

# Feedback on Adventure Activities – Managing the risks from natural hazards good practice guide

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## Submitter details

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## Submission

### Introduction

1. Recreation Aotearoa is a registered charity and the organisation responsible for providing leadership, advocacy, and professional development opportunities for those involved in the broader recreation sector. We work at an agency, industry, and professional level to build capability, develop partnerships, and equip individuals and organisations with the skills they need to deliver high-quality recreation experiences that engage participants.
2. The Recreation Aotearoa membership includes recreation policy makers, territorial local authorities, voluntary organisations, regional sports trusts, outdoor recreation businesses, and others involved in the delivery of recreation throughout New Zealand.
3. Our mission is enhancing wellbeing through recreation.
4. In partnership with Tourism Industry Aotearoa (TIA), Recreation Aotearoa provides the SupportAdventure website, publishes the SupportAdventure newsletter and in the past, coordinated the production of Activity Safety Guidelines (ASGs). These are critical pieces of infrastructure for the Adventure Activity sector.
5. Two staff members of Recreation Aotearoa and their counterparts from TIA served, at the request of MBIE, on their Expert Reference Group that guided the MBIE targeted review Adventure Activities.
6. At any given time, dozens of registered Adventure Activity Operators (AAO's) are organisational members of Recreation Aotearoa. A similar amount of AAO's are members of TIA, however it is important to note that many registered AAO's, perhaps a small majority, are not members of either industry body. Regardless, numerous individuals employed at the Governance, Management and operational levels of AAOs are members of Recreation Aotearoa, as well as many auditors and technical experts.

### General comments

7. Recreation Aotearoa submits that the provision of ASGs have been hugely successful in standardising both operators' practice and the auditing process.

The ASG development process has been world leading and brought positive sector ownership. However, the sector doesn't have the financial resources to develop and maintain ASGs on a sustainable basis. For several years, WorkSafe provided partnership funding with the industry bodies to develop and maintain ASGs. In recent years, this funding declined and became somewhat ad hoc, then eventually ceased. This is a lamentable loss of opportunity and system strength. In this regard, we welcome the provision of guidance on managing Natural Hazard Risk.

8. However, we note that since WorkSafe made the decision to bring the development and maintenance of ASGs in-house, very little has been delivered. The current suite of ASGs is inadequate for such a diverse sector, and WorkSafe's lack of understanding of the need to keep them current diminishes their value. There is an urgent need for ASGs in open water paddling, white-water activities, and kite surfing. There are also a number of ASGs that are overdue for revision.
9. A previous MBIE consultation document outlined four broad tools in the adventure activities system that that could be used to improve safety standards; (a) change regulations; (b) change the safety audit standard; (c) adjust the audit process; and (d) change or add to guidance. At the time, Recreation Aotearoa commended the identification of those tools and expressed a strong order of preference with regard to those tools. We submitted that additions to guidance would be the most cost-effective and welcomed change by the adventure activity sector. Noting that (a) and (b) have occurred, we welcome the addition of Natural Hazard Risk Management guidance.
10. Recreation Aotearoa submits, as has been noted by MBIE and WorkSafe in at least two documents, not all adventure activities are the same. Each adventure activity has a unique and dynamic mixture of technical and environmental risks. Participants in different types of adventure activities have variable risk appetites. Recreation Aotearoa acknowledges the inherent difficulty of formulating guidance that covers such a variety of contexts. It follows that not all adventure activities and thus operators, should be regulated in exactly the same way or subject to the same guidelines.
11. Recreation Aotearoa observes that while 'guidance' is not regulation, any guidance provided by WorkSafe (the regulator) is perceived as, and becomes

de-facto, regulation. Auditors require extensive justification from an operator to deviate from WorkSafe guidance and in many cases, simply won't allow any deviation from guidance to pass an audit. For this reason, it is essential that guidance provided by WorkSafe is very measured.

12. As has been acknowledged by MBIE, Recreation Aotearoa notes that the adventure activities regime has been working well, as the 2016 performance review found. Recreation Aotearoa submits that natural hazards are generally well managed in the adventure activities regime. Operators tend to know well what they're dealing with, and technical experts review their work, both their safety management planning and their practice. The Whakaari/White Island catastrophe was a tragic but unique event. It highlighted the volcanic risk, which is quite specific, being present in only a few locations in New Zealand. As such, there is a risk of regulatory over-reaction.
13. Relatedly, we note that in his review findings KC Laurenson concluded that visiting Whakaari/White Island should have been regarded by WorkSafe as a separate and discrete Adventure Activity by WorkSafe. This would imply that we should be cautious about providing universal guidance on managing the risks of natural hazards, across both volcanic and non-volcanic contexts.
14. At a general level, recognising that any guidance effectively becomes regulation and a compliance burden, the draft document is too long. At close to 50 pages, it is intimidating and dense, especially for a new entrant to the sector. Recreation Aotearoa submits its support for a more focused 'less-is-more' approach to guidance. Good design is not about adding more and more features. It is about removing features until only those things that are absolutely necessary, remain. There is a risk, that by way of its sheer size, critical aspects of natural hazard guidance are diluted and missed.

### **Specific Comments**

15. Recreation Aotearoa submits concern with the language in Section 1.2 that states "... is designed to deliberately expose participants to a serious risk to their health and safety." This overstates the nature and role of risk in Adventure Activities. Deliberately exposing clients to risk is the not central premise, intent or outcome of an Adventure Activity.

16. Recreation Aotearoa submits its support for the acknowledgement on Page 9 (Key terms used in these guidelines) that a technical adviser might be a paid employee of the Adventure Activity Operator. However, we are concerned that inconsistencies with this, emerge later in the document (Appendix 1).
17. Recreation Aotearoa is deeply concerned by the implied duties of landowners or managers, in relation to Natural Hazard Risk, in Section 2.2 of this document. This could have hugely detrimental impacts to access to recreational spaces and places in New Zealand. Recreation Aotearoa submits that the Safety Audit Standard, already explicitly requires operators to assess and manage natural hazard risks, which is subject to audit.
18. The guidance that “...the landowner or land manager has a duty to tell operators about all hazards.....A landowner or land manager may also be required to take additional steps to manage the risks in respect of a natural hazard,” is inconsistent with the WorkSafe Policy Clarification published in 2019, which states “...a PCBU whose land is being accessed for recreation is only responsible for risks arising from the work or workplace, and is not responsible for the risks associated with the recreational activities.”
19. Recreation Aotearoa further submits that the draft guidance is also inconsistent with FAQs published by WorkSafe that states “PCBUs aren’t responsible for naturally occurring features that aren’t part of, or affected by, their work.”
20. Additionally, in the common context of an Adventure Activity taking place on a farm, the draft guidance appears to be inconsistent with Section 37(3) of the Health and Safety at Work Act (2015), which states: “...if the PCBU is conducting a farming business or undertaking, the duty owed by the PCBU under that subsection applies only in relation to the farm buildings and any structure or part of the farm immediately surrounding the farm buildings that are necessary for the operation of the business or undertaking...does not apply in relation to the main dwelling house on the farm (if any); or any other part of the farm, unless work is being carried out in that part at the time.”

21. Recreation Aotearoa notes that in previous consultations undertaken by MBIE Since the Whaakari/White Island tragedy, the idea that additional duties, regulations and compliance costs be imposed on landowners was vehemently opposed by numerous submitters. This included many NGOs and interest groups who are not even exposed to the Adventure Activity regulations, as they understood the broader 'chilling-effect' such impositions would create in the realm of recreational access. An additional duty on landowners would impose yet another barrier to recreational access for the wider, unregulated, recreation community and would likely result in the denial of access. We were pleased that those ideas were not brought forward by WorkSafe or MBIE and are thus disappointed that they have emerged here.
22. Recreation Aotearoa submits that the premise that a 'landowner' understands the natural hazard, equal to or better, than the operators or is in a position to assess natural hazards as they pertain to adventure activities, is flawed. Natural hazards are best assessed and managed by qualified and competent adventure activity professionals, subject to audit. Alternatively, requiring a landowner to engage a costly expert to assess the risk, would inevitably result in access being denied.
23. Recreation Aotearoa submits that the only possible instances in which landowners should have a duty applied to them is in areas of volcanic activity. These rare circumstances present a natural hazard that is typically beyond the expertise of AAO's or the audit bodies and could be better assessed, communally, by an agency such as GNS.
24. While we appreciate the use of Examples in the Draft Guidance (eg Page 12), to further aid understanding. In the case of Section 2, it would have been helpful to use an example of a Natural Hazard Risk, rather than an example based on transport.
25. In Section 5, Recreation Aotearoa submits its support for the use of such terms as "*decision criteria*", "*control measure*", "*reasonably foreseeable*" and "*trigger points*", which reflect good practice and are widely understood.

26. However, we submit our concern that in the same section, a variety of confusing and misaligned language is used. For example, section 5.4 mentions eliminating both "*serious risks*" and "*serious risks that are unnecessary*". Furthermore, an "acceptable level" (Page 26) of remaining risk, is not defined.
27. Recreation Aotearoa submits that the threshold for notification in Section 10.1, remains unclear enough to be helpful. The use of examples would be helpful here.
28. Recreation Aotearoa has a long-standing interest in the collection of safety-related data and, as a result, the notification of incidents. This has been expressed in various submissions to MBIE and WorkSafe consultations, since the Whakaari/White Island tragedy. Recreation Aotearoa submits that critical to providing safe activities is operators collecting incident information, discussing it openly with staff, and analysing trends. The Safety Audit Standard requires this, and auditors ensure it happens at an operator level. Aggregating that process nationally would enhance safety considerably. Section 10 deals with how this happens, presently. We will take this opportunity to suggest how the notification system, might be enhanced.
29. Recreation Aotearoa notes that the 2010 review of the sector recommended supporting and strengthening the National Incident Database (NID). However, MBIE was focused on implementing the Adventure Activities Regulations and gave it little attention.
30. Currently, even information on significant incidents is hard to obtain. WorkSafe prosecutions take a long time and 'lessons-learned' are published late, if at all. This is indicative of a system that is focused on prosecution rather than education.
31. Recreation Aotearoa supports a system by which operators could input information directly to a National Incident Database using an electronic template, or preferably an app. Incidents would include accidents and near misses; and be mandatory. The experience with the previous (voluntary) National Incident Database was that very few operators used it well and feedback to the sector was sporadic. Merging the best aspects of the NID and

the WorkSafe notification system, would be profoundly beneficial to operator and regulator, alike.

32. Section 11 deals with Risk Disclosure, which is an issue that Recreation Aotearoa has made numerous submissions on in the past. We note that risk disclosure is already a requirement of the Safety Audit Standard and isn't aware of any evidence, with the possible exception of Whakaari/White Island, that a lack of risk disclosure is a problem within the adventure activity sector.
33. Recreation Aotearoa submits that over the last decade there has been a steady trend of adventure activity operators moving away from attempting to absolve themselves of liability by using waivers, and to disclose risks appropriately. Auditors have required two-way risk disclosure for some time – the operator discloses the risks to the potential participants and the participant discloses any personal issues that the operator may need to know to keep them safe. These have been two of the many benefits and improvements brought about by the Adventure Activity Regulations.
34. Invariably, leaders disclose the risks during the activity briefing. On rare occasions auditors need to point out that, important as that is, it is too late for most participants to withdraw, and that it also must be done when participants book. Recreation Aotearoa welcomes the recent improved clarity of when and how risk should be disclosed.
35. Recreation Aotearoa notes that ambiguity and potential for confusion remains. For example, Section 11.1 does not really explain, define or give examples of “*serious risk*”. Additionally, it is not obvious if risks pre-mitigation or post-mitigation, should be disclosed. Perhaps, in that regard, it would be helpful to clarify whether Hazards (as opposed to risks) should be disclosed, or not.
36. Recreation Aotearoa acknowledges and commends the provision of the *How we apply Adventure Activity Regulation 8A Policy Clarification*. We suggest that key aspects of this, such as accessibility and responsiveness, are brought through to the guidance document.
37. Section 13 (Appendix 1) deals with the role and nature of Natural Hazard Technical Advisers. Recreation Aotearoa submits its concern in relation to the requirement and costs of these Technical Advisers.



38. Much further clarity is required as to the threshold by which Natural Hazard Technical Advisers are required and if information provided by agencies such as GNS, DOC, Metservice and the Avalanche Advisory would serve as sufficient substitutes.
39. Recreation Aotearoa submits its concern that if the guidelines are taken *prima facie*, a sufficiently qualified and abundant workforce is available in New Zealand to serve the Technical Adviser requirement. Even if it was, it would likely be too expensive to be sustainable for many Adventure Activity Operators.