

December 2019

## POLICY CLARIFICATION

# Amusement devices

This policy clarification sets out WorkSafe's expectations of outdoor go karting operations and amusement device operators.

### Why is this policy clarification needed?

In August 2019 there was a ruling in the High Court that outdoor go karting operations do not meet the statutory definition of an amusement device under the Machinery Act 1950 and are therefore not subject to the Amusement Devices Regulations 1978 (the Regulations).

This ruling changes our interpretation of an amusement device. This policy clarification sets out what the ruling will mean in practice.

### Key elements in the High Court ruling

The Machinery Act 1950 defines an amusement device as 'an appliance to which the motion of a prime mover is transmitted and which is used, or designed or intended to be used, for the amusement, recreation or entertainment of persons being carried, raised, lowered, or moved by the appliance or any part thereof while it is in motion; and includes the prime mover, transmission machinery, supporting structure, and any other equipment used or intended to be used in connection therewith.'

Key elements in the Court's rationale include:

- An amusement device is made up of a prime mover (an engine) and a separate appliance, with the motion of the prime mover going through the transmission machinery connecting the two, resulting in the carrying, raising, lowering, or movement of the appliance.
- An amusement device needs to be erected or constructed for operation (for varying lengths of time, sometimes permanently), and then operated, and used for entertainment purposes.

- The notion of an amusement device being erected or constructed applies to the overall operation (eg the track, the barriers around the track and associated equipment).
- Single, individually propelled machines, which are not 'erected' or 'constructed' will not be amusement devices (unless referred to explicitly in the Regulations).

We will use the Court's rationale to interpret the definition of amusement device when we process applications for registration under the Regulations.

### Outdoor go karting operations are no longer considered to be amusement devices

Outdoor go karting operations are no longer considered to be amusement devices. This means they are no longer covered by the Regulations and do not need to be registered with WorkSafe as an amusement device.

### Obligations under HSWA still apply

While outdoor go karting operations don't need to be registered as an amusement device, the obligations under the Health and Safety at Work Act 2015 (HSWA) still apply. This includes all the general obligations under HSWA.

This means we expect operators of outdoor go karting operations to protect workers and others from harm, so far as is reasonably practicable.

Operators who have previously operated under the Regulations should continue to implement WorkSafe

imposed conditions for safe operation. Those conditions reflect appropriate safety standards.

This is consistent with the ruling from the Court that: 'It may be unwise for operators who have hitherto operated under the Regulations to now depart from WorkSafe imposed conditions for safe operation. Those requirements may likely reflect appropriate safety standards.'

### **Other operators should proceed as registered amusement device operators**

For other registered amusement devices, there is no change. WorkSafe expects operators to be responsible and apply for registration as required.

We expect operators of registered amusement devices to do all that is reasonably practicable to prevent harm to workers and others in accordance with HSWA and to meet the requirements of the Regulations.