



Submission to

WorkSafe

Proposed Changes to the Safety Audit Standard

Date: 25 November 2022

Tourism Industry Aotearoa (TIA) welcomes the opportunity to comment on WorkSafe's proposed changes to the Safety Audit Standard.

EXECUTIVE SUMMARY

- TIA is supportive of WorkSafe's review of the Safety Audit Standard.
- This tranche is one of the outcomes of the targeted review of the adventure activity regulations undertaken by the Ministry of Business, Innovation and Employment (MBIE) in 2021.
- TIA supports a title change to the document with the removal of the word 'Audit' to establish clarity as to the document purpose.
- TIA supports a clarification of the definition of *ongoing compliance* with further recommendations.
- TIA suggests including the reasoning for non-inclusion of earthquakes in the definition of Natural Hazards.
- TIA supports a change to the definition of 'near miss' with further recommendations.
- TIA supports a more detailed definition of Safety Management System (SMS) and would support example documents being included as appendices.
- TIA supports the revision of the term 'technical adviser'.
- TIA does not support the proposed changes to 'communication' as defined in Sub Section 4.5. The international travel industry makes bookings on behalf of operators' months or years in advance. The operator cannot be held responsible for the delivery of safety messaging by third parties.
- TIA supports the proposed refinement of the wording in both points related to Risk Management Measures, Sub Section 5.2.
- TIA supports the addition of a new subsection 5.4 to address Natural Hazard Risks. Further, TIA suggests that the reasoning for the non-inclusion of earthquakes as natural hazard risks be included for clarification purposes.
- TIA supports the proposed changes to the wording of Dynamic Management of Risks in Subsection 6.3.
- TIA supports the proposed changes Subsection 6.4 as related to maximising the safety of participants and maximum trip capacity. TIA does not support a restrictive definition that does not allow for dynamic management of situations and risks.

- TIA supports clear guidance for field communications, However, as written, the amendment does not specify if the ability to contact emergency services overrides existing protocols to relay using a base station or if this is to be used in the absence of a base relay. Further clarification is required.
- TIA supports the ready availability of first aid supplies. Clarification of the definition of *immediately* is necessary to distinguish between remote locations and base-facility locations.
- TIA suggests a specific timeline of at least an Annual Review of emergency & preparedness plans and procedures, rather than 'periodically'.
- TIA suggests specifically requiring the operator to be designated as the holder of the appropriate first aid qualification rather than 'someone' not controlled by the operator.
- TIA supports the recording and notification of near miss incidents to an industry register. Clearer definitions of a near miss are necessary for clarification and coding purposes. Also, the reporting of a near miss, for the purposes of learning and education, should not necessarily result in an investigation by the authority.
- TIA does not support the inclusion of 'ought reasonably to have known' in the suggested revision of Subsection 10.3 on the basis that the clause is significantly subjective and that no current platform for shared incidents or near misses exists in the public domain.

INTRODUCTION

1. Tourism Industry Aotearoa (TIA) is the peak body for the tourism industry in New Zealand. With around 1,200 members, TIA represents a range of tourism-related activities including hospitality, accommodation, adventure and other activities, attractions and retail, airports and airlines, transport, as well as related tourism services.
2. The primary role of TIA is to enable outstanding tourism This includes working for members on advocacy, policy, communication, events, membership, and business capability. The team is based in Wellington and is led by Chief Executive, Rebecca Ingram.
3. Any enquiries relating to this paper should in the first instance be referred to Lori Keller, TIA Industry Advocate by email at lori.keller@tia.org.nz or by phone on 021 0868 5356.

OUR UNDERSTANDING OF THE SITUATION

On 9 December 2019 Whakaari/White Island erupted resulting in the tragic loss of 22 lives, and a further 25 people left with serious, life-long injuries.

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

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

This specific review of the Safety Audit Standard is one of the outcomes of the targeted review of the adventure activity regulations undertaken in 2021.

TIA is supportive of this review.

STAKEHOLDER CONSULTATION

In preparing this submission, TIA has engaged with its members in the adventure activity sector. Other consulted parties include Recreation Aotearoa and Education Outdoors NZ.

OUR FEEDBACK

We have grouped our feedback to align with the specific questions in WorkSafe's submission document.

1. Proposed change to the title of the document

TIA supports a title change to establish better clarity as to the purpose of the document, removing the word 'audit'. We would suggest a new document titled: Safety Standards for Adventure Activities. The removal of 'audit' from the document title highlights the importance of the document content and its applicability to all those involved in the sector.

2. Proposed changes to Section 1: Introduction; Sub-section number: 1.4; Sub-section name: Ongoing compliance

TIA supports a clarification of the definition of *ongoing compliance* with further recommendations. We suggest replacing the word 'should' with 'must' in the sentence: "This review ~~should~~ must take into account any audit findings, reports from technical advisers and/or technical experts, and analyses and recommendations from specific reviews, including reviews of incidents". The use of 'must' highlights the importance of incident analysis as well as annual review findings and audit recommendations.

3. Proposed changes to Section 2: Definitions

a) Proposed new definition for 'natural hazards'

TIA is supportive of the new definition of Natural Hazard on the proviso that the reasoning for the non-inclusion of earthquakes as natural hazards is explained in the document. Feedback from the sector has highlighted varying levels of understanding of this topic, and as earthquakes are endemic to most parts of New Zealand, we are seeking further clarity.

b) Proposed change to 'incident' definition

TIA supports a change to the definition of 'near miss' as detailed in the consultation document. Further, TIA strongly supports the creation of a near miss register, supported by WorkSafe, enabling the sharing of near miss incidents across the sector.

c) Proposed change to 'safety management system (SMS)' definition

TIA supports a more detailed definition of Safety Management System (SMS). This list of documents suggested in the consultation document are an excellent template. A library of sample documents would be valued by the sector. This library could be held on the WorkSafe website as well as the SupportAdventure platform.

d) Proposed change to 'technical adviser' definition

TIA supports the revision of the term 'technical adviser'. Operators regularly seek advice from auditors whilst undergoing audits. As this is not permitted under the current regulations, clarifying the term 'Technical Advisor' and how a Technical Advisor is someone able to assist with their inquiries will be well received by the industry.

4. Proposed changes to Section 4: Leadership and management; Sub-section number: 4.5; Sub-section name: Communication

TIA does not support the proposed changes to 'communication' as defined in Sub Section 4.5. The international travel industry makes bookings with travellers, on behalf of operator's months or sometimes, years in advance. An operator cannot be held responsible for the delivery of risk information/safety messaging by third parties beyond New Zealand. We understand the intent of the wording is to ensure that participants are informed as early as possible about inherent risks in the activities they choose to undertake. This is commendable. However, the complexity of the international travel industry makes this proposal particularly challenging. At present, we are hearing of cases where offshore travel agents are refusing to forward Risk Disclosure documents from NZ activity operators to potential clients due to 'own-country' laws that would (in the event of an injury to the client) make the travel agency liable if they do so. Other complications arise as Inbound Tour Operators (ITO's) are being asked to communicate risks and distribute Risk Disclosure Forms to clients on behalf of each one of the tour suppliers. Some ITO's work with over 2000 suppliers and may have large groups of clients (100 or more) participating in multiple activities as they travel through New Zealand. TIA supports the commitment to communicate risks to clients in a meaningful way. However, the current communication proposal is not fit-

for-purpose and is unlikely to significantly improve risk disclosure to participants, particularly to those booking beyond New Zealand borders. TIA would strongly support wider industry engagement on this specific proposal and would welcome the opportunity to assist WorkSafe in creating a workable solution to this complex issue.

5. Proposed changes to Section 5: Risk and hazard management; Sub-section number: 5.2; Sub-section name: Risk management measures

- a) TIA supports the proposed refinement of the wording in both points related to Risk Management Measures, Sub Section 5.2 with the following additions:
*'Control measures being regularly monitored and checked **'at least annually'** to ensure they are still managing the risk effectively'*. The addition of this clause establishes a minimum baseline for checks (the operators may have higher requirements).
- b) TIA supports the additional clarity provided in the suggested example of eliminating a risk.
- c) TIA supports the removal of the words 'office work' in favour of scenarios likely to fall under the HSAW (General Risk and Workplace Management) Regulations 2016.

6. Proposed new sub-section 5.4 - Managing Natural Hazard Risks

TIA supports the addition of a new subsection 5.4 Managing Natural Hazard Risks with the addition of the rationale for the non-inclusion of earthquakes as natural hazard risks be included (for clarification purposes). As one of the aims of the proposed changes is to ensure better understanding by the sector, the rationale used to this decision would be helpful.

7. Proposed changes to Section 06 – Standard Operating Procedures

- a) Sub-section 6.3 – Dynamic Management of Risks:

TIA supports the wording revision to Dynamic Management of risks to include "SOPs must also require the operator to monitor on an ongoing basis the risks associated with natural hazards within their operating area and have clear decision criteria for postponing or cancelling activities (or moving the activity to a safer location) based".

- b) Sub-section 6.4 – Supervision
 - i. TIA does not support a restrictive placement of assistant supervisors in activities. TIA would support a should/shall/may definition that allows for assistant supervisors to be placed in specific locations under 'normal operating conditions' but also allows for a change of position as/when required to optimise safety.

- ii. TIA supports the inclusion of a maximum ratio of participants in SOP's. TIA does not support a restrictive definition that does not allow for dynamic management of situations and risks.

8. Proposed changes to Sub-section number: 6.6, Sub-section name: Field communications

TIA supports clear guidance for field communications. As written, the amendment does not specify if the ability to contact emergency services overrides existing protocols to use a base station or if this requirement is to be used in the absence of a base relay. In many sectors, office/base teams are trained specifically to handle emergency situations. TIA would suggest further clarification on this point.

9. Proposed changes to Section 7: Emergency preparedness and response plans

- a) Reference to 'Adequate first aid supplies must be available at all times during the activity'

TIA supports the ready availability of first aid supplies. Clarification of the definition of 'immediately' is necessary to distinguish between remote locations and base-facility locations. Depending on the activity, guides may be unable to carry all necessary first aid supplies. However, these supplies may be available within a short distance at a designated storage point. The inclusion of such a solution would be useful.

- b) Reference to 'The emergency preparedness and response plans must be tested and reviewed periodically, reviewed after an incident or emergency, and revised as required'

TIA suggests a specific timeline of at least an Annual Review of emergency & preparedness plans and procedures, rather than 'periodically'.

TIA suggests amending the clause: "The operator must revise the emergency response plan in response to the findings of any test or review to ensure that the plan is workable and effective" to:

"The operator must revise the emergency response plan in response to the findings of any test or review or **as a result of any change to the operating environment** to ensure that the plan is workable and effective. "

- c) Reference to 'The operator must ensure that staff and participants have ready access to someone with an appropriate and current first aid qualification'

TIA suggests specifically requiring the operator to be designated as the holder of the appropriate first aid qualification rather than 'someone' not controlled by the operator.

- d) Reference to 'The operator must ensure that staff and participants have ready access to someone with an appropriate and current first aid qualification'

TIA is supportive of first aid qualification that are specific to the risk inherent in the activity and the location/remoteness of the activity (e.g., solo guiding in a remote location vs. solo guiding at an obstacle course situated as base facility with other staff).

10. Proposed changes to Section 8: Incident management; Sub-section number: 8.1; Sub-section name: Incident response

TIA supports the recording and notification of near miss incidents to an industry register. Clearer definitions of a near miss are necessary for clarification and coding purposes. Also, the reporting of a near miss, for the purposes of learning and education, should not necessarily result in an investigation by the authority.

One of the purposes of reporting near misses, and a subsequent register, is to improve safety outcomes. TIA would strongly support a Near Miss register that is managed by WorkSafe. Further, the circulation of a monthly 'Near Miss' report to registered Adventure Activity operators would ensure that relevant and current anonymised information is delivered to key operational staff/stakeholders. Without a plan to distribute the information, the register would not meet its full potential for positive impacts on safety culture. The industry would highly value a register being re-instated.

11. Proposed changes to Section 10: Continual improvement; Sub-section number: 10.2; Sub-section name: Internal review of the SMS

- a) TIA supports the addition of 'complaints' into the proposed wording.
- b) TIA does not support the inclusion of the wording 'ought reasonably to have known' without the creation of a near miss register and subsequent circulation of information. 'Ought reasonably to have known' is a catch-all phrase that does not reflect the diversity, remote locations, or types of operations in the adventure activity sector. Not all Adventure Activity operators are members of professional associations. Many businesses operate in isolated environments away from similar activity providers. An assumption that knowledge is readily accessed shared among operators is incorrect. TIA supports the recording and notification of near miss incidents to an industry register. A platform for the circulation of these reports is necessary to achieve desired safety improvements. TIA would support the publishing of links to government procured and published reports (via use of the Support Adventure platform) to facilitate access to safety information within the sector. TIA strongly supports the principle of prevention before harm.

Comment

TIA supports WorkSafe taking a stronger role in the sector providing that 'a stronger role' manifests as education and engagement, both as equally as important as enforcement.

There is strong demand from the sector for guidance from WorkSafe. Guidance requests include: the development of further Adventure Safety Guidelines (ASG's) to match the range of activities listed on the WorkSafe register, overdue updates

of existing ASG's currently on the SupportAdventure website, and desire to meet with WorkSafe staff at regular intervals (hui) to answer industry questions. TIA would strongly support further work in this area and would be available to support WorkSafe to meet with industry.

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

WorkSafe has a role to provide guidance to the sector, with input from the sector. Completing the full set of ASG's and creating/publishing a review schedule for those ASG's would be highly regarded by the industry.

Follow up process

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

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

BACKGROUND

TIA has a long and established history in the support and development of adventure safety standards.

In 2010, in response to concerns about several serious incidents in the adventure and outdoor commercial sectors, the then Department of Labour (DOL) was tasked to review practices within those sectors to determine if changes were needed to strengthen risk management and safety systems.

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

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

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

website. The additional guidance resulted in the development of activity specific safety guidelines (ASGs) in consultation with industry.

In 2016, the then voluntary guidelines became part of the Health and Safety at Work (Adventure Activities) Regulations. The regulations set out the requirement and process for becoming registered as an adventure activity operator and made it an offence for unregistered operators to offer adventure activities to participants. As part of this increased focus on adventure safety, TIA, with funding from WorkSafe and support of Recreation Aotearoa, undertook the development of further sector specific Adventure Safety Guidelines. The suite of ASG's can be found on the SupportAdventure website. Also at this time, a commitment to create and distribute an industry specific safety-focussed newsletter was made. The SupportAdventure newsletter continues to be jointly written and distributed by TIA and Recreation Aotearoa and is produced bi-monthly.

As a result of the Whakaari White Island Tragedy in November 2019, MBIE undertook a targeted review of the health and safety regulatory regime for adventure activities in 2020. As part of this review, MBIE convened an Expert Reference Group comprising members from industry, academia and tangata whenua. Two TIA representatives sat on the Expert Reference Group, one acting as Chair.

TIA continues to be an ongoing contributor to the development of safety guidance for the sector and works collaboratively with industry partners alongside the Regulator (WorkSafe) to achieve positive adventure safety outcomes.