

Regulatory Impact Statement

Registration scheme for adventure tourism sector

Agency Disclosure Statement

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

It provides an analysis of options to introduce a compulsory registration scheme for the adventure tourism sector (excluding adventure aviation activities, commercial jet boating and rafting), that Cabinet agreed to in principle on 23 August 2010. The options were to provide a registration scheme with a requirement for:

- up-front and periodic external safety audits of operators' safety management provisions (to a level depending on the risk threshold of the business); and
- an obligation on operators to keep their registration up-to-date.

The analysis is in response to Cabinet's invitation for the Minister of Labour to report back to Cabinet Economic Growth and Infrastructure Committee (EGI) by 30 November 2010 with detailed policy proposals on the design, implementation issues, and costs associated with the proposed registration scheme, including further detail on additional compliance costs and the funding and institutional arrangements to deliver the proposals set out in the paper under EGI (10) 183.

The analysis considers two options:

- registration and then obtaining a safety audit
- obtaining a safety audit and securing automatic registration on a public register.

It is premised on the earlier RIS completed before the Cabinet decision to implement a registration requirement for adventure tourism operators.

Regulations would need to be made under section 21(1) of the Health and Safety in Employment Act 1992 (HSE Act).

The key assumptions and dependencies are that:

- more than one safety auditing provider will seek accreditation through the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), or a similar organisation recognised by the Secretary of Labour for that purpose, in order to provide safety audits for the adventure tourism sector
- JAS-ANZ or a similar organisation will successfully develop a credible standard with the sector for evaluating and accrediting safety auditing providers
- adventure tourism operators will respond to requests to obtain safety audits so that few prosecutions or other enforcement actions are required.

The proposal is constrained by a small overlap with the Amusement Devices Regulations 1978. Some activities currently requiring registration under the Amusement Devices Regulations 1978, such as bungee jumping with machine winches, may be more appropriately safety audited to the proposed adventure tourism audit standard than the machinery-only focused audits that the Amusement

Devices Regulations specify. The Department of Labour will identify the activities that this may apply to (likely to be only a few), and will seek exemptions under section 3 of the Machinery Act 1950 to ensure that only the proposed adventure tourism audit standard applies.

Activities already governed by the Maritime Rules, and to be governed by the Adventure Aviation Rules, will not be covered by the proposed registration scheme.

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.

Consultation with the sector indicated strong support from leading sector organisations for a registration scheme.

As the adventure tourism sector makes a significant contribution to New Zealand's economic growth, the options have been considered to ensure the sector is able to continue to operate viable, innovative and profitable businesses, while ensuring that effective regulation is in place to ensure safety, the reputation of New Zealand's tourism sector, and New Zealand's international reputation more broadly.

Lesley Haines, Deputy Secretary, Workplace Group

[Signature of person]

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Status quo and problem definition

Status quo

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 year¹.

Based on the value of a statistical life of \$3.5 million, if only one life per year was saved the benefits over costs of the proposals in this RIS would be \$2.7 million per annum. Savings in public health costs as a result of serious harm injuries, ACC costs and lower impacts on economic growth would increase the value of benefits over costs. Similarly, preventing the very significant costs to the industry arising from reputational damage associated with loss of life further increases the value of benefits over costs. In improving the safety management systems in the sector, the registration scheme could be expected to save at least one life per year.

The 2009-10 Department of Labour-led review into risk management and safety in the adventure tourism sector concluded that there are gaps in the safety management framework which allow some adventure and outdoor commercial sector businesses to operate at lower 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.

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 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 (DOC) 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.

Except for adventure tourism sector activities operating within rules-based systems, New Zealand's health and safety legislation relies on full awareness and

¹ 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.

understanding of 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.

There is currently no comprehensive information available about where adventure tourism operators are, what activities they offer, and whether these activities have adequate safety management provisions. This compromises operators' access to information and advice on health and safety, and makes it difficult for regulatory agencies to direct information provision, support and enforcement activities at operators.

Retaining the status quo through the absence of any further government action, while inexpensive, is likely to mean that further harm to individuals and their families is not averted that could have been averted. This is likely to detract from New Zealand's reputation as an attractive, high quality tourism destination.

Problem definition

In August 2010, Cabinet agreed in principle to a compulsory registration scheme for the adventure tourism sector, requiring:

- up-front and periodic external safety audits of operators' safety management provisions (to a level depending on the risk threshold of the business); and
- an obligation on operators to keep their registration up-to-date.

Cabinet requested detailed policy proposals on the design, implementation issues, and costs associated with the proposed registration scheme, including further detail on additional compliance costs and the funding and institutional arrangements to deliver the proposals.

The problem is to design a compulsory registration scheme for the adventure tourism sector that meets the objectives outlined below without imposing undue compliance costs on providers.

Objectives

The objectives of the proposal are to:

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

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 following matters have been addressed in relation to the registration scheme:

- definition of the types of adventure tourism operators who will be required to register through the proposed registration scheme
- the process for registration
- how the standard for safety audits that must be obtained for the purposes of registration will be set
- how safety audit providers are accredited to provide audits for the purposes of the scheme
- how costs will be covered for the registration scheme, safety audits and accreditation process.

Regulatory Impact Analysis

Alternatives to a registration scheme considered

The Department considered a notification-only scheme and a licensing scheme as well as the proposed registration scheme. It presented the key differences between these options and the reasons for recommending the registration scheme in the Regulatory Impact Statement that was completed with the Cabinet paper leading to the decisions that this analysis is premised on.

The 'no change' option (maintaining the status quo) was also considered at that time. It was 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.

Two options for delivering a registration scheme considered

Two options have been identified for delivering the proposed registration scheme. These are:

- registration and then obtaining a safety audit or
- obtaining a safety audit and securing automatic registration on a public register.

Implications, benefits and costs that apply to both options

Both options will require regulations to be made under the HSE Act 1992 and both would incur compliance costs for businesses completing audits as a requirement of registration.

All operators already have a duty under the HSE Act 1992 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 will increase compliance costs, for operators currently meeting their HSE obligations, this should not be large.

The 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.

It will introduce barriers for businesses to offer certain defined adventure activities as adventure tourism sector operators. At present, these restrictions do not exist, except where registration under the Amusement Devices Regulations 1978 is required, Maritime or Adventure 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, more than half (884) of the estimated number of adventure tourism businesses that would be eligible to register through 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 align with good practice or in order to obtain consent from some local authorities.

Benefits from the scheme include reducing the six fatalities and 60 serious harm injuries per year in the sector, 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.

Cost of safety audits

Audit costs for adventure tourism operators will be graduated depending on the risk profile of the activities offered by the business and the complexity of the business. Anticipated typical costs would be approximately \$1300 for an upfront accredited audit (including costs to manage the public register) for medium risk activities in less complex businesses, to up to \$2500 for high risk activities in more complex businesses.

Anticipated typical costs of subsequent periodic accredited audits would be approximately \$800 for medium risk activities in less complex businesses to \$1400 for high risk activities in more complex businesses.

The Department of Labour expects that for particularly simple operations, the costs for up front and periodic accredited audits will be lower. Because the cost of managing the public register will be built into this fee, adventure tourism businesses will be charged no other fees for the registration process.

The Department of Labour expects that most up front and periodic audits will be valid for a three year period and include a desk audit and inspection as required, although audits of a few activities in which highly technical equipment is used may need to be more frequent. The three-year audit duration for most activities, and more frequent audits for some operations currently registered under the Amusement Devices Regulations 1978, reflects current practice. The Department of Labour will work to ensure that a consistent approach to determining audit duration is specified in the safety audit standard.

Cost of accreditation scheme

The accreditation scheme is anticipated to cost safety auditing providers a one-off fee of approximately \$9000 - \$10,500 for each provider, plus a per annum charge per current safety audit certificate that the provider has issued (anticipated to be up to

\$100) which covers ongoing maintenance of the accreditation scheme, surveillance of the safety auditing schemes and maintaining the public register.

The safety auditing providers will bear the cost of the one-off accreditation fee and the operators (clients of the safety auditing providers) will bear the cost of the annual accreditation scheme maintenance fee through a direct increase of the cost of a safety audit. That increase has been built into the costs identified under 'Cost of safety audits' discussed above.

Implications, benefits and costs of each option compared

Option 1: Requiring that adventure tourism operators register and then obtain a safety audit

This would involve adventure tourism operators:

- registering with the Department of Labour or another appointed registration body
- obtaining a safety audit from an accredited provider to complete the registration process
- providing evidence of a completed safety audit to the registration body
- paying a registration fee
- ensuring information about their business is kept up to date.

The registration body would log the information onto its own publicly accessible database.

This option would have significantly higher compliance costs than Option 2. To maintain a separate registration database, the Department of Labour has estimated that adventure tourism operators would need to pay between \$270 and \$370 each (depending on functionality of the registration website and other factors) every time they obtain a safety audit in addition to the cost of an audit to an accredited standard.

For most operators, this cost would be incurred every three years and would essentially be paying for a duplicate of the database held by the accreditation body. Adventure tourism operators would also need to undertake the administrative tasks associated with registration as listed above, which they would not have to undertake for Option 2. Given that the accreditation body can provide reports to the Department of Labour and Maritime New Zealand to support them with their enforcement functions, and potentially also provide them with a portal into the data on its database, the Department of Labour has identified no benefits of this option.

Option 2: Requiring that adventure tourism operators obtain a safety audit, and automatically become registered on a public register

This would involve adventure tourism operators obtaining a safety audit from an accredited provider and providing them with the concomitant information for the public register, and taking no other steps for registration. Once audited, operators would automatically become registered to offer those activities for which they were audited. The accredited safety auditing provider would be obligated to provide the accreditation body with the details of all adventure tourism operators that they have provided a safety audit certificate for and to keep that information up to date. The accreditation body logs the information onto its own publicly accessible database.

This option achieves the Government's desired outcomes that all adventure tourism operators are logged on a register, have up-front and periodic external safety audits

to an accredited standard, and that their registration details are kept up-to-date for the lowest possible cost to adventure tourism businesses. It reflects current practice when any business obtains a safety audit from a safety audit provider accredited by JAS-ANZ for that purpose. In this option, the cost of maintaining the database is built into an annual fee charged to the safety audit provider and all administrative tasks associated with providing and maintaining the information on the database is the responsibility of the safety audit provider that provides the safety audit certificate. No separate registration fee needs to be paid.

Consultation

The following government agencies were consulted at earlier stages of the review: Ministry of Transport; 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 (from 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 years)².

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 options analysis shows that Option 2: *Requiring that adventure tourism operators obtain a safety audit, and automatically become registered on a public register* is the approach that will achieve Government's objectives at a much lower cost than establishing a separate registration scheme and audit requirement. This option requires that operators obtain a safety audit from an accredited provider, with the registration process occurring automatically. Additionally, all administrative tasks associated with providing and maintaining the information on the register would be

² 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.

the responsibility of the safety audit provider that provides the safety audit certificate. Option 2 is recommended for this reason.

Implementation

Transitional period

To manage workflows associated with the registration process and ensure that those activities with the highest risks are prioritised for safety audits, it is necessary that operators of adventure tourism activities first notify the Department of Labour of the following matters:

- Name of business / organisation / sole trader offering the activity/ies
- Name of a contact person who can represent the business or organisation
- Phone number, postal and email addresses for the contact person
- Description of all activities offered
- Physical location of all activities offered
- Evidence of any external safety audits that have already been obtained for the activities.

This will require downloading a form from the Department's website or requesting one from the Department, completing it and emailing or posting it to the Department. No charge is proposed for this notification step as it will be managed from within the Department of Labour's baseline.

The Department of Labour will then prioritise adventure tourism operators for safety audits, with those businesses offering activities with the highest risk profiles being scheduled for safety audits before those with lower risk profiles, and write to them requesting that they commence a safety audit within three months and complete it within six months after it commences. The first three month period is proposed so operators have time to obtain quotes for a safety audit and prepare for it. A six month period has been found to be appropriate to complete a safety audit in case an adventure tourism business needs to make significant changes to its operations in response to emerging audit findings in order to pass an audit.

The data provided to the Department of Labour could also help the Department of Conservation to identify illegal operators on public conservation land (subject to a data sharing agreement between the Department of Labour and the Department of Conservation, if possible).

Developing a credible standard for audits

JAS-ANZ has provided a proposal to the Department of Labour to work with the sector to develop a standard for evaluating and accrediting the safety audit providers. It has already discussed this with all of the safety audit providers currently known to provide safety audits for the adventure tourism sector in New Zealand, and the Department of Labour has had indications from these providers that they would be open to engaging in a process of this kind. The proposed standard would be underpinned by a New Zealand Standard relevant to risk management and safety in the sector, such as AS/NZS 4801:2001 *Occupational health and safety management systems*. AS/NZS 4801:2001 already informs the auditing tools used by some of the safety auditing providers, so it is anticipated that it should be relatively easy for providers to meet the new standard and become accredited.

Developing a competitive market of safety audit providers

The Department of Labour has had two clear expressions of interest in accreditation from safety audit providers for the purposes of providing safety audits for adventure tourism businesses. Additionally, one further safety audit provider is already accredited by JAS-ANZ for a different standard and is unlikely to find it difficult to expand its accreditation status for this purpose. The Department of Labour is also aware of three other safety audit providers who may also be interested and discussions between Qualmark and OutdoorsMark about collaborating to strengthen the safety auditing aspect of Qualmark audits and retain its value for the sector.

Raising awareness about the requirement to obtain a safety audit

The Department of Labour considers that the safety audit providers and sector representative bodies will do much of the awareness raising required to inform operators that they will be required to obtain a safety audit. The safety audit providers will do this in order to advertise their services. The Department of Labour will complement this with its own awareness raising initiatives funded from its baseline. This will make clear that failure to obtain a safety audit when required may result in prosecution or other enforcement actions.

Minimising compliance costs

Compliance costs are minimised in this proposal by utilising an existing register held by the accreditation body and processes that are already required for safety auditing providers to be accredited. The proposal is that adventure tourism operators will have to undertake a single step – obtain a safety audit and provide the safety auditing provider with the concomitant information for the public register – and the remaining steps associated with populating and maintaining the information on the register of operators will occur as part of the safety audit providers' arrangements with the accreditation body. Compliance costs will also be graduated according to the risk profile of the particular activities being offered.

Interaction with, and impacts on, existing regulation

Activities already governed by the Maritime Rules, and to be governed by the proposed Adventure Aviation Rules, will not be covered by the proposed registration scheme.

The proposal is constrained by a small overlap with the Amusement Devices Regulations 1978. Some activities currently requiring registration under the Amusement Devices Regulations 1978, such as bungee jumping with machine winches, may be more appropriately safety audited to the proposed adventure tourism audit standard than the machinery-only focused audits that the Amusement Devices Regulations specify. The Department will identify the activities that this may apply to (likely to be only a few), and will seek exemptions under Section 3 of the Machinery Act 1950 to ensure that only the proposed adventure tourism audit standard applies.

Enforcement strategy

The Department of Labour and Maritime New Zealand will receive regular reports from the accreditation body on adventure tourism businesses that fail to complete a safety audit within a specified period to enable them to carry out their enforcement functions. The Department of Labour will also seek an agreement with relevant agencies to be informed if they are aware of any eligible adventure tourism operators who have not registered. The accreditation body's register of audited adventure tourism operators is publicly available.

Monitoring, evaluation and review

The Department of Labour will monitor the completeness of the notification and audited adventure tourism operator registers by sorting the information by area and seeking advice from sector representative bodies, regional Department of Labour offices and other sources.

The Department of Labour will track the progress of completed audits against its notification register to ensure that adventure tourism operators are complying with requests to obtain safety audits, are completing them in reasonable time, and that all adventure tourism operators will be audited within three years of the scheme's commencement.