

Chapter 3

Regulations governing the use of motorised mobility devices

3.1 This chapter outlines the current regulations that govern the use of motorised mobility devices – including mobility scooters and motorised wheelchairs – throughout Australia. The chapter also summarises the state and territory road rules which determine which motorised mobility devices are permitted to be used on footpaths, roads, bike-paths and in other public spaces.

3.2 Also outlined in this chapter is the process by which the ARR's are developed, maintained and administered.

Australian Road Rules

3.3 The ARR's contain the basic rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and others. The ARR's were first approved in 1999 by the former Australian Transport Council (now known as the Transport and Infrastructure Council).¹ The ARR's have been designed as model laws (or template legislation) and have no legal effect. State and territory governments do have the ability to adopt the ARR's in ways that suit their own specific, local conditions. For the most part, states and territories have introduced the ARR's into their own laws. However, no state or territory has introduced every provision contained in the ARR's into legislation, and there are a number of provisions in the Rules that specifically leave certain matters to state and territory governments to determine.²

Motorised mobility devices

3.4 The ARR's regulate the use of 'motorised wheelchairs'³ on roads or road-related areas such as footpaths. A motorised wheelchair which is not able to travel faster than 10 km/h on level ground is recognised under the ARR's as a pedestrian.⁴ This means that users are subject to the general road rules applying to pedestrians, including rules which:

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- 1 The Transport and Infrastructure Council is made up of the ministers responsible for road safety matters in each state and territory, and the Commonwealth minister responsible for transport matters.
 - 2 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Austroads Ltd, *Submission 64*, p. 2 and National Transport Commission *Submission 68*, p. 2.
 - 3 Under the Australian Road Rules, the term 'motorised wheelchair' refers to a chair that is mounted on two or more wheels, which is built to transport a person who is unable to walk or has difficulty walking, and which is propelled by a motor.
 - 4 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Part 14, Rule 18.

- require pedestrians to use the footpath or nature strip adjacent to a road where there is one which can be used safely, and not travel on the road in these circumstances;
- prohibit pedestrians from causing a traffic hazard by moving into the path of a driver; and
- regulate the use of shared paths with bicycles.⁵

3.5 A motorised wheelchair that can travel faster than 10 km/h on level ground is treated as a vehicle,⁶ which means that the person using the device is treated as a driver,⁷ who is subject to all of the road rules applying to drivers of vehicles.⁸

3.6 Under the ARRs⁹ vehicles are prohibited from being driven on paths (including footpaths, bicycle paths and shared paths). There is, however, an exception for a driver of a motorised wheelchair, provided that he or she complies with the following requirements:

- the unladen mass (or TARE) of the wheelchair is not over 110 kg;
- the wheelchair is not travelling over 10 km/h;
- because of the driver's physical condition, the driver has reasonable need to use a wheelchair; and
- the driver gives way to all other road users (including pedestrians) and animals on the path.¹⁰

State regulations governing the use of motorised mobility devices

3.7 As previously noted, states and territories are able to use the ARRs as the framework for their own legislation, or can adapt them to meet specific, local conditions. While to a large degree Australian states and territories have used the ARRs as a basis for their own laws, identifying any subtle differences is not a simple task. The rules in relation to motorised mobility devices are complex and there is a lack of consistency in relation to whether a transport, health or disability agency has responsibility for administering the system or providing guidance on the rules.

5 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Part 14.

6 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Rule 15.

7 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Rule 16.

8 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Parts 3–13, 16 and 18.

9 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Rule 288.

10 Parliamentary Counsel's Committee, *Australian Road Rules*, as at 19 March 2018, Sub-Rule 288(3).

New South Wales¹¹

3.8 Under the NSW Road Rules, a person using a mobility device¹² is defined as a pedestrian. Under NSW law, users of a mobility device are not required to register the device, but must comply with NSW Road Rules which state that:

- the user must not travel faster than 10 km/h on level ground;
- the mobility device must not exceed 110 kg unladen;
- the user must not travel on the road unless it is impractical to travel on the footpath or nature strip next to the road;
- the user must keep as far to the side of the road as possible and face oncoming traffic if no footpath is available;
- the user must not use the mobility device with a blood alcohol concentration of 0.05 or more.

3.9 In NSW, there is no test or requirement for a special licence. Users must, however, be unable to walk or have difficulty in walking to be able to lawfully use a motorised wheelchair on a footpath, public road or in a road related area.

South Australia¹³

3.10 South Australia's regulations are based on ARRs, which state that a person using a motorised mobility scooter¹⁴ is classed as a pedestrian if the maximum speed on level ground cannot exceed 10 km/h. As such the user:

- must observe the same road rules that apply to pedestrians;
- must not obstruct the path of any driver or other road user;
- must not travel along a road if there is a footpath or nature strip adjacent to the road, unless it is impracticable to travel on the footpath or nature strip;
- must keep as far to the side of the road as possible if travelling along the road and travel facing the approaching traffic (unless it is not practicable to do so);

11 Based on information provided in *Current NSW Road Rules and Laws in NSW*, website <https://www.advancedscooters.com.au/current-nsw-road-rules-and-laws> (accessed 14 August 2018) and NSW Government, *Submission 106*.

12 The term mobility device is used by the New South Wales Government to vehicles, including motorised wheelchairs and mobility scooters that are specially constructed as a mobility aid for people with a disability and meet the classification of a 'non road' motorised wheelchair under the *Motor Vehicle Standards (Road Vehicles) Determination 2017*.

13 South Australian Department of Planning Transport and Infrastructure, Information Sheet 8, Version 6, *Motorised mobility scooters*, website https://dpti.sa.gov.au/_data/assets/pdf_file/0014/141620/Info_Sheet_8_June_2015_Web.pdf (accessed 27 August 2018).

14 The South Australian Department of Planning, Transport and Infrastructure note that motorised mobility scooters are also known as mobility scooters, motorised wheelchairs or gophers.

- can use shared paths, off-road bike paths, and shopping malls.

Victoria¹⁵

3.11 Under the *Road Safety Act 1986* and the *Victorian Road Safety Road Rules 2017*, motorised mobility devices, including mobility scooters and motorised wheelchairs:

- are not defined as motor vehicles (and therefore cannot be registered);
- must have a maximum capable speed of 10 km/h on level ground and a maximum unladen mass of 110 kg;
- are to be used only by a person with an injury, disability or medical condition which means they are unable to walk or have difficulty walking.

3.12 Users of a vehicle defined as a motorised mobility device, are required to follow the same rules as pedestrians. These rules include travelling on the footpath (unless this is impractical) and only using the road where an appropriate footpath or nature strip is not available. If there is no footpath available to use, users must travel facing oncoming traffic.

3.13 Currently, under Victorian regulations, rules and standards, mobility scooters and motorised wheelchairs are treated equally.

Tasmania

3.14 The *Tasmanian Vehicle and Traffic Act 1999*, defines a motor vehicle as a vehicle that is built to be propelled by a motor that forms part of the vehicle if the power output is greater than 200 watts and can reach a speed greater than 10 km/h. This definition includes power wheelchairs and mobility devices capable of exceeding 10 km/h. This type of vehicle must be registered if used in an area defined as a 'public street' – recognised as both private and public land, and including recreational areas, parks and beaches.¹⁶

3.15 A mobility scooter that is not classified as a motor vehicle under the traffic regulations – that is one which is restricted to travel less than 10 km/h – is classified as a pedestrian and is required to obey pedestrian laws. Specifically, the scooter is required to be driven on footpaths and is subject to pedestrian rules for crossing roads.¹⁷

15 Based on information provided in Royal Automobile Club Victoria (RACV), *Motorised mobility devices*, website, <https://www.racv.com.au/on-the-road/driving-maintenance/road-safety/road-rules/motorised-mobility-devices.html> (accessed 27 August 2018) and Darebin Disability Advisory Committee, *Submission 102*, p. 1.

16 Tasmanian Department of Health and Human Services, *Submission 50*, p. 1.

17 Tasmanian Department of Health and Human Services, *Submission 50*, p. 1.

3.16 The Tasmanian Department of Health and Human Services noted that there is currently no legal requirement for education surrounding the safe use of non-registrable vehicles, including powered mobility devices.¹⁸

Western Australia¹⁹

3.17 Western Australia's Road Safety Commission notes that mobility scooters or devices give independence to people who have difficulty walking due to a physical condition. While the Road Safety Commission stresses that mobility scooters are not meant to be used as a replacement for a motor vehicle, it also notes that there are currently no laws prohibiting or governing the use of mobility scooters by people who do not have limited mobility.

3.18 Under Western Australia's current traffic laws, users of mobility scooters and motorised wheelchairs are classed as pedestrians, provided the maximum speed of the equipment is 10 km/h. Those devices capable of travelling faster than 10 km/h must be registered as vehicles.

3.19 Mobility scooters and motorised wheelchairs are allowed to travel on:

- footpaths;
- shared paths; and
- the sides of roads if there is no footpath.

Queensland²⁰

3.20 The Queensland Government requires that if a mobility scooter or motorised wheelchair is being used outside of the home – for example on a footpath – the person using the device is considered to be a pedestrian under the Queensland Road Rules.

3.21 Under the Queensland Road Rules, a person using a mobility scooter or motorised wheelchair, or any other pedestrian must:

- use the footpath or nature strip where available;
- [if there is no footpath or nature strip available, or there is an obstruction that needs to be avoided] the person must travel as close as possible to the left or right hand side of the road – and should face oncoming traffic if possible;
- cross a road by the most direct route and use a crossing where available.

18 Tasmanian Department of Health and Human Services, *Submission 50*, p. 1.

19 Based on information provided in Government of Western Australia, Road Safety Commission, website, <https://www.rsc.wa.gov.au/Your-Safety/Safety-Topics/Seniors> (accessed 27 August 2018).

20 Based on information provided in Queensland Department of Transport and Main Roads, *Registration*, website, <https://www.qld.gov.au/transport/registration/register/wheelchair> (accessed 14 August 2018) and Brisbane City Council, *Submission 53*.

3.22 In addition to these general rules, a person using a mobility scooter or a motorised wheelchair must also exercise due care and attention for the safety of others at all times, including travelling at an appropriate speed.

Northern Territory²¹

3.23 Under Northern Territory legislation, motorised mobility devices are treated as pedestrians (in accordance with the ARR) provided that the device cannot travel at a speed of more than 10 km/h. Under these regulations, the user of a motorised mobility device may ride on the footpath where available, and can only travel on the road to cross by the most direct route.

3.24 Under Northern Territory legislation, a motorised mobility device cannot legally be driven on a road. It was noted, however, that in remote areas, where there is a lack of footpath infrastructure these devices are frequently used on roadways, where technically they are not permitted to be used. It was acknowledged, however, that users have few other options to access services in the community if they are not able to use a motorised mobility device.

3.25 The Northern Territory Department of Infrastructure, Planning and Logistics noted that one of the key issues raised during its consultation with the Northern Territory community had been the lack of clear definitions in relation to motorised mobility devices, including where they can be legally used.

Australian Capital Territory²²

3.26 The Australian Capital Territory (ACT) Government has adopted the ARR, through the application of the *Road Transport (Safety and Traffic Management) Regulation 2000*. While mobility scooters and motorised wheelchairs are usually differentiated by both construction and users, they are generally treated equally under existing ACT regulations, as 'motorised wheelchairs'.

3.27 In the ACT, a pedestrian includes a person driving a 'motorised wheelchair' that cannot travel at over 10 km/h (on level ground). As such, the user of a mobility scooter or motorised wheelchair is provided the same rights and responsibilities as an ambulant pedestrian.

3.28 The ACT regulations provide that a person may use a motorised wheelchair on a path if:

- the unladen mass of the wheelchair is not over 110 kg;
- they are not travelling at over 10 km/h; and
- because of their physical condition, the user has a reasonable need to use a motorised wheelchair.

21 Based on information contained in Northern Territory Department of Infrastructure, Planning and Logistics, *Submission 70*, p. 2.

22 Based on information provided in ACT Government, *Submission 103*, [p. 2].

3.29 In responding to concerns from the community, the ACT was the first jurisdiction in Australia to provide an exemption to the above mass limit for motorised wheelchairs used on a path. The exemption increased the allowable mass of the unladen wheelchair to 150 kg.

3.30 The ACT Government advised that the ARR's treatment of the users of motorised wheelchairs (that cannot travel at more than 10 km/h) is supported by the *Motor Vehicle Standards Act 1989*. The Motor Vehicle Standards (Road Vehicles) Determination 2017 under the MVSA, provides that a motorised wheelchair is designed to be used by a single person, is self-propelled, is not capable of exceeding 10 km/h on level ground, and if not propelled solely by one or more electric motors, has an unladen mass of 40 kg or more.

3.31 It is the understanding of officers within the ACT Road Transport Authority, that under the MVSA, mobility scooters and motorised wheelchairs that can travel at more than 10 km per hour on level ground are considered to be non-standard motor vehicles. The ACT Government advised that because it is an offence under the MVSA to import or supply to market such devices, an offender would be liable to a penalty for each such offence.

Human Rights

3.32 The issue of human rights was raised by a large number of submitters who suggested that any tightening of the regulations for mobility scooters and motorised wheelchairs would discriminate against both older people and those with a disability.

3.33 Ms Marg Bell expressed concern that any proposal to further regulate motorised wheelchairs would "have the effect of condemning a community already struggling to cope with the normal activities of everyday life".²³ She continued:

It's seeking to limit the movement of already limited people who in many cases need their wheelchairs simply to function, not to go down the road in, but to get to the toilet and the washbasin. They need a wheelchair to compensate for what their body cannot achieve on its own. I am not suggesting that they need to go to the toilet at 10kph. I am trying to point out that their wheelchair is a vital supplement for their legs.²⁴

3.34 The sentiments expressed by Ms Bell were echoed by a number of submitters who argued that users of mobility scooters and motorised wheelchairs should not be treated differently, or discriminated against.²⁵ Mr Ray Jordan for example, argued that:

We have laws that limit the speed at which people are allowed to drive their cars. Those speed limits vary depending on the circumstances. Yet we do

23 Ms Marg Bell, *Submission 41*, p. 1.

24 Ms Marg Bell, *Submission 41*, p. 1.

25 See, for example, Mr R. Fountain, *Submission 12 and Supplementary Submission 12*, Ms Joanne McWatters, *Submission 30*, Ms Saverina Cardamone, *Submission 36*, Mr John Moxon, *Submission 56* and Ms Stacey Christie, *Submission 66*.

not limit the maximum speed of the cars themselves. We rely on drivers obeying the rules which, generally, they do.

Should the riders of mobility scooters and power wheelchairs be treated differently to car drivers? Should their devices be physically limited to a slow walking pace as some have suggested? I say no, this would be seen as discriminatory by many in the community.²⁶

3.35 Ms Erin Condrin submitted that able bodied people have the right to make decisions about how fast they move in a variety of situations – including playing soccer with their children, walking their dog, or when running late for an appointment. Further, Ms Condrin argued:

As a walking person, you can decide when it's appropriate to walk and when it's appropriate to jog or run. Your proposed legislation takes away my right to choose. Not only is this belittling to suggest that all users of mobility scooters and motorised wheelchairs are incapable of using common sense and deciding what speed we move at, it is unfair to impose restrictions on the mobility of people with disabilities when those who are able bodied do not face the same standards. Is this not discrimination?²⁷

3.36 There are a number of conventions that have been ratified by the Australian Government, the principles and articles of which are reflected in Australian legislation and in public policy and programs. These include Commonwealth, state and territory anti-discrimination legislation, the *National Disability Strategy 2010–2020*, and the NDIS.²⁸

3.37 A number of submitters, including the Office of the Public Advocate (Victoria) (OPA Victoria), pointed to the central role that human rights should play in any discussions around the use and regulation of mobility devices.²⁹ OPA Victoria pointed to the United Nations Principles for Older Persons (1991) and the United Nations Convention on the Rights of Persons with Disabilities (2006), and argued that these instruments are part of the framework within which "policies affecting older people and people with disabilities should be considered".³⁰

3.38 OPA Victoria also argued that:

26 Mr Ray Jordan, *Submission 23*, [p. 2].

27 Ms Erin Condrin, *Submission 52*, [p. 1].

28 As the NDIS continues to roll out across Australia, it will be the agency responsible for the provision of mobility devices, such as mobility scooters, motorised wheelchairs and other mobility equipment. Older Australians who are not eligible for the NDIS will also be able to obtain mobility devices from schemes which are currently in place.

29 See, for example, Mr R. Fountain, *Submission 12 and Supplementary 12*, Ms Joanne McWatters, *Submission 30*, Ms Saverina Cardamone, *Submission 36*, Mr John Moxon, *Submission 56*, Ms Stacey Christie, *Submission 66*, NSW Council of Social Services, *Submission 78*, Physical Disability Council of NSW, *Submission 79* and Queenslanders with Disability Network, *Submission 82*.

30 Office of the Public Advocate (Victoria), *Submission 63*, p. 3.

In an ageing society, it is vital that older persons with mobility impairments are supported to participate actively in Australian society, whether that is through involvement in education, employment, volunteering or other activities with family and friends.³¹

3.39 With this in mind, it was noted that the instruments being referred to by OPA Victoria were not based on a medical model of disability or ageing (which often seek to emphasise a specific medical diagnosis or focus on what people are not able to do). Rather, these instruments are based on a human rights model which encourages active participation and inclusion.

United Nations Principles for Older Persons

3.40 On 16 December 1999, the United Nations Principles for Older Persons were adopted by a resolution of the General Assembly. In adopting the principles, the United Nations (UN) acknowledged that in all countries, individuals are "reaching an advanced age in greater numbers and in better health than ever before". Under the principles, the UN declared that in addition to basic human rights in relation to food, water, shelter, clothing and health care, older persons also have the right to:

- maintain their independence;
- participate in the community;
- access social and legal services to enhance their autonomy, protection and care;
- access educational, cultural, spiritual and recreational resources; and
- be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.³²

United Nations Convention on the Rights of Persons with Disabilities

3.41 The United Nations Convention on the Rights of Persons with Disabilities (CRPD) applies to people with disabilities of all ages. There are two articles contained within the CRPD which are of particular relevance to the issues around regulation of mobility scooters and motorised wheelchairs.

Article 3 – Guiding principles

The guiding principles of the Convention are:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;

31 Office of the Public Advocate (Victoria), *Submission 63*, p. 3.

32 United Nations Human Rights, Office of the Commissioner, website: <https://www.ohchr.org/en/professionalinterest/pages/olderpersons.aspx> (accessed 21 August 2018).

- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women; and
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.³³

Article 20 – Personal mobility

Article 20 of the Convention, states parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- (a) facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities; and
- (d) encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.³⁴

Disability Discrimination Act

3.42 Section 23 of the *Disability Discrimination Act 1992* prohibits discrimination against a person on the grounds of their disability. This includes refusing to allow a person access to premises or use of facilities (that the public is entitled or allowed to enter or use). The Act covers circumstances in which discriminatory terms or conditions are imposed on a person's access or use of premises or facilities. It also covers situations in which a person imposes discriminatory requirements as to the manner of a person's access to premises or use of facilities, on the basis of disability.

3.43 The term 'premises' is defined in the Act to include both a structure and a place (whether it is enclosed or not). The Australian Human Rights Commission

33 United Nations, Department of Economic and Social Affairs, Division for Inclusive Social Development, website <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/guiding-principles-of-the-convention.html> (accessed 23 August 2018).

34 United Nations, Department of Economic and Social Affairs, Division for Inclusive Social Development, website <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-20-personal-mobility.html> (accessed 23 August 2018).

(AHRC) has determined that the term 'premises' can include public footpaths; and states that barriers to using footpaths could potentially constitute unlawful discrimination. Barriers could, for example, include:

- the placement of street furniture, poles, bollards or equipment in locations that cause a barrier to access;
- poor maintenance that prevents the safe use of a footpath by persons with disabilities, including wheelchair users – such as, overhanging vegetation or uneven surfaces caused by pot-holes or tree roots; and
- encroachment by occupants or users of adjacent premises – including encroachments by nearby businesses, or building works that do not provide users with an alternative, safe route.³⁵

3.44 It is noted, therefore, that any measures taken which limit the ability of people using motorised wheelchairs to use public footpaths could potentially constitute unlawful discrimination on the grounds of disability.³⁶ Section 29 of the Act contains a limited exemption for cases in which avoiding the discrimination would impose an 'unjustifiable hardship' on the discriminator.³⁷

Disability (Access to Premises – Buildings) Standards 2010

3.45 The Disability (Access to Premises – Buildings) Standards 2010 are made under the Disability Discrimination Act and set out a number of legally binding design standards for buildings. The AHRC has determined that public footpaths are not subject to the Standards, but has recommended that government authorities with responsibilities for footpaths adopt certain technical specifications, which the AHRC considers to be good practice. These include specifications for width and clearance heights, gradient, surface finish, kerb heights and tactile indicators at crossings. The AHRC does, however, also acknowledge that the requirements adopted at individual locations will also need to take account of local conditions, including the needs of the community, historical practice and any unique heritage or environmental issues.³⁸

35 Australian Human Rights Commission, Frequently asked questions: Access to premises, website <https://www.humanrights.gov.au/frequently-asked-questions-access-premises#footpath> (accessed 23 August 2018).

36 Australian Human Rights Commission, Frequently asked questions: Access to premises, website <https://www.humanrights.gov.au/frequently-asked-questions-access-premises#footpath> (accessed 23 August 2018).

37 The Australian Human Rights Commission has determined that in these circumstances, an assessment would be required in relation to what is fair and reasonable in the circumstances, taking into account issues such as financial costs, and weighing the potential benefits of access or use to persons with disabilities against the detriment to the discriminator in providing that access or use.

38 Australian Human Rights Commission, *Guidelines on application of the Premises Standards*, website <https://www.humanrights.gov.au/guidelines-application-premises-standards> (accessed 14 August 2018).

Disability Standards for Accessible Public Transport 2002

3.46 The committee was advised that there is currently no clear way for a person intending to purchase a motorised mobility device to know whether it will be suitable or safe to use on public infrastructure, including footpaths. It was also noted that determining whether a device can be used to access passenger transport can also be difficult. Problems arise when a mobility device is found to be too heavy to use passenger ramps, too wide to access doorways, or unable to access allocated spaces.³⁹

3.47 Given the risks this situation poses to users of mobility devices, other commuters, passenger transport workers, and to infrastructure, the Disability Standards for Accessible Public Transport 2002 were reviewed in 2013. Austroads noted that one of the recommendations from that review was for the Commonwealth, in collaboration with state and territory governments, to develop and implement a national labelling scheme for motorised mobility devices. The Federal Government noted the recommendation, and indicated its support for an Austroads project to develop a labelling system to better inform customers about the suitability of different mobility devices for use on public infrastructure, such as footpaths, and passenger transport conveyances.⁴⁰

Licencing, registration and third-party insurance

3.48 The issue of licencing, registration and insurance for motorised mobility devices was raised by a number of submitters, with many supportive of a licensing, registration and insurance scheme.⁴¹ Ms Stacey Christie, for example, suggested that perhaps a licencing system would offer a good solution:

That way the thousands of people with permanent disabilities, who use their motorised wheelchairs every day and are very safe, are not penalised for the errors of a select few irresponsible individuals. People who use their wheelchairs the majority of the time would easily pass a licence test and people who are unsafe wouldn't be able to purchase a mobility scooter.⁴²

3.49 Mr Terry Flower informed the committee that an industrial accident saw him purchase the first of many mobility devices in 1998. Mr Flower, a South Australian, indicated that he currently owns several scooters (which he uses for different purposes) and which are all covered for comprehensive insurance by the Royal Automobile Association of South Australia (RAA SA). Mr Flower noted that his mobility scooters are also covered for third party insurance by the Motor Accident Insurance Commission (MAIC).⁴³

39 Austroads Ltd, *Submission 64*, p. 3.

40 Austroads Ltd, *Submission 64*, p. 3.

41 See, for example, Ms Jacqueline Walling, *Submission 1*, Mr Ian Keith, *Submission 6*, Dr Colin Sheppard, *Submission 8*, Mr Peter Mitchell, *Submission 13*, Ms Judy and Mr Ray Taylor, *Submission 16*, Mr Ron Henney, *Submission 42*, Ms Helen Mikolaj, *Submission 46* and Mr Paul Brand, *Submission 55*.

42 Ms Stacey Christie, *Submission 66*, [p. 3].

43 Mr Terry Flower, *Submission 60*, p. 1.

3.50 Mr Flower pointed to the fact that in South Australia, the rules have recently been changed to allow adults to ride their bicycles on the footpaths. He observed that bicycles are frequently ridden at speeds in excess of 10 km/h. Noting these changes, Mr Flower made the following suggestion in relation to a registration system:

An option that is available would be to make every mobility scooter and pushbike have an identification number that is a registration number. If this idea was adopted irresponsible users of mobility scooters and pushbikes would be readily identifiable by the police.⁴⁴

3.51 It is noted that, given motorised mobility devices which cannot travel faster than 10 km/h are classified as pedestrians, they are not subject to driver licencing requirements in any state or territory.

New South Wales⁴⁵

3.52 The NSW vehicle registration system generally requires all motorised vehicles (that meet national design and safety standards) be registered for use on a road or road-related areas. There are certain vehicles, however, that are specifically exempt from registration and do not require CTP insurance.

3.53 The nominal defendant provisions under the NSW motor accident scheme can (subject to some conditions) provide insurance cover for personal injury claims arising from accidents on roads or road-related areas, where a motorised wheelchair that is not required to be registered is at fault.

South Australia⁴⁶

3.54 In South Australia, mobility scooters do not require registration. The MAIC provides users of mobility devices with third-party insurance cover at no cost, in cases where an incident occurs on the road or on a footpath in which the user of the mobility scooter or motorised wheelchair was at fault. Potential purchasers are advised to contact an insurance company or broker to check personal liability and insurance cover for mobility scooters.

Victoria

3.55 Under Victorian legislation motorised mobility devices – including mobility scooters and motorised wheelchairs – are not defined as motor vehicles and therefore cannot be registered.⁴⁷

44 Mr Terry Flower, *Submission 60*, p. 2.

45 Based on information provided in *Current NSW Road Rules and Laws in NSW*, website <https://www.advancedscooters.com.au/current-nsw-road-rules-and-laws> (accessed 14 August 2018) and NSW Government, *Submission 106*.

46 Based on information provided in South Australian Department of Planning, Transport and Infrastructure, Information Sheet 8, Version 6, *Motorised mobility scooters*, website https://dpti.sa.gov.au/_data/assets/pdf_file/0014/141620/Info_Sheet_8_June_2015_Web.pdf (accessed 14 August 2018).

47 Darebin Disability Advisory Committee, *Submission 102*, p. 1.

Tasmania

3.56 Under Tasmanian regulations, mobility scooters or motorised wheelchairs only need to be registered if they are used on public streets (including footpaths) and can exceed a speed of 10 km/h. If mobility scooters or motorised wheelchairs require registration (that is, if they are able to travel at more than 10 km/h) they are registered as a light vehicle or a motorcycle with conditions, depending on how they are constructed.⁴⁸

Western Australia⁴⁹

3.57 The Western Australian Department of Transport uses the term 'motorised wheelchair' to include wheelchairs driven by petrol, diesel or electric engines, as well as vehicles referred to as gophers. Under Western Australian legislation, these vehicles must be designed so that they cannot exceed a speed of 10 km/h.

3.58 Users of these vehicles are not required to hold a driver's licence and are not required to pay compulsory Motor Injury Insurance (MII). Interestingly, the Western Australian Department of Transport indicated that where a genuine need is demonstrated, vehicles that are more suitable for higher speeds (for example, quad bikes) can be conditionally licensed as 'motorised wheelchairs'.

Queensland⁵⁰

3.59 In Queensland, a motorised wheelchair⁵¹ used on a footpath or road area must be registered. To be registered, the motorised wheelchair must:

- have an electric motor;
- be designed and built for use by a seated person with mobility difficulties;
- not be capable of travelling at more than 10 km/h;
- have a maximum TARE (or unladen weight) of 150 kg; and
- not be propelled by an internal combustion engine.

3.60 Provided the applicant complies with specific procedural requirements (including supplying a medical certificate confirming their medical need to use a wheelchair due to mobility impairment) there is no cost for registration in Queensland.

48 Tasmanian Department of State Growth, Transport, *Registration: Wheelchairs*, website <https://www.transport.tas.gov.au/registration/information/wheelchairs> (accessed 27 August 2018).

49 Based on information contained in Western Australia Department of Transport, website *License a motorised wheelchair*, <https://www.transport.wa.gov.au/licensing/license-a-motorised-wheelchair.asp> (accessed 27 August 2018).

50 Based on information contained in Queensland Department of Transport and Main Roads, website <https://www.qld.gov.au/transport/registration/register/wheelchair> (assessed 14 August 2018).

51 The Queensland Department of Transport and Main Roads refers to motorised mobility devices as 'motorised wheelchairs' rather than 'mobility scooters'.

Users of registered motorised wheelchairs also receive compulsory third-party insurance free of charge. This provides coverage in the event that a user causes injury to another person while on a road-related area such as a footpath.

3.61 After a motorised wheelchair is registered, the user receives:

- a number plate;
- a registration certificate; and
- an information sheet explaining Queensland Road Rules relating to motorised wheelchairs.

Northern Territory

3.62 The Northern Territory does not operate a registration, licensing or compulsory third-party insurance system for motorised mobility devices.⁵²

3.63 The nominal defendant provisions in the Northern Territory's motor accident scheme can (subject to some conditions) provide insurance cover for personal injury claims arising from accidents on roads or road-related areas, where a motorised wheelchair that is not required to be registered is at fault.

Australian Capital Territory

3.64 The nominal defendant provisions in the ACT's motor accident scheme can (subject to some conditions) provide insurance cover for personal injury claims arising from accidents on roads or road-related areas, where a motorised wheelchair that is not required to be registered is at fault.

Stakeholder views

Licensing, registration and insurance

3.65 The Brisbane City Council advised that through its *Brisbane Access and Inclusion Plan 2012–2017*, it has been working to improve pathways and ramps, as well as accessibility for mobility scooters and wheelchairs on Brisbane's bus network.

3.66 It was noted that the current Queensland system – which includes registration and free third-party insurance for motorised mobility devices – is effective. The Brisbane City Council also argued that the Queensland system, which ensures that mobility scooters are only registered to people who require them, is something that other states and territories could consider implementing.⁵³

3.67 The Brisbane City Council submitted that there are currently a number of gaps in regulatory and licensing processes for mobility scooters which could be remedied for the benefit of both footpath and public transport users. The Council pointed to the lack of consistency between states in relation to standards, licensing, education and accessible public transport and made the following recommendations to rectify this situation:

52 Northern Territory Department of Infrastructure, Planning and Logistics, *Submission 70*, p. 2.

53 Brisbane City Council, *Submission 53*, [p. 2].

- an Australian standard should be put in place for design and manufacture of mobility scooters with speed limiters for footpath use;
- the Austroads standard for footpaths should be amended to include reference to mobility scooters;
- given the increasing number of mobility scooters, consideration should be given to the need to revise the standard pathway width (which is currently 1.2 metres);
- the states and territories consider implementing a basic licencing scheme to ensure that users have the ability to use a mobility scooter safely; and
- basic training for mobility scooter users should be provided by mobility scooter retailers or certified companies – with eligible users able to access funding through the NDIS.⁵⁴

3.68 Brisbane City Council noted that the gaps "include consistency of standards between states, licencing and education".⁵⁵ As one of the largest public transport operators in Australia, it emphasised the point that particular attention needs to be paid to mobility scooter access onto public transport.⁵⁶

3.69 In terms of licencing, the OPA Victoria indicated that it does not consider the licencing of all motorised mobility devices a workable solution, on the basis that:

It would create an unworkable, costly system that would further stigmatise and discriminate against people with mobility disabilities. It would only create additional barriers to people with disabilities, of whatever age, participating and contributing to society. Furthermore, it would do little to reduce accidents.⁵⁷

3.70 The NSW Government argued that, without compelling evidence to suggest that it would improve road safety, implementing a registration scheme for mobility devices would be contrary to the state's Better Regulation policy.⁵⁸ It was also argued that requiring mobility devices to be registered could potentially create a significant financial and regulatory burden, "the costs of which would either have to be met by the users themselves or absorbed by government".⁵⁹

3.71 Mr Charles Nicholson, a submitter from NSW, noted that in that state, provisional registration is already in use for vehicles described as 'non-complying

54 Brisbane City Council, *Submission 53*, [pp 2-3].

55 Brisbane City Council, *Submission 53*, [p. 1].

56 Brisbane City Council, *Submission 53*, [p. 1].

57 Office of the Public Advocate (Victoria), *Submission 63*, p. 4.

58 In June 2008, the NSW Government released its Guide to Better Regulation. The Guide outlines the requirements for best practice regulation-making across government, with agencies required to apply the seven 'better regulation principles' to avoid the creation of red tape in new regulatory proposals and reduce existing red tape (as legislation is reviewed).

59 NSW Government, *Submission 106*, p. 4.

vehicles'.⁶⁰ Non-complying vehicles include tractors, equipment used by councils to carry out roadside mowing, as well as those used for roadworks, beach cleaning and shopping trolley collection.⁶¹ Mr Nicholson suggested that it would be possible for mobility scooters to be included in this category, be required to have provisional registration and be required to be fitted with a small, readily identifiable, registration number plate. Mr Nicholson also argued that all motorised mobility scooters should be covered by compulsory third-party insurance and that this could be achieved by users paying a nominal amount, for example, ten per cent of the cost of car CTP.⁶²

3.72 The committee was advised that, in the past, South Australia did have a low-cost registration scheme for motorised wheelchairs, which provided insurance, but did not require a number plate to be issued. It was also noted that currently in South Australia, the MAIC does provide free third-party insurance cover for mobility scooters (in cases of accidental injury).⁶³

3.73 It is also noted that third-party insurance arrangements provided by state and territory governments appear to be limited to the use of motorised wheelchairs on a road, or a road-related area, such as a footpath. It would seem that they do not cover injuries caused on private premises, such as in a shopping centre or a local club (which would need to be covered by a separate public liability insurance policy).

3.74 Ms Helen Mikolaj advised that, as a mobility scooter user in South Australia, she has been able to obtain comprehensive insurance for her current scooter through the RAA SA. In terms of appropriate regulation, Ms Mikolaj also argued in favour of:

- a system of registration for those mobility scooters which have third-party insurance cover (for which a nominal fee is charged);
- the introduction of a number plate or identity plate for mobility scooters and bicycles (to identify the user);
- a Certificate of Competency for users of mobility scooters (for which basic training is required);
- retailers of mobility scooters to offer appropriate advice to purchasers (before they buy); and
- medical assessments of a person's ability to use and control a mobility scooter (including eyesight checks).⁶⁴

3.75 Similar views were expressed by Dr Gary Musselwhite, a mobility scooter user who has lived in NSW, Queensland and now Victoria. In addition to suggesting

60 Mr Charles Nicholson, *Submission 44*, p. 3.

61 NSW Department of Roads and Maritime Services, website <http://www.rms.nsw.gov.au/roads/registration/get-nsw-registration/vehicle-sheets/tractor.html>, (accessed 20 August 2018).

62 Mr Charles Nicholson, *Submission 44*, p. 3.

63 Ms Helen Mikolaj, *Submission 46*, [p. 1].

64 Ms Helen Mikolaj, *Submission 46*, [p. 1].

that the conditional registration of all mobility scooters and power chairs should be mandatory across all states (in line with the Queensland system), Dr Musselwhite suggested that:

- users of a mobility device should be required to undergo an assessment conducted by an occupational therapist (to ensure that the device is required to assist with mobility and that the user is capable of operating the mobility device in a safe manner);
- based on an occupational therapist's assessment, a person with a significant impairment may require their mobility device to be speed limited as a condition of registration; and
- mobility scooters should have an attached registration plate (which acts as a means of identifying the user in the event of an incident or police involvement).⁶⁵

3.76 Further, Dr Musselwhite recommended that all states adopt "consistent policy and legislation in respect to the registration of motorised mobility scooters and power chairs", and that consideration be given to the introduction of regular assessments for users of mobility devices.⁶⁶ The assessments, which would be conducted by an occupational therapist (and funded using an aged care package, Medicare or NDIS) would go some way to ensuring that individuals were safe to continue using a mobility device.⁶⁷

Assessment by a medical professional

3.77 A number of submitters raised the issue of medical assessments for users of mobility devices. Many argued that while they were not in favour of making it unduly difficult for users of mobility devices to get around, they were of the view that users of should be required to be assessed by a medical professional prior to purchasing (or being prescribed) a mobility device.⁶⁸ A number of stakeholders also argued that assessments of an individual's ability to control a mobility device should be checked on a regular basis – with many people suggesting assessments be undertaken annually.⁶⁹

65 Dr Gary Musselwhite, *Submission 61*, [p. 4].

66 Dr Gary Musselwhite, *Submission 61*, [p. 4].

67 Dr Gary Musselwhite, *Submission 61*, [p. 4].

68 Some submitters suggested that these assessments should be undertaken by a general practitioner or other medical specialist, while a number recommended these assessments could be undertaken by an occupational therapist.

69 See, for example, Ms Jacqueline Walling, *Submission 1*, p. 2, Mr John McQuiggin, *Submission 11*, Mr Peter Mitchell, *Submission 13*, Mr Nigel Caswell, President, People with Multiple Sclerosis Victoria, *Submission 18*, Mr Kevin Finlayson, *Submission 27*, Ms Liz Black, *Submission 39*, Ms Margaret Bayley, *Submission 48*, Mr Paul Brand, *Submission 55* and Ms Jenny Linton-Webb, *Submission 67*.

3.78 Ms Anita Volkert, National Manager, Occupational Therapy Australia (OTA) told the committee that the organisation supported the idea of a standardised assessment tool for mobility scooter and motorised wheelchair use. OTA also agreed that an occupational therapy assessment should be a requirement for people with identified health issues, which result in functional limitations. OTA warned however, that the further regulation of motorised mobility devices may disadvantage some users – particularly if increased assessment, licensing and insurance costs create delays in obtaining a mobility device. Ms Volkert explained that OTA encourages:

...careful consideration of the impact this may have on the ability of people with chronic health conditions and disabilities to effectively participate in society, which we know increases people's health and wellbeing.⁷⁰

3.79 Professor Carolyn Unsworth representing CQUniversity Australia, told the committee that, in terms of assessment and education for mobility device users, she has recently been involved in the development of the Powered Mobility Device Assessment and Training Tool – PoMoDATT. The training tool, which has been researched over a period of five years, has recently been published and:

...it's widely used by occupational therapists to assist them to make sure that people who are using scooters and wheelchairs are safe to do so. In addition, if they're not safe, then there's a training mechanism incorporated so that we can work with people to get people safe. I believe that this is a very important tool that we can use. It's only one aspect of the entire problem, but it does contribute to helping make people safe.⁷¹

3.80 OPA Victoria also raised the issue of assessments for users of mobility devices. OPA Victoria expressed the view that in some situations it may be appropriate for an individual to undergo testing to determine if using a mobility scooter or a motorised wheelchair is appropriate for them (or remains appropriate for them). It was submitted, however, that there are existing systems of assessment which can be used in these situations.⁷²

Education and training

3.81 A number of stakeholders argued that in Australia, children are educated about road safety in an attempt to keep them safe when they are walking or riding bicycles. Australians also consider education and training to be an important step in learning to drive and being granted a licence to drive a vehicle. It was submitted that more should be done to educate people in the use of motorised mobility devices and

70 Ms Anita Volkert, National Manager, Professional Practice and Development, Occupational Therapy Australia, *Committee Hansard*, 23 July 2018, p. 24.

71 Professor Carolyn Unsworth, CQUniversity Australia, *Committee Hansard*, 23 July 2018, p. 25.

72 Office of the Public Advocate (Victoria), *Submission 63*, p. 2.

operating them in a manner that is safe for users and others, while at the same time educating the broader community about safety around motorised mobility devices.⁷³

3.82 Mr Nigel Caswell, President, People with Multiple Sclerosis Victoria, suggested that there is a need for a minimum level of training and information to be provided to all people who purchase (or are prescribed) a mobility scooter or motorised wheelchair. Mr Caswell argued that:

This training and information should be provided before the purchase is completed and should cover safe use, courtesy and safety for other people and basic maintenance (if the user is not capable of the maintenance this information should be provided to the user's carer or similar). In my view the provision of this training and information should be an obligation of the retailer supplying the machine, and desirably retailers should offer regular half day courses for persons proposing to purchase a machine.⁷⁴

3.83 The issue of shared roads, paths and other spaces was raised by a number of submitters. A number of stakeholders also pointed to the fact that there are frequently a range of vehicles which share roads, paths and other spaces, particularly in cities.⁷⁵

3.84 A number of submitters also made it clear that safety is not the sole responsibility of those who use motorised mobility devices. Stakeholders argued that pedestrians not watching where they are going, people texting or talking on phones, bicycles and skateboards travelling too fast, and vehicles blocking footpaths can also pose a danger.

3.85 For example, whilst acknowledging that while some people can be "uncaring and reckless" on a scooter, Mr Russell Anderson argued that the general public also need to be more aware of their surroundings:

The general public need to be also made aware of the dangers they pose to themselves. I have had many occasions where people just stop dead in front of you for no reason and it is not that easy to stop dead [on a scooter]. Or they just walk out straight in front of you or they block your path with shopping trolleys.⁷⁶

3.86 Ms Robyn Hall expressed similar frustrations and told the committee:

Scooters are not the only things used on pavements and it's unfair to target just those who use them. I am sick to death of going down the shopping strip in Richmond, Melbourne and adults are riding their pushbikes (illegal by the way) on the footpath. I have seen people hit and nearly hit by these

73 See, for example, Ms Jacqueline Walling, *Submission 1*, Mr John Halford, *Submission 10*, Mr Peter Mitchell, *Submission 13*, Mr Trevor Hodson, *Submission 15*, Mr Ray Jordan, *Submission 23*, Ms Liz Black, *Submission 39* and Miss Joanne Berry, *Submission 51*.

74 Mr Nigel Caswell, President, People with Multiple Sclerosis Victoria, *Submission 18*, [p. 4].

75 See, for example, Mr R Fountain, *Supplementary Submission 12*, Ms Yvonne Sartori, *Submission 14*, Mr Arthur Comer, *Submission 17*, Ms Robyn Hall, *Submission 19* and Miss Stacey Christie, *Submission 66*.

76 Mr Russell Anderson, *Submission 3*, p. 1.

irresponsible idiots and yet when I complained to our local council I was told it's nothing to do with them.⁷⁷

3.87 Mr Peter Fraser also raised the problem of pedestrians not being aware of their surroundings:

In my local shopping centre....one has to be very careful as so many people are texting or talking on their mobiles instead of looking where they are going. This is a daily problem that I encounter.⁷⁸

3.88 OPA Victoria acknowledged the increased use of motorised mobility devices, and noted that in addition to those people who have their own mobility scooter or motorised wheelchair, motorised scooters are often available for temporary hire at shopping centres, educational facilities and recreational facilities. It was argued, therefore, that at any one time across Australia, there "will be hundreds or thousands of motorised mobility devices in use".⁷⁹

3.89 OPA Victoria also acknowledged that as a result of the sheer numbers of devices, accidents are going to happen. It argued however, that:

...it is wrong to blame the driver of these devices solely for these accidents. Accidents often happen because of the physical environment in which the users of motorised devices find themselves. For example, poorly maintained footpaths, steep and uneven terrain, kerb ramps (or kerb cuts), inadequate street lighting and the failure of other people to look where they are going.⁸⁰

3.90 OPA Victoria suggested that rather than additional regulation, community education is a better solution to the problem of incidents and accidents involving motorised mobility scooters, motorised wheelchairs, bicycles and skateboards. OPA Victoria indicated its support for community education designed to remind people to be more aware of what is going on in the environment around them, and to be more mindful of others, particularly when they are using headphones and mobile phones.

3.91 Community education, it was argued, should focus on the rights and responsibilities of users of motorised mobility devices, members of the general public as well as the agencies responsible for community infrastructure, without condemning or excluding those people who need mobility devices.⁸¹

77 Ms Robyn Hall, *Submission 19*, p. 1.

78 Mr Peter Fraser, *Submission 28*, p. 1.

79 Office of the Public Advocate (Victoria), *Submission 63*, p. 4.

80 Office of the Public Advocate (Victoria), *Submission 63*, p. 4.

81 Office of the Public Advocate (Victoria), *Submission 63*, p. 3.

