

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



Governor-General

## Order in Council

At Wellington this 10<sup>th</sup> day of October 2011

His Excellency The Governor General 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 November 2011.
- 3 Interpretation**  
In these regulations, unless the context requires another meaning,—  
**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

**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

**recognised registrar** means a person or an organisation recognised by the Secretary under regulation 17

**register** means to register an adventure activity operator under regulation 15 as being authorised to provide certain adventure activities

**registrar** means—

- (a) the recognised registrar (if any); or
- (b) the Secretary, if there is no recognised registrar

**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 recognised by the Secretary under regulation 11

**Secretary** means the chief executive of the Department of Labour

**serious harm** has the meaning given by section 2 of the Act.

#### **4 Definition of adventure activity**

(1) In these regulations, **adventure activity**—

- (a) means an activity—
  - (i) that is provided to a participant in return for payment; and
  - (ii) that is land-based or water-based; and
  - (iii) that involves the participant being guided, taught how, or assisted to participate in the activity; and

- (iv) the main purpose of which is the recreational or educational experience of the participant; and
  - (v) that is designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity; and
  - (vi) in which—
    - (A) failure of the provider's management systems (such as failure of operational procedures or failure to provide reliable equipment) is likely to result in serious harm to the participant; or
    - (B) the participant is deliberately exposed to dangerous terrain or dangerous waters; and
  - (b) includes, for example, an activity listed in the Schedule, but only to the extent that paragraph (a) applies to the activity.
- (2) However, an **adventure activity** does not include any of the activities described in subclauses (3) to (6).
- (3) An **adventure activity** does not include any of the following:
- (a) an activity for which a maritime document (as defined by section 2(1) of the Maritime Transport Act 1994) is required;
  - (b) an activity for which instruction is given only in relation to the supply of equipment for use in the activity;
  - (c) 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);
  - (d) use of an amusement device (as defined by section 21A(1) of the Machinery Act 1950) to which the Machinery Act 1950 applies;
  - (e) any of the following that is done indoors: abseiling, rappelling, or rock climbing;
  - (f) ice-skating on a human-made surface;
  - (g) a snow activity that is done indoors or within a patrolled ski area.
- (4) An **adventure activity** does not include an activity provided by a sports club or recreation club to—

- (a) a member of the club; or
  - (b) a member of another sports club or recreation club under an agreement between the clubs; or
  - (c) a person who is not a member of the club if the activity—
    - (i) is provided only to encourage membership of the club or interest in the club's activities, or for the purposes of a competition; 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 an association representing sports clubs or recreation clubs to—
- (a) a member of the association or of any of the clubs; or
  - (b) a member of another association, or of any sports clubs or recreation clubs represented by the other association, under an agreement between the associations; or
  - (c) a person who is not a member of the association, or of any of the clubs it represents, if the activity—
    - (i) is provided only to encourage membership of the association or interest in the association's activities, or for the purposes of a competition; and
    - (ii) is provided to any 1 person on no more than 12 days in any 12-month period.
- (6) 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, any 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 adventure activities that were audited; and
    - (ii) the period for which the audit is valid, which must not exceed 3 years; and
    - (iii) the conditions (if any) to which the certificate is subject; and
  - (b) promptly provide to the registrar a copy of the safety audit certificate and any other information needed for the operator to be registered; and

- (c) pay to the registrar, on demand, any fees payable under regulation 15(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 registrar receives a copy of a person's safety audit certificate and the other information required by regulation 5(4)(b), the registrar 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 registrar must not register the person if the registrar 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 registrar may, at the registrar's discretion, not register the person if the registrar 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 failure to take all practicable steps to safely provide adventure activities has endangered, or may have endangered, a person's life; or
  - (c) the person has previously, while the requirement in regulation 7(1)(a) applied, provided adventure activities that the person was not registered to provide.

- (4) However, before declining the person's registration, the registrar must give the person an opportunity to be heard on the matter.
- (5) The registrar 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 registrar'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 unless, when the activity is provided,—
  - (a) the operator is registered to provide it; or
  - (b) the operator is, in accordance with regulation 21, exempt from the requirement in paragraph (a).
- (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 November 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 the period starting on 1 November 2011 and ending on 30 April 2012 must give a written notice to the Secretary on or before 30 April 2012.



- (2) Any other adventure activity operator who provides an adventure activity to a participant in the period starting on 1 May 2012 and ending on 31 December 2013 must give a written notice to the Secretary before providing the first such activity.
- (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 on or before 31 December 2012, it may include evidence of any safety audit of the operator's provision of the adventure activities—
  - (a) that has been passed; or
  - (b) that has been commenced, but not completed.
- (5) An operator whose written notice includes evidence of a safety audit that has been commenced, but not completed, may give a further written notice to the Secretary on or before 31 December 2012 with evidence that the audit has been passed.

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

- (1) The Secretary may, in the period starting on 1 May 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) or (5) that includes evidence that the operator 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 had the appropriate experience and qualifications to do so.

#### *Safety auditors*

#### **10 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 registrar 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 registrar with the auditor's views on any matter in regulation 6(2) or (3) or 16(1)(b) or (c) or (2) that may constitute grounds for the registrar to make a decision on the matter.

**11 Recognition as safety auditor**

- (1) The Secretary may recognise a person or an organisation as a safety auditor 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 has the appropriate experience and qualifications to carry out the proposed audits; and
  - (b) 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; and
  - (c) the person or organisation is unlikely to have a conflict of interest that cannot be appropriately managed in carrying out the audits 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 a safety auditor.
- (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 a safety auditor; 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 12.
- (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.

**12 Conditions of recognition as safety auditor**

- (1) The Secretary may, when granting recognition as a safety auditor,—
  - (a) impose any conditions of recognition that the Secretary considers are required in the interests of safety:

- (b) impose, at the Secretary's discretion, a condition of recognition that limits the safety auditor to only specified locations or types of adventure activity or equipment.
- (2) The Secretary may, at his or her discretion, withdraw a condition of recognition by written notice to the safety auditor.
- (3) A safety auditor must comply with the conditions of the auditor's recognition.

**13 Withdrawal of recognition as safety auditor**

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

*Registrar and registration*

**14 Functions of registrar**

The functions of the registrar 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.

**15 Register of adventure activity operators**

- (1) The registrar 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, any 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 16;
  - (g) if registration is cancelled under regulation 16, 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 registrar for registration of an adventure activity operator is \$100 (excluding goods and services tax) for each full or partial year of registration.
- (5) The registrar 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.

**16 Cancellation or suspension of registration**

- (1) The registrar must cancel a person's registration as an adventure activity operator if the registrar 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 registrar must cancel a person's registration as an adventure activity operator, or suspend the registration for any period that the registrar thinks fit, if the registrar 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 failure to take all practicable steps to safely provide adventure activities has endangered, or may have endangered, a person's life; or
  - (d) the person has, while the requirement in regulation 7(1)(a) applied, provided adventure activities that the person was not registered to provide.
- (3) However, before cancelling or suspending a person's registration, the registrar must give the person an opportunity to be heard on the matter.
- (4) The registrar 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 registrar'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.

*Recognised registrar*

- 17 Recognition as registrar**
- (1) The Secretary may recognise a person or an organisation as the registrar 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 is likely to carry out registration in a way that is objective and that promotes safety and the public interest; and

- (b) the person or organisation is unlikely to have a conflict of interest that cannot be appropriately managed in carrying out registration and doing anything else that the person or organisation does or is likely to do; and
  - (c) it is otherwise appropriate to recognise the person or organisation as the registrar.
- (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 registrar; 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 18.
- (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.

**18 Conditions of recognition as registrar**

- (1) The Secretary may, when granting recognition as the registrar, 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 registrar.
- (3) The registrar must comply with the conditions of the registrar's recognition.

**19 Withdrawal of recognition as registrar**

- (1) The Secretary may withdraw the registrar's recognition as the registrar only in accordance with this regulation.
- (2) The Secretary must be satisfied on reasonable grounds that—
  - (a) the registrar has breached a condition of the registrar's recognition; or
  - (b) it is in the interests of safety to withdraw the registrar's recognition.

- (3) The Secretary must give the registrar an opportunity to be heard on the proposal to withdraw recognition.
- (4) The Secretary must, if withdrawing recognition, give a written notice to the registrar stating that the registrar's recognition as the registrar has been withdrawn.

#### *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.

#### *Exemptions for adventure activity operators*

##### **21 Exemptions for adventure activity operators**

- (1) The Secretary may, at his or her discretion, grant an exemption from the requirement in regulation 7(1)(a) (that an adventure activity operator must not provide an adventure activity to a participant unless, when the activity is provided, the operator is registered to provide it).
- (2) An exemption may apply to—
  - (a) 1 or more particular adventure activity operators;
  - (b) 1 or more types of adventure activity operator;
  - (c) any adventure activity operator who provides 1 or more particular adventure activities or types of adventure activity.
- (3) The Secretary may, when granting an exemption, impose any conditions of the exemption that the Secretary thinks fit.
- (4) The Secretary must, if granting an exemption, publish a notice in the *Gazette* that—
  - (a) specifies or describes the adventure activity operators to whom the exemption applies; and



- (b) states the effect of the exemption; and
  - (c) specifies any conditions of the exemption.
- (5) The Secretary may cancel an exemption if the Secretary is satisfied that it is proper to do so.
- (6) The Secretary must, if cancelling an exemption, publish a notice in the *Gazette* that—
- (a) specifies the day on which the exemption is cancelled, which must be a reasonable period after the day on which the notice is published; and
  - (b) states the effect of the cancellation of the exemption.

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**Schedule**  
**Activities referred to in definition of**  
**adventure activity**

r 4(1)(b)

**Note**

Each activity listed in this schedule is an example of an adventure activity, but only to the extent that regulation 4(1)(a) applies to the activity.

Abseiling or rappelling (if done outdoors)  
Bridge swinging  
Bungy jumping  
Canoeing  
Canyon swinging  
Canyoning  
Caving  
Glacier walking  
High ropes course crossing, high wire crossing, or use of a zip wire  
Kayaking  
Mountaineering  
Off-road vehicle driving  
Quad biking or trail biking  
River boarding  
Rock climbing (if done outdoors)

Scuba diving

Snow activities (if done outdoors and outside a patrolled ski area)  
such as the following:

- (a) skiing:
- (b) snowboarding

  
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 unless the operator is registered to provide the activity. The offence provision applies to an operator only on and from 1 November 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. 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 a recognised 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 on or before 31 December 2013 must provide certain information to the Secretary. Evidence of certain safety audits may be included and

may preclude the Secretary from giving a written notice requiring the operator to become registered before 1 November 2014.

The regulations set out the requirements for becoming recognised as a safety auditor by the Secretary. 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 registrar with views on certain matters.

The regulations also set out the requirements for becoming recognised as the registrar by the Secretary. The registrar's functions include keeping and maintaining a public register of adventure activity operators and suspending or cancelling the registration of operators in appropriate situations.

The Secretary may grant an exemption to 1 or more adventure activity operators from the requirement to be registered when providing an adventure activity to a participant. An exemption may be cancelled. These regulations come into force on 1 November 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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