

Submission on the Adventure Activities: Keeping it Safe consultation document.

3/11/2021

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BYATA welcomes the opportunity to support the Hon Michael Wood, Minister for Workplace Relations and Safety on his review of the Adventure Activities system following the devastating events of Whakaari / White Island and to provide feedback on the consultation document developed by the Ministry of Business, Innovation and Employment (MBIE) – in support of the Adventure Activity operators of NZ.

1. Who is BYATA?

The Backpacker Youth Adventure Travel Association is a collective (140+) of youth and adventure-based tourism businesses, which rely heavily on 18–35-year-old youth travelers visiting New Zealand. Our group's pou's are to Advocate, Collaborate, and Communicate on behalf of members to ensure a healthy youth tourism sector. Our members include activity operators, accommodation providers, rental vehicles and transport networks within New Zealand's diverse tourism sector.

Our timu is to lead the next generation of traveler and our tirohanga is to be the independent voice for the youth travel industry. We are on a mission to define and advocate the true value of the sector, demonstrating that our customers for life are the poster child of the four capitals model.

Roughly half of our members are Adventure Activity operators who either are registered as a current certificate holder via the Worksafe scheme or potentially could be required, to be part of the Worksafe register in the future, so the significance of this submission is dramatic.

Please contact Chris Sperring, BYATA Chair for further information with regards this submission on 0211413757 or info@byata.org.nz

2. BYATA on behalf of its membership agrees with your stance that the goal *is to reduce harm* in the adventure activities sector. And furthermore, agrees with the statement that any changes that are made (following the consultation process) are completed in a way that will avoid having a chilling effect on the adventure activities sector or see unnecessarily restrictions of public access to the outdoor and recreation activities.

PROPOSALS TO SUPPORT BETTER MANAGEMENT OF NATURAL HAZARDS

Requirements for Operators

To address these issues, we are proposing introducing explicit requirements in regulation that:

- › **Operators are required to do all that is reasonably practicable to assess and manage natural hazard risks that may affect their activities.**
- › **Operators to have clear policies and processes in place to consider when risks may be unacceptable and call activities off.**

3. BYATA supports this messaging as our members *already take* all reasonable and practicable steps to identify risk to staff and visitors as per current Health and Safety Act and Adventure Activity regulations. Infact most of our members are considered world leading in the adventure space and take extreme pride in the duty of care they provide in their operations using the best safety equipment and systems that are available to them. Any changes to systems should be considered as tweaks rather than drastic over haul.

To be clear our members already;

- Make reasonable efforts to identify what natural hazards may affect their activities and how much risk the hazards pose
 - Manage activities to minimise these risks so far as reasonable practicable (they take and cut different routes to avoid natural hazards)
 - Have clear, pre set policies in place in their safety management systems for what conditions under which they will call activities off
 - Have processes in place to regularly check conditions continue to be acceptable both before and during the duration of activities.
 - Set clear roles and responsibilities for which staff members (including managers and frontline staff) are responsible for calling activities off both before and during an activity.
4. This is noted by virtue, of the total amount of trips per year and activities that are cancelled on a day-to-day basis at extreme cost to the business sector-wide throughout the year. A prime example would be the Glacier Hiking and trips on the West Coast, effected directly by the weather.

If the standards around the policy and procedure to call off activities were to be increased further, our operators would find their business operations untenable from a cost and operational perspective. And as more trips are required to be cancelled, due to the risk averse nature of our operation, would result in further loss of revenue. This is extremely difficult in the current COVID environment.

5. It is the uncertified activities and *unregulated operators* that are largely the concern in this space who present a risk and a reputation of this sector.

Requirements on landowners and land managers;

BYATA does not support any measures or additional onus that is applied to landowners around liabilities associated with the management of natural hazards. This is already appropriately managed. Putting pressure on landowners for liability in the event of an accident would have a chilling affect on the industry as rights of access would be diminished.

Landowners in general already do the below;

- › Provide information to operators about natural hazard risks on their land that they know about (or should reasonably know about).
6. Landowners – being the principal entities are DOC, LINZ and Iwi owning roughly 90% of the land that commercial operators conduct business on in Aotearoa. DOC is well resourced in terms of human capital and should already be able to provide the necessary information regarding the natural hazard risks that exist on their land. Unknowns exist around private landowner knowledge especially if that person resides overseas.
 7. Technological preparedness for landowners and operators would be the identifiable gap here especially if liability fell on a landowner where the requirement was to provide day to day updates with regards changing natural hazards. Uniformity and consistency when developing process for landowners is key.
 8. Any major changes to the risk model which places risk and responsibility on the landowner will only serve to act as a disincentive to private and Māori landowners to allow tourism operations on their land. Given the scarcity of suitable land which are fit for tourism purposes generally, this could further reduce land availability to the industry and in some cases see many tourism leases for adventure activities be reduced as risk averse landowners look to limit their liability. The shift in liability to landowners will also serve to damage the Māori economy, where capitalization of land is extremely difficult, the loss of tourism would be catastrophic. Seeing businesses faced with closure resulting in redundancies of their teams.
 9. Landowners and managers whilst being able to provide *some* advice around natural hazards would not necessarily be able to draw conclusions around whether those natural hazard's might impact on the safe delivery of an activity. It's the operator who would hold the technical expertise for their operation. And whilst natural hazards might seem strikingly obvious for extreme events such as floods and volcanic eruptions it is where there are small natural hazard events which create the problem in the mind of the landowner around suitability of their land to host an operator.

PROPOSALS TO CHANGE HOW RISK IS MONITORED, ASSESSED & COMMUNICATED

Introducing a risk classification system

Not all adventure activities carry the same level of risk. Both the type and degree of risk faced by participants and workers can vary greatly across different activities.

We think there is an opportunity to better recognise, communicate and act on these differences in risk level through introducing a risk classification system.

Under a classification system, operators and auditors would assess each of their activities against an assessment criteria to provide each activity a “risk score”.

This risk score could be used to:

- › Set how often activities needed to be audited – with lower risk activities able to be audited less often than high risk activities. **For example, operators offering low risk activities might have a safety audit at least once every four years, while operators offering high risk activities might be required to have a safety audit at least once every two years.**
- › Help explain to participants the risk levels of different activities as part of advertising.
- › Help WorkSafe build a profile of risks in the sector and identify where higher risk activities are occurring.

10. BYATA is not in favor of introducing a new risk classification system.
11. BYATA welcomes consultation with Industry to understanding that a risk classification system cannot be easily applied across all activities covered by the Worksafe register regime due to the complexities involved with managing different types of activities in NZ. Especially, when adding natural hazards into that framework.

Risk Disclosures:

Improving risk disclosures to participants

A key part of how we ensure risks are acceptable in the adventure activities sector is through participants making informed decisions.

We have heard that participants do not always feel that the information they are given by operators provides them a good understanding of the risks involved in adventure activities. We think more detailed standards will help support more consistent approaches towards risk disclosures among operators and spread good practices.

We propose introducing more detailed requirements for how and when risk disclosures to adventure activity participants should be made, and what they should include.

12. BYATA supports that member will continue to use / adopt risk disclosure statements as opposed to liability waivers to better inform users of the risks involved in an activity.
13. All risk disclosure must be practicable at the point of delivery within a fair and reasonable time frame. These should be tailored to individual business and activities, with disclosure formats tested and signed off by relevant bodies prior to being made mandatory.

PROPOSALS TO STRENGTHEN THE ROLE OF WORKSAFE

For the adventure activities regime to work well and improve safety standards it needs to be supported by a strong regulator. One of the key findings of the 2020 targeted review was that the adventure activities sector was not always well supported by WorkSafe, and that there were gaps in the way WorkSafe was performing its roles.

Adjusting the registration process and increasing the information operators provide to WorkSafe

We propose adjusting the operator registration process so that:

- › Operators register their operation with WorkSafe directly, rather than through their auditor
- › Operators provide more information to WorkSafe when they register
- › Operators review the information they provide to WorkSafe each year and update information as necessary

14. BYATA welcomes any steps to allow Worksafe to be more approachable in the future and to be able to have reasonable two-way conversations with operators as inadequate resourcing has meant this has not been the case in the past.
15. It is hard to see how without significant funding Worksafe would be resourced to complete additional role of regulatory services in the future. However, BYATA understands that there only two experts who cover the adventure market activities, which spans over 300 operators. More technical experts are required, and the solution is to canvas from within industry those world-leading recognized and operators to provide best practice technical auditing.
16. The industry feels that there is an overall lack of communication and support with very little opportunity for two-way dialogue. Further to this Worksafe are now heavily involved in the urgent development and implementation of the Risk Assessment processes outlined for use with the Covid Vaccination Certification program. We are concerned that this additional but immediate body of work will stretch Worksafe further and could hinder future efforts to connect Worksafe in a more meaningful way with Adventure Activity operators. This as well as inhibit their effectiveness around increasing their capacity as regulator within this space. In short Worksafe might well be spread to thin to carry out additional duties above and beyond its obligations with regards the Covid management delivery.

NON-REGULATORY PROPOSALS TO GUIDANCE AND AUDIT PROCESS

Wider changes to guidance materials, the audit standard or the audit process could also be made alongside or instead of the particular proposals we have discussed. In particular these proposals include:

- › Changes to the safety audit standard to improve safety standards e.g. specify qualification requirements for particular staff.
- › Changes to the audit process e.g. tighten safety checks on operators.
- › Updating guidance materials to fill identified gaps around the management of natural hazards.

17. BYATA supports Government collaboration with our membership and recognized industry educators including Go with Tourism to enable the delivery of accessible and affordable qualification standards to provide professional development opportunities for staff in certain activities, however specialized positions already have mandated qualifications.
18. BYATA supports the establishment of an ACC register of notifiable incidents, with input from the sector.

Cost implications of proposals

Some of these proposals will have cost implications for operators, landowners and participants. At this stage, we do not expect these cost increases will be significant compared to an operator's or landowner's existing costs of meeting their duties under the HSW Act and current Adventure Activities Regulations. However, we want to test this through the consultation process and to explore if other costs might be involved in these changes.

19. BYATA is opposed to any changes within the audit regime, which would cause an increase in costs to operators. It is unacceptable to accept any form of additional cost being placed on an already under pressure and struggling sector because of changes made following the consultation process.
20. This is because the Tourism Industry and Adventure operators' sector in particular have expended cash reserves because of the border closures due to Covid 19. Operators will likely face a third Winter and Summer without International visitors in any material way due to ongoing border restrictions, MIQ requirements and airline constraints.
21. The notion that any small additional cost be passed back to the user via an increase in ticket pricing shows a lack of understanding and compassion for our members position at this time. Pre-Covid users of activity product were three times (3x) more likely to be International Youth. This extrapolates out to be at least three times (3x) more than this figure for Domestic users in the same age demographic. The loss of revenue in the last three (3) years has been significant and should not be underestimated at this time. Operators are faced with ongoing uncertainty around visitor numbers and talk of increased costs for their business by tourism taxes. Not all of these can be absorbed through ticket pricing.
22. The development of the new risk classification system will potentially increase cost to those business where the risk profile is highest by virtue of more regular auditing. As such a business who was audited pre consultation changes once every three years may well be required to audit on an annual basis.
23. There are only two recognized audit companies in NZ. The chances of costs escalating exponentially should one of these entities cease to trade would be a major inhibitor to this process.
24. Encouraging operators that changes will enhance the Tourism Industry in the long run is positive and supported by BYATA, promoting our destination as a safe and regenerative destination is key. The current systems and procedures in place are noted at various points through the consultation document as already very robust. As such any changes to systems should be seen as refinements rather than major overhauls.

25. Where there are gaps around natural hazards and the documentation associated with currently should be addressed carefully. The process would benefit refinement following the initial draft, which BYATA would be happy to assist with.
26. BYATA would support enhancements to the current regulatory system only where central Government developed tool kits and standardized documentation with no cost implications to these businesses
27. Furthermore, BYATA advocates that future auditing costs be funded by Government until 2025 to allow for international visitor growth to be re-established.



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