

# Regulatory Impact Statement

## Registration scheme for adventure and outdoor commercial sectors

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Labour.

It provides an analysis of options to address the following problems:

- There were 31 reported fatalities and 297 reported workplace serious harm injuries in the part of the sector not covered by rules-based approaches during the five year period 1 July 2004 to 30 June 2009.
- New Zealand's current legislation places no obligations on most adventure and outdoor commercial sector (adventure tourism) businesses to comply with upfront or periodic safety audits, relying instead on full awareness and understanding of health and safety obligations and penalties as deterrence to non-compliance<sup>1</sup>. This creates a situation where businesses can operate below optimum safety levels by not prioritising safety, either knowingly or unknowingly.
- Currently, no comprehensive information exists about where adventure tourism operators are, what activities they offer, and whether these activities have adequate safety management provisions. Therefore, targeting of health and safety activities such as information provision, support and enforcement to providers is difficult.
- While these gaps remain there is insufficient assurance that preventable accidents will not occur, harming individuals, their families, New Zealand's international reputation and the industry's reputation.

As the adventure tourism sector makes a significant contribution to New Zealand's economic growth, careful consideration has been given to ensuring that the sector is able to continue to operate viable, innovative and profitable businesses, but also that effective regulation is in place to ensure safety and New Zealand's international reputation. The proposal in this paper would be an effective way of balancing the Government's objectives and improving safety in land-based activities and water-based activities not covered by rules-based approaches.

The proposal is for a compulsory registration scheme for adventure tourism sector operators fitting a pre-determined description with, for most businesses, a requirement for upfront and periodic external safety audits of operators' safety management provisions (to a level depending on the risk threshold of the business). The requirement for safety audits would be based on a risk assessment that considers the environment in which activities are delivered. Adventure tourism sector businesses with a particularly low risk profile may not require a safety audit in order to be registered and therefore will not incur significant compliance costs. The registration scheme would apply to all commercial land-based and water-based activity operators (or all of these operators within a certain risk profile), excluding white water rafting, jet boating and adventure aviation for which

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<sup>1</sup> Aviation and some water-based activities are the exception and more tightly regulated by rules-based systems.

rules-based requirements already exist. Operators found to be operating without registration would be liable to prosecution.

A 2009/10 interagency review of risk management and safety in the adventure tourism sector informed this proposal. Workplace serious harm accidents and fatalities reported to the Department of Labour, Maritime New Zealand and the Civil Aviation Authority, plus statistical information from the Ministry of Tourism about the economic benefits of the sector to New Zealand's economy informed the review. Consultation with the adventure tourism sector indicated strong support from leading sector organisations for a registration scheme.

The proposal is not constrained by any commitments or existing obligations. The proposed review of the Amusement Devices Regulations 1978 on the Department's work programme for 2010/11 can occur in parallel with and cognisant of this initiative.

Activities already governed by maritime rules and civil aviation rules will not be covered by the proposed registration scheme. Until a decision has been made about what form the Amusement Devices Regulations 1978 continue to take, those regulations will continue to also apply to some activities in the adventure tourism sector. The proposals apply only to the commercial sector (that is, organisations that charge a fee to guide or deliver the activity and where a person is working for gain or reward). They will not affect organisations that do not charge a fee.

At this stage, agreement in principle is being sought for the registration scheme. This will be subject to a report back from the Minister of Labour to Cabinet Economic Growth and Infrastructure (EGI) Committee by 30 November 2010 on further work on the funding and institutional arrangements to deliver the registration scheme and other initiatives. Final Cabinet decisions will be sought when detailed policy proposals are provided in the proposed report back.

Regulations would need to be made under section 21(1) of the Health and Safety in Employment (HSE) Act 1992, pending final Cabinet decision. The Minister of Labour must consult all persons and organisations the Minister thinks appropriate, having regard to the regulations' content, before recommending making any regulations.

The registration scheme would introduce barriers for businesses to enter the industry as adventure tourism sector operators would be required to pass initial and periodic safety audits in order to provide adventure activities. At present, these restrictions do not exist, except where registration under the Amusement Devices Regulations 1978 is required, maritime or civil aviation rules apply, or when adventure tourism sector operators seek to deliver their activities on public conservation land or under the jurisdiction of some local authorities. As at May 2010, 884 adventure tourism businesses that would come under the registration scheme already had a safety audit in order to get a Department of Conservation concession to operate on public conservation land. A significant number of others will also have had voluntary safety audits to adhere to good practice or in order to obtain consent from some local authorities.

For those businesses that have not already had an external safety audit and require one under the registration scheme, compliance costs will be graduated depending on the risk profile of the activities offered by the business and the level of safety audit required. Typical costs would include a one-off payment of \$1000 for the upfront audit for medium risk activities, to up to \$2200 for the upfront audit for high risk activities, depending on the complexity of the organisation being audited. This would cover the first three years of the

business's operations. Typical costs of the periodic audits would be the equivalent of \$100 to \$365 per year, depending on the complexity of the organisation being audited, its risk profile and the frequency of audits. Benefits from the scheme include reducing the six fatalities and 60 serious harm injuries per year, providing a greater level of assurance to customers and staff, contributing to protecting the economic value of New Zealand's tourism industry, and better industry reputation.

All operators have a duty under the HSE Act to, among other things, provide and maintain a safe working environment, ensure that plant is safe, and develop procedures for dealing with emergencies that may arise. In order to comply with this they need to have comprehensive safety systems, particularly given the heightened inherent risk in the industry. Whilst a registration scheme requiring upfront and periodic safety audits may increase compliance costs, for operators currently meeting their HSE obligations, this should not be large.

This initiative will bring some consistency to the requirements operators need to meet in order to operate in different locations and with different types of land tenure.

Lesley Haines, Deputy Secretary, Workplace Group

[Signature of person]

[Date]

## Status quo and problem definition

New Zealand has a strong reputation for developing innovative and successful adventure tourism products (e.g. commercial jet boating, bungee jumping, and plastic sphere globe riding). This is helped by the current regulatory environment, with low barriers to entry and performance-based legislation.

Except for some special provisions that apply to aircraft and ships, the same health and safety provisions that apply to all workplaces apply to the adventure tourism sector. The provisions are principally directed at ensuring worker safety but also cover other persons in, or in the vicinity of, a workplace. In the adventure tourism sector, this includes customers engaged in activities.

Current legislative controls under the Health and Safety in Employment (HSE) Act 1992 place obligations on adventure tourism sector businesses to identify hazards and either eliminate, isolate or minimise them. However, in this sector some risk is inherent in many activities. In such a context non-regulatory and self-regulatory options may not be appropriate or effective in ensuring these risks are appropriately managed.

For many activities or businesses, registration under the Amusement Devices Regulations 1978 is required, maritime or civil aviation rules apply, or Department of Conservation or local authority consent is required (for example when adventure tourism sector operators seek to deliver their activities on public conservation land or under the jurisdiction of some local authorities). However, some activities and businesses fall between these additional safety controls.

Furthermore, no comprehensive information exists about where adventure tourism sector operators are, what activities they offer, and whether these activities have adequate safety management provisions. Therefore, targeting of health and safety activities such as information provision, support and enforcement to providers is difficult.

Except for adventure tourism sector activities with rules-based systems, New Zealand's current legislation places no obligations on many of these businesses to comply with up-front or periodic safety audits, relying instead on full awareness and understanding of health and safety obligations and penalties as deterrence to non-compliance. This creates a situation where businesses can operate below optimum safety levels by not prioritising safety, either knowingly or unknowingly.

Many adventure tourism sector businesses are small and/or comparatively new. These businesses often have an operator who is knowledgeable and passionate about the product or activity, but may not always have the skills or knowledge to implement appropriate risk management systems. The review heard from a number of operators of businesses of different sizes who described substantial health and safety system learning curves that initially compromised the level of safety of their operations.

There are gaps in the safety management framework, however, which allow adventure and outdoor commercial sector businesses to operate at different standards than those that the paying public should reasonably expect and that experts within the industry consider acceptable. While these gaps remain there is insufficient assurance that preventable accidents will not occur. This situation could result in harm to individuals and their families and damage to New Zealand's reputation as an international visitor destination and the industry's reputation.

For the year ended March 2009:

- International tourist expenditure accounted for \$9.3 billion or 16.4% of New Zealand's exports (including international airfares paid to New Zealand carriers)
- Tourism directly and indirectly contributed \$15 billion (or 9.1%) to New Zealand's total GDP (excluding GST and import duties)
- Tourism directly supported 94,600 full time equivalent employees (4.9% of the workforce)
- In 2008, 38% of all international tourists (849,200 in total, aged 15 years or over) participated in at least one adventure activity while in New Zealand (both recreational and commercial activity)
- In total, international visitors who participated in at least one adventure tourism activity spent \$3 billion in New Zealand, more than half of total international visitor expenditure (\$5.9 billion).

Adventure tourism is an integral part of the New Zealand experience for our international visitors. As such, any negative publicity associated with preventable fatalities and serious harm incidents could have a serious impact on our reputation as an attractive, high quality tourism destination. There were 31 reported fatalities and 297 reported workplace serious harm injuries in the part of the sector not covered by rules-based approaches during the five year period 1 July 2004 to 30 June 2009. This is approximately six fatalities and 60 serious harm injuries per year, comprising about 10% of the total fatalities and at least 5% of total serious harm injuries reported to the Department per year<sup>2</sup>. Retaining the status quo through the absence of any further government action may detract from New Zealand's reputation as an attractive, high quality tourism destination and may mean that further harm to individuals and their families is not averted.

A compulsory registration scheme with requirement for upfront and periodic external safety audits of operators' safety management provisions (to a level depending on the risk threshold of the business) is recommended. Such a scheme is the most appropriate way to ensure that targeting of health and safety activities such as information provision, support and enforcement to providers can occur and that appropriate skills and knowledge are brought to bear when implementing risk management systems. Except through a significantly more expensive licensing scheme, only a registration scheme and supporting enforcement actions can provide reasonable assurance that preventable accidents will not occur that could result in harm to workers, consumers and their families and damage to New Zealand's reputation as an international visitor destination and the industry's reputation.

As the adventure tourism sector makes a significant contribution to New Zealand's economic growth, careful consideration has been given to ensuring that the sector is able to continue to operate viable, innovative and profitable businesses, but also that effective regulation is in place to ensure safety and New Zealand's international reputation. The proposal for a registration scheme would be an effective way of balancing the Government's objectives and improving safety in land-based activities and water-based activities not covered by rules-based approaches.

By taking a risk-based approach, the proposal for a registration scheme aligns with the proposal also before Cabinet to make new Maritime Rules under the Maritime Transport Act 1994: Part 81 Commercial Rafting Operations. That proposal relaxes the stringency of some Rules that cannot be justified on safety grounds, taking into account the actual risk of the

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<sup>2</sup> Anecdotal and other evidence suggests significant under-reporting of injuries in the sector because they are thought of as recreational, even though fees have been paid for participation.

activity. It requires that guides have enhanced first aid and river rescue skills and operators have Safe Operational Plans tailored to the risks encountered on a specific river. Additionally, commercial rafting operations remain subject to such inspections and audits as the Director of Maritime New Zealand considers necessary in the interests of safety.

## Objectives

The objectives of this proposal are to:

- reduce accidents and fatalities in the sector
- ensure that New Zealand continues to be perceived as a quality destination for international visitors
- provide ongoing assurance for Government, industry, operators and participants that adventure tourism sector operators have appropriate safety management provisions for the activity they are offering.

There should not be an expectation that all accidents in the sector can be eliminated. Rather, it should be expected that all practicable efforts are made to minimise the risk of accidents.

The proposal put forward for analysis came out of a review of risk management and safety in the adventure tourism sector ordered by the Prime Minister in 2009.

The proposal is not constrained by any commitments or existing obligations (the proposed review of the Amusement Devices Regulations 1978 on the Department's work programme for 2010/11 can occur in parallel with and cognisant of this initiative). At this stage, approval in principle is sought for this initiative so detailed policy proposals on the design, implementation issues and costs associated with the registration scheme and a more comprehensive and specific Regulatory Impact Statement can be prepared.

## Regulatory impact analysis

### Regulatory options

The Department considered a notification-only scheme and a licensing scheme as well as the proposed registration scheme. The key differences between these options are as follows:

Type of scheme	What each type of scheme would involve
<p><b>Notification-only scheme</b></p> <p>(Similar to requirements currently in place for forestry and construction)</p>	<ul style="list-style-type: none"> <li>• All operators (or all operators within a certain risk profile) notify a central oversight body on an online database and declare against certain requirements (e.g possession of a safety plan)</li> <li>• Complemented by the oversight body that runs the scheme checking operators (e.g. on a random or notified basis) to ensure details are correctly provided</li> <li>• Operators who did not notify would be barred from operating. Operators found to be operating without notification would be liable to prosecution. Operators not in compliance with their disclosure could be subject to enforcement action.</li> </ul>
<p><b>Registration scheme</b></p> <p>(Similar to requirements already in place for</p>	<ul style="list-style-type: none"> <li>• All operators (or all operators within a certain risk profile) to register themselves on a register to be managed by a central oversight body and provide evidence against certain requirements (e.g possession of a safety plan)</li> <li>• Requirement of up-front and periodic (probably three-yearly) external safety audits of operators' safety provisions (to a level depending on the risk)</li> </ul>

<p>amusement devices as defined under the Amusement Devices Regulations 1978, with additional requirements)</p>	<ul style="list-style-type: none"> <li>• Safety audits most likely against generic safety criteria</li> <li>• Requirement for an annual declaration that operators are continuing to adhere to their safety management plans</li> <li>• Complemented by the oversight body that runs the scheme checking operators (e.g. on a random or notified basis) to ensure details are correctly provided and the operators are continuing to comply with their safety plans</li> <li>• Operators who did not register would be barred from operating. Operators found to be operating without registering could be subject to enforcement action</li> </ul> <p>Note that compliance costs of any note associated with this scheme are related to the external safety audits. The scheme does not introduce any new health and safety practice requirements than operators have to meet already under the current legislation.</p>
<p><b>Licensing scheme</b> (Similar to the requirements under the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999)</p>	<ul style="list-style-type: none"> <li>• All operators (or all operators within a certain risk profile) to apply for a licence on a periodic (perhaps three-yearly) basis and provide evidence against certain requirements (e.g possession of a safety plan)</li> <li>• Requirement of up-front and periodic (probably three-yearly) external safety audits of operators' safety provisions (to a level depending on the risk)</li> <li>• Safety audits most likely against activity-specific codes of practice</li> <li>• Requirement for an annual declaration that operators are continuing to adhere to their safety management plans</li> <li>• Professional judgement made about the competence of the provider and their arrangements to comply with the law and how likely it is that compliance will continue throughout the licence period</li> <li>• Possibly other requirements such as fit and proper person specifications to own and/or manage adventure tourism sector businesses</li> <li>• Probably a three-yearly assessment of the suitability of the operation to be re-issued with a licence</li> <li>• Complemented by the oversight body that runs the scheme checking operators (e.g. on a random or notified basis) to ensure details are correctly provided and the operators are continuing to comply with their safety plans</li> <li>• Operators who did not obtain a licence would be barred from operating. Operators found to be operating without a licence could be subject to enforcement action.</li> </ul>

The Department considers that the costs to government and to businesses of a full licensing scheme would be considerably less cost-effective than a registration scheme, whilst a notification-only scheme would not address all of the assurance problems identified in the adventure tourism review.

The Minister of Labour will report back to EGI by 30 November 2010 with detailed policy proposals on the design, implementation issues, and costs associated with the registration scheme, including more detail on additional compliance costs.

Indicative costs of the three regulatory options are shown below. The report back discussed above will also investigate the funding and institutional arrangements for administering the registration scheme, and where the costs may fall (for example, government, industry through cost recovery, or shared arrangements).

Type of scheme	Indicative cost of administering the scheme	Indicative cost to government	Likely compliance costs for businesses and sector bodies
Notification-only scheme	<p><b>Low</b></p> <ul style="list-style-type: none"> <li>• A very simple online database would be required</li> <li>• Checks on operators would be against very simple criteria.</li> </ul>	<p><b>Low</b></p> <ul style="list-style-type: none"> <li>• Enforcement activity is likely to be lowest.</li> </ul>	<p><b>Low</b></p> <ul style="list-style-type: none"> <li>• Simple on-line notification and declaration only.</li> </ul>
Registration scheme	<p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• A more complex online database would be required than would be necessary for a notification only scheme</li> <li>• Checks on documentation provided and more frequent checks on operators would be required.</li> </ul>	<p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• Enforcement activity is likely to be more frequent than for a notification only scheme.</li> </ul>	<p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• Initial and periodic external safety audits required (although audits against generic safety criteria limit any negative impact on innovation)</li> <li>• Providing evidence against certain requirements (e.g possession of a safety plan) means uploading documents onto an on-line database or sending them to the relevant agency</li> <li>• Arguably the additional cost for an employer meeting their HSE obligations should not be high and will largely deliver greater compliance.</li> </ul>
Licensing scheme	<p><b>High</b></p> <ul style="list-style-type: none"> <li>• A more complex online database would be required than would be necessary for a registration scheme (with set up costs likely to be considerably more)</li> <li>• Checks on documentation provided and on operators would need to be more frequent, comprehensive and complex (being activity-specific)</li> <li>• The responsible agency would need to make professional judgements about the competence of the provider and their arrangements to comply with the law and how likely it is that compliance will continue throughout the licence period.</li> </ul>	<p><b>High</b></p> <ul style="list-style-type: none"> <li>• Enforcement activity is likely to be highest.</li> </ul>	<p><b>High</b></p> <ul style="list-style-type: none"> <li>• Initial and periodic external safety audits required</li> <li>• Activity-specific codes of practice may need to be developed with sector bodies</li> <li>• Providing evidence against certain requirements (e.g possession of a safety plan) means uploading documents onto an on-line database or sending them to the relevant agency</li> <li>• Providing evidence of provider competence likely to require more extensive business – licensing authority engagement.</li> </ul>



The differences in benefits between notification-only, registration and licensing schemes in terms of the safety assurance they offer are shown below.

<b>Benefits</b>	<b>Notification only scheme</b>	<b>Registration scheme</b>	<b>Licensing scheme</b>
All operators (or all operators within a certain risk profile) would be required to have a safety plan at the point of registration	√	√	√
Operators' contact information (so support can be provided) would be known at a point in time	√	√	√
Information on the size and profile of the sector, including participation and incident levels, collectable at a point in time	√	√	√
The entity selected to manage the scheme could assume other roles	√	√	√
Ability to contact operators and gather information resolved in an ongoing way (database will not become out of date)	<b>X</b>	√	√
Safety assurance resolved on the <u>existence</u> of an operator's safety plan <u>at start up</u>	<b>X</b>	√	√
Safety assurance resolved on the <u>quality</u> of an operator's safety plan <u>at start up</u>	<b>X</b>	√	√
Safety assurance resolved on the <u>ongoing existence</u> of operators' safety plans	<b>X</b>	√	√
Safety assurance resolved on the <u>ongoing quality</u> of operators' safety plans	<b>X</b>	√	√
Safety assurance resolved that all operators (or all operators within a certain risk profile) <u>implement</u> their safety plans	<b>X</b>	√	√

The 'no change' option (maintaining the status quo) was also considered but rejected because it would not address any of the problems identified through the review. Retaining the status quo would pose risks to the annual \$3 billion that international visitors who participate in at least one adventure tourism activity spend in New Zealand and not reduce the risk of serious harm to service users.

The registration scheme will incur costs to pay for managing the registration database and for obtaining the safety audits. Based on discussions with Outdoors New Zealand, which administers the OutdoorsMark safety auditing scheme, it is estimated that for those businesses that have not already had an external safety audit and require one under the registration scheme, compliance costs will be graduated depending on the risk profile of the activities offered by the business and the level of safety audit required. Typical costs would

include a one-off payment of \$1000 for the upfront audit for medium risk activities, to up to \$2200 for the upfront audit for high risk activities, depending on the complexity of the organisation being audited. This would cover the first three years of the business's operations. Typical costs of the periodic audits would be the equivalent of \$100 to \$365 per year, depending on the complexity of the organisation being audited, its risk profile and the frequency of audits. The upfront audit would be required at the point of registration and the periodic audits perhaps every three to five years<sup>3</sup>. The registration scheme will also include a risk-based assessment that considers the environment in which activities are delivered. Adventure tourism sector businesses with a particularly low risk profile may not require a safety audit in order to be registered and therefore will not incur significant compliance costs.

Advice obtained from the Adventure Activities Licensing Service in the UK is that the total average cost of licensing is approximately £750 per provider per year (approximately \$1504), part paid by the provider and part paid by the government. The Department anticipates that the registration scheme should cost significantly less than this.

Note that until a decision has been made about what form the Amusement Devices Regulations 1978 continue to take, those regulations will continue to also apply to some activities in the adventure tourism sector.

Additional human resources will be needed within businesses to register on the database, maintain the business's information on the database, and organise the safety audits to occur. A significant percentage of businesses in the sector are already subject to compliance costs of a similar nature, however, depending on their location and the type of tenure over the land on which they operate. For instance, the Department of Conservation operates a 'required safety audit regime' for concessionaires on public conservation land and the Queenstown Lakes District Council requires an application for resource consent from operators once they have guided five people within its jurisdiction, including a safety management plan.

Note that upfront and periodic safety audits would require a pool of approved auditors to avoid slowing down business decisions. The Department of Labour has discussed this with Outdoors New Zealand which manages the OutdoorsMark safety auditing system and anticipates that the market would respond to this demand as industry capacity for an increased number of audits already exists and could be grown quickly.

#### *Form of the change in regulation*

Regulations would need to be made under section 21(1) of the Health and Safety in Employment Act 1992, pending further Cabinet decisions.

#### *Differences with practice in Australia*

Commercial tourism operators in Australia are subject to mandatory legal requirements in relation to trade practice and health and safety legislation, and specific legislation such as the Victorian Government's Marine Act (1988). Thus, as employers and persons controlling a place of work or work area, operators have a duty of care to employees and clients. Operators must identify, assess and control hazards in order to manage exposure to risk of employees and clients. Further, Australian commercial operations are subject to damage claims from injury incidents and may have to pay compensation to those parties suffering loss or injury, particularly where their duty of care to clients is breached.

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<sup>3</sup> Or more frequently when an operator's risk profile suggests closer scrutiny would be appropriate as currently occurs for registration under the Amusement Devices Regulations 1978.

Australia also has 'Adventure Activity Standards' (AAS), introduced in 2003 with the aim of encouraging responsible and consistent safety and environmental practices across Victoria's adventure industry and later introduced in other states. AAS apply to both commercial and not-for-profit providers. The Standards outline minimum risk management and environmental responsibilities, covering key business practices such as leader competency, emergency procedures, equipment, and commitment to environmentally sustainable operations. The standards were developed in consultation with the industry.

AAS are not statutory standards by law. Legal liability for injuries or property damage is primarily governed by the law of contract and negligence. The AAS have been established as minimum standards for organisations conducting outdoor recreation activities for dependant groups (where participants have a level of dependence upon the leader). However, commercial activity providers will be aware that AAS have been applied by most managers of crown land as a legal requirement of necessary licenses.

In addition to AAS, there is the National Outdoor Leader Registration Scheme (NOLRS). NOLRS was established in 2003, with registered leaders in Western Australia, Queensland, New South Wales and the Northern Territory. The NOLRS benchmarks national standards for outdoor leadership.

The proposal for a registration scheme in New Zealand with initial and periodic external safety audits is therefore markedly different to the Australian approach. However, this needs to be considered in light of the fact that New Zealand has a no fault accident compensation scheme while in Australia commercial operations are subject to damage claims from injury incidents and may have to pay compensation to those parties suffering loss or injury, particularly where their duty of care to clients is breached.

#### *The impact on New Zealand's commitment toward a single economic market with Australia*

The proposal does not introduce any regulatory barriers on occupations (that is, it is not occupational licensing and should not impede the trans-Tasman labour market). The underlying health and safety obligations (identifying hazards and controlling them) will remain very similar across the two countries. Registration will be of the activity, which is usually place-bound or specific to the New Zealand environment (for example, white water rafting and mountain climbing).

#### Alternative options

The Department also considered a number of alternative initiatives to the registration scheme, but determined that they do not provide the level of safety assurance required and are unsatisfactory in terms of providing solutions to the identified problems. The initiatives would involve agencies exploring:

- *Educating consumers to look for a safety mark from an accredited safety auditing scheme when selecting an adventure tourism sector provider*

Advantages - this would be the key alternative way to provide assurance to consumers if government did not wish to introduce a registration scheme.

Disadvantages – past experience with consumer education / awareness strategies suggests that it can take considerable time before they start to change consumer behaviour and the strategies' effectiveness is unclear.

- *Requiring operators to have a satisfactory safety audit in order to receive any taxpayer-funded promotional benefits (such as inclusion through i-Site stands, Tourism New Zealand)*

Advantages – this would be a low-cost option for government to provide an incentive for operators to get safety audits of their activities.

Disadvantages – while it would be likely to endorse existing practice by more professional and larger operators, it would be unlikely to change behaviours among smaller operators (including those less likely to have a safety certificate), or relatively new businesses.

- *Linking ACC payments to evidence of audited safety management plans*

Advantages – this would involve considering extending the Workplace Safety Discount Programme to adventure tourism sector operators. Operators would have a monetary incentive to undertake sound safety management and improve safety systems, and it could also lower overall costs to government.

Disadvantages – there would need to be strong support from the sector as a group in order for it to be worthwhile. Given that the levy paid by employers only relates to the injuries of workers, not customers, any saving on ACC levies for businesses would be likely to be small. The recent decision to introduce experience rating in the ACC Work Account is likely to help support the objectives of the review.

- *Expanding the rules-based approach taken under the Maritime Transport Act and the Civil Aviation Act for possible application to other adventure based activities*

Advantages – this would have brought consistency of approach across water, air and land-based activities with similar risk profiles and provide an increased level of assurance about the risk management provisions that apply to them. It would also allow for monitoring of entry, audit activities and closing down of unsafe operations.

Disadvantages – this would be a slow and expensive process and it is likely that this level of control is disproportionate to the scale of the problem. As new activities, or variants on existing activities, were developed, it would require new sets of rules or revision of rules.

- *Increasing the level of inspection under the HSE Act*

Advantages – this could occur prior to the commencement of some or all operations, and/or at more frequent intervals once operations are in place, depending on risk. It could mean that operators have more face-to-face contact with an inspector and that this provides an opportunity to learn about good practice. There would be a continuance of voluntary codes and other instruments at lower administration costs than new interventions.

Disadvantages – without a registration scheme, this initiative would capture only those operators and activities known to agencies. Additionally, there are concerns about the logistics of undertaking a significantly higher level of inspections and the level of safety assurance they could provide. Participants would not have complete assurance, unless the additional resources for increased inspection provides scope for consistent start-up and periodic audits by inspectors and those inspectors were qualified to make a full assessment of the safety management provisions operators put in place. Reliance on frequent ongoing inspections shifts the burden of responsibility for safe operations away from an operator and towards the regulators perhaps raising public and operator perceptions that the regulator is assuring the safety of individual operations.

## Non regulatory initiatives

Other initiatives alone will not resolve the problems faced by the sector, however, as they will not provide information on where adventure tourism sector businesses are and what activities they offer, or on whether those businesses have adequate safety management provisions in place. While those knowledge gaps remain, there is insufficient assurance that preventable accidents will not occur and targeting of health and safety activities such as information provision, support and enforcement to providers will be difficult.

The complementary initiatives that the Department will be leading further work on are:

- facilitating establishing an industry-led entity to strengthen the safety management framework for the sector
- evaluating the safety auditing schemes for adventure tourism sector operations to ensure they are fit for purpose
- investigating the development of a register of government-accredited adventure tourism-related safety auditing schemes
- developing a generic practice guide for the sector (other than for adventure aviation activities and commercial jet boating and rafting)
- providing other guidance to better inform operators about their current responsibilities
- collecting better and more consistent information on the sector and improving its collation
- for activities where qualifications are not already required, investigating whether instructors and guides should be required to hold qualifications and work only within the scope of their qualifications for some activities
- investigating if New Zealand should be represented on the International Organisation for Standardization's TC 228 Working Group for Adventure Tourism
- scoping the development of guidance on land owners' and land managers' safety-related responsibilities when they grant permission for adventure tourism sector activities to operate on land that they own or manage.

## **Consultation**

The following government agencies were consulted at earlier stages of the review: Ministry of Transport; Ministry of Tourism; Civil Aviation Authority; Maritime New Zealand; ACC; Department of Conservation. Two leading sector organisations (the Tourism Industry Association New Zealand and Outdoors New Zealand), representatives of councils for Local Government New Zealand, and a 69-member external reference group of relevant people and organisations from the sector were also consulted. Public consultation also occurred.

The government agencies, Tourism Industry Association New Zealand, Outdoors New Zealand and representatives of councils for Local Government New Zealand were all represented on the governance and/or working groups established for the review that made the recommendations. The external reference group was consulted by email throughout the process. The public consultation process involved the dissemination of questionnaires in late 2009 (to which 142 responses were received).

All agencies involved in the governance and working groups for the review agreed with the proposal for a registration scheme with upfront and periodic safety audits. Initially the

Department was proposing only upfront safety audits, but to respond to agencies' concerns that this would not provide ongoing assurance about the safety management provisions of operators, altered the proposal to also include periodic safety audits (to be undertaken perhaps every three to five years)<sup>4</sup>.

Feedback received from the external reference group and public consultation was about a wider ranging and diverse set of issues and proposals, but commonly also supported the idea of having a registration scheme with upfront and periodic external safety audits.

## **Conclusions and recommendations**

The Department will undertake further work on the funding and institutional arrangements to deliver the registration scheme and complementary recommendations, with a particular focus on the appropriateness of industry-government shared models. Agreement in principle is sought to a compulsory registration scheme, subject to a report back on this further work.

## **Implementation**

Activities already governed by maritime rules and civil aviation rules will not be covered by the proposed registration scheme. Until a decision has been made about what form the Amusement Devices Regulations (ADR) 1978 continue to take, those regulations will continue to also apply to some activities in the adventure tourism sector. There may be scope to reduce or remove the impact of the ADR on the adventure tourism sector if the registration scheme is implemented.

## **Monitoring, evaluation and review**

The Department will undertake further work on these aspects as part of the proposed report back.

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<sup>4</sup> Or more frequently when an operator's risk profile suggests closer scrutiny would be appropriate as currently occurs for registration under the Amusement Devices Regulations 1978.