

# DRAFT FOR CONSULTATION

## **Health and Safety in Employment (Adventure Activities) Regulations 2011**

Governor-General

### **Order in Council**

At Wellington this                      day of                      2011

Present:  
in Council

Pursuant to sections 21 to 23 of the Health and Safety in Employment Act 1992, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Labour made in accordance with section 21 of that Act.

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## Regulations

- 1 Title**  
These regulations are the Health and Safety in Employment (Adventure Activities) Regulations 2011.
- 2 Commencement**  
These regulations come into force on 1 October 2011.
- 3 Interpretation**  
In these regulations, unless the context requires another meaning,—  
**accreditation body** means the person or organisation recognised by the Secretary as the accreditation body under regulation 14  
**Act** means the Health and Safety in Employment Act 1992

**adventure activity** has the meaning given by regulation 4

**adventure activity operator** means a person (whether an employer, a principal, or a self-employed person) who provides an adventure activity to a participant in return for payment

**inspector** has the meaning given by section 2(1) of the Act

**place of work** has the meaning given by section 2(1) of the Act

**provide**, in relation to adventure activities, means where an adventure activity operator—

- (a) directly provides the activities in person; or
- (b) indirectly provides the activities through an employee or other person

**register** means to register an adventure activity operator under regulation 18 as being authorised to provide certain adventure activities

**safety audit standard** means a safety audit standard, including any changes to a safety audit standard, published by notice in the *Gazette* under regulation 20

**safety auditor** means a person or an organisation accredited by the accreditation body as a safety auditor under regulation 10

**Secretary** has the meaning given by section 2(1) of the Act

**significant hazard** has the meaning given by section 2(1) of the Act.

#### 4 Definitions of adventure activity and related terms

(1) In these regulations,—

**adventure activity**—

- (a) means an activity—
  - (i) that is land-based or water-based; and
  - (ii) that involves the participant being taught how to participate in, or being guided in participating in, the activity; and
  - (iii) the main purpose of which is the recreational or educational experience of the participant; and
  - (iv) in which the participant explores a controlled danger associated with personal challenges; and

- (v) in which there is more than a minor risk, because of the features of the activity or the natural environment in which it occurs, that the participant will suffer harm of a type referred to in the definition of significant hazard in section 2(1) of the Act; and
  - (b) includes an activity listed in the Schedule to the extent that paragraph (a) applies to it
- isolated** means that any part of an activity is not within 30 minutes' walk of a location—
- (a) from which emergency services can be contacted (for example, by mobile phone); and
  - (b) that emergency services can access by road
- specified waters** means—
- (a) the sea; and
  - (b) tidal waters; and
  - (c) inland waters that are turbulent or at least 50 metres from the nearest land (other than an island).
- (2) However, an **adventure activity** does not include any of the activities described in subclauses (3) to (5).
  - (3) An **adventure activity** does not include any of the following:
    - (a) driving or being driven on a public road;
    - (b) an activity for which a maritime document (as defined by section 2(1) of the Maritime Transport Act 1994) is required;
    - (c) an activity for which instruction is given only in relation to the supply of equipment for use in the activity;
    - (d) use of a passenger ropeway (as defined by Schedule 1 of the Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999);
    - (e) use of an amusement device (as defined by section 21A(1) of the Machinery Act 1950) to which the Machinery Act 1950 applies;
    - (f) cycle touring that is not isolated;
    - (g) land-based fishing that is not isolated and that does not involve entering specified waters on foot;
    - (h) tramping or hiking that is not isolated and that does not involve entering specified waters on foot;

- (i) skiing, snowboarding, sledging, ice-skating, or a similar activity on a ski-field or ice-rink that is prepared and marked and is patrolled by people who can attend to injuries;
  - (j) water sports outside specified waters.
- (4) An **adventure activity** does not include an activity provided by a voluntary association of persons to—
- (a) a member of the association; or
  - (b) a member of another voluntary association under an agreement between the associations; or
  - (c) a person who is not a member of the association if the activity—
    - (i) is provided only to encourage membership of the association or interest in the association's activities; and
    - (ii) is provided to any 1 person on no more than 12 days in any 12-month period.
- (5) An **adventure activity** does not include an activity provided by a registered school or a tertiary education provider (as defined by sections 2(1) and 159(1) of the Education Act 1989, respectively) to—
- (a) a student of the school or provider; or
  - (b) a student of another school or provider under an agreement between the schools or providers; or
  - (c) a person who is not a student of the school or provider if the activity—
    - (i) is provided only to encourage enrolment with the school or provider or interest in the activities of the school or provider; and
    - (ii) is provided to any 1 person on no more than 12 days in any 12-month period.

#### *Adventure activity operators*

### **5 Safety audit of adventure activity operator**

- (1) This regulation and regulation 6 specify how an adventure activity operator becomes registered to provide certain adventure activities.
- (2) The operator must—

- (a) obtain from a safety auditor a safety audit of the operator's provision of the adventure activities; and
  - (b) pass the safety audit; and
  - (c) provide the safety auditor with the following information:
    - (i) the operator's full name;
    - (ii) a description of the adventure activities that the operator provides;
    - (iii) the address of each place of work at which the operator provides the adventure activities;
    - (iv) if the operator provides the adventure activities through a business or other operation, the legal name or trading name of the business or operation.
- (3) A safety auditor that performs a safety audit of an operator's provision of adventure activities must—
- (a) audit the operator for compliance with the 1 or more safety audit standards that apply to the activities; and
  - (b) give written notice to the operator of whether the operator passed the audit and, if the operator failed the audit, the reasons for the failure.
- (4) If the operator passes the safety audit, the safety auditor must—
- (a) issue a safety audit certificate to the operator that specifies—
    - (i) the period for which the audit is valid, which must not exceed 3 years; and
    - (ii) the conditions (if any) to which the certificate is subject; and
  - (b) promptly provide to the accreditation body a copy of the safety audit certificate and any other information needed for the operator to be registered; and
  - (c) pay to the accreditation body, on demand, any fees payable under regulation 18(4) for registration of the operator for the period for which the audit is valid.
- (5) A safety auditor may issue a safety audit certificate subject to any conditions—
- (a) that the auditor considers are required to maintain the safety of the adventure activities; and

- (b) that are consistent with the 1 or more safety audit standards that apply to the activities.
- (6) Registration may be renewed under this regulation and regulation 6 as if it were a new registration.

**6 Registration of adventure activity operator**

- (1) If the accreditation body receives a copy of a person's safety audit certificate and the other information required by regulation 5(4)(b), the body must promptly register the person as an adventure activity operator authorised to provide the adventure activities specified in the certificate, unless registration is declined under subclause (2) or (3).
- (2) The accreditation body must not register the person if the body is satisfied on reasonable grounds that—
  - (a) the person provided false information or evidence in obtaining the certificate; or
  - (b) the person is not an adventure activity operator; or
  - (c) the person is unfit to be registered because of the improper way in which the person previously provided adventure activities.
- (3) The accreditation body may, at the body's discretion, not register the person if the body is satisfied on reasonable grounds that—
  - (a) the person has not complied with a condition of the certificate or of a prior certificate; or
  - (b) the person's previous negligence in providing adventure activities has endangered, or may have endangered, a person's life; or
  - (c) the person has previously provided adventure activities that the person was not registered to provide.
- (4) However, before declining the person's registration, the accreditation body must give the person an opportunity to be heard on the matter.
- (5) The accreditation body must, if declining a person's registration,—
  - (a) give a written notice to the person stating that the person's registration as an adventure activity operator has been declined; and

- (b) refund to the safety auditor any fees paid for the registration.
- (6) The accreditation body's grounds for deciding on a matter in subclause (2) or (3) may be informed by—
  - (a) the views of the safety auditor that issued the adventure activity operator's current safety audit certificate; or
  - (b) the views of an inspector resulting from the exercise of his or her functions under the Act.

#### **7 Offence to provide adventure activity if not registered**

- (1) An adventure activity operator must not provide an adventure activity to a participant in return for payment unless, when the activity is provided, the operator is registered to provide it.
- (2) Section 50(1) of the Act applies to subclause (1) so that a failure to comply with the requirements of subclause (1) is an offence under section 50(1).
- (3) However, this regulation applies to an adventure activity operator only on and from the earlier of—
  - (a) 1 October 2014;
  - (b) the day that is 9 months after the day on which the operator receives a written notice from the Secretary under regulation 9.

#### **8 Initial requirements after regulations commence**

- (1) An adventure activity operator who provides an adventure activity to a participant in return for payment in the period starting on 1 October 2011 and ending on 30 November 2011 must give a written notice to the Secretary before 1 January 2012.
- (2) Any other adventure activity operator who provides an adventure activity to a participant in return for payment in the period starting on 1 December 2011 and ending on 30 November 2013 must give a written notice to the Secretary within 1 month after the day on which the first such activity is provided.
- (3) The written notice must—
  - (a) specify the operator's full name; and
  - (b) specify the full name of a contact person who represents the operator; and

- (c) specify the contact person's phone number, postal address, and email address; and
  - (d) describe the adventure activities that the operator provides; and
  - (e) specify the address of each place of work at which the operator provides the adventure activities; and
  - (f) if the operator provides the adventure activities through a business or other operation, specify any legal name or trading name of the business or operation.
- (4) If the written notice is given before 1 April 2012, it may also include evidence of any safety audit of the operator's provision of the adventure activities that was commenced before 1 October 2011—
- (a) if the audit was passed before the written notice is given; or
  - (b) if the audit was not passed before the written notice is given.
- (5) An operator whose written notice includes evidence of a safety audit under subclause (4)(b) may, if the operator passes the audit before 1 April 2012, give written notice to the Secretary with evidence that the audit was passed.

**9 Secretary may require earlier safety audit and registration**

- (1) The Secretary may, in the period starting on 1 January 2012 and ending on 31 December 2013, give a written notice to an adventure activity operator that requires the operator to—
- (a) initiate a safety audit of the operator's provision of adventure activities with a safety auditor within 3 months after the date on which the operator receives the notice; and
  - (b) pass the safety audit, and become registered as an adventure activity operator authorised to provide the adventure activities, within 6 months after the date on which the audit starts.
- (2) A written notice may be given at the Secretary's discretion.
- (3) However, the Secretary must not give a written notice if, when the notice is to be given,—
- (a) the Secretary has received a notice given under regulation 8(4)(a) or (5) that includes evidence that the oper-

- ator has passed a safety audit of the operator's provision of the adventure activities; and
- (b) the safety audit was passed within the last 3 years and any period of validity specified for the safety audit has not ended; and
  - (c) the Secretary considers that the auditor that provided the safety audit was reputable.

*Safety auditors*

**10 Accreditation as safety auditor**

- (1) This regulation specifies how a person or an organisation becomes accredited as a safety auditor.
- (2) The person or organisation must—
  - (a) obtain an accreditation assessment from the accreditation body; and
  - (b) satisfy the requirements for accreditation as a safety auditor under the accreditation assessment.
- (3) The requirements for accreditation as a safety auditor under an accreditation assessment must include the following:
  - (a) that the person or organisation operates in New Zealand or Australia;
  - (b) that the person or organisation has the appropriate experience and qualifications to carry out the proposed audits;
  - (c) that the person or organisation is likely to carry out the audits in a way that is objective and that promotes safety and the public interest;
  - (d) that it is not reasonably foreseeable that the person or organisation will have a conflict of interest in carrying out the audits and doing anything else that the person or organisation does or is likely to do;
  - (e) that it is otherwise appropriate to accredit the person or organisation as a safety auditor.
- (4) The accreditation body must, if granting accreditation, give a written notice to the person or organisation that—
  - (a) states that the person or organisation is accredited as a safety auditor; and

- (b) specifies the period for which the person or organisation is accredited; and
  - (c) at the accreditation body's discretion, specifies a condition of the accreditation that limits it to only specified locations or types of adventure activity or equipment; and
  - (d) specifies the conditions of the accreditation (if any) imposed under regulation 12.
- (5) The accreditation body must, if declining to grant accreditation, give a written notice to the person or organisation stating that accreditation has not been granted.
- (6) Accreditation may be renewed under this regulation as if it were a new accreditation.

#### **11 Functions of safety auditor**

The functions of a safety auditor are—

- (a) to provide safety audits of the compliance of an operator's provision of adventure activities with the 1 or more safety audit standards that apply to the activities; and
- (b) to issue safety audit certificates to operators who pass safety audits, subject to appropriate conditions (if any); and
- (c) to provide copies of safety audit certificates and related information to the accreditation body so that operators are registered; and
- (d) to pay the fees for registration of an operator during the period for which an audit is valid; and
- (e) to monitor operators for compliance with conditions of safety audit certificates that the auditor issues; and
- (f) to provide the accreditation body with the auditor's views on any matter in regulation 6(2) or (3) or 19(1)(b) or (c) or (2) that may constitute grounds for the accreditation body to make a decision on the matter.

#### **12 Conditions of accreditation as safety auditor**

- (1) The accreditation body may, when granting accreditation as a safety auditor, impose any conditions of accreditation that the body considers are required in the interests of safety.

- (2) The accreditation body may, at the body's discretion, withdraw a condition of accreditation by written notice to the safety auditor.
- (3) A safety auditor must comply with the conditions of the auditor's accreditation.

### **13 Withdrawal of accreditation as safety auditor**

- (1) The accreditation body may withdraw a safety auditor's accreditation as a safety auditor only in accordance with this regulation.
- (2) The accreditation body must be satisfied on reasonable grounds that—
  - (a) the safety auditor has breached a condition of the auditor's accreditation; or
  - (b) it is in the interests of safety to withdraw the safety auditor's accreditation.
- (3) The accreditation body must give the safety auditor an opportunity to be heard on the proposal to withdraw accreditation.
- (4) The accreditation body must, if withdrawing accreditation, give a written notice to the safety auditor stating that the auditor's accreditation as a safety auditor has been withdrawn.

#### *Accreditation body and register*

### **14 Recognition as accreditation body**

- (1) The Secretary may recognise a person or an organisation as the accreditation body only in accordance with this regulation.
- (2) The person or organisation must apply in writing to the Secretary.
- (3) The Secretary must be satisfied that—
  - (a) the person or organisation operates in New Zealand or Australia; and
  - (b) the person or organisation is likely to carry out accreditation in a way that is objective and that promotes safety and the public interest; and
  - (c) it is not reasonably foreseeable that the person or organisation will have a conflict of interest in carrying out accreditation and doing anything else that the person or organisation does or is likely to do; and

- (d) it is otherwise appropriate to recognise the person or organisation as the accreditation body.
- (4) The Secretary must, if granting recognition, give a written notice to the person or organisation that—
  - (a) states that the person or organisation is recognised as the accreditation body; and
  - (b) specifies the period for which the person or organisation is recognised; and
  - (c) specifies the conditions of the recognition (if any) imposed under regulation 16.
- (5) The Secretary must, if declining to grant recognition, give a written notice to the person or organisation stating that recognition has not been granted.
- (6) Recognition may be renewed under this regulation as if it were a new recognition.

#### **15 Functions of accreditation body**

The functions of the accreditation body are—

- (a) to keep and maintain a public register of adventure activity operators authorised to provide adventure activities; and
- (b) to suspend or cancel the registration of operators in appropriate situations; and
- (c) to provide accreditation assessments of persons or organisations seeking accreditation as safety auditors; and
- (d) to accredit safety auditors that satisfy the requirements for accreditation, subject to appropriate conditions (if any); and
- (e) to monitor safety auditors for compliance with those conditions and in other respects, and to withdraw accreditation in appropriate situations.

#### **16 Conditions of recognition as accreditation body**

- (1) The Secretary may, when granting recognition as the accreditation body, impose any conditions of recognition that the Secretary considers are required in the interests of safety.
- (2) The Secretary may, at his or her discretion, withdraw a condition of recognition by written notice to the accreditation body.

- (3) The accreditation body must comply with the conditions of the body's recognition.

**17 Withdrawal of recognition as accreditation body**

- (1) The Secretary may withdraw the accreditation body's recognition as that body only in accordance with this regulation.
- (2) The Secretary must be satisfied on reasonable grounds that—
- (a) the accreditation body has breached a condition of the body's recognition; or
  - (b) it is in the interests of safety to withdraw the accreditation body's recognition.
- (3) The Secretary must give the accreditation body an opportunity to be heard on the proposal to withdraw recognition.
- (4) The Secretary must, if withdrawing recognition, give a written notice to the accreditation body stating that the body's recognition as the accreditation body has been withdrawn.

**18 Register of adventure activity operators**

- (1) The accreditation body must keep and maintain a public register of adventure activity operators authorised to provide adventure activities.
- (2) The register must record the following for each adventure activity operator:
- (a) the operator's full name;
  - (b) a description of the adventure activities that the operator is authorised to provide;
  - (c) the address of each place of work at which the operator provides the adventure activities;
  - (d) if the operator provides the adventure activities through a business or other operation, the legal name or trading name of the business or operation;
  - (e) the period for which the operator is registered, being the period for which the operator's current safety audit certificate is valid;
  - (f) any period for which registration is suspended under regulation 19;
  - (g) if registration is cancelled under regulation 19, the date of cancellation.

- (3) The information recorded on the register must be available on an Internet site for inspection by the public free of charge at all reasonable times.
- (4) The fee payable to the accreditation body for registration of an adventure activity operator is \$100 (excluding GST) for each full or partial year of registration.
- (5) The accreditation body must register an operator, and keep the operator registered, regardless of whether the safety auditor that is liable for the related registration fee under regulation 5(4)(c) has paid the fee.

#### **19 Cancellation or suspension of registration**

- (1) The accreditation body must cancel a person's registration as an adventure activity operator if the accreditation body is satisfied on reasonable grounds that—
  - (a) the person was registered by mistake; or
  - (b) the person provided false information or evidence in obtaining the person's current safety audit certificate; or
  - (c) the person is not an adventure activity operator.
- (2) The accreditation body must cancel a person's registration as an adventure activity operator, or suspend the registration for any period that the accreditation body thinks fit, if the accreditation body is satisfied on reasonable grounds that—
  - (a) the person is unfit to be registered because of the improper way in which the person has provided adventure activities; or
  - (b) the person has not complied with a condition of the person's current safety audit certificate; or
  - (c) the person's negligence in providing adventure activities has endangered, or may have endangered, another person's life; or
  - (d) the person has provided adventure activities that the person is not registered to provide.
- (3) However, before cancelling or suspending a person's registration, the accreditation body must give the person an opportunity to be heard on the matter.
- (4) The accreditation body must, if cancelling or suspending a person's registration, give a written notice to the person that—

- (a) states that the person's registration as an adventure activity operator has been cancelled or suspended; and
  - (b) for a suspension, specifies the period for which the registration is suspended.
- (5) The accreditation body's grounds for deciding on a matter in subclause (1)(b) or (c) or (2) may be informed by—
- (a) the views of the safety auditor that issued the adventure activity operator's current safety audit certificate; or
  - (b) the views of an inspector resulting from the exercise of his or her functions under the Act.

*Safety audit standards*

**20 Publication of safety audit standards**

- (1) The Secretary must develop, and continue to review, 1 or more safety audit standards.
- (2) The Secretary may publish a safety audit standard, or a change to a safety audit standard, by notice in the *Gazette*.
- (3) Safety audit standards must specify standards or requirements with which adventure activity operators must comply to reduce risks when an operator provides adventure activities.
- (4) Different safety audit standards may apply to different types of adventure activities provided by operators.

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**Schedule**

r 4(1)

**Activities included as adventure activities**

Abseiling  
 Bridge swinging  
 Bungy jumping  
 Canyon swinging  
 Canyoning  
 Car racing (self-drive)  
 Caving  
 Climbing  
 Coasteering  
 Cycle touring (if isolated)

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- Fishing (land-based, if isolated or involving entering specified waters on foot)
- Glacier walking
- Globe riding (in plastic spheres)
- Horse or pony trekking
- Hunting
- Indoor rock climbing
- Luge riding (or riding other equipment down a slope)
- Mine shaft jumping
- Motorcycle touring
- Mountain biking
- Mountaineering
- Off-road vehicle driving
- Parasailing (whether towed by a vehicle or vessel)
- Quad bike touring
- Rope course crossing
- Sandboarding
- Skiing, snowboarding, sledging, or ice-skating (if not on a prepared, marked, and patrolled ski field or ice-skating rink)
- Swimming with marine mammals
- Trail bike riding
- Tramping or hiking (if isolated or involving entering specified waters on foot)
- Water sports such as the following (if in specified waters):
- (a) black water rafting:
  - (b) boating:
  - (c) canoeing:
  - (d) diving or snorkelling:
  - (e) kayaking:
  - (f) paddle boarding:
  - (g) rafting:
  - (h) river boarding, surfing, sledging, or tubing:
  - (i) sailing:
  - (j) surfing:
  - (k) waterskiing (or otherwise being towed by a vessel):
  - (l) windsurfing.

Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations are the Health and Safety in Employment (Adventure Activities) Regulations 2011.

The regulations make it an offence for an adventure activity operator to provide an adventure activity to a participant in return for payment unless the operator is registered to provide the activity. The offence provision applies to an operator only on and from 1 October 2014, or an earlier date if the Secretary of the Department of Labour (the **Secretary**) gives a written notice requiring the operator to become registered before then.

An activity must meet certain requirements to qualify as an adventure activity. The activities listed in the *Schedule* are adventure activities to the extent that they meet those requirements. However, some activities are excluded outright.

The regulations set out the process for becoming registered as an adventure activity operator. The process includes the requirement that the operator obtains and passes a safety audit from an accredited safety auditor. An operator is audited for compliance with the 1 or more safety audit standards that apply to the activities provided by the operator. The Secretary develops and publishes the standards. An audit may allow the operator to be registered for up to 3 years before another audit is required. A fee is payable for each year of registration.

Adventure activity operators who provide adventure activities in the first 2 years and 2 months after the commencement of the regulations must provide certain information to the Secretary. Evidence of certain prior safety audits may be included and may preclude the Secretary from giving a written notice requiring the operator to become registered before 1 October 2014.

The regulations set out the requirements for becoming accredited as a safety auditor. A safety auditor must obtain an accreditation assessment from the accreditation body and satisfy its requirements. A

safety auditor's functions include providing safety audits to adventure activity operators, monitoring compliance with the conditions of safety audit certificates, and providing the accreditation body with views on certain matters.

The regulations also set out the requirements for becoming recognised as the accreditation body by the Secretary. The accreditation body's functions include keeping and maintaining a public register of adventure activity operators and accrediting safety auditors.

These regulations come into force on 1 October 2011.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*:  
These regulations are administered by the Department of Labour.

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