

ELT APPROVAL MEMO

To: Phil Parkes
From: Adventure Activities project team
Date: 17 March 2020
Subject: Adventure Activities Regime Project

DRAFT

RECOMMENDATIONS

It is recommended that you:

- a. **Agree** to the proposed timeframe of confirming the recognition of safety auditors by Friday 24 April 2020 **AGREE / DO NOT AGREE**
- b. **Agree** to the proposed project governance structure **AGREE / DO NOT AGREE**
- c. **Agree** to a proactive WorkSafe media statement on 23 March by a technical spokesperson **AGREE / DO NOT AGREE**
- d. **Agree** to a Senior Advisor (Audit and Investigations), CAR reviewing the information submitted by safety auditors in their written application for recognition **AGREE / DO NOT AGREE**
- e. **Agree** to the establishment of a recognition panel and consisting of the following members: Paul Molloy and Rick Lannigan **AGREE / DO NOT AGREE**
- f. **Note** that approval for the activation of the second priority of this project (health check of the AA regime) will be sought at a later date **NOTED**
- g. **Note** that a full briefing will be provided to the Minister for Workplace Relations and Safety by Friday 20 March 2020 **NOTED**

PURPOSE

Earlier this month, the GM Regulatory Effectiveness and Legal and the Acting Chief Operating Officer stood up a small cross-organisation project team to identify, consider and provide advice to WorkSafe on issues relating to the registration of adventure activity operators (AAOs).

This memorandum requests approval for the proposed approach, associated timelines and ongoing resourcing for the project team.

Key facts/findings to date are:

- Joint Accreditation Standards of Australia and New Zealand (JAS-ANZ) is the accreditation body for safety auditors
- WorkSafe recognised safety auditors for the purposes of the Adventure Activities regime in 2015
- The recognition of the three safety auditors still operating the market at that time (Qualworx, QSI/AdventureMark and Telarc) lapsed on 31 December 2018
- Neither JAS-ANZ nor the three safety auditors have raised the lapsed recognition with WorkSafe
- With lapsed recognition, the safety auditors should not have been issuing safety audit certificates to AAOs from 1 January 2019
- The safety auditors have issued safety audit certificates to 76 AAOs since 1 January 2019 (24% of 316 registered AAOs)
- Of these 76 AAOs, 49 are new registrations (65%) and 27 (35%) are re-registrations
- QualWorx has issued 33 (43%), Telarc has issued 3 (4%) and QSI/AdventureMark has issued 40 (53%) of the 76 safety certificates
- WorkSafe considers the lapsed recognition to be a technical oversight
- Two of the safety auditors (Qualworx and AdventureMark) are continuing to audit and issue safety certificates to AAOs
- [REDACTED]
- WorkSafe does not foresee any substantive safety implications for the 76 AAOs that are affected by the recognition issue.

Our advice is that the first priority should be recognition of the safety auditors and subsequent reconfirmation of the safety certificates for the affected AAOs (Table 1: Priority One). The second priority is the health check of WorkSafe's current administration of the AA regime to opportunities for improvement (Table 1: Priority Two).

BACKGROUND

Under the Health and Safety at Work (Adventure Activities) Regulations 2016 (the Regulations), safety auditors must be formally recognised by WorkSafe in order to conduct safety audits of AAOs. Once recognised, safety auditors can audit and as appropriate issue safety certificates to AAOs so they can then be registered by the WorkSafe Registrar.

While making internal inquiries relating to the Whakaari/White Island incident as part of its investigation, WorkSafe identified that the recognition of safety auditors for the Adventure Activities (AA) regime had lapsed on 1 January 2019.

The safety auditors were last recognised in 2015. They were required to reapply for recognition by 31 December 2018. We received no applications for recognition. In the meantime, we continued to accept safety audit certificates from these organisations, and register the AAOs. We have now temporarily ceased registration of AAOs.

There are currently 316 registered AAOs. 76 AAOs (24% of the total) may be affected by this technical error, having been audited (and subsequently registered) during the period when the auditors' recognition was lapsed. The 76 AAOs consists of 49 new registrations (65%) and 27 renewals (35%).

We need to remedy this situation. It will become a public process that is likely to attract media attention [REDACTED].

At this point we:

- consider this a technical oversight
- consider that current registrations remain valid for the time being
- don't see any substantive safety implications for the operators that may be affected by this issue
- have paused operational activity to identify unregistered AAOs until there are recognised safety auditors.

Refer to Appendix A for the current process diagram for the administration of the AA regime.

PROJECT PLAN

The project plan has been divided into two parts:

- The first priority is to:
 - resolve the issue of the recognition of the safety auditors, and
 - reconfirm the safety certificates issued to 76 AAOs by the safety auditors.
- In parallel, we will be undertaking a health check of the current AA administration to identify risk and issues, and recommend system improvements.


Table 1 below provides actions against timeframes for the above planned work.

Figure 1 provides a high level overview of the significant milestones for this work.

Table 1: Adventure activities recognition, registration and health check project plan

Priority One: Recognition of safety auditors and reconfirmation of registrations of AAOs

	Action	Who	By when (2020)	Comment
PRIORITY ONE: Recognition of safety auditors and reconfirmation of registrations of AAOs	[REDACTED]	[REDACTED]	Monday 16 March	COMPLETED
	[REDACTED]	Lisa Nickson	Tuesday 17 March	IN PROGRESS
	Develop key messages for communication at meeting with JAS-ANZ around lapsed recognition and planned approach to rectify	Mark Scott	Monday 16 March	COMPLETED
	Develop key messages for communication of criteria that will be used for recognition of safety auditors		Wednesday 18 March	IN PROGRESS
	Hold meeting with JAS-ANZ and inform them of our approach to assessing criteria for recognition of safety auditors	Catherine Epps	Friday 20 March	
	Agree key messages for proactive media communication once WorkSafe has met with the two safety auditors and the risk of the public becoming aware of the issue has escalated	Mark Scott	Friday 20 March	
	Update Minister on planned proactive media communication plan and provide key messages for Minister to use for media enquiries		Friday 20 March	
	Develop key messages for communication at meeting with safety auditors		Thursday 19 March	
	Hold meeting with safety auditors			
	Request safety auditors make written application for recognition	Catherine Epps	Friday 20 March	Contingency to allow for any required changes to approach dependent on outcome of meeting with JAS-ANZ the week of 17 March

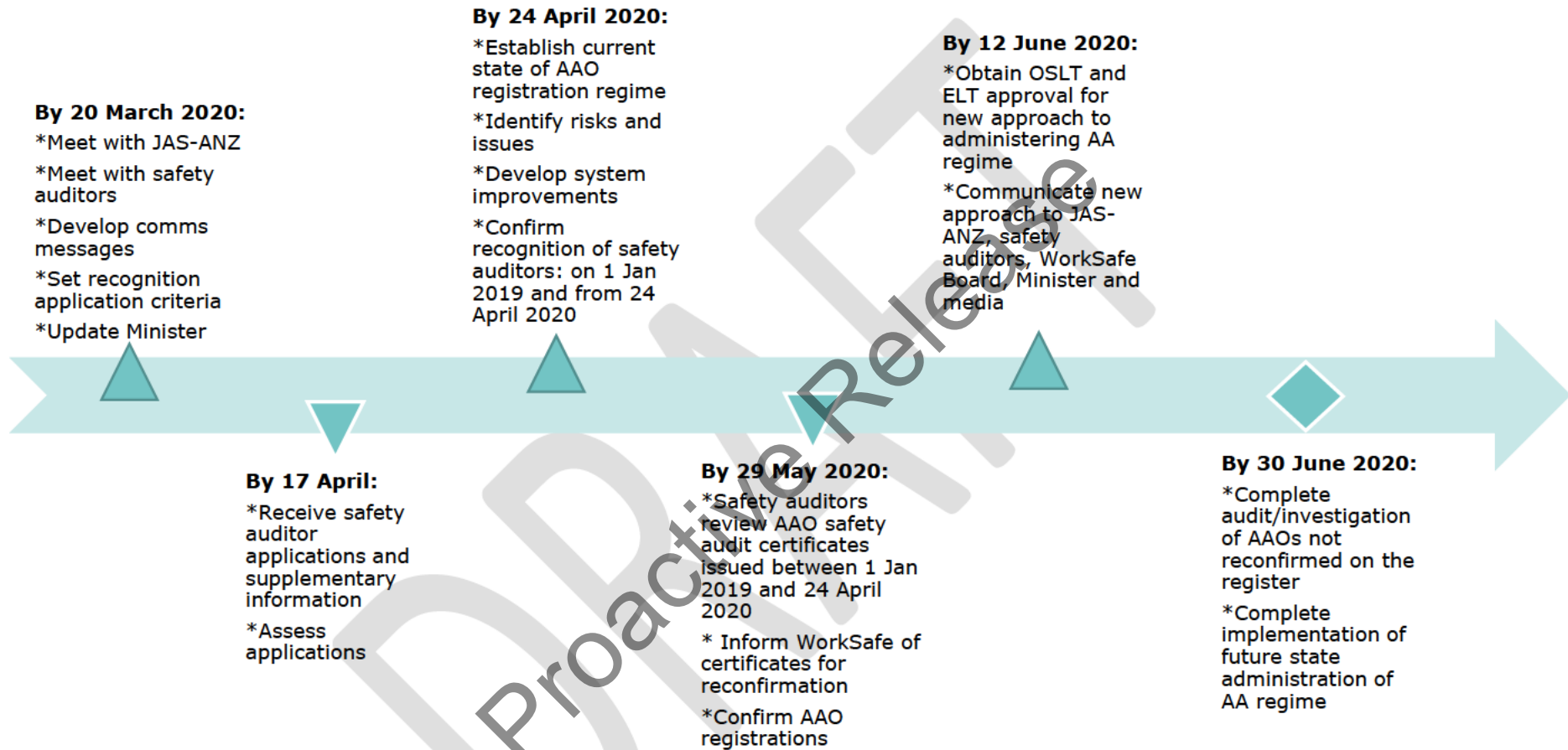
Deliver agreed communications approach	TBC	Monday 23 March	Other dates dependent on ELT approval
Written applications due	QualWorx QSI/AdventureMark	Friday 3 April	Allows 10 working days for application to be made including all required supporting information
Request relevant information Jan 2015 to Dec 2018	Telarc	Friday 3 April	This safety auditor is no longer seeking recognition
Review of the information submitted by safety auditors in written application	Senior Advisor (Audit and Investigations), CAR	Thursday 16 April	Allows 8 working days for review following receipt of applications Note: Good Friday and Easter Monday fall within this period 2 working days per safety auditor and 2 working days contingency
Review of the interactions of the auditors with WS			
Review of the ongoing accreditation processes with JAS – ANZ and confirmation of the inputs required from JAS-ANZ to address the matters in reg 9(1)		Thursday 16 April	
Make recommendation that the safety auditors meet the requirements of reg 9 as at March 2020	Recognition Review Panel: 1. Paul Molloy 2. Rick Lannigan 3. Senior Advisor (Audit and Investigations), CAR	Wednesday 22 April	Allows 3 days for Senior Advisor (Audit and Investigations), CAR to undertake any internal consultation that may be required following review of written applications before presenting findings to recognition review panel for approval of decisions
Make recommendation that WorkSafe can recognise safety auditors as at 1 January 2019			
	Lisa Nickson	Thursday 23 April	
Make recognition decisions	Catherine Epps	Friday 24 April	
Confirm whether WorkSafe would have recognised			

safety auditors as at 1 January 2019			
Letter sent to safety auditors confirming recognition and containing all appropriate conditions of recognition			
Safety auditors recognised with robust conditions imposed			
Review safety audit certificates issued by the safety auditors to AAOs and issued between 1 Jan 2019 and 24 April 2020	Qualworx Telarc QSI/AdventureMark	Friday 22 May	Assumes 4 weeks for the safety auditors to review the 76 AAOs affected from 1 January 2020. WorkSafe will consider sequencing dependent on the volumes of safety audit certificates for each safety auditor and possible resourcing options to assist in this process
Safety auditors inform WS of AAOs audit certificates that can be reconfirmed	QualWorx Telarc QSI/AdventureMark	Monday 25 May	
Registrar confirms registration of each AAO is valid	Registrar	Friday 29 May	
Further audit or investigation of each AAO for which concerns have been raised for the audit certificate and the registration cannot be reconfirmed	Senior Advisor (Audit and Investigations), CAR	Tuesday 30 June	Allows 4 weeks for a further audit of the AAO to occur if deemed necessary and/or a WorkSafe investigation needs to be undertaken prior to confirmation of registration

Priority Two: Health check of the administration of AA regime

	Action	Who	By when (2020)	Comment
PRIORITY TWO: Health check of the administration of AA regime	Develop current state analysis of regime by examining <ul style="list-style-type: none"> - Legislative framework - Policy - Practice - Guidance - Resources - Capability - Training - Capacity - IT - Stakeholder management and engagement - Internal stakeholder management and engagement 	Health Check project team	Monday 20 April	
	Identify opportunities for improvement: <ul style="list-style-type: none"> - Spot checks - JAS-ANZ MOU requirements - Recognition renewals process - QA/QC of decisions - Recording of decisions 	Health Check project team	Monday 20 April	
	Develop any identified system, tool and process improvements	Health Check project team	Monday 20 April	
	Develop paper for OSLT and ELT to approve any identified system, tool and process improvements the AA regime	Health Check project team	Monday 1 June	
	Obtain OSLT approval and sign-off for any identified system, tool and process improvements to the AA regime	OSLT	Monday 8 June	
	Obtain ELT approval for any identified system, tool and process improvements to the AA regime	ELT	Wednesday 10 June	
	Develop and release key communication messages to JAS-ANZ, the safety auditors, WorkSafe NZ Board, Minister and media	Mark Scott	Friday 12 June	
	Implement Future State administration of AA regime		Tuesday 30 June	

Figure 1: High-level overview of significant project milestones



PROJECT GOVERNANCE

The Acting Chief Operating Officer (Tony Hetherington) and Acting GM Regulatory Effectiveness (Bronwyn Turley) are jointly accountable for delivery of the project brief.

We propose to establish a governance group consisting of WorkSafe's Chief Legal Advisor (Tracey Conlon), Head of Health and Technical Services (Catherine Epps), Acting Senior Manager Policy, Practice, Guidance and Education (Carey Griffiths), Strategic Communications Manager (Mark Scott) and the GM People, Culture and Safety (Glenda Harvey). The Health Check Project team will have a one-hour weekly meeting with the governance group, commencing from Friday 27 March 2020.

The governance group will ensure that the Health check project team are meeting the deliverables in accordance with the timeline established in the project plan detailed in Table 1.

COMMUNICATION APPROACH

A planned communication approach has been developed by the Strategic Communications Manager for the next three weeks (see Appendix B). This includes all possible communications trigger(s) and contains key messages for use with both internal (CAR and GI AA reassessment teams) and external stakeholders (JAS-ANZ, the safety auditors and the Minister).

REQUIRED RESOURCES

It is estimated that a team of 4.5 FTEs will be required for the duration of the project until 20 April 2020. The team should consist of the Senior Advisor (Audit and Investigations), CAR and 3.5 FTEs who would be working on the health check of the current administration of the AA regime.

The Senior Advisor (Audit and Investigations), CAR would be undertaking the review of the information submitted by the safety auditors in their written application for recognition.

It is proposed that the Health Check team will consist of: 1 FTE Principal Advisor Operational Policy; 1 FTE Senior Advisor Operational Policy; 0.5 FTE Senior Advisor Regulatory Frameworks / Practice Framework; 1 FTE Operations (TBC).

The Health Check team will also need regular access to a dedicated Legal advisor, as and when required.

RECOGNITION REVIEW PANEL

The purpose of the recognition review panel is to:

- 1) prepare recommendations on whether safety auditors satisfy the key requirements of reg 9(1), and
- 2) prepare recommendations on whether WorkSafe would have recognised the safety auditors as at 1 January 2019.

We believe a recognition review panel is required to ensure that there is a robust process to assess the applications for recognition by the safety auditors as part of this project. We recommend that the Senior Advisor (Audit and Investigations), CAR prepare the 'cases' for each safety auditor, and for part of a panel of three reviewing the cases and making recommendations to Catherine Epps regarding recognition.

We recommend the panel consist of Peter Nicholls, Rick Lannigan and Paul Molloy and supported by an administrative support professional.

These recommendations by the panel will enable Catherine Epps to make recognition decisions and confirm whether WorkSafe would have recognised the safety auditors as at 1 January 2019.

RISKS AND ISSUES

Other risks

The current situation with COVID-19 and the restrictions on international travellers entering NZ mean that the majority of AAOs will be operating at severely reduced capacity, if at all, over the coming months. This project and its intended timelines for deliverables will ensure that WorkSafe's administration of the Adventure Activities regime is in good shape by the time operations pick up again.

Media interest in this work may be unpredictable due to the competing demands of COVID coverage. We will ensure clear messaging to mitigate any risks arising.

NEXT STEPS

A full briefing will be provided to the Minister for Workplace Relations and Safety by Friday 20 March 2020.

Regular updates will be provided to the WorkSafe NZ Board.

DISCUSSION

The following roles or group were consulted to gather the information for this document:

- Legal
- Regulatory Effectiveness
- Operations – Health and Technical Services
- GM Regulatory Effectiveness
- Chief Operating Officer

DRAFT
Proactive Release

APPROVAL

It is recommended that you

a)	<u>Agree:</u> Agree to the proposed timeframe of confirming the recognition of safety auditors by Friday 24 April 2020	Yes / No
b)	<u>Agree:</u> Agree to the proposed project governance structure	Yes / No
c)	<u>Agree:</u> Agree to a proactive WorkSafe media statement on 23 March by a technical spokesperson	Yes / No
d)	<u>Agree:</u> Agree to a Senior Advisor (Audit and Investigations), CAR reviewing the information submitted by safety auditors in their written application for recognition	Yes / No
d)	<u>Agree:</u> Agree to the establishment of a recognition panel and consisting of the following members: Paul Molloy and Rick Lannigan	Yes / No
e)	<u>Note:</u> Note that approval for the activation of the second priority of this project (health check of the AA regime) will be sought at a later date	Yes / No
f)	<u>Note:</u> Note that a full briefing will be provided to the Minister for Workplace Relations and Safety by Friday 20 March 2020	Yes / No

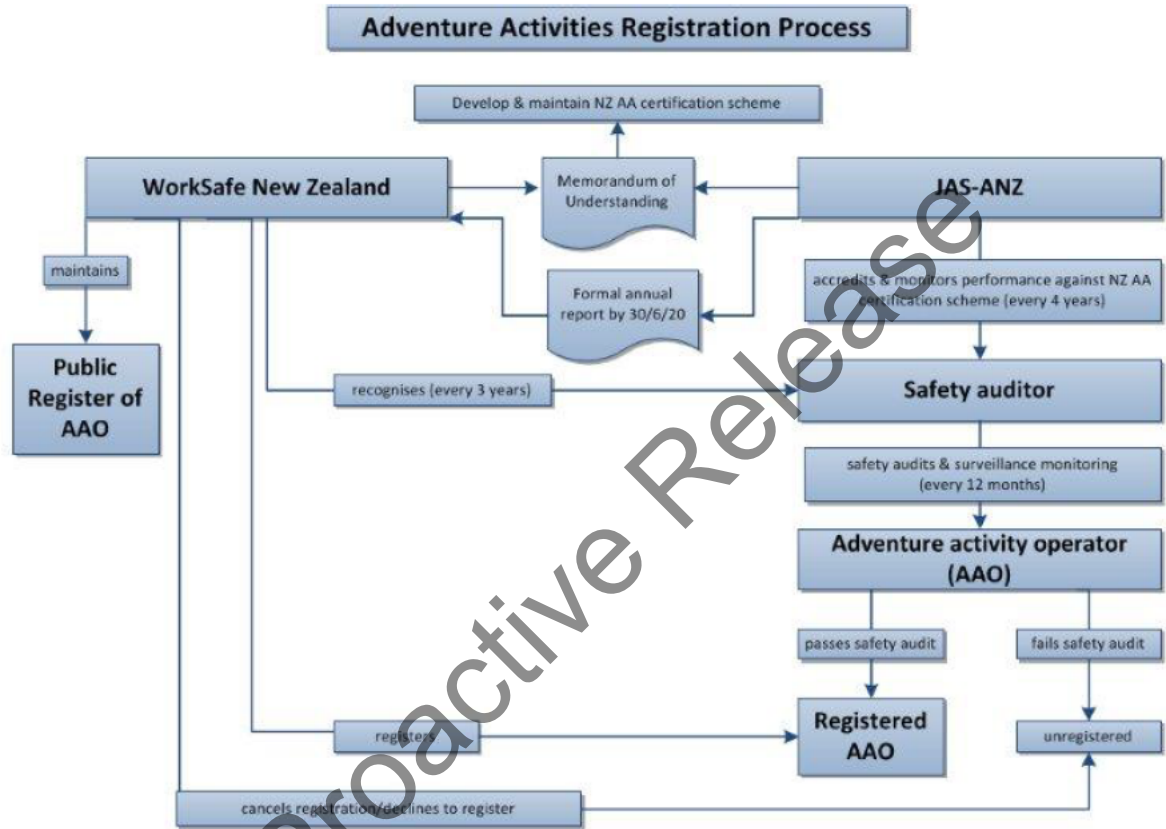
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Phil Parkes

Chief Executive

WorkSafe New Zealand

Date

APPENDIX A: ROLES AND RESPONSIBILITIES FOR REGISTRATION PROCESS



- WorkSafe New Zealand responsibilities**
- Developing, reviewing and publishing safety audit standards
 - Contributing to accreditation services provided by JAS-ANZ
 - Granting recognition of safety auditors
 - Registering AAOs certified under certification scheme
 - Supporting, developing, maintaining and publicising certification scheme (Further defined in operational agreements)

- JAS-ANZ responsibilities**
- Accrediting AAO
 - Reporting to WorkSafe
 - Providing services to support, maintain and publicise certification scheme (Further defined in operational agreements)

APPENDIX B: ADVENTURE ACTIVITIES PROJECT – COMMUNICATION APPROACH

Overarching approach

- This plan covers the next three weeks (with review and revise points at the end of each week).
- It relates only to the remediation of the recognition issue.
- It will be progressively updated as required against changing circumstances.
- Issues wider than recognition matters will be added as WorkSafe’s information and position solidifies.
- External communications are designed to deliver a clear message that this is a technical oversight and WorkSafe has no substantive safety concerns for those AAOs affected by the recognition issue.
- Internal communications will be focused on the CAR team and Karen Davidson’s GI AAO operational team - CAR to advise that other activity is occurring around their work, and Karen’s team to put their work back by up to two months while other work is completed. There will not be an all-staff intranet item posted on this issue at this point. The CAR team will receive a face-to-face briefing from Catherine Epps. Karen Davidson’s team will be briefed by videoconference.
- A full briefing, including this plan, will be provided to the Minister for Workplace Relations and Safety by Friday 20 March 2020.

Communications trigger/s

- In the week ending 20 March (**actual dates of meetings to be confirmed**), WorkSafe will have discussed the issues with:
 - JAS-ANZ
 - Safety auditors (3)
- The JAS-ANZ meeting will trigger a communications approach, dependant on the options decided or approved by ELT as outlined below.

	Option	Analysis
A	Proactive WorkSafe media statement issued following meetings with JAS-ANZ and safety auditors (23 March)	<ul style="list-style-type: none"> • Transparent approach • Accountable • Could be prematurely opening up to public scrutiny while current state analysis is still being undertaken • WorkSafe retains control of the key messages
B	Proactive WorkSafe media statement issued following the completion of the priority 1 project (24 April)	<ul style="list-style-type: none"> • Reasonably transparent approach, more informed key messages (include work achieved to date, not just what we plan to do) • Risks information being put in the public arena from other sources first (e.g. individual safety auditors), losing control of the key messages
C	Reactive WorkSafe media statement as needed (e.g. enquiry)	<ul style="list-style-type: none"> • Least transparent approach • Risks information being put in the public arena from other sources first, losing control of the key messages • Loss of public confidence in the regulator
D	All of the above	<ul style="list-style-type: none"> • Most comprehensive and transparent approach • Most resource intensive • Could amplify concerns rather than lessen them

The project team recommends **option A**.

Key messages

- WorkSafe is working to resolve 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.
- These operators remain registered, and WorkSafe does not consider cancellation of the registration of the operators is required.
- The public should have confidence that the lapsed recognition does not impact on safety in the sector. The auditors were operating as if they were recognised so were meeting their audit obligations.
- WorkSafe is working with the three audit bodies and JAS-ANZ to regularise their recognition by the end of April 2020.
- The technical oversight does not involve White Island Tours.

Spokesperson

Option	Pros	Cons
Technical spokesperson (Chief Inspector)	<ul style="list-style-type: none"> • Proportionate to the issue • Subject matter expert (high credibility, ability to respond accurately to follow up questions) • Ability to escalate to more senior spokesperson if circumstances require 	<ul style="list-style-type: none"> • May be seen as WorkSafe trying to minimise the issue
Chief Executive	<ul style="list-style-type: none"> • Indicates high level of accountability • provides public assurance 	<ul style="list-style-type: none"> • Undermines key message of technical oversight, gives incorrect perception of importance/severity of issue • Not a subject matter expert, would require significant support to respond appropriately in live situations • Inability to escalate internally further, other than Board Chair or Minister

The project team recommends a **Technical spokesperson**.

Draft web statement (AAO page) (becomes media statement as required)

WorkSafe is working to resolve a technical oversight under the Adventure Activities regulations.

Under the regulations, WorkSafe must 'recognise' safety auditors who issue safety certificates to adventure activity operators. That recognition of the three auditors lapsed on 1 January 2019 and neither the auditors, the auditors' accreditation body JAS-ANZ nor WorkSafe were aware that recognition has lapsed.

Since 1 January 2019, three safety auditors (QualWorx, QSI/AdventureMark and Telarc) have issued safety certificates to 76 adventure activity operators.

The safety auditors were operating as if they were recognised, and WorkSafe has no reason to believe the lapsed recognition has had any impact on safety in the sector.

WorkSafe is working with the three safety auditors and JAS-ANZ to remedy this technical oversight by the end of April 2020.

The issue does not involve White Island Tours.

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 the affected operators remain registered
- The public should continue to have confidence in the safety of adventure activity operations around the country – this is a technical oversight and not a safety concern.