

2 November 2021

Health and Safety Policy Team
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email: HSWregs@mbie.govt.nz

Tēnā koe

Proposed Changes to the Adventure Activities Regulatory Regime

Tōpūtanga Tapuhi Kaitiaki o Aotearoa, the New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on proposals for improved safety standards in the Adventure Activities Regulatory Regime.

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand, representing 51,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment matters. NZNO embraces te Tiriti o Waitangi and contributes to the improvements of the health status and outcomes of all people of Aotearoa New Zealand through influencing health, employment, and social policy development.

We share the intent of the Ministry of Health's definition of equity which equally applies to NZNO work across professional, industrial and members' activities.

NZNO supports the tightening of safety standard in the adventure activities sector.

We consulted our membership on the proposed changes, and received a comprehensive response from the New Zealand Committee of Critical Care Nurses. This committee represents approximately one thousand Critical Care Nurses. Their views are set out in the table below.

You will see, in the table, that we have excluded questions that are not relevant to our field of expertise.

Nāku noa nā

Sue Russ | Policy and Research Assistant
Sue.Russ@nzno.org.nz



National Office
Level 3, Findex House
57 Willis Street
Wellington 6011
PO Box 2128
Wellington 6140
T 0800 28 38 48
www.nzno.org.nz

Q1	<i>In your experience, how well do you think natural hazards are currently being managed in the adventure activities regime?</i>
	There is an unacknowledged gap with all aspects of natural hazards and their effect on the activity environment that needs to be identified to take all possible steps to mitigate and be reflected in activity operations policy. Action to mitigate the effects of climate change and the associated natural hazards on community amenity values. Further, consideration is required to preserve sites with historical and cultural significance to the community from natural hazards. It is important that a certain degree or level of awareness and interest regarding emerging concerns of climate change is considered in terms of understand perceived risks associated with these activities and what may be the critical factors preferences and priorities from a Māori perspective.
Q2	<i>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?</i>
	Like the changes in health structures we need to reflect changes in governance structure to ensure tangata whenua Māori and explicitly the mana whenua, who are the haukainga iwi/ hapū across the regions, have exclusive rights under the obligation of Te Tiriti O Waitangi which guarantees partnership, in the form of active protection. Therefore, providing for co-management and co-design consideration to be included in the policy outlines and decision-making policies/ reporting lines with the outdoor adventure activity planning, activity, and assessment of the environment in which the activity is planned. This could pertain to cultural risk within the natural environment. For instance, the Pae Ora – Health Futures Bill provides for iwi-partnership boards to maintain a stewardship role in supporting health and wellbeing outcomes and determining priorities for kaupapa Māori mātauranga investment. Understanding Māori land characteristics and governance, building Māori capacity, and equitable access to research and innovation are critical to the participation, uptake, and implementation of any new opportunities.
Q3	Duties for operators in managing natural hazards
	<i>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?</i>
	There is a place for explicit expert-based guidelines utilising best practice to assist operators in their adventure operations. Adherence and detailed requirements to these expert guidelines would assist operators in identifying and minimising potential risks. Supporting operators to link with expert organisations to manage these risks could be an outline of operator requirements.
Q4	<i>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?</i>

National Office

Level 3, Findex House
57 Willis Street
Wellington 6011

PO Box 2128
Wellington 6140

T 0800 28 38 48

www.nzno.org.nz

	This explicit requirement would benefit operators that may develop a culture of focusing on profit rather than risk analysis to complete adventure experiences.
Q5	<p><i>If this requirement was introduced, what are the key elements operators should consider when making the decision to call off activities?</i></p> <p>The key element would bring the risks of people equipment and environment as part of the risk management plan to continue with activities or not – for example, heavy rain warning in the activity area, consumers with identified personal health issues incompatible with activity or cultural situations such as a rāhui. More importantly, there needs recognition that provides for the relationship of Māori and traditional spiritual and cultural values of their ancestral lands, waters sites, wāhi tapu and taonga are adequately recognised in accordance with the principles of the Treaty of Waitangi. It is well documented and reported that Tangata whenua remain concerned that their role of kaitiakitanga is not adequately recognised and that there are few opportunities to manage specific areas of Māori natural ancestral whenua according to Tikanga Māori. Therefore, consideration for tangata whenua to have the continued ability indicate their desire to be involved in the decision-making process regarding such developments.</p>
Q6	<p><i>Are there any other ways you think adventure activities operators could improve the management of natural hazards?</i></p> <p>Natural hazards can be a managed risk if using the right processes such as weather checks, terrain warnings such as flooding but there could also be an example of utilising expert staff to pre-assess areas that are used for activities before activity commencement if there has been an identified natural hazard risk such as earthquake, flooding, slips etc.</p>
Q7	<p>Duties for Landowners in managing natural hazards</p> <p><i>In your experience, how do operators and landowners currently work together to manage hazards?</i></p> <p>Unable to comment on this working relationship but operators using private land need to use a consultative process and provide support to landowners to put risk management systems in place for outdoor adventure activities. There is a monetary link that needs to have explicit responsibilities attached with this risk analysis stratification that clearly states operators and landowners' responsibilities.</p> <p>Consideration of Māori land having multiple owners can be problematic, particularly as many of the multi-own land blocks are administered under an Ahu Whenua collective or Te Tumu Pae ora – Office of Māori Trustee. There are likely to be delays in resolving natural hazards and more importantly the lack of resources or financial means, capability, or capacity to do so often results in work becoming stationary.</p>
Q8	<p><i>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?</i></p> <p>Yes, specific requirements and reporting lines between operators and landowners are essential to close the loop for risk analysis and management.</p>
Q9	<p><i>If a specific duty was introduced for land owners and managers, do you think they should be required to:</i></p> <p><i>a) provide information to operators about natural hazard risks on their land; or</i></p> <p><i>b) assess and actively manage the risk of natural hazards on their land.</i></p> <p><i>What are the benefits and costs you see under each approach?</i></p> <p>This needs to be a two-way relationship as it prevents apportioning blame in the event of mishap whether this is a near miss or an actual event causing harm. There needs to be a reporting line between the landowner and operator and the availability for landowners and operators to share costing for natural hazard identification and risk management via the use of an approved regulator of outdoor activities and environmental assessment. This could be something that Workplace NZ provides to operators and landowners to ensure expert advice</p>

	is available. The costing of this provides a difficulty as this could potentially reduce or impede operators and landowners from providing activities due to the cost of risk management process.
Q10	<p><i>Are there any other ways landowners/land managers could improve the management of natural hazards to support adventure activities operators when accessing their land?</i></p> <p>Clear channels of communication between landowners and operators through clear who to contact lines- for example operator owner down to activity guides.</p>
Q11	<p>Risk classification system</p> <p><i>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?</i></p> <p>A risk classification system could reduce the knowledge and expertise required for each particular adventure activity. Due to the different environments that are utilised for activities, requiring explicit knowledge for example sea vs lake, bush vs mountain. Expert knowledge needs to be utilised for risk assessment. Grouping activities into a risk classification system increases the risk of operator error in not understanding the knowledge, experience and expertise required to operate an activity which in itself becomes a risk.</p>
Q12	<p><i>What are the benefits and issues of introducing a risk classification system?</i></p> <p>As mentioned above there could be a negative impact through using the risk classification system as the guideline but it could be a positive tool if it links to specific activity linked expertise such as the Mountain Safety Council or SfrITO to use for activity procedure and processes linked to risk management.</p>
Q13	<p><i>We consider a risk classification system could assess the risks of an adventure activity under two broad categories:</i></p> <ul style="list-style-type: none"> › <i>Environmental risks from where the activity occurs (for instance, does it go through avalanche or landslide prone areas).</i> › <i>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).</i> <p><i>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?</i></p> <p>Utilising evidence-based risk analysis models made for outdoor activities that are used by all operators is something that Workplace NZ could give operators and landowners guidance on as well as Māori input for cultural considerations and shared insights. Using outdoor experts such as Mountain Safety Council, local iwi/ hapū and kaupapa Māori experts to guide appropriate risk assessment would be of benefit to guide processes. The role of kaitiaki is clearly situated in the role of providing cultural support and expertise.</p>
Q14	<p><i>Do you support setting how often operators are audited based on their activities risk classification (e.g. the lower the risk the longer length of time between safety audits)? What benefits and issues do you see with this approach?</i></p> <p><i>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?</i></p> <p>This would be an appropriate audit timeframe.</p>
Q15	<p>Risk disclosure</p> <p><i>What types of information is useful to help participants and others understand the risks involved in adventure activities?</i></p> <p>An informed consent process needs to be instigated where the explanation of risks and signed consent is instigated to protect both participants and operators.</p>

Q16	Acceptable levels of risk <i>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?</i>
	Yes the Government could provide required linkage to expert bodies or groups that need to be used by operators to set up risk management plans in consultation with Workplace Safety NZ
Q17	<i>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?</i>
	Yes, in situations of civil disaster, culturally significant events that impact Tangata Whenua and in events that have high-risk warnings attached. The government would do this in consultation with the appropriate agency for example the CAA and appropriate iwi/ hapū and kāhui Māori groups.
Q18	Strengthening the role of WorkSafe <i>What information would be useful for operators to provide WorkSafe about their operation?</i>
	Risk assessment and management documentation, operator licences and guide qualifications/ experience. Any previous non-compliance with operating in the adventure tourism industry and a governance structure that details responsibility for health and safety, occupational health, HR, and risk management consultation processes.
Q19	<i>What would be the best process for operators to provide information to WorkSafe?</i>
	Via a regular electronic database system that is updated within audit timeframes and updated with any changes in practice which includes areas of operation and changes in governance structures.
Q20	<i>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?</i> <i>For example:</i>
	› a volcanic eruption, landslide or significant rockfall occurring in the area adventure activities regularly take place › workers or participants being stranded in a cave, gully or other enclosed space by rising water › any incident that requires workers or participants to be rescued › a participant or worker falling from a height over 2 metres › a participant or worker suffering hypothermia. › Others?
	Agree with all of these.
Q21	<i>In what types of situation would you expect WorkSafe to cancel, suspend or decline an operator's registration to provide an adventure activity?</i>
	Lack of documented procedures and policies, lack of notification of changes in practice to Worksafe, evidence of undeclared safety breaches that have not been reported on or disclosed.
Q22	<i>Are there any other changes you think are needed to support WorkSafe to take a stronger role in the sector?</i>
	Legalise obligations to operators to report to Worksafe on the above.
Q25	Guidance and audit changes <i>What types of guidance are most useful to support safety in adventure activities? Are there any gaps in current guidance?</i>
	Use of expert knowledge in the form of designated expert organisations.

Q26	<p><i>What types of information would be useful to include in guidance to operators about managing natural hazard risks?</i></p> <p><i>For instance:</i></p> <ul style="list-style-type: none"> › <i>Where to get information about different types of hazards</i> › <i>The types of steps an operator is expected to go through to manage different hazards</i> › <i>Examples of what good management of hazards looks like</i> <p>As mentioned previously linking operators to experts in outdoor activity risk management would allow operators to learn and get the best advice on how they can manage risk. Workplace NZ could provide a conduit to these organisations for operators and landowners.</p>
Q27	<p>Excluding guidance on natural hazards, are there any other gaps in current guidance?</p> <p><i>Are there any administrative problems in the audit process you would like to comment on? How do you think these problems could be addressed?</i></p> <p>Unable to comment but assuming that the DAA is industry approved and specific.</p>
Q28	<p><i>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?</i></p> <p>Data that does not identify operators but gives examples of near misses or actual events and the contributing factors that may have been involved and advice on how to mitigate these risks for future practice.</p>
Q29	<p>Other changes</p> <p><i>Are there any other issues or potential improvements in how adventure activities are regulated you would like to comment on?</i></p> <p>Worksafe NZ and ACC should both take a more proactive role in advising the industry operators including the provision of expertise. It is unrealistic for small operators to source this expertise and could lead to multiple sources of differing advice putting individuals at risk.</p>
Q32	<p>Cost implications of proposals</p> <p><i>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?</i></p> <p>This is a difficult question to ask a New Zealander as the cost for these experiences is often prohibitive to the local market but there should be no barrier to ensuring that safety is paramount as to how do we price a life or long term injury to the impact on an individual, their whanau and family/ community.</p>