



Will the Whakaari White Island tragedy change adventure tourism in New Zealand?

Neil Beadle

Outline

- 1 Why is adventure tourism important to NZ?
- 2 Whakaari/White Island – timeline of events
- 2 Who has been charged under Health & Safety At Work Act 2015?
- 3 How is adventure tourism regulated?
- 4 Department of Labour v Waitomo Big Red – some similarities
- 5 Summary Conclusions

Why is adventure tourism important to NZ?

MBIE 2012 International Visitor Survey

- Half of all tourists did some form of adventure tourism
- 1 in 3 did extreme adventure tourism - 367,000 people
- Those who did adventure tourism spent \$1.6 billion in NZ which was 60% of all holiday related tourism expenditure
- 'Mainstream NZ product'

Whakaari/White Island - timeline of events

2019

- October - A WorkSafe safety expert inspected White Island Tours two months before the eruption
- 25th November – 1st December : GNS Science raised its volcanic warning to alert level 2
- 3 December – GNS Science data indicated that the volcano may be entering a period where eruptive activity was more likely than normal. All GNS staff were banned from going near volcanic vents
- 9 December – Whakaari/White Island erupted

2020

- 15 December – First court date set in the Auckland District Court adjourned
- 18 December – MBIE announces independent review to assess the adequacy and appropriateness of WorkSafe's actions and whether further steps should have been taken

2021

- 5 March – appearance in the Auckland District Court, adjourned to 3 June 2020 in Whakātane

Who has been charged

Parties charged under the Health and Safety at Work Act 2015

Tourism operators

- Whakaari Management Ltd
- White Island Tours, owned by Ngati Awa
- Volcano Air Safaris
- Aerius Helicopters Limited
- Kahu NZ (helicopter services)
- Inflight Charters
- ID Tours New Zealand (cruise ship shore excursions)
- Tauranga Tourism Services

Directors of Whakaari Management Ltd:

Three directors are charged

Government agencies

GNS Science

National Emergency Management Agency
(Civil Defence)

Regulatory landscape



Health and Safety at Work Act 2016



Health and Safety at Work (Adventure Activities) Regulations 2016



Registrar of adventure tourism activities

Adventure activity is defined in the regulations as *‘an activity that is deliberately designed to expose participants to a serious risk to their health and safety, that must be managed by the provider of the activity, and the failure of the provider’s management system is likely to result in a serious risk to the participants health and safety’.*

The Regulations

- Safety audits required (regulation 6(1))
- Offence to provide or offer an adventure activity unless registered or exempt (regulation 8)
- Fines for breach - \$10,000-\$50,000
- Public register of adventure activity operators who are authorised to provide adventure activities (regulation 17)
- WorkSafe must develop and continue to review 1 or more safety audit standards (regulation 19)

Department of Labour v Waitomo Big Red (2009)



“Without the instinct for adventure in young people, any civilization, however enlightened, any state, however, well ordered, must wilt and wither”

Kurt Hahn, founder of the Outward Bound movement

Summary of conclusions

'Review of risk management and safety in the adventure and outdoor commercial sectors in New Zealand' in 2010

Health and Safety at Work (Adventure Activities) Regulations 2016

Factors here:

- Apparently White Island Tours passed all safety audits under the Regulations
- 'Safest Place to Work' award for 2018
- WorkSafe visited White Island Tours two months before the eruption
- Query impact of GNS alleged failure to warn?

Summary conclusions cont'd

Judge Tompkins said in WBR in relation to those facts:

- 'the use of hindsight in this way, whilst perhaps being understandable, is outside the statutory scheme'.
- 'it is neither possible nor desirable to remove all risk. To do so would be to the longer term detriment of New Zealand.'

Where to from here?

Thank you