

Impact Analysis Statement

Summary IAS

Details

Lead department	Office of Industrial Relations, Department of State Development and Infrastructure
Name of the proposal	Proposed amendments to the <i>Work Health and Safety Regulation 2011</i> to give effect to national model WHS Regulation requirements relating to passenger ropeways and transferring an amusement device log book upon relinquishing control of the device.
Submission type	Summary IAS
Title of related legislative or regulatory instrument	Amendment to the <i>Work Health and Safety Regulation 2011</i>
Date of issue	13 August 2024

What is the nature, size and scope of the problem? What are the objectives of government action?

Passenger ropeways

Passenger ropeways, also known as cable cars or gondola rides, are used primarily for transporting people, mostly over difficult or mountainous terrain. In Queensland, there are three passenger ropeways: the Skyrail Rainforest Cableway, near Cairns, which provides sightseeing for tourists, and the Mt Bellenden Ker and Kareeya Hydro cable cars which both provide transport for workers.

High safety standards relating to passenger ropeways are necessary to ensure risks to health and safety arising from this type of plant are eliminated or minimised so far as is reasonably practicable. Failing to maintain high health and safety standards for passenger ropeways can result in serious injuries or fatalities.

The *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2011* (WHS Regulation) apply to passenger ropeways generally as a type of plant used at a workplace. In addition to general provisions for plant, the WHS Regulation has specific provisions for particular types of plant, such as amusement devices and cranes.

Queensland's WHS regulatory framework is based on national model WHS laws, which were developed through Safe Work Australia and adopted in Queensland from 1 January 2012.

In 2014, the national model WHS Regulations were amended to include specific requirements for passenger ropeways. The amendments addressed a gap created due to passenger ropeways being excluded from the scope of AS 3533.1.2009 *Amusement rides and devices—Design and construction* which meant the amusement device regulations no longer applied to passenger ropeways. A national regulatory impact statement was not prepared for the passenger ropeway amendments as Safe Work Australia considered it was an unintended omission from the original model WHS laws and could be resolved with other technical amendments being made to the national model WHS regulations.

Queensland did not adopt the national model WHS Regulation amendments at that time. Consequently, passenger ropeways in Queensland are not subject to specific regulatory requirements that apply to other significant items of plant, such as registrable amusement devices.

Amusement device log books

An amusement device log book is used to keep records relevant to the safety of an amusement device (e.g. details about repairing, erecting, storing and maintaining the device as well as annual and major inspections). The WHS Regulation has requirements in relation to keeping amusement device log books which must contain certain information.

The national model WHS Regulations were amended in April 2022 to include additional requirements regarding log books for amusement devices. These amendments implemented Recommendation 28 from the 2018 Review of the National Model WHS laws, which recommended ensuring details of statutory notices issued by any WHS regulator and evidence of training and instruction are included in the log book for an amusement device. The national model WHS Regulation was also amended to explicitly require making the log book available to the new device owner when relinquishing control of the amusement device. This complements the requirement in section 237 of the WHS Regulation for certain records of plant to be made available to another person when control of the plant is relinquished.

Queensland's WHS Regulation was amended in 2019 to require that log books include details of statutory notices and competency of amusement device operators, which effectively implemented Recommendation 28 from the 2018 Review of the National Model WHS Laws. However, as a result of the April 2022 amendments to the national model WHS regulations, consideration was given to adopting the additional requirement clarifying the mandatory transfer of amusement device log books when a device is relinquished.

Objective

One of the objectives of the work health and safety (WHS) regulatory framework is to protect workers and other persons (e.g. members of the public such as passengers) against harm to their health, safety and welfare through the elimination or minimisation of risks arising from plant.

The objective of government action is to provide clear and enforceable standards in relation to:

- the protection of workers and other persons using passenger ropeways by specifying particular requirements for operation, inspection, testing, maintenance and design registration meeting technical standards and engineering principles.
- the protection of workers and other persons using amusement devices by ensuring log books containing relevant records are transferred on relinquishing the amusement device, which enables subsequent device owners to be informed about the history of the device and action needed to comply with inspection, testing, maintenance and repair of amusement devices.

What options were considered?

Passenger ropeways

Option 1 – No action

Option 1 is to take no further action and not adopt national model WHS Regulation requirements regarding passenger ropeways. This would mean relying on the existing WHS regulatory framework as it applies to plant generally, without specific requirements relating to passenger ropeways.

Option 2 - Proposed amendment to the WHS Regulation – adopting passenger ropeway requirements in the national model WHS Regulations with an additional requirement regarding comprehensive inspections

Option 2 would place requirements on a person conducting a business or undertaking (PCBU) which has management or control of a passenger ropeway. The requirements in Chapter 5 (Plant and structures) of the WHS Regulation proposed to apply to are:

- operation (section 238, WHS Regulation)
- storage (section 239, WHS Regulation)
- maintenance, inspection and testing (section 240, WHS Regulation)
- annual inspections (section 241, WHS Regulation)

- comprehensive inspections (this is a new provision comparable with the amusement device major inspection requirement in section 241A but modified to be more suitable for ropeways)
- plant design registration (Schedule 5, Part 1, Plant requiring registration of design)

Transitional arrangements are proposed for existing passenger ropeways in relation to plant design registration. Existing passenger ropeways would not require full plant design registration for the existing ropeway. However, existing ropeways would need to comply with requirements in relation to future design alterations which would affect health or safety (section 244, WHS Regulation).

In recognition that existing ropeway owners have already made plans or decisions regarding potential imminent upgrades, it is proposed to have a two-year lead-in time for the design registration alteration requirement. This will provide existing ropeways with sufficient notice for moving into the design registration system for future alterations that may require design registration.

Any new passenger ropeways constructed in the future would need to comply with the full requirements for plant design registration (i.e. registration of the initial design as well as any future alterations that affect health or safety).

Amusement device log books

Option 1 – No action

Option 1 is to take no further action and not adopt the national model WHS Regulation requirement regarding transfer of an amusement device log book when control of the device is relinquished (for example, to the new owner of the device). This would mean relying on the existing WHS regulatory framework which refers to transferring certain records about an amusement device to subsequent owners but does not have an explicit requirement to hand over the log book.

Option 2 – Proposed amendment to the WHS Regulation – adopting the national model WHS Regulation requirement relating to the transfer of log books with an additional requirement to address privacy concerns

Option 2 is to amend the WHS Regulation to adopt the national model WHS Regulation provision which would require a person to make the log book available when relinquishing control of the amusement device. However, it is also proposed to include a provision to protect the personal information of amusement device workers where this has been included in the log book.

The national model WHS regulation amendment replaced an existing note for section 242 of the WHS Regulation, which pointed to section 237(5) of the WHS Regulation requiring plant records to be made available, including the log book, when a person is being supplied with plant. The model WHS Regulation amendment has created a new offence provision to make it clear a log book must be made available when the device is relinquished to another person.

A log book includes personal information relating to the identity and competency of workers who operate the amusement device as well as the competency of persons performing work under section 204(3) and 239(2) of the WHS Regulation (see section 242A(1)(a) and (b)). However, there are concerns about the right to privacy for these workers when the log book is relinquished to a new device owner. While most of the information in a log book relates to the device itself and is considered necessary to assist the next owner of the device, it is not considered relevant for subsequent owners of the device to have personal details about the workers of the previous device owner. It is proposed to make a minor change to the model provision to ensure the personal details of workers and their competency/training are not included in the log book when it is provided to the new owner of the device. However, a person's name and/or signature entered into the log book to verify an action taken (e.g. daily check, maintenance) should not be removed from the log book.

Option 3 – Proposed amendment to the WHS Regulation – adopting the national model WHS Regulation requirement relating to the transfer of log books without modification to address privacy concerns

Option 3 is to amend the WHS Regulation to adopt the national model WHS Regulation requirement relating to the transfer of log books without modification to address privacy concerns.

What are the impacts?

Passenger ropeways

Option 1 – No action

No action would mean a gap continues to exist in Queensland's WHS regulatory framework regarding passenger ropeways. Inconsistency with national model WHS regulation requirements may be perceived negatively by the community which generally has high expectations about regulatory oversight of significant plant and infrastructure.

For existing PCBUs with management or control of a passenger ropeway, Option 1 means:

- future design alterations which may affect health or safety would not require plant design registration, and costs associated with that would not be incurred (see Option 2 below for more details of plant design registration);
- the PCBU must continue to comply with overarching duties under the WHS Act in relation to ensuring the passenger ropeway is without risks to the health and safety of any person without the benefit of clear standards specific to passenger ropeways set out in the WHS Regulation. In addition, compliance costs associated with general plant requirements in the WHS Regulation would continue to apply.

For PCBUs with management or control of a passenger ropeway constructed in the future, Option 1 means:

- no financial costs associated with plant design registration requirement (both for the initial design registration of the entire ropeway and future design alterations that would affect health or safety);
- the PCBU would be required to comply with overarching duties under the WHS Act in relation to ensuring the passenger ropeway is without risks to the health and safety of any person without the benefit of clear standards specific to passenger ropeways set out in the WHS Regulation. In addition, compliance costs associated with general plant requirements in the WHS Regulation would be incurred.

Option 2 – Proposed amendment to the WHS Regulation – adopting passenger ropeway requirements in the national model WHS Regulations with an additional requirement regarding comprehensive inspections

Option 2 removes the gap in Queensland's WHS regulatory framework by adopting the passenger ropeway requirements in the national model WHS Regulation. Further, it includes a requirement for comprehensive inspections comparable with the major inspection requirement for amusement devices, which was included in the WHS Regulation following a recommendation by the *Best Practice Review of Workplace Health and Safety Queensland* in 2017. A comprehensive inspection is a thorough inspection of critical components of the ropeway and reflects the continuous approach inspections of ropeway components reflected into relevant published technical standards, such as AS 4722:2018 *Passenger ropeways and passenger conveyors*. The proposed regulatory requirements provide clear and enforceable regulatory standards aimed at eliminating or minimising exposure to the risk of death and serious injury to workers who operate, use or work near passenger ropeways as well as members of the public.

For existing PCBUs with management or control of a passenger ropeway, Option 2 means:

- After the two-year lead-in period for design registration, there would be financial costs associated with plant design registration compliance in the future where an alteration to the design would affect health or safety. The application fee for plant design registration or an alteration is \$132.29 as at 1 July 2024 (this fee is subject to the annual Government Indexation Rate process). In addition, there are costs associated with plant design verification processes. The plant design verification process is intended to ensure plant is designed and verified to appropriate technical standards. The cost of verification processes depends on the scope of the alteration proposed, with more significant alterations to the design likely to require more time for a competent engineer to assess. However, there are strong safety reasons for requiring design registration, including design verification for particular types of plant that have a higher level of risk to health and safety arising from inadequate or poor design. Design registration provides that particular types of plant meet relevant technical standards and engineering principles and ensures there is scrutiny by the WHS Regulator of this process.

- There are costs associated with the proposed requirements regarding the operation, inspection, testing and maintenance of passenger ropeways. A comprehensive inspection of critical components of ropeways is based either on recommendations of the manufacturer, a competent person who has previously inspected the ropeway and recommended a shorter period, or in accordance with published technical standards. Recommended periods vary depending on the component (for example, one particular critical component may require a comprehensive inspection at least once every 5 years, while another critical component may require a comprehensive inspection at intervals of not more than 1 year, or 2000 hours of operation, whichever is earlier). However, the proposed regulatory requirements generally align with the operational practices of the existing ropeways and codify what would reasonably be expected in discharging a health and safety duty under the WHS Act. Consequently, the proposed requirements are not anticipated to have an adverse impact on PCBUs for the existing ropeways.

For PCBUs with management or control of a passenger ropeway constructed in the future, Option 2 means:

- Financial costs associated with plant design registration requirement (both for the initial design registration of the entire ropeway and future design alterations that would affect health or safety). This includes the plant design registration application fee and costs associated with the plant design verification process.
- Costs would be incurred regarding the operation, inspection, testing and maintenance of ropeways. However, the proposed requirements codify what would reasonably be expected in discharging a health and safety duty under the WHS Act.

Due to the small number of existing passenger ropeways and the two year phase-in period for design registration in relation to alterations, the impact on the Office of Industrial Relations in relation to monitoring compliance is expected to be minimal.

Amusement device log books

Option 1 – No action

As Option 1 is the status quo, it does not add to the regulatory burden.

However, Option 1 would continue to contribute to confusion among businesses about whether a log book must be transferred on relinquishing the device to another. Not receiving the log book for a second hand amusement device places the new PCBU with management or control of the device at a disadvantage in not knowing the full history of the device.

Option 1 does not safeguard personal information about amusement device workers which may be contained in the log book and subsequently passed on to the next PCBU with management or control of the device.

Option 2 – Proposed amendment to the WHS Regulation – adopting the national model WHS Regulation requirement relating to the transfer of log books with an additional requirement to address privacy concerns)

Option 2 places a low level administrative burden on the PCBU with management or control of the device to transfer the log book on relinquishing the amusement device, although this may already be occurring in practice.

Option 2 clarifies there is an explicit requirement to transfer of the log book which ensures subsequent owners are informed about the history of the device and can ensure inspection, maintenance, testing and repairs are carried out as needed.

Consistency with the national model WHS regulation requirement to transfer a log book with the amusement device enhances national uniformity, which is of value for amusement devices sold interstate.

Option 2 has the benefit of safeguards to protect the privacy and reputation of amusement workers so personal information is not provided in the log book when it is transferred to the next PCBU with management or control of the amusement device.

Option 3 – Proposed amendment to the WHS Regulation – adopting the national model WHS Regulation requirement relating to the transfer of log books without modification to address privacy concerns

Option 3 has the same impacts Option 2 without the benefit of safeguards to protect the privacy and reputation of amusement device workers where personal information is included in the log book and may be transferred to the next PCBU with management or control of the device.

Who was consulted?

Representatives from the existing passenger ropeways (Skyrail Cableway, CleanCo (Kareeya Hydro) and BAI Communications (Mt Bellenden Ker)) were consulted between March 2022 and July 2024. Consultation about the passenger ropeway proposal also occurred with the Australian Workers' Union, the Department of Transport and Main Roads, and the Department of Tourism and Sport.

Representatives from the amusement device industry who were consulted on development of the *Amusement Devices Code of Practice 2023* were also consulted about the proposed log book amendment:

- Australian Amusement, Leisure and Recreation Association (AALARA)
- Showmen's Guild of Australasia
- Village Roadshow Theme Parks (Sea World, Movie World and Wet'n'Wild)
- Coast Entertainment Holdings – formerly Ardent Leisure (Dreamworld and Whitewater World)
- Aussie World
- Australian Workers' Union
- Engineers Australia
- Board of Professional Engineers of Queensland
- Department of Housing, Local Government, Planning and Public Works, which has portfolio responsibility for the *Professional Engineers Act 2002*

The Department of the Premier and Cabinet and Queensland Treasury were also consulted about the proposed regulatory approach for passenger ropeways and amusement device log books.

Feedback from those consulted was incorporated in developing the recommended option. Organisations consulted either supported, or did not oppose, the proposed amendments.

What is the recommended option and why?

Passenger ropeways

The recommended option is to adopt the national model WHS Regulation requirements regarding passenger ropeways with an additional requirement in relation to comprehensive inspections (Option 2).

Option 2 will have positive social and economic benefits for passenger ropeway owners, workers and members of the public. Positive social and economic benefits include:

- clear regulatory standards aimed at eliminating or minimising exposure to the risk of death and serious injury to workers who operate, use or work near passenger ropeways as well as members of the public. Clear regulatory standards are enforceable and provide economic and social benefits for workers, their families and members of the public by ensuring businesses meet obligations to comply with high standards of health and safety.
- reducing complexity by having substantially nationally consistent passenger ropeway requirements under WHS laws. The small number of passenger ropeways in Australia means that it is a specialised area where experts can be engaged from other jurisdictions to assist with different tasks in inspecting and maintaining ropeways. Adopting the national model WHS Regulation requirements for passenger ropeways will mean Queensland is consistent with all other jurisdictions (with the exception of Victoria who have not adopted the national model WHS Regulations). One of the objects of the WHS Act is to maintain and strengthen the national harmonisation of WHS laws and to facilitate a consistent national approach to work health and safety in Queensland (section 3(1)(h), WHS Act).

Option 1 is not preferred as it does not offer the benefits of Option 2. Further, the absence of specific regulation for passenger ropeways, particularly plant design registration, would be undesirable if a new passenger ropeway were to be built in Queensland without the level of oversight provided by the proposed regulatory requirements.

Amusement device log books

The recommended option is to adopt the national model WHS Regulation requirement relating to the transfer of log books with an additional requirement to address privacy concerns (Option 2).

Option 2 will have positive social and economic benefits for amusement device owners, workers and members of the public. The information stored in log books is of significant assistance to the acquirer of a second-hand amusement device and will help owners understand the risks associated with the device and meet their safety

obligations in relation to ongoing maintenance, inspection, testing and repairs. The sharing of this information between owners is a low regulatory burden but leads to improved work health and safety outcomes. The additional requirement to prevent disclosure of personal information about amusement device workers provides a safeguard to protect privacy where that information is not relevant to the next owner of the amusement device.

Option 1 is not preferred as it is desirable for national uniformity in relation to the explicit requirement for transferring log books, particularly as it is a common occurrence for amusement devices to be sold interstate.

Option 3 is not preferred as section 25 of the *Human Rights Act 2019* establishes that a person has a right not to have the person's privacy unlawfully or arbitrarily interfered with. Option 3 would enable personal details about a worker recorded in a log book, for example, the person's photo and their training and qualifications, to be disclosed in the log book handed over to the new device owner when there is no strong justification for requiring this personal information to be disclosed.

Impact assessment

	First full year	First 10 years
Direct costs – Compliance costs*	Depends on a range of factors including which critical components of existing ropeways are due to be inspected comprehensively in accordance with manufacturer's instructions or published technical standards. See 'what are the impacts' for details.	Depends on a range of factors including: <ul style="list-style-type: none"> • whether an existing passenger ropeway requires an alteration to the design that would affect health or safety, and consequently require plant design registration for the alteration; and • whether a new passenger ropeway is constructed in Queensland. See 'what are the impacts' for details.
Direct costs – Government costs	Nil. Expected to be fully absorbed within existing funding allocations.	Nil. Expected to be fully absorbed within existing funding allocations.

Signed



.....
 Graham Fraine
 Director-General
 Department of State Development and Infrastructure

Date: 13 / 08 / 2024



.....
 Grace Grace MP
 Minister for State Development and Infrastructure
 Minister for Industrial Relations and
 Minister for Racing

Date: 16 / 08 / 2024