

**DRAFT**

## ELT ADVICE MEMO

**To:** Executive Leadership Team

**From:** Tony Hetherington (Acting Chief Operating Officer) and Bronwyn Turley (Acting GM Regulatory Effectiveness)  
Adventure Activities Health Check project sponsors

**Prepared by:** Adventure Activities Health Check project team

**Date:** 11 May 2020

**Subject:** Adventure Activities Regime Project

### RECOMMENDATIONS

It is recommended that you:

- a. **Note** that the first priority of the Adventure Activities Health Check project (AA project) is on track **NOTED**
- b. **Note** that the recognition of safety auditors was confirmed on Friday 1 May 2020 **NOTED**
- c. **Note** that the reconfirmation review of the 76 safety audit certificates issued by auditors while not recognised will be completed by 22 May 2020 **NOTED**
- d. **Note** the revised communications approach outlined in this memo **NOTED**
- e. **Note** that the Adventure Activities Health Check project team will stand down until the PwC work is complete, and re-form after the PwC report has been received to scope up the second priority of the project (the AA health check) in light of the findings and recommendations **NOTED**
- f. **Note** that the health check will be completed in time for AAO registration renewals from 1 August 2020 **NOTED**
- g. **Note** that we are working with Operations to manage the issue of rafting operators being brought into the adventure activities regime in the current circumstances, including considering seeking an amendment to the revocation of Maritime Rule 81 **NOTED**
- h. **Note** that a full briefing, including the revised communications approach, will be provided to the Minister for Workplace Relations and Safety by Friday 15 May 2020 **NOTED**
- i. **Discuss and indicate your agreement** with the approach outlined in the memo **AGREED / NOT AGREED**

## PURPOSE

This memorandum provides an update on, and seeks your endorsement of, the work of the cross-organisation project team to identify, consider and provide advice to WorkSafe on issues relating to the registration of adventure activity operators (AAOs).

We introduced the project to you in a memo dated 17 March 2020, setting out the project's two priorities:

- the recognition of the safety auditors and subsequent reconfirmation of the 76 safety certificates for the affected (AAOs (Priority One), and
- the health check of WorkSafe's current administration of the AA regime to identify risks and issues, and recommendations for system improvements (Priority Two).

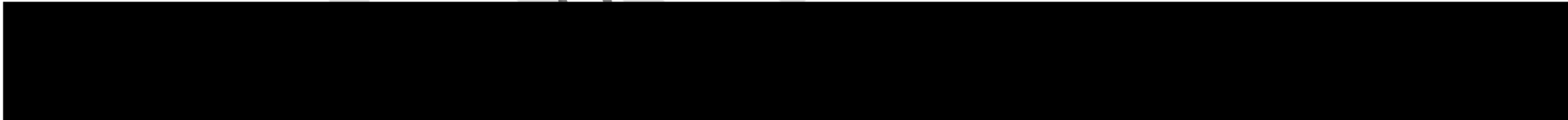
This memo provides an update on progress to resolve the issue of recognition, and it sets out the revised communications approach. It also asks you to note that the health check of the adventure activities regime (Priority 2) will not commence until the PwC report is available, as part of the legal work being undertaken for WorkSafe by Simpson Grierson.

## BACKGROUND

Under regulation 6(1) of the Health and Safety at Work (Adventure Activities) Regulations 2016 (the Regulations), an adventure activity operator (AAO) must pass a safety audit. The safety audit must be carried out by a 'safety auditor' recognised as such by WorkSafe under regulation 9 of the Regulations.

Regulation 9(1) sets out the criteria for recognition. Once recognised, safety auditors can audit and, as appropriate, issue safety certificates to AAOs so they can then be registered by the Registrar of Adventure Activities. The Registrar is currently WorkSafe.

While investigating the Whakaari/White Island incident, WorkSafe identified that the recognition of the three safety auditors (Qualworx, Telarc, and Integra) for the Adventure Activities (AA) regime had lapsed on 1 January 2019, having last been recognised in 2015.



## **UPDATE ON PRIORITY ONE: RECOGNITION OF SAFETY AUDITORS AND RECONFIRMATION OF REGISTRATIONS OF AAOS**

### **1. Recognition of safety auditors**

The following provides an account of the process followed and the outcomes achieved.

#### ***Engagement and application***

In late March 2020 members of the project team met with Joint Accreditation Standards of Australia and New Zealand (JAS-ANZ) and the three affected safety auditors to discuss the issue of lapsed recognition and the process by which we sought to resolve it.

We subsequently invited the two practising safety auditors to submit a written application for recognition, and to provide information in support of their application. One auditor withdrew from the market in November 2019, so was not invited to reapply for recognition. We asked all three auditors to apply for a determination from WorkSafe as to whether we would have recognised them at 1 January 2019.

#### ***Assessment and recommendations***

The project team developed criteria for assessing whether the safety auditors meet the requirements in regulation 9(1) and therefore should be, and should have been, recognised by WorkSafe, including matters of appropriate experience and qualification, objectivity and safety promotion, conflicts of interest, and anything else considered relevant.

Information held by the Joint Accreditation Standards of Australia and New Zealand (JAS-ANZ) and WorkSafe (such as interactions of the auditors with us) was also relevant to the assessment.

The applicants submitted their JAS-ANZ accreditation information for the purpose of determining whether they meet the criteria in regulation 9(1) of the Regulations. This information was highly relevant to WorkSafe's own determination of the matter.

Peter Nicholls (Senior Advisor, Audit and Investigations, Specialist Interventions) collated and analysed each of the safety auditors' applications and/or supplementary information into records of assessment.

On 22 April 2020, a panel of three WorkSafe staff (Peter Nicholls, Paul Molloy, Rick Lanigan) (the Recognition Panel) reviewed the three auditors' records of assessment and made recommendations to Catherine Epps, Head of Health and Technical Services, [REDACTED]

[REDACTED]

[REDACTED]



## **Outcomes**

As the decision maker, Catherine Epps:

- recognised Qualworx as a safety auditor on 24 April 2020 for a period of three years from the date of application, subject to conditions
- recognised Integra as a safety auditor on 1 May 2020 for a period of three years from the date of application, subject to conditions
- determined that there is sufficient evidence/information for WorkSafe to confirm it would have recognised all three safety auditors on 1 January 2019.

Qualworx and Telarc were notified of the outcome on 28 April 2020, and Integra was notified on 4 May 2020.

JAS-ANZ was notified of the outcome for all three safety auditors on 4 May 2020.

Having undertaken this process, we remain confident that the lapse of recognition was the result of a technical oversight as first supposed. We consider that the current AAO registrations remain valid for the time being, until the reconfirmation process described below suggests otherwise.

### **2. Reconfirmation of safety audit certificates for AAOs**

As a condition of recognition for Qualworx and Integra, and by request to Telarc, the three safety auditors must review the safety audit certificates they issued from 1 January 2019, and advise WorkSafe whether there are any reasons why the certificates cannot be re-confirmed. The safety auditors must complete this review by 22 May 2020.

WorkSafe will audit or investigate each AAO for which concerns have been raised for the audit certificate and the registration cannot be reconfirmed by 30 June.

### **3. Communications approach**

When the project began, we were concerned that work to resolve the recognition lapses would become a public process that was likely to attract media attention [REDACTED] With the Strategic Communications Manager, the project team developed a planned, proactive communication approach, which included all possible communications trigger(s) and key messages for use with both internal and external stakeholders (including JAS-ANZ, the safety auditors and the Minister).

Through our positive interactions with JAS-ANZ and the affected safety auditors, the project team's careful management of the recognition process and the impact of the Covid-19 response, we do not think it necessary to release messages proactively. We have revised the communications approach, as set out in Appendix A.

WorkSafe has provided regular updates to the Minister through verbal briefings at officials' meetings. We will provide a full briefing, including the revised communications approach, to him by Friday 15 May 2020.

## **PROPOSAL FOR PRIORITY TWO: AA REGIME HEALTH CHECK**

While working through Priority One, the project team undertook a mapping exercise to identify related pieces of work (underway or planned) that could overlap with the second priority. A diagram representing all of the work currently identified is provided for your reference at Appendix B.

This includes work being undertaken by PwC for Simpson Grierson [REDACTED]

The PwC work was originally due to be completed sometime in April. However, it is now likely to progress more slowly as a result of the Covid-19 Alert Level 4 lockdown. A revised delivery date for the work has not yet been communicated with WorkSafe but is likely to be sometime in May.

[REDACTED] This approach would minimise risk, as well as maximise both efficiency and effectiveness, reduce duplication of effort, and avoid causing undue distress for AA operational staff, e.g. through having to meet multiple demands for information.

We have decided that the project team should stand down for the time being. [REDACTED]

In practice, this means:

- project team members will substantively return to their regular roles for the next 3-6 weeks (depending on when the PwC report is received)
- the team will continue to meet once a week or as needed, to attend to essential project business
- weekly AA Health Check project governance group meetings will cease, and resume once Priority Two has been scoped up.

We consider that the health check will be completed, and system improvements implemented, in time for AAO registration renewals from 1 August 2020, as originally planned.



## **PROJECT GOVERNANCE**

A governance group was established, with terms of reference, to ensure the project team meets the deliverables in accordance with the project plan's timeline, provide line of sight across the organisation's wider work, and help the project team manage issues and risks, as needed.

Governance group members are: Chief Legal Advisor (Tracey Conlon), Head of Health and Technical Services (Catherine Epps), Acting Senior Manager Policy, Practice, Guidance and Education (Caroline Gall), Strategic Communications Manager (Mark Scott) and the GM People, Culture and Safety (Glenda Harvey).

The project team meets with the group weekly.

## **NEXT STEPS**

A full briefing, including the revised communications position, will be provided to the Minister for Workplace Relations and Safety by Friday 15 May 2020.

Regular updates will be provided to the WorkSafe NZ Board.

The project team is also working with the relevant teams within WorkSafe to consider the impact of the revocation of Maritime Rule 81 on 1 October 2020. From that date, any rafting operation that meets the definition of an adventure activity according to the Regulations must be registered with WorkSafe as an AAO under the Regulations. This means that all whitewater rafting operators will need to be audited and be registered by 2 October 2020 if they wish to operate continuously. This change poses a significant burden on both safety auditors and the ~35 whitewater rafting operators in the climate of Covid-19 business recovery. We are looking at options for managing this significant burden, including potentially seeking an amendment to the revocation of the Maritime Rule 81 that would push out the date when whitewater rafting operators come under the Regulations.

## RECOMMENDATIONS

It is recommended that you:

a.	<b>Note:</b> Note that the first priority of the Adventure Activities Health Check project (AA project) is on track	Yes / No
b.	<b>Note:</b> Note that the recognition of safety auditors was confirmed on Friday 1 May 2020	Yes / No
c.	<b>Note:</b> Note that the reconfirmation review of the 76 safety audit certificates issued by auditors while not recognised will be completed by 22 May 2020	Yes / No
d.	<b>Note:</b> Note the revised communications approach outlined in this memo	Yes / No
e.	<b>Note:</b> Note that the Adventure Activities Health Check project team will stand down until the PwC work is complete, and re-form after the [REDACTED]	Yes / No
f.	<b>Note:</b> Note that the health check will be completed in time for AAO registration renewals from 1 August 2020	Yes / No
g.	<b>Note:</b> Note that we are working with Operations to manage the issue of rafting operators being brought into the adventure activities regime in the current circumstances, including considering seeking an amendment to the revocation of Maritime Rule 81	Yes / No
h.	<b>Note:</b> Note that a full briefing, including the revised communications approach, will be provided to the Minister for Workplace Relations and Safety by Friday 15 May 2020	Yes / No
i.	<b>Discuss and agree:</b> Discuss and indicate your agreement with the approach outlined in the memo	Yes / No

Phil Parkes

Chief Executive

WorkSafe New Zealand

Date

## **APPENDIX A: ADVENTURE ACTIVITIES PROJECT – REVISED COMMUNICATIONS APPROACH**

### **Overarching approach**

Given that the issues have been resolved around recognition and are being resolved around certificates, the approach to media commentary has been revised. The circumstances have been properly managed and there is no evidence of any concern within the sector. We, therefore, do not intend to make any public statements at this time. Making a public statement at this point will create a story where currently none exists.

We have a reactive position ready should there be any media inquiries. This position covers the next four weeks (with review and revise points at the end of each week). A technical spokesperson (Chief Inspector) would be the most appropriate person to front any media inquiries.

A full briefing, including this plan, will be provided to the Minister for Workplace Relations and Safety by Friday 8 May 2020.

### **Key messages**

- WorkSafe has resolved a technical oversight in relation to the Adventure Activities regulations. Under those regulations safety auditors have to be formally recognised by WorkSafe – a process in which they submit their accreditation provided by JAS-ANZ (Joint Accreditation Standards of Australia and New Zealand). The recognition of the three safety auditors lapsed on 1 January 2019 and neither they, JAS-ANZ nor WorkSafe were aware of this.
- The three auditors have issued 76 audit certificates to operators in that time.
- WorkSafe has worked with the three audit bodies and JAS-ANZ to regularise their recognition and recognition has been granted.
- The public should have confidence that the lapsed recognition did not impact on safety in the sector. The auditors were operating as if they were recognised so were meeting their audit obligations.
- The technical oversight does not involve White Island Tours.
- WorkSafe has required the three audit bodies to review the 76 safety certificates that were issued during the period of lapsed recognition to ensure that these safety certificates can be reconfirmed. This will be completed by 22 May 2020.

### **Draft Ministerial speaking points**

- I have sought and received assurances from WorkSafe that there is no reason to believe this technical oversight undermines public safety.
- I am concerned that this occurred, and have asked WorkSafe to provide me with a full briefing on how this will be resolved and what steps will be put in place to ensure it does not happen again.
- WorkSafe has advised me that the three audit bodies have had their lapsed recognition resolved and that the two currently in the market have been formally recognised.
- WorkSafe has advised me the affected operators remain registered.
- The public should continue to have confidence in the safety of adventure activity operations around the country – this was a technical oversight and not a safety concern.



## APPENDIX B: DIAGRAM OF OVERLAPPING WORK – PROPOSED OR UNDERWAY

