is monitoring undertaken; what is the schedule of meetings between parties to discuss/review natural hazards, who is responsible for the costs of monitoring etc.

## **B. Changing how we monitor, assess and communicate risks**

### *Definition of Risk*

Risk is a complex construct. Adventure activities carry with them an inherent level of risk. Activity risk is dynamic and may be amplified or diminished based on a variety of factors. These factors may include: the skill level of the participant, the location of the activity, weather conditions, and experience of the guide/instructor.

TIA submits that the term “acceptable risk”, in the context of Adventure Activities, is not definable. The appetite for risk varies significantly between individuals and across activities. The proposal to determine or define ‘*acceptable risk*’ is too simple a mechanism to be applied to the adventure activity sector. An attempt to do so would likely result in a significant ‘chilling effect’ on the industry. Whilst we understand and support the desire to explain risk levels to participants, we do not believe that a risk matrix would sufficiently express the nuances inherent in adventure activities to provide clarity to participants. In fact, a risk matrix would likely lead to one of two conclusions:

- a) a false of security around the activity or
- b) over-emphasis of risk leading to participant cancellation.

Rather than using the term ‘acceptable’ level of risk, TIA supports the use of the term ‘mitigated risk.’ This term is a more accurate reflection of existing risk management protocols utilised in adventure activities. It rightfully indicates that risks are regularly managed and that risks are inherent to the activities.

Regarding specific measures to be taken to improve risk disclosure and/or explanations, TIA has some suggestions:

### *Improving risk disclosures to participants*

TIA strongly supports the use of risk disclosure statements by adventure activity operators. We believe that a standardised risk disclosure form that can be customised by operators for their activity would be well received by the industry and by participants. A sample document has been created by industry and is currently available on the [SupportAdventure website](#). It would be helpful to have this form endorsed by WorkSafe to add support to the model. The risk disclosure statement could be added to individual company websites to enable participants to determine if the activity suited their individual risk profile.

Operators already provide safety (i.e. risk disclosure) briefings to their participants as a requirement of the Audit Standard. Specifics of safety briefings are documented in each business’ standard operating procedure (SOP). It may be useful to introduce a standard template for risk disclosure briefings (like a standardised disclosure statement template suggested above) to provide consistency across the sector. It may also be worth having risk disclosure statements and written/video safety briefings available for preview ahead of an activity to assist visitors in their decision to participate in an activity. This would also diminish the perception that the participant was coerced to participate in the activity due to a lack of applicable ‘exit’ options.

Regarding the communication of risks, TIA would support the establishment of dedicated online forums for registered operators to share recent natural hazard observations in their specific geographic location, or any observations related to equipment use/malfunction whilst conducting an activity.

#### *Creating a stronger role for government to support decisions on acceptable risks*

TIA strongly rejects the suggestion that the decision to cancel or suspend activities could be made outside the PCBU. Technical expertise is held within each business, specific to the range of activities and location of that business. An assumption that a government agency could make a more informed safety decision for a specific PCBU is highly contestable.

### **C. Strengthening the role of WorkSafe**

TIA strongly supports the relationship between the adventure activity sector and WorkSafe. As one of two sector bodies representing the adventure sector (Recreation Aotearoa being the other) TIA is committed to representing the sector and ensuring the best outcomes for PCBU's and participants. Addressing the role and priorities of WorkSafe holds the most significant opportunity for change and improved outcomes for the sector. As background to the existing review, an earlier review took place in 2009 ([\*Appendix 1\*](#)) aiming to address many of the same issues highlighted in the present consultation paper.

#### *Are there any other changes you think are needed to support WorkSafe to take a stronger role in the sector?*

TIA supports WorkSafe taking a stronger role in the sector providing that 'a stronger role' manifests as education and engagement, and not simply enforcement. Presently, the industry accepts enforcement from WorkSafe, but receives little guidance from the Regulator.

There is strong demand for guidance from WorkSafe. Guidance requests include: the development of further Adventure Safety Guidelines (ASG's) to match the range of activities listed on the WorkSafe register, overdue updates of existing ASG's currently on the SupportAdventure website and operator desire to meet with WorkSafe staff at regular intervals (hui) to answer industry questions. Regrettably, the Regulator has been reluctant or not resourced to move ahead on most of these requests. This situation leaves industry bodies such as TIA and Recreation Aotearoa taking on responsibility for preparing and answering guidance requests from the industry.

At present, WorkSafe takes a reactionary role to incidents and accidents in the sector. TIA believes a more proactive approach is better suited to addressing issues of safety in the industry. WorkSafe should be prepared to intervene in operations where audit bodies (or WorkSafe itself) have identified unsafe practices in the workplace (just as 'site closures' occur in the construction sector). This deregistration may be temporary or permanent and should be done with urgency once an investigation is undertaken.

Whilst TIA understands that WorkSafe resources are constrained, TIA submits that the Regulator is inadvertently increasing the risks faced by operators and participants in the sector by ignoring the guidance requests and refusing meaningful engagement with the sector.



*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?*

TIA is supportive of WorkSafe and ACC developing a list of 'reportable incidents/near misses' in conjunction with reference groups from the sector. These notifiable incidents would be added to the WorkSafe platform, and results shared with the industry quarterly (or by agreed recurrence). It is important that industry is consulted to develop the lists of 'near misses' as they need to be specific and meaningful to each sector. This is another opportunity for WorkSafe to engage with the sector.

#### **D. Guidance and audit changes and published reporting information**

*Are there any ways you think the current audit process should be changed to improve safety standards?*

TIA is strongly supportive of safe and managed adventure activity operations. The most significant frustration aired by activity providers are the schedule or frequency of audits, and their subsequent cost. If there were a means to simplify and/or reduce audit costs whilst maintaining or improve existing levels of safety, TIA would strongly support this initiative.

Another opportunity for increasing safety would be the endorsement of Industry Qualifications and Standards. Recognition of these qualifications would fit well within the existing Audit Standard. TIA would not support the mandating of qualifications for all staff; however, TIA would support a register of key personnel with associated qualifications and/or experience becoming part of the registration requirement for Adventure Activity Operators. Changes to key personnel should also be updated with WorkSafe, as they are with auditing bodies.

TIA would also support a change of name from Audit Standard to 'Operator Standard' – this would ensure that operators understand that the Audit Standard is an operational document rather than an auditors document. Again, this change should be socialised into the sector by WorkSafe, ensuring higher levels of engagement and compliance.

*What types of guidance are most useful to support safety in adventure activities? Are there any gaps in current guidance?*

WorkSafe has a role to provide guidance to the sector, with input from the sector. Completing the full set of ASG's should be done (there are currently 15 activities on the WorkSafe website listed as 'nearly certain to be subject to regulations', but only 12 have existing ASG's). There also needs to be a review programme for the existing ASG's. A clear commitment from WorkSafe to the funding, creation, review, and publishing of ASG's would be highly regarded by the industry.



*What types of information would be useful to include in guidance to operators about managing natural hazard risks?*

TIA would support the publishing of links to government procured and published reports (via use of the Support Adventure platform) to facilitate access to safety information within the sector. TIA strongly supports the ethos of prevention before harm.

*Are there any administrative problems in the audit process you would like to comment on? How do you think these problems could be addressed?*

Due to the seasonal nature of the industry, timing of audits and assessments is challenging. TIA would support building more flexibility into the timing, via consultation with operators to ensure the timing of assessments is viable for both the operator and the auditing body. This may be done by way of online calendar booking system highlighting regions where particular auditors and/or technical experts may be visiting at a particular time of year.

*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?*

The Department of Conservation holds a register of incidents/near misses/ accidents for their concessionaires. The publication of this data would be useful in ascertaining the regularity of accidents and incidents in particular regions. The value in reporting near misses – carefully evaluated – is essential to developing a safety culture where reporting is valued rather than feared, and where reporting does not necessarily result in enforcement action.

### **Cost implications of proposals**

Border closures due to the COVID19 pandemic have already resulted in the permanent closure of several adventure activity businesses, many quoting ongoing compliance costs as 'the straw that broke the camel's back'. Our concern was such that TIA set up a no-interest loan scheme in 2020 to assist members maintain AAR (Adventure Activity Regulations) registration and pay for audit costs. Any increases in compliance costs may lead to the closure of more businesses. To their credit, many operators have taken on the challenge to 'pivot and diversify.' Unwittingly, this diversification has resulted in other compliance costs. For example, a rafting operator added a food truck offering to their business to attract school groups. This addition resulted in unanticipated food compliance and consenting costs that outweighed the benefit of the food truck. These cost increases can make business untenable.

*What benefits will come from implementing these proposals for you or on your business?*

Provided that WorkSafe engages with the industry, there is likely benefit in improved guidance documentation, risk disclosure templates, and operational guidelines. TIA is hopeful that this would lead to a stronger safety proposition for participants.

*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?*

Due to New Zealand's strong international reputation for adventure activity safety and innovation, participants generally book their activities without concern. There is already a highly regarded safety system in place. Whilst the tragedy of Whakaari White Island should not be diminished, it should not cast a negative light across the entire industry. TIA supports strengthened oversight of the industry, but this oversight should not come with additional costs or constraints on operations. Again, we refer to the beginning of the paper where 'casting a chilling effect upon the industry' is to be avoided. TIA strongly supports this statement and hopes the various recommendations resulting from this consultation reflect that stated intention.

## **COMMENT**

TIA wants to thank MBIE for its commitment to an open and genuine consultation process, and its' continued engagement and meetings with the sector.

## **FOLLOW UP PROCESS**

TIA wishes to participate further in any follow-up process, including any formal meetings, to ensure that the potential impacts on tourism are adequately represented.

## **BACKGROUND**

Prior to COVID19, tourism was New Zealand largest export sector. It was, and will continue to be, a major contributor to the New Zealand economy. Tourism takes the lead in promoting New Zealand to the world. The brand positioning built by a vibrant tourism industry has become an important source of national confidence and identity and a front window for "Brand New Zealand".

Prior to the COVID-19 pandemic, tourism's contributions to the New Zealand economy were:

- Total annual tourism expenditure was \$41.9 billion – \$115 million per day.
- Annual international tourism expenditure was \$17.5 billion – \$48 million per day.
- Annual domestic tourism expenditure was \$24.4 billion – \$67 million per day.
- Total annual tourism expenditure had increased by almost \$15 billion, or 55%, in the past seven years.
- Tourism was New Zealand's largest export industry, contributing 20.1% of total exports.
- Tourism generated a direct annual contribution to GDP of \$16.4 billion, or 5.5%, and a further indirect contribution of \$11.3 billion, another 3.8% of New Zealand's total GDP.
- 225,384 people are directly and another 158,802 indirectly employed in tourism in New Zealand – 13.6% of the total number of people employed in New Zealand.
- The annual GST paid by tourists is \$3.9 billion, including \$1.8 billion collected from international visitors.

Source: Statistics NZ [Tourism Satellite Account](#) year ended March 2020 (issued December 2020).

Appendix 1: Ref: Dept of Labour, August 2010: "[Review of risk management and safety in the adventure and outdoor commercial sectors in New Zealand 2009/10](#) "

In response to concerns about several serious incidents in the adventure and outdoor commercial sectors, the then Department of Labour (DOL) was tasked to review practices within those sectors to determine if changes were needed to strengthen risk management and safety systems.

In June 2010, DOL released the [Review of Risk Management and Safety in the Adventure and Outdoor Commercial Sectors in NZ](#) final report. The review recommended a number of actions including:

- that a tool be developed to offer generic safety guidance to the sector
- that additional guidance be developed and disseminated widely to better inform operators within the sector about their current responsibilities, particularly activity specific guidance.

TIA (then called Tourism Industry Association New Zealand) was contracted by the DOL to manage the development of both these recommendations in consultation with industry. The generic safety guidance tool has been developed in the form of the SupportAdventure.co.nz website.

The additional guidance has resulted in the development of activity specific safety guidelines (ASGs). The ASGs are not statutory standards imposed by law; rather, they are a set of voluntary guidelines that reflect industry's current recommendations for good practice and meeting all practicable steps for management of activity specific hazards.

The ASGs aim to provide practical guidance for commercial operators providing specific adventure activities to actively manage the safety of those activities. The guidance is based on industry's current recommendations for good practice safety management. Following the guidance will help operators to meet their legal requirements to take all practicable steps for identifying and managing hazards under the New Zealand Health and Safety Legislation, and particularly the Adventure Activity Regulations 2011.

The key outcomes of this project were tied to both the ASGs themselves and to the process used to develop them. There are both direct and indirect outcomes.

The direct outcomes from the ASGs are:

- The ASGs will provide operators, auditors, and regulators with consistent and clear recommendations on good practice safety management strategies for managing significant hazards.
- The ASGs will give assurance to government and the public that operators have access to current industry safety recommendations.

The indirect outcomes from the ASGs are:

- The ASGs and their development process will promote a strong safety culture by enabling and role modelling the sharing of industry safety information.
- The ASGs development process will give assurance to operators that they have access to, and can contribute to, information on current industry safety recommendations.

- The ASG (Activity Safety Guidelines) development process will encourage the development of activity- based communities and greater overall collaboration within the sector.
- The ASG development process will assist with establishing consistent levels of safety within and across activity groups.
- The ASG development process will instil confidence in all stakeholders that the guideline content is driven by technical experts.