

# How we administer the adventure activities regime

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*POLICY*

March 2023



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

**WORKSAFE**  
Mahi Haumarū Aotearoa

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## Purpose

This policy outlines how we administer the adventure activities regime.

It sets out:

1. Our dual role as the Registrar and regulator.
2. How we make decisions as the Registrar and regulator.
3. How we manage the registration of adventure activity operators (including suspension and cancellation of registration).
4. How we manage the recognition of safety auditors (including the withdrawal of recognition).

This policy should be read in conjunction with:

- [When will WorkSafe intervene](#)
- [How we intervene](#)
- Authorisations [Policy](#) and Enforcement [Policy](#)
- the Safety Audit Standard for Adventure Activities: Requirements for a safety audit of operators (the Safety Audit [Standard](#))
- the New Zealand Adventure Activities Certification Scheme: Requirements for bodies certifying adventure activity operators' safety management systems (the [Scheme](#)).

## What the Adventure Activities regime is

The adventure activities regime is an important mechanism for reducing the risk of harm to workers and others (e.g. participants) from adventure activities, and for raising safety standards in the adventure activities sector.

By adventure activities regime, we mean the regulatory system established through the Health and Safety at Work (Adventure Activities) Regulations 2016 (the [Regulations](#)), and the Health and Safety at Work Act (Act) 2015 ([HSWA](#)).

The main agents in the regime are:

- adventure activity operators (operators)
- safety auditors
- WorkSafe New Zealand
- the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), who help us deliver the Scheme by certifying safety auditors
- Ministry of Business, Innovation and Employment (MBIE), who is responsible for administering, monitoring, and evaluating HSWA and monitoring our performance as regulator.

## What we do as the Registrar and regulator

We're both the regulator and Registrar for adventure activities.

As the **regulator** we have a broad range of interventions we can undertake under HSWA and the WorkSafe New Zealand Act 2013. We can use the powers of an inspector (for example, to collect evidence) and take opportunities to maximise our impact (for example, by taking a sector-wide approach to an issue through an education or information campaign).

As **Registrar** we make decisions about operator registration, and we maintain a public register of operators. Our powers, as set out in the Regulations, are limited. This means that any action required outside registration must be handled by WorkSafe as the regulator, not the Registrar.

The table sets out what we do in both our roles:

WHAT WE DO AS THE REGULATOR	WHAT WE DO AS THE REGISTRAR
<p>Act as regulatory steward for New Zealand's health and safety system and deliver regulatory functions (refer section 10 of the <a href="#">WorkSafe New Zealand Act 2013</a>)</p> <p>Under the Regulations, we:</p> <ul style="list-style-type: none"> <li>- make decisions to:               <ul style="list-style-type: none"> <li>- recognise safety auditors, unless we decline to do so for reasons specified in the Regulations</li> <li>- place conditions on safety auditors' recognition where appropriate</li> <li>- withdraw recognition</li> </ul> </li> <li>- manage the Safety Audit Standard and Scheme.</li> </ul>	<p>Under the Regulations, we:</p> <ul style="list-style-type: none"> <li>- keep and maintain the public register of operators</li> <li>- make decisions to:               <ul style="list-style-type: none"> <li>- register operators, unless we decline to do so for reasons in the Regulations</li> <li>- decline to register operators</li> <li>- suspend registration, for a period we see fit</li> <li>- cancel registration.</li> </ul> </li> </ul>

## How we make intervention decisions

Our role as Registrar gives us a general view of the types of activities that are offered, the number of registered operators, and oversight of their performance in relation to their registration. This helps support us as regulator, so we can take action to ensure the continuing overall good performance of the regime.

Where we have significant concerns about the integrity of the regime, or the performance of someone in it, we may decide to intervene:

- as the regulator, by inspecting the business and considering enforcement action, and/or
- as the Registrar, by considering the matter and suspending or cancelling the operator's registration.

We use:

- *When will WorkSafe intervene* to decide if we will intervene, and
- *How we Intervene* to guide us, if we have decided to do so.

When we intervene, we're clear about which actions we're taking as the regulator and which we're taking as the Registrar.

## **We apply our authorisations policy**

We use the Authorisation Policy to guide our decisions about the registration of operators and recognition of safety auditors. This means our decisions are:

- context-specific and proportionate
- consistent
- fair, just, and impartial
- transparent, and
- informed.

We're also responsive and timely when we make decisions. This means we balance efficiency with good decision-making.

## **We use a decision-making process**

### 1. We collect evidence

We can receive evidence from a range of sources, including:

- the safety audit report and certificate
- the safety auditor
- information we hold, including insights from our inspectors, and other regulators
- the operator.

### 2. We assess the quality of the evidence

We consider whether the evidence we receive is sufficient for us to apply the criteria in the Regulations<sup>1</sup>. If it's not, we source additional information. How much weight we give to information we receive is determined on a case-by-case basis.

### 3. We apply the Regulations

#### **WE CONSIDER IF THERE ARE GROUNDS FOR US TO TAKE ACTION**

An action is anything we can do as regulator or Registrar. It includes (but is not limited to):

- registering, declining registration, suspending, or cancelling registration of operators
- recognising and withdrawing recognition of safety auditors
- taking enforcement action.

We decide whether there are grounds for us to take action as the regulator or the Registrar by considering whether the evidence we have meets the criteria in the Regulations. How we do this in our roles as Registrar and regulator is outlined later in this policy.

#### **WE CONSIDER IF WE HAVE DISCRETION**

If we determine we have grounds to take action:

- where the Regulations indicate we **must** take an action, we take that action if the evidence meets the criteria to do so
- where the Regulations indicate we **may** take an action, we use our discretion to decide whether to do so, and if so, what the action will be.

<sup>1</sup> See: How to apply the Regulations when managing operators' registration and when recognising safety auditors in sections 3 and 4 of this document.

## **WE APPLY CONCEPTS IN THE REGULATIONS TO CLARIFY WHAT IS EXPECTED**

We follow what's expected of us according to the Regulations. This includes applying concepts in the Regulations to our decision making. Two of these concepts are 'satisfied on reasonable grounds' and the definition of 'person', which we interpret as follows:

### **Satisfied on reasonable grounds**

In a number of places, the Regulations specify that we must be 'satisfied on reasonable grounds' that the circumstances exist to support our decisions.

This is a lower standard than 'beyond reasonable doubt'. We'll use relevant and reliable evidence to support our decisions. A person doesn't need to have committed an offence under HSWA for us to decide to decline, suspend, or cancel registration.

### **Definition of person**

The Regulations refer to a 'person'. We interpret this to have the same meaning as in HSWA: that a 'person' can be a natural person, incorporated body, or body corporate.

The Regulations use 'person' and 'adventure activities operator' interchangeably. Whether a person is registered as an operator or not determines what Regulations we can apply (for example, we cannot cancel registration of an unregistered person who is providing adventure activities, but we may choose as regulator to take enforcement action).

Where the person is an incorporated body or body corporate, we may consider the person's previous history, taking account their role in the organisation, as part of our decision making.

## **4. We consider the situation and proportionality of our response to it**

We know our decisions can have significant impact on operators and safety auditors. We make sure our decisions and actions are proportionate and appropriate given the situation.

## **5. We base our decisions on relevant considerations**

Our decisions, including those where we apply the Regulations, must be supported by relevant considerations. This means we consider the context of each decision, and the associated operator/safety auditor and their circumstances.

## **6. We give the other party the opportunity to be heard, if needed**

If we're considering a decision which may negatively affect a person, we'll:

- make an initial decision and advise them
- give the person a reasonable opportunity to respond and provide any additional information they want to
- take into account what they share with us when making our final decision.

## **7. We make a decision and action it**

Once we've made a final decision, we provide written notice of our decision, and promptly take action.

## **As Registrar, we manage operators' registration**

As the Registrar we make decisions to:

- register operators, unless we decline to do so for reasons in the Regulations
- decline to register operators
- suspend registration, for a period we see fit
- cancel registration.

## **We register an operator unless there's good reason not to**

Generally, we register an operator unless:

- there's evidence that one of the grounds for declining applies, or
- the operator holds an exemption from the requirement to be registered under section 220 of HSWA.

## **We can suspend and cancel registration**

We make sure our response to a situation is proportionate. This means we're more likely to consider:

- suspending the operator's registration where a temporary cessation is warranted; for example, where the operator needs to take some action to remedy a situation and the issue can be easily remedied
- cancelling the operator's registration when the situation cannot be easily remedied, or where we have reasonable grounds to believe that the person's actions or inactions could result in a likelihood of serious harm.

Regulations 7 and 18 detail the criteria for declining, suspending, or cancelling registration. Each criterion is explained below.

## **How we apply the Regulations when managing operators' registration**

### **The person provided false information/evidence in order to obtain their safety audit certificate - Regulations 7(2)(a) and 18(1)(b)**

If a person provided false information or evidence to obtain their safety audit certificate, we must cancel the operator's registration.

We may suggest that the person obtain a new safety audit certificate based on corrected information. This may or may not require a new audit; this will be determined by the safety auditor.

Any subsequent application will be considered on its own merits. However, we may apply additional scrutiny when considering an application by a person who previously provided false information to obtain their safety certificate.

### **The person is not an adventure activity operator - Regulations 7(2)(b) and 18(1)(c)**

We need to be satisfied that operators meet the meaning of adventure activity in the Regulations.

We may determine they are not an adventure activity operator if the:

- operator fits within one of the exclusions
- activities for which the person is seeking registration would not normally be considered an adventure activity
- activity is covered by another regulatory regime, such as the Amusement Devices Regulations 1978.

Generally, our assessment follows the following process:

- We consider the operator's view.
- We may also ask the operator for a copy of the audit report and (if required) seek further information from the safety auditor.
- We form an initial decision, advise the operator and provide them with an opportunity to respond. If our initial decision differs to the operator's, we'll include a reason for our initial decision.
- After giving the operator a reasonable opportunity to respond, we make a final decision based on the information we have at that time and inform them of that decision.

**The person is unfit to be registered because of the improper way in which they previously provided adventure activities - Regulations 7(2)(c) and 18(2)(a)**

A person may be considered unfit to be registered if their actions or inactions, when previously providing adventure activities, give us reason to be concerned about the way they are likely to operate now or in the future.

We'll consider whether the situation fits best with this criterion or the criterion about an operator's failure to safely provide activities (see below). We'll use the decision-making process outlined in this policy to help us decide which Regulation applies. If we've determined they're unfit, we must decline registration.

**The person has not complied with a condition of the certificate or any prior certificate - Regulations 7(3)(a) and 18(2)(b)**

The Scheme provides for a safety audit provider to issue a certificate 'subject to any conditions it considers are required to maintain the safety of the adventure activities, and that are consistent with the relevant safety audit standard'. The conditions may include:

- surveillance audits
- specified actions the operator needs to take
- restrictions on the locations or type of terrain where the activity may be conducted.

When considering non-compliance with a condition of the certificate or of a prior certificate, we consider the nature of the non-compliance and make a decision.

Where an operator had failed to comply with a condition but had since remedied the situation to the satisfaction of the safety auditor, it may be reasonable for us to consider registering the operator.

**Their failure to safely provide activities, so far as is reasonably practicable, has endangered or may have endangered a person's life - Regulations 7(3)(b) and 18(2)(c)**

For this criterion to be met, something needs to have happened that gives us reason to think someone's life has been or could be endangered. This could include a near-miss, an incident, or an ongoing unsafe operation.



Our [Reasonably practicable](#) fact sheet<sup>2</sup> gives more information about what reasonably practicable means.

Evidence that could support us to consider that this criterion has been met include:

- successful prosecution under HSWA
- records of infringement offence(s)
- finding by a coroner
- successful civil action.

We'll confirm that the matter falls within the scope of these parts of the Regulations (or is a more serious matter, which would make the operator unfit as above) and then make a decision based on the relevant evidence.

### **The person has provided adventure activities the person was not registered to provide – Regulations 7(3)(c) and 18(2)(d)**

We'll generally only decline, suspend, or cancel an operator's registration on this basis if the operator's actions were deliberate.

We'll use our discretion and will consider whether the operator can demonstrate commitment to complying with the Regulations.

### **The person was registered by mistake – Regulation 18(1)(a)**

We'll cancel any registration that was registered by mistake, for example, due to an administrative error.

## **As regulator, we can recognise safety auditors**

As the regulator we make decisions to:

- recognise safety auditors, unless we decline to do so for reasons specified in the Regulations
- place conditions on safety auditors' recognition where appropriate
- withdraw recognition.

Under the Regulations we can recognise either a natural person or organisation as a safety auditor.

## **What safety auditors do**

Safety auditors<sup>3</sup> play a key role in the adventure activities regime. They provide:

- assurance that adventure activity operators have identified and are managing the risks associated with the activities they offer and provide
- an expert view on whether an adventure activity operator has an appropriate plan to safely provide an activity, and the right built-in contingencies if things don't go according to plan
- assurance that adventure activity operators are performing in accordance with their safety management plans
- useful feedback and perspective to us about how the sector and regime are working.

<sup>2</sup> See also: [Health and Safety at Work Act 2015 No 70 \(as at 01 December 2020\), Public Act 22 Meaning of reasonably practicable – New Zealand Legislation](#)

<sup>3</sup> We note the term 'safety auditor' is used in the Regulations. The term 'certification body (CB)' or 'conformity assessment body (CAB)' are used in the Scheme and have the same meaning.

## How we work with safety auditors

We acknowledge the role of safety auditors and work with them in good faith to support them, provide information, and make sure the regime operates well.

Given their role, safety auditors' performance is important to us. We monitor their performance and engage with them when we identify areas where they can improve.

## How we apply the Regulations when recognising safety auditors

When we make decisions about recognition, we focus on the safety auditor's specific circumstances, skills, and expertise.

We make sure they can only do things that they are competent to audit, by placing conditions on their recognition.

We make our decision to recognise safety auditors by considering whether they have demonstrated they satisfy the requirements prescribed by Regulation 9 of the Regulations.

### Appropriate experience and qualifications – Regulation 9(a)

We consider whether there is sufficient evidence to conclude that the skills and experience of the safety auditor's personnel are appropriate/relevant for their audit activities. Evidence can include:

- audit activities the safety auditor has undertaken in the recent past
- how the safety auditor ensures their personnel have the appropriate/relevant skills and experience to enable it to conduct their audit activities
- records the safety auditor keeps that demonstrate the skills and experience of their personnel
- how the safety auditor selects an audit team to ensure it has the appropriate/relevant skills and experience for an audit.
- how the safety auditor monitors the performance of personnel regularly involved in audits
- safety auditors' operational documents
- feedback from JAS-ANZ.

### Likely to carry out audits in a way that is objective and that promotes safety and the public interest – Regulation 9(b)

We consider whether there is sufficient evidence to conclude that the safety auditor can conduct audits in an objective way that promotes safety and the public interest. Evidence can include:

- how the safety auditor's senior management demonstrates its commitment to impartiality
- how the safety auditor ensures it conducts audits in an objective way that promotes safety and the public interest
- evidence that safety auditors have agreed to a code of conduct and are bound by a current contract and statement of confidentiality
- feedback from JAS-ANZ.

## Unlikely to have a conflict of interest that can't be managed – Regulation 9(c)

We consider whether there is evidence that the safety auditor is likely to be able to avoid conflicts of interest, and if not, whether they are likely to be able to appropriately manage conflicts of interest. Evidence can include:

- how the safety auditor identifies and manages conflicts of interest on an ongoing basis
- what conflicts of interest the safety auditor has identified
- how the safety auditor has managed the conflicts of interest it has identified
- feedback from JAS-ANZ.

## It is otherwise appropriate to recognise the person or organisation as a safety auditor – Regulation 9(d)

We consider whether there is sufficient evidence to conclude that it is otherwise appropriate to recognise the safety auditor. Evidence can include:

- how the safety auditor decides upon appropriate action when a nonconformity is raised through surveillance
- feedback from JAS-ANZ
- whether the safety auditor has a documented complaints and appeals procedure
- how the procedure is communicated to adventure activity operators
- what records of complaints and appeals are kept by the safety auditor
- how the safety auditor manages their relationship with us, including how they decide when to request assistance and guidance, or to refer a matter to us.

## **We can withdraw recognition**

We may withdraw recognition from a safety auditor if we are satisfied on reasonable grounds that either the safety auditor breached a condition of their recognition or doing so is in the interests of safety.

Evidence may include:

- information we hold that a safety auditor has breached a condition of their recognition
- information that shows the safety auditor has acted in a way that has put health and safety at risk.

When we decide to withdraw recognition of a safety auditor, we apply natural justice, and treat the safety auditor with fairness. We give them an opportunity to respond, and we take into account what they share with us prior to making our final decision.



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