

**Submission
No 66**

NON-REGISTERED MOTORISED VEHICLES

Organisation: NSW Government
Name: Mr Chris Eccles
Position: Director General, Premier and Cabinet
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Premier
& Cabinet

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Mr Greg Aplin MP
Chair
Joint Standing Committee on Road Safety
Parliament House
Macquarie Street
Sydney NSW 2000

- 2 MAY 2013

Dear Mr Aplin

I refer to the NSW Parliamentary Joint Standing Committee on Road Safety (Staysafe Committee) Inquiry into Non-Registered Motorised Vehicles.

Please find attached a NSW Government submission.

Should you require further information, please contact [REDACTED]

Yours sincerely

[REDACTED]
Chris Eccles
Director General

Submission by

NSW Government

in response to

**The Parliamentary Joint Standing Committee
on Road Safety
(Staysafe)**

Inquiry into Non-Registered Motorised Vehicles



April 2013

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1 TERMS OF REFERENCE

STAYSAFE INQUIRY INTO NON-REGISTERED MOTORISED VEHICLES

On 28 February 2013 the Parliamentary Joint Standing Committee on Road Safety (Staysafe) issued its terms of reference in relation to non-registered motorised vehicles.

The table below provides a reference point for each of the Staysafe Inquiry terms of reference within the NSW Government submission.

Terms of Reference	Location/Reference in Submission
a) The current status of non-registered motorised vehicles in road rules definitions and the extent of road safety problems related to their use	Part 3
b) The adequacy of data collection for injury and fatality rates arising from the use of non-registered motorised vehicles	Part 4
c) Vehicle standards requirements for non-registered motorised vehicles, including vehicle design, engine capacity, mass and speed controls	Part 5
d) The extent and effectiveness of education and the necessity for skills and competency training for users of non-registered motorised vehicles, particularly in relation to safe use	Part 6
e) Insurance implications of injuries and fatalities sustained and caused by non-registered motorised vehicles	Part 7
f) Initiatives taken by local Councils and other jurisdictions to certify, register and regulate the use of currently non-registered motorised vehicles	Part 8
g) Any other related matters.	Part 9

2 Introduction

The Government welcomes this inquiry to investigate the use of non-registered motorised vehicles.

This submission will examine the status of non-registered motorised vehicles, including mobility scooters, electric cycles, Segways, quad bikes and other alternative vehicles on public roads, footpaths and public land and their impact on road safety. It should be noted that although the Inquiry's focus will be on the use of these vehicles on public roads, road related areas and public spaces, some of the issues arising from the Inquiry may be relevant to their use on private property.

Non-registered motorised vehicles in use today vary in purpose, design, and capacity, and therefore different vehicle types are treated differently under the law.

A number of non-registered motorised vehicles are important to improve mobility for older people and people with a disability. This submission examines some of the safety issues with the use of these vehicles and some possible measures to enable them to be used more safely.

Some vehicles such as quad bikes have limited use on roads and are employed more on private properties for work purposes such as on farms. Other vehicles such as Segways are used for recreational purposes. The submission will discuss the different legal and policy issues concerning some of the different non-registered motorised vehicles in use today.

3 The current status of non-registered motorised vehicles in road rules definitions and the extent of road safety problems related to their use

There is a proliferation of non-registered motorised vehicles that provide alternative transport options. Many are aimed at meeting the needs of disabled people and an increasingly ageing population where mobility and alternative transport options are increasingly essential. However, the interactions between different vehicles and their impact on road safety must be considered. Non-registered motorised vehicles in use today differ in purpose, design, and capacity, and therefore should be treated differently under the law.

In addition to safety issues, it is anticipated that increased use of non-registered motorised vehicles such as motorised wheelchairs and mobility scooters, may place pressure on existing infrastructure, particularly in areas with a large and growing population of older people.

3.1 Motorised wheelchairs and mobility scooters

Determining the legal status of motorised wheelchairs and mobility scooters is challenging. One reason stems from the fact that the terms 'motorised wheelchair' and 'mobility scooter' are not defined in the Road Rules 2008. 'Wheelchair' is defined, and therefore by extension a 'motorised wheelchair' is a wheelchair to which a motor is fitted. The definition of 'motorised wheelchair' in the Road Rules 2008 encompasses mobility devices that some consumers and suppliers describe in alternative terms such as *mobility scooter*, *mobility device*, and *gopher*.

In this submission, the term 'mobility device' will be used to describe motorised wheelchairs and mobility scooters. These should not be confused with a motorised scooter, which is defined in the Australian Road Rules as a type of toy, and not replicated in the NSW Road Rules 2008.



Mobility scooter



Motorised wheelchair

In addition, the definitions of 'pedestrian' and 'vehicle' under the Road Rules 2008 establish two categories of motorised mobility device. Vehicles incapable of travelling at more than 10km/h are deemed *pedestrians* for the purposes of the Road Rules 2008, and those capable of travelling at more than 10km/h are categorised as *vehicles*. This is consistent with the Australian Road Rules and equivalent road rules in other jurisdictions.

The Road Transport (Vehicle Registration) Regulation 2007 (the Registration Regulation) explicitly excludes from the registration provisions, vehicles that are:

...specially constructed to be used, and while on a road or road related area are used, solely for the conveyance of a person with a disability that substantially impairs the person's mobility, and which [are] not capable of travelling at more than 10 kilometres per hour.

Similarly, the Road Transport (Driver Licensing) Regulation 2008 (the Licensing Regulation) excludes persons from the need to hold a licence if they are driving or riding:

...any motor vehicle or trailer that is specially constructed to be used, and while on a road or road related area is used, solely for the conveyance of an invalid and is not capable of travelling at more than 10 km/h.

The combined effect of the above regulations is that a person who drives or rides a vehicle intended to aid their mobility does not require a licence and the vehicle is not required to be registered. Provided the vehicle is not capable of travelling at more than 10km/h, the person is deemed a pedestrian for the purposes of the road rules. As such, he or she must use footpaths and only travel on the road under certain circumstances.

It should be noted that despite the Road Rules 2008 containing provisions for motorised wheelchairs (including mobility scooters) that *can* travel at more than 10km/h, such vehicles must comply with the Registration Regulation and therefore the vehicle standards specified. However, there are no appropriate standards that can apply to motorised wheelchairs to ensure that they can be used safely on the road network, which is busy with heavier and much faster vehicles. Similarly, people using such vehicles must also comply with the Licensing Regulation; however, there is no appropriate licence class applicable to them.

In effect, this renders it illegal to use a motorised mobility device that is capable of travelling at more than 10km/h on public footpaths or a roadway as:

- the vehicle requires registration but cannot be registered without compliance with the mandatory safety standards; and
- the user requires a licence but there is no applicable licence class.

3.1.1 Impact on road safety

There are a number of concerns with the use of motorised mobility devices with respect to the safety of the vehicle user and for pedestrians who share paths with these vehicles.

Safety concerns arise when there is a lack of appropriate footpaths, or footpaths are not properly maintained which forces motorised mobility devices onto the road. Indeed, motorised mobility device users may choose the road to avoid such problems.

Apart from not complying with safety standards, motorised wheelchairs have a low profile, making them inconspicuous to drivers of vehicles. Some motorised wheelchairs do not have lights fitted, which compounds the problem at night. NSW Police advice suggests that operators of these vehicles often do not stop to look out for traffic or give way at pedestrian crossings or traffic lights and obstruct other motor vehicles on the roads. Users are often elderly and physically vulnerable, which exacerbates the physical impact of any injuries they may receive. To this end, the Centre for Road Safety recommends operators fit their motorised mobility device with flags to improve visibility.

As users also generally receive little training in how to operate motorised mobility devices safely, the situation poses a genuine road safety risk. A 2011 Monash University study highlighted the lack of product safety regulation of motorised mobility devices which may in turn be adversely influencing road safety in addition to any concerns about the competency of the vehicle operator.

Austrroads is currently undertaking a review to develop a nationally consistent approach to the use of mobility devices. This will provide for the safe interaction of motorised mobility vehicles and other road users in both the road and road related environments. The findings from the research are expected to be presented to Austrroads in August 2013. The National Transport Commission, through the Australian Road Rules Maintenance Group, is currently reviewing the Australian Road Rules in relation to their application to motorised mobility devices.

3.1.2 EnableNSW

Research has highlighted the lack of product safety regulation for mobility devices. EnableNSW is the NSW Government agency responsible for prescribing and procuring mobility devices and providing training for all new wheelchair users. Problems emerge only when users do not use equipment in accordance with their guidance. Conversely, the diversity of sales points for mobility devices, including secondary markets means that mobility devices are often sold to people who lack the functional and/or cognitive ability to use them safely.

Mobility device safety has been a topic of national interest and during 2012, EnableNSW participated in a collaborative project with the Australian Competition & Consumer Commission (ACCC), NRMA Motoring & Services (NRMA), CHOICE, Flinders University and other stakeholders in the mobility device usage and safety survey report. It is Australia's first national survey of mobility device users and was designed to provide a better understanding of the demographics of mobility device users, and patterns of use among the Australian population. The report is available on the ACCC website:

<http://www.productsafety.gov.au/content/index.phtml/itemId/996221>.

3.1.3 Provision of motorised mobility devices through EnableNSW

EnableNSW provides motorised mobility devices as a means of mobility rather than as a transport option. However, some consumers use their mobility devices as a replacement for transport which can be evidenced by their repair history.

EnableNSW has provided approximately 400 mobility devices to people with a disability in NSW since January 2010. Provision of a scooter through EnableNSW requires that the person has a clinical assessment and trial, usually with an Occupational Therapist (OT), as well as a medical questionnaire completed by their medical practitioner. This ensures that there are no medical, physical, sensory or other conditions that that would affect the person's ability to use the scooter safely.

Despite this, EnableNSW has received requests to provide mobility devices to people who are legally blind who plan to use them on public roads as transport replacements. There is currently no impediment to a person who has impaired vision or other limitations affecting their capacity to safely drive a device from purchasing one privately for their use.

EnableNSW is concerned about the additional safety implications relating to the use of mobility devices on public roads in rural and urban areas, where there are no footpaths. EnableNSW requires that the scooters it provides are speed limited to no greater than 10km/h in order to comply with the NSW Road Rules. EnableNSW is receiving increasing requests to provide mobility devices that have speeds over 10km/h, with some mobility devices available on the market now having a capacity to travel up to 17km/h.

Motorised mobility device crashes, as evidenced by repair requests to EnableNSW, include mobility devices hitting cars, being hit by cars, falls from devices, devices tipping on ramps, collisions with stationary objects and other pedestrians, and the underside of the mobility device being caught on rough ground/footpaths/gutters.

3.1.4 Enforcement

Police at the roadside cannot readily determine the upper speed capacity of a motorised mobility device. This presents a barrier to appropriate enforcement in terms of where motorised mobility devices may legally be ridden.

It should be noted that motorised mobility devices are subject to the drink driving laws.

Under section 12 of the *Road Transport (Safety and Traffic Management) Act 1999* it is an offence to use a vehicle under the influence of alcohol or any other drug, or what is commonly referred to as 'driving under the influence' (DUI). This offence applies to all vehicles on wheels, whether or not motorised.

Under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999* a person must not drive a motor vehicle with the presence of a prescribed concentration of alcohol (PCA). The Act defines 'motor vehicle' to mean a vehicle that is built to be propelled by a motor that forms part of the vehicle.

Hence the PCA offences also apply, but how the law applies to an individual will depend on whether the motorised mobility device user has a driver's licence and if yes, the licence class held.

The PCA offence in the *Road Transport (Safety and Traffic Management) Act 1999* is dependent on licence class (ie. novice and unlicensed drivers have a lower PCA limit than unrestricted licence holders). The holder of an unrestricted licence has a PCA of 0.05; novice drivers (L and P licence holders) have a PCA of zero; and 'special category drivers' have a PCA limit of 0.02.

'Special category drivers' include those who have never been licensed or whose licence has expired or been cancelled. It must be noted that some people by virtue of their disability have never held a drivers licence. Others may have been obliged to return their licence or allowed it to expire because they are no longer able to drive due to age or infirmity.

3.2 Electric cycles

3.2.1 Power assisted bicycles

Under the Road Rules 2008, a bicycle is defined as:

a vehicle with two or more wheels that is built to be propelled by human power through a belt, chain or gears (whether or not it has an auxiliary motor), and includes:

- a) a pedicab, penny-farthing and tricycle, and*
- b) a power-assisted pedal cycle within the meaning of vehicle standards, as amended from time to time, determined under section 7 of the Motor Vehicle Standards Act 1989 of the Commonwealth,*

but does not include:

- c) a wheelchair, wheeled recreational device, wheeled toy, or*
- d) any vehicle with an auxiliary motor capable of generating a power output over 200 watts (whether or not the motor is operating), other than a vehicle referred to in paragraph (b).*

A vehicle that cannot be propelled solely by human power is not a power assisted pedal cycle. Under the *Motor Vehicle Standards Act 1989*, a power assisted pedal cycle is a conventional pedal cycle (bicycle) with an auxiliary motor fitted that has a maximum power output up to 200 watts for conventional power assisted pedal cycles or 250 watts for pedelecs. It is built to be propelled primarily by the rider, with the motor only intended to provide assistance, such as when cycling uphill or into a headwind, or if the rider is not sufficiently fit to maintain a reasonable speed.

It should be noted that a pedelec is an electric bicycle that complies with the European Standard EN 15194:2009 Cycles - Electrically power assisted cycles - EPAC Bicycles and which requires the rider to pedal for the motor to activate; and deactivates the motor once the rider reaches a speed of 25km/h, or sooner if they stop pedalling.



Power assisted pedal cycles

The Road Rules 2008, Registration Regulation and Licensing Regulation all allow for power assisted pedal cycles that comply with the definition given in the Commonwealth *Motor Vehicles Standards Act 1989*. Therefore such electric bicycles do not require registration or licensing, and are subject to the same road rules as conventional bicycles.

The Centre for Road Safety is satisfied that electric bicycles which meet the defined characteristics for power assisted pedal cycles do not pose any additional safety concerns than conventional pedal cycles.

NSW Health encourages people to walk and cycle as good ways of incorporating physical activity into everyday life which in turn promotes healthy lifestyles and can help prevent chronic disease. Power-assisted pedal cycles are gaining in popularity and allow people who cannot or do not want to cycle steep inclines to still be able to enjoy cycling either as a recreational activity or for active travel purposes.

3.2.2 Other electric cycles

An electric bicycle that cannot be propelled without a motor operating is not a bicycle under the legislation. It is in effect, a motorcycle and if it is to be used, must comply with motor vehicle standards. Such vehicles could possibly be low-cost, environmentally-friendly alternative to conventional vehicles, but their use do not lead to the health benefits associated with conventional bicycles or power assisted pedal cycles. Further, their range is restricted by battery, which limits its appeal to short journeys such as commuting.

Electric cycles that cannot be propelled without a motor are not subject to the same allowances as power assisted pedal cycles. Depending on engine size and top speed, they are regarded as either a form of *moped* or *motorcycle* and therefore captured by legislation. In this respect, they must comply with the safety standards specified in the Commonwealth *Motor Vehicles Standards Act 1989*, be fitted with a compliance plate issued by the federal Department of Infrastructure and Transport, and be registered. Riders must also hold a motorcycle licence and are subject to the same road rules as motorcyclists.

3.2.3 Enforcement

In December 2012, the Road Rules 2008 were amended to incorporate the national vehicle standards definition of bicycle. The effect was to allow for the usage of the 'pedelec', which is commonly found in Europe, and included in the national vehicle standards last year. This amendment was intended to assist with enforcement as the

motor on a pedelec can only operate when the rider pedals and must cut-out when it reaches 25km/h. Any electric cycle that can reach speeds beyond this has a motor in excess of 250 watts and is not classified as a 'power assisted pedal cycle'; it therefore is not exempt from the legislation.

Although NSW Police have advised that this change in legislation has proven to be at times challenging to enforce at the roadside due to difficulties in determining power output and primary means of propulsion, it must be noted that under the Road Transport (Vehicle Registration) Regulation 2007, the onus is on the vehicle owner to ensure the vehicle complies with the specified standards.

NSW Police also note some recent cases in which pedals were inoperable yet vehicles were still held to be bicycles because of the emphasis on the power output. A recent example of this saw a vespa-style motorised bike ridden by the accused with the chain disconnected so the pedals were completely inoperative and the vehicle could only be propelled by the motor. The magistrate held that the vehicle was exempt from registration and licensing regulations because it had a 200 watt motor. In contrast, in *Matheson v Director of Public Prosecutions (NSW) [2008]* a person was successfully prosecuted for riding such a vehicle without registration or licence.

3.2.4 Problems with imposing the law

As noted above, NSW Police reports that at times there is uncertainty for police officers and the courts to differentiate between a legal power-assisted pedal bicycle and other electric cycles which are subject to registration and their riders to licensing laws. This creates difficulties for police to enforce a range of offences.

For example, the rider of a 'motor cycle' must have a relevant licence, which comes with associated age restrictions, training requirements, PCA limits, novice licence restrictions, and a demonstrated knowledge of the road rules. Demerit points can also be applied for traffic offences committed by the rider of a motor vehicle. Licence disqualifications and suspensions apply equally regardless of the type of 'motor vehicle' being driven or ridden.

Helmet laws become difficult for police to enforce when the legal status of the vehicle is ambiguous. Motorcyclists must wear different types of helmets to cyclists. This is challenging to determine if police observe what appears to a moped being ridden by a rider wearing a bicycle helmet, yet cannot tell whether the vehicle is a 'power assisted pedal cycle' or a 'moped', particularly since a 'moped' may also be pedal-assisted. In this case an infringement may, for example, be incorrectly issued for not wearing a motorcycle helmet.

Further, NSW Police have also advised that the confusion for courts and police officers and practical difficulties in identifying whether a vehicle is a power-assisted pedal cycle or a motorised cycle that requires registration, is a major problem with disqualified drivers. NSW Police reports that a number of disqualified drivers are using motorised bikes (or mopeds with pedals) as an alternative form of transport, and in many cases the pedals are inoperable, ineffective or disconnected.

3.2.5 Driving Under the Influence (DUI)

Under the *Road Transport (Safety & Traffic Management) Act 1999* the rider of a vehicle including a power-assisted pedal cycle or other electric cycles may be charged with the offence of 'use/attempted use of a vehicle under the influence of alcohol or any other drug' (informally known as DUI, or 'driving under the influence'). NSW Police have advised that in reality, it is difficult for police to secure a conviction without medical evidence in the form of an alcohol or drug test, and that suspected cases of impaired riding of a power-assisted pedal cycle fall outside of the breath testing and roadside drug testing regimes.

If conducting an alcohol or drug test is not possible, the offence of DUI relies on police and/or witness observations as to the person's manner of riding and physical appearance. These may be indicative of impairment, but are not necessarily conclusive. The only objective way to determine that a rider has consumed alcohol, or taken drugs, is to test them.

3.2.6 Dangerous driving offences where a rider is intoxicated by alcohol or drugs

Under the *Crimes Act 1900* the offences of dangerous driving occasioning death or grievous bodily harm apply to the rider of a 'vehicle'. Therefore the rider of a motorised vehicle could be charged if their speed or manner of driving resulted in an impact that caused death or grievous bodily harm.

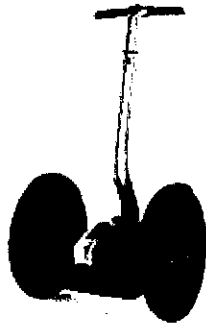
These offences also apply if the rider was under the influence of alcohol or drugs as do the offences of aggravated dangerous driving occasioning death or grievous bodily harm. NSW Police have indicated that a rider may not be subject to the alcohol and drug testing regime if their motorised vehicle falls outside the definition of a 'motor vehicle'.

These are serious criminal offences with significant community safety risks. At the same time, these offences carry severe legal penalties for convicted riders. If a prosecution fails because a vehicle is deemed to be a 'bicycle' and not a 'motor vehicle' then there is also the possibility that costs could be awarded against police. There are also potential liability issues for police if, for example, a drug test ordered by police is later deemed to be unlawful because the motorised vehicle is not a 'motor vehicle'.

NSW Police have advised that some courts have held that the various legal definitions can be complex for lay people to navigate and that advertising claims made by vendors regarding the legal status of these bikes can be misleading. In some instances, magistrates may find that a vehicle does need to be registered but not record a conviction for unregistered driving because of the complexity of the legislation and/or misleading advertising claims.

3.3 Segways

The Segway Personal Transporter, more commonly known as a 'Segway' is a proprietary vehicle.



Segway

The vehicle is a two wheeled, self-balancing, electric vehicle, kept upright by computers and motors in its base. Standing on a platform, the user controls the vehicle by shifting their bodyweight and pressing against handlebars that extend from the base. It weighs up to 54.4kg, is capable of speeds up to 20km/h and has a maximum range of 39km.

Since the Segway is a motor vehicle, it must abide by the Commonwealth *Motor Vehicles Standards Act 1989*, which requires compliance with specified safety and performance standards. For these purposes, the Segway does not meet the required standards, and is effectively prohibited from importation into Australia for supply to the market or for use in road transport. However, a person may import off-road Segways providing they are not used on the road network.

Additionally, in NSW the vehicle is a 'registrable motor vehicle' under the *Road Transport (Vehicle Registration) Act 1997*, and therefore must be registered before it can be used on roads or related areas. It must also comply with the safety and performance standards specified in the *Road Transport (Vehicle Registration) Regulation 2007*, which are the same as those under the Commonwealth Act. As Segways currently do not meet these standards, and are not a type of vehicle exempted from these requirements, they cannot be registered in NSW. For this reason it is illegal to use such vehicles unless a person has received an individual exemption from Roads and Maritime Services.

Segway use has been assessed by road transport authorities at State and national levels. It has been previously agreed that Segways should be prohibited for use on roads and road related areas in every jurisdiction across Australia, with the exception of limited use around Lake Burley Griffin in Canberra. This trial is restricted and limited to supervised tours run by the authorised operator. Many Segway proponents claim the vehicles are permitted widespread use around the world. However this is incorrect as most places where they are used have strict traffic controls in place such as urban centres with wide footpaths and traffic-free zones.

It should be noted that there are a number of Segway tours in operation around NSW. These use off-road Segways, which are permitted to be imported, and are used exclusively on roads, paths and areas not covered by road transport legislation. This includes private land, enclosed areas such as shopping malls, golf courses and a dedicated, segregated area at Sydney Olympic Park where a private operator runs Segway tours.

In Tasmania, amendments will soon be made to vehicle registration legislation to exempt Segway riders from the requirement to hold a driver licence. Short term unregistered vehicle permits will then be issued to tour operators with specific conditions attached so that Segways will be able to be used for tours. This amendment is an interim measure so that an operator can begin tours on public roads as soon as possible. Later this year further legislative amendments are planned to exclude Segways from the definition of a motor vehicle, subject to conditions similar to those attached to the permit.

3.3.1 Safety concerns

Segways pose risks to a variety of road users. Should they be classified as a *vehicle*, they must be used on roads, where their lightweight design compared to cars, lack of safety features and slow speeds mean their users are vulnerable to faster moving, heavier vehicles. The risks are compounded as Segways do not have any in-built lights, reflectors or indicators, or horn or other warning device.

In contrast, if they are classified as a *pedestrian* and allowed to be used on footpaths, their heavier weight compared to pedestrians and high speeds mean they pose a risk to other pedestrians. The risks are compounded in this instance as Segways are comparatively difficult to manoeuvre, cannot do an effective emergency stop and they are not fitted with a horn or other warning device.

It should be noted that the Centre for Road Safety has received a number of requests to allow a Segway to be used as a mobility vehicle and to exempt the user from the registration regulations. All of these requests have been denied as the need to stand to use the Segway and the mode of steering by shifting bodyweight means it is inappropriate to class it as a mobility device.

From an enforcement perspective, the main issue for police is the acceptance of Segways as a recreational vehicle (some venues hire them out for tours), and they are often used for promotional/advertising purposes. In the course of these activities they may be taken onto public roads and footpaths and can pose a safety risk. They can also be a nuisance to pedestrians if ridden on footpaths, and as they are a novelty vehicle, Segways can cause passing motorists to become distracted. As noted above only off-road Segways are currently allowed to be imported, and hence they are not allowed for use on public roads and road related areas.

3.4 Quad bikes

A quad bike or 'all terrain vehicle' is a four-wheeled motorcycle. Quad bikes are primarily an item of plant intended for industrial use, such as on farms. They are also used in other industries, and function as a recreation vehicle used in racing, off-road tours and amusement vehicles.



Quad-bike

Quad bikes are a form of motor vehicle and should they be intended for use in road transport, they would also have to comply with Commonwealth *Motor Vehicles Standards Act 1989*, which requires compliance with specified safety and performance standards. Quad bikes do not meet these standards, but are able to be imported without restrictions into, and sold in, Australia because their primary function is as an item of plant and not a motor vehicle.

In addition, in NSW quad bikes are 'registrable motor vehicles' under the *Road Transport (Vehicle Registration) Act 1997*, and must be registered before they can be used on roads or related areas. They must also comply with the safety and performance standards specified in the Registration Regulation. As quad bikes do not meet these standards, nor are they exempted from these requirements, they cannot be fully registered in NSW. However, in recognition of the activities quad bikes are used for, they can be conditionally registered for certain tasks, subject to certain conditions.

In response to the growing demand for smaller, more environmentally-friendly vehicles and to cope with congestion taxes introduced by a number of countries, the European Union allows quad bikes to be used on the road network. However, some countries have very specific standards for the types of quad bikes that fall into this category to ensure that the risks they pose are minimised.

3.4.1 Safety concerns

Quad bikes have proven to be the single-most dangerous item of plant in Australian industry in recent times, with over 100 people killed using them in the past 10 years. According to a media review undertaken by the Australian Centre for Agricultural Health and Safety, University of Sydney, there were 23 quad bike-related deaths reported nationally in 2011, including four children under the age of 16.

There are a number of risks associated with these vehicles, namely that:

- Most quad bikes do not have a differential, which is a device that adjusts the comparative speed of wheels when cornering to counteract the fact that the outer wheels travel further when turning a corner. To compensate for this, the driver must physically adjust their weight to shift the line the quad bike takes when cornering. This can be difficult to do, especially as the speed of the quad bike increases and/or if the rider has restricted mobility, such as through an infirmity or age. This risk is further compounded if the quad bike is fitted with large off-road tyres that operate under low pressure. This need for driver interaction makes quad bikes particularly unsuitable as a form of mobility vehicle for people who have difficulty walking.
- Quad bikes' performance characteristics are such that users are frequently tempted to take them off dedicated roads or tracks, and inadvertently use them on inappropriate terrain, which causes them to overturn. (The term 'all terrain vehicle' is now discouraged as it gives a false impression of the performance capabilities of these vehicles.)
- Quad bikes have a limited load capacity, yet they are constantly loaded with equipment that raises their centre of gravity and increases the load over their rear, and increases their propensity to overturn and flip over backwards.

The paradox is that the risks identified above are an integral part of the quad bike design, but nothing has been done to rectify this problem to date. However, these problems are now being investigated by a research project, the Quad Bike Performance Project, sponsored by WorkCover NSW and overseen by a specialist committee, the Quad bike (ATV) Project Reference Group. This is a world's first and is of such importance that it has members from NZ and North America, most of whom travel to attend the meetings; Transport for NSW is a constituent member (represented by the Centre for Road Safety). Its deliberations are being followed closely.

In addition to the above, quad bikes do not offer any rider protection should they be involved in a crash with another vehicle.

The problem identified above relating to the absence of a differential creates a risk when working on a farm, but it would pose a higher risk if quad bikes are allowed on the roads and are required to travel in dedicated lanes. Indeed, even a road camber will require the rider to constantly shift their weight, leading to fatigue.

Although not necessarily relevant to this inquiry, it should be noted that quad bikes differ from most of the other vehicles under consideration as they are powered by a petrol engine, so cannot be considered to be as environmentally-friendly as the others. In addition, they are capable of high speeds and their range does not depend on a battery making them a real alternative form of transport to cars or motorcycles.

3.5 Other devices

There are a range of other devices that are available on the market that can be considered as alternative vehicles. These share a number of characteristics, namely they are small, lightweight, electrically powered from a battery, have limited range, and can only carry one person. In fact, a term has already been created for them: *Personal Mobility Devices*, or 'PMDs'.

PMDs can be used for three purposes: as an alternative mode of transport for all journeys; or for local travel; or for commuting to and from transport hubs. Their actual use is dependent on a number of factors, especially their range; their speed; their recharge time; and their size and weight or ability to be folded to a suitable size for carrying on public transport.

A type of vehicle that should be excluded from these considerations is bicycles fitted with petrol engines. These are a form of moped or motorcycle, and are subject to the applicable laws outlined above in Part 3.2.2. There are suggestions that petrol powered bicycles are being used by children who are causing a nuisance in urban areas, and exposing themselves and pedestrians to considerable danger.



Unregistrable petrol-powered bicycle

3.5.1 Status of PMDs under the law

All PMDs are a type of motor vehicle and must comply with Commonwealth *Motor Vehicles Standards Act 1989*. PMDs do not meet the required safety and performance standards under the legislation, and are effectively prohibited from importation into, and sale in, Australia for supply to the market or for use in road transport. However, PMDs may be imported and/or sold providing they are not used on the road network.

Particularly in NSW, PMDs are 'registrable motor vehicle' under the *Road Transport (Vehicle Registration) Act 1997*. They therefore must be registered before they can be used on roads or related areas, and comply with the safety and performance standards specified in the Registration Regulation. As PMDs do not meet the standards, nor are they exempted from these requirements, they cannot be registered in NSW. It is therefore illegal to use them on a road or road related area.

Some PMDs are readily available as a children's toy, and may legitimately be used within the confines of a home or other private space.

Please note that motorised kick or foot scooters are prohibited from use in NSW. The Road Rules 2008 do not incorporate the requirements for motorised scooters from the Australian Road Rules, which allows for kick scooters fitted with a motor of up to 200 watts to be used.

3.5.2 Safety concerns

The safety concerns with PMDs are generally the same as those with Segways (see Part 3.3). However, the risks posed to pedestrians by some of the smaller and lighter vehicles are not as great, provided the PMD does not travel at excessive speed, and

the 10km/h limit that applies to motorised mobility devices is deemed an appropriate limit for PMDs.

The range of PMDs potentially available requires a corresponding range of skills to operate them competently. Evidence presented to the Centre for Road Safety shows that some PMDs can be used with the minimum of training, while others require in excess of three hours training to be used properly.

4 The adequacy of data collection for injury and fatality rates arising from the use of non-registered motorised vehicles

4.1 Reporting of crash data on non-registered motorised vehicles

It is important to note that statistics on crashes involving non-registered motorised vehicles are suspected to be under-reported. However, the crash numbers are very low in comparison to other groups such as pedestrians, cyclists, motorcyclists and vehicle occupants.

The crash statistics are based on NSW Police data records which capture only that a vehicle was, for example, a 'motorcycle' or a 'bicycle'. It is not possible to distinguish, between a bicycle or power assisted pedal cycle; or a registered or unregistered motorcycle in terms of crash data. Further, the type of vehicle may only be recorded if it is relevant to the offence as in the case of unregistered driving.

The Motor Accidents Authority (MAA) only collects claims on injuries data. This will typically relate to a crash involving a motor vehicle from a specific vehicle registration class that gives rise to a personal injury or Accident Notification Form (ANF) claim under the existing motor accidents legislation.

From crash data the Centre for Road Safety is able to report on crashes involving motorised wheelchairs and scooters, motorised bicycles and mini-bikes. All other non-registered motorised vehicles (including quad-bikes) are grouped under 'unknown' and 'other' categories of traffic units involved in a crash. Improvements planned under CrashLink 2 (the Centre for Road Safety's new data warehouse) will see quad bikes being reported as a separate category of road users.

From this data, it was determined that in 2011, there were 26 crashes involving motorised wheelchairs or mobility scooters and 44 reported road crashes involving motorised bicycles. Further insight can be gained into crashes involving non-registered motorised vehicles through reviewing a selected number of such crashes. This provides an opportunity for detailed analysis as case studies and statistics around these crashes will be insignificant due to small numbers.

4.1.1 Crash data

The Centre for Road Safety receives information from NSW Police about crashes which occur in NSW and in which there is at least one casualty (killed or injured) or where at least one road vehicle is towed away. Some of these crashes are excluded by the Centre because they fail to meet other necessary criteria. These criteria are governed by national guidelines established in 1983 which are applied in NSW.

Overall, in 2011, 364 people were killed and approximately 26,000 people injured on NSW roads. The number of recorded casualty crashes involving mobility devices is comparatively low.

Crashlink data for casualty crashes from 2000 to 2004 are contained in table below.

Number of casualties from crashes involving a motorised wheelchair, road user class, degree of casualty, reporting year, 2000-2004						
Reporting year						
Road user class	Degree of casualty	2000	2001	2002	2003	2004
Motorised wheelchair driver	Killed	1	0	1	2	1
	Injured	5	12	7	14	20
Motorised wheelchair passenger	Injured	0	0	0	0	0
Motorcycle rider	Injured	0	0	0	0	0
Pedal cycle rider	Injured	0	0	0	0	0
Pedestrian	Injured	0	1	1	1	0

Since 2005 it has been possible to differentiate mobility scooters from wheelchairs in the motorised wheelchair category. The following table shows this differentiation. Data have been sourced from the CrashLink database. Data for 2012 are preliminary and subject to change.

Motorised wheelchair casualties, conveyance type/road user class, degree of casualty, reporting year, 2005-2012*									
Reporting year									
Conveyance type / Road user class	Degree of casualty	2005	2006	2007	2008	2009	2010	2011	2012*
Mobility scooter driver	Killed	0	1	1	2	1	2	1	1
	Injured	4	16	10	21	28	20	18	14
Mobility scooter passenger	Injured	0	0	0	0	1	0	0	0
Motorised wheelchair driver	Injured	5	3	3	7	2	2	4	1
Pedal cycle rider	Injured	0	0	0	0	1	0	0	0
Pedestrian	Injured	1	0	0	1	0	1	1	1

* Data for 2012 are incomplete and subject to change (available data as at 01/04/2013)

Prepared by Centre for Road Safety, Transport for NSW - 08/04/2013

4.1.2 Quad bike crashes

In the case of crashes involving quad bikes the main reason for exclusion is that the crash had occurred outside the road reserve, such as on private property, a park or a beach.

Quad bikes can be identified from the crash database and excluded crash records. Both are manual processes and the results should be considered as indicative, rather than complete.

For example:

- 1) **Crash Database:** These are quad bike crashes which meet all criteria (i.e. on road crashes). In 2010 one fatal crash, 7 injury and one non-casualty crashes were identified; in 2011, zero fatal crashes, 6 injury crashes; in 2012, zero fatal crashes, 9 injury crashes.
- 2) **Excluded Crash Records:** These are quad bike crashes which did not meet all criteria (i.e. off road crashes). In 2010 one fatal crash and 5 injury crashes were identified; in 2011, 5 fatal and 4 injury; in 2012, 2 fatal and 4 injury. In all cases the casualty was the quad bike rider and the number of persons killed/injured corresponds to the numbers of fatal/injury crashes.

In 2013 there have been at least three fatal crashes reported which have involved quad bikes. These crashes are under review to determine whether they will be exclusions from the official crash records as they may have occurred off public road reserve.

4.2 NSW Health's Admitted Patients Data Collection

NSW Health has not undertaken specific research on the incidence of road crashes involving non-registered motorised vehicles. It may be possible to extract some information from NSW Health's Admitted Patients Data Collection, which consists of routinely collected hospitalisation data, such as the types and rates of injuries requiring hospitalisation following falls from motorised mobility devices. However, this data is limited in that specific codes do not exist for all vehicle types referred to in the terms reference.

The NSW Health Admitted Patients Data Collection contains coded data about every hospital admission in NSW, including demographic information such as age and locality of residence, and in the case of injured persons, information about the nature of injuries and external causes of injuries (such as in a motor vehicle crash). The limitations of data collection should be noted in interpreting any data extracted. For example, the completeness and accuracy of hospitalisation data depends on the level of detail and accuracy of the information recorded by clinicians in the medical record of the injured person.

4.3 Department of Family and Community Services client data collection

The use of off-road motorised vehicles occurs in work settings and therefore their consideration from an occupational, health and safety perspective is also important. Within the Department of Family and Community Services' large residential facilities, non-registered motorised vehicles are used to assist with client mobility. In the main this usage is limited to the grounds of its facilities and does not include usage in the general community.

The Department does collect data on the incidents which arise from the use of these vehicles while on its premises. The level of vehicle ownership and operation for its clients is summarised as follows:

Facility/ Division	Vehicle Type	Count
Hunter Residences	Gold Buggies (some customised for wheelchair use)	12
Hunter Residences	Custom electric vehicle	1
Hunter Residences	Custom diesel vehicle	1
Northern region	Mobility scooters	7

The majority of incidents reported relate to access in and out of the vehicle, issues with client behaviour management and driver error.

The Department of Family and Community Services also has clients in the general community (accepting home care and community support services) who utilise non-registered motorised vehicles for mobility. The ownership and operation of these vehicles is outside the responsibility and control of the Department and it does not collect data on client incidents which arise from the use of these vehicles.

5 Vehicle standards requirements for non-registered motorised vehicles, including vehicle design, engine capacity, mass and speed controls

5.1 Australian Design Rules

The standards that apply to motor vehicles supplied to the market for use in road transport – the Australian Design Rules (the ADRs) – are intended to ensure that the risks the vehicles pose for their occupants and other road users have been controlled as far as is reasonably practicable. In so-doing, the ADRs identify different vehicle classifications that have corresponding ADRs; these include passenger cars, motorcycles, buses and goods vehicles.

A report to develop a national policy framework for Alternative Vehicles was commissioned by Austroads in July 2010. The report found that while an extraordinary range of innovative vehicles are being developed to address environmental and network efficiency concerns, not all are suitable to be operated on a road. Some have the potential to be used on specially designed infrastructure such as bike paths while others like mobility scooters are a substitute for walking and best operated on footpaths.

The report also identified that there are no international vehicle standards that can be applied in their entirety to cover all concerns about the safety and operation of alternative vehicles.

To enable non-registered motorised vehicles to be used on the road, a new category would need to be developed to avoid forcing them into existing categories and being subject to inappropriate ADRs. However, the risks presented by current, conventional motor vehicles on the road are the same, so the standards applied to control them must be the same, but it would be impossible for most non-registered motorised vehicles to meet these standards.

For this reason, non-registered motorised vehicles should be limited to roads where controls apply, such as low speed limits, and/or be restricted to dedicated operating lanes where they are segregated from faster, heavier motor vehicles. It is understood that Austroads has recommended that the speed limits on mobility scooters be reduced to 6km/h for personal and public safety reasons.

It should be noted that comparing non-registered motorised vehicles with motorcycles for the purposes of vehicle standards is not appropriate as motorcycles are a long established mode of transport whose standards are supported by rider training and licensing.

5.2 Repercussions of inappropriate vehicle standards

There are some non-registered motorised vehicles that are so similar to established vehicles that the same standards apply to them. This particularly applies to electric cycles that do not have pedals fitted, and providing they meet the performance standards specified in the ADRs for pedelecs, they pose similar risks as conventional bicycles or pedelecs.

As discussed in 3.2.3, it is possible that some motorised cycles are being incorrectly labelled as less than 200 watts so they can be marketed as power assisted pedal cycles not requiring registration. Despite a vehicle conforming to the relevant standards when purchased, it can be later modified to increase their speed and output.

Quad bikes are, reportedly, very susceptible to 'roll-over'-type accidents and therefore pose a safety risk to the community despite being generally only ridden on private property.

Many vehicles standards such as headlights and side mirrors do not apply to motorised vehicles that fall within the current definition of a 'bicycle'. The vehicle otherwise would physically resemble a motor scooter, achieve speeds comparable to a motor vehicle and be ridden in traffic as if it were a motor scooter. This poses personal safety risks to riders if they are, in effect, riding a motorcycle, yet relying on a standard bicycle helmet and bike lights to protect them.

6 The extent and effectiveness of education and the necessity for skills and competency training for users of non-registered motorised vehicles, particularly in relation to safe use

As discussed above, operators of motorised wheelchairs and mobility vehicles are given little training in how to operate them, and are not required to demonstrate any knowledge of the road rules that apply to them. The personal and public safety risks are compounded when operators are physically or cognitively impaired with slower reaction times and diminished hearing.

Children riding motorised vehicles of any kind, both on the road or on footpaths, also present a public, personal and road safety risk. It is unclear that children have the cognitive skills to judge speed, distance and assess risk when sharing the footpath with pedestrians while operating a motorised vehicle at speed.

There may be benefits from additional guidance on skills and competency training for users of non-registered motorised vehicles, particularly from an occupational health and safety perspective. This would provide a clear standard of education to use in training staff that are required to use such vehicles.

6.1 Research into the effectiveness of education and training

There have been a range of national and international pilot projects conducted on the education and training of motorised wheelchair users, but the effectiveness of these programs have not been evaluated.

The Council on the Ageing recommended the following abilities for motorised wheelchair users for competency training:

- Co-ordination and strength
 - Ability to manipulate controls e.g. turn key,
 - Adjust dials, use accelerator
 - Ability to steer and turn in tight corners
 - Ability to turn your head to look to the side or behind if reversing.
- Physical balance and endurance
 - Ability to maintain balance when travelling over rough or uneven ground
 - Ability to adjust body position when travelling up or down steep gradients or kerb ramps
 - Ability to be seated for extended periods
 - Ability to stand or walk short distance.
- Vision
 - Ability to notice and move around obstacles in field of vision
 - Ability to notice moving objects and avoid collisions

- Ability to notice objects in the periphery of your vision eg seeing motor vehicles or pedestrians around you.
- Perception
 - Ability to judge distances.
- Thought processes and memory
 - Ability to remember safety procedures
 - Ability to concentrate for lengthy periods
 - Ability to react quickly for stopping or turning.
- Feelings and judgement
 - Ability to stay calm in difficult situations
 - Ability to be patient with other people
 - Ability to make good judgements in protecting your safety and the safety of others.

The following research studies provide further findings from some 'pilot' programs which have been conducted.

6.1.1 Mobility devices

The University of the Fraser Valley Centre for Education and Research on Ageing (CERA), British Columbia, in collaboration with the Scooter Working Group of the City of Abbotsford, conducted a research project regarding the use of mobility scooters which involved a scooter user education and training 'pilot' program. The "Scooter Smart" education/training model was developed and implemented in two community regions.

The findings were published in the 2008 Final Report entitled: *Mobility Scooter Research Project.1 Preliminary findings* suggested that the proposed model for mobility scooter education could be used to guide learning activities for mobility scooter users. In order to refine the model and evaluate effectiveness, the model would need to be subjected to more research. The mobility scooter users' guide would also need to be further refined and research would be conducted to determine its effectiveness.

The report concluded that scooter training should include knowledge and skills on safe operation of the mobility scooter, regulations and rules of the road for mobility scooters, insurance, operation in different pedestrian environments, mobility scooter maintenance and storage, medication use and the safe operation of a mobility scooter. Training should also include a "Code of Courtesy" that will capture the nature of "good mobility scooter driving behaviour and mobility scooter driving etiquette", and a practical component that would include basic safe manoeuvring of a mobility scooter.

The 2006 Hazard (Edition No. 62) by the Victorian Injury Surveillance Unit (VISU) entitled: *Consumer product-related injury (2): Injury related to the use of motorised mobility scooters* makes reference to a comprehensive training resource, Scooter Safe, which is available through the National Roads and Motorists' Association (NRMA). The Council on the Ageing in the ACT prepared this resource in 2002 for

use by Occupational Therapists and community health professionals who prescribed Motorised Mobility Scooters (MMS) as a mobility aid, suppliers of MMS and equipment services.

The resource includes: The Training Handbook; an IBM compatible disk containing a PowerPoint presentation of 5 training modules; templates for overhead transparencies; the Scooter Safe User Guide (for participants); a training video: There's something about scooters; and a resource list for further information. The resource was used in 'pilot' training sessions with groups of MMS users.

In regard to the effectiveness of the 'pilot' training, some participants exhibited limited knowledge of road and pedestrian safety rules and limitations of their scooter and many had skills deficiencies especially in ramp use, manoeuvring in a tight space and reversing (Browndon & Marcar, 2002).

One of the recommendations that VISU put forward in their report was to expand assessment and training opportunities so that all potential mobility scooter users are assessed by a trained therapist and undergo competency-based training.

Monash University Accident Research Centre (MUARC) published a report entitled: *Targeted Study of Injury Data Involving Motorised Mobility Scooters* commissioned by the Australian Competition and Consumer Commission (ACCC). As part of the MUARC's research, key informant interviews were conducted and it was reported that most participants supported the development of standardised training information for distribution at point of sale. The specific educational requirements included: road rules; sharing public space; common reasons for accidents; skills required to prevent accidents; and information in a variety of languages.

The report described actions to improve education materials which focused on: consistent information; increased availability of information and training; community demonstrations such as "scooter musters"; a DVD distributed at point of sale; working with sponsors to increase educational funding; and incorporating user perspectives into any new educational material.

In 2011, the Centre for Road Safety provided two-year funding for the Holroyd Council Motorised Wheelchair Pilot. Several other councils and regions were involved that delivered programs. In particular, Parkes Council looked at engineering design challenges for local road environment improvements for safer travel. Local government programs have developed in this area to address increasing numbers due to the ageing population. (Further commentary is provided on the Pilot in Part 8.1).

6.1.2 Quad bikes

Transport and Road Safety (TARS) Research Unit, University New South Wales published an article in 2011 entitled: *It's time for quad bike manufacturers to rollover on safety*. The article highlighted that data from the University of Sydney's Australian Centre for Agricultural Health and Safety (ACAHS) showed that the number of deaths from the use of quad bikes, also known as all terrain vehicles (ATV), had risen in the past decade from around eight to 10 a year, to 14 deaths in 2010.

Although the industry continues to recommend their traditional rider-education program as a remedy to the problem, they seem to be having little effect on safety. No Australian evaluations of these programs have been carried out.

6.1.3 Quad bike training and education

TAFE Illawarra provides quad bike training as part of nationally accredited qualifications and skills training. The students who undertake this training are able to operate quad bikes as workers in the agricultural industry. It is *not* compulsory for users of quad bikes (recreational or industry workers).

What has been learnt from this training is that students at the commencement of the course reflect the relatively low level of knowledge and skills that is found in the general community. They soon learn the basics of assessing the vehicle and its safety features and the skills required to use quad bikes.

6.2 Education training programs delivered by Transport for NSW

After reviewing the available research, Transport for NSW conducted a literature review to determine how best to communicate with older pedestrians. The research paper entitled: *Research into the delivery of safety messages to older pedestrians* identified that the best educational approach for older road users was through a local program delivery with peers. The delivery of road safety messages to older people is best undertaken in familiar surroundings such as retirement villages and senior centres.

Based on this principle Transport for NSW developed the *Walking Safely* communication resource. Two sequential presentations explore the limitations of older pedestrians, safe places to cross, the safe use of pedestrian crossings, safety equipment and safe travel tips. The second presentation specifically addresses the safe use of motorised wheelchairs.

The resource was developed in consultation with local councils in 2011 and was updated in August 2012 to reflect workshop participants' feedback. The presentation is designed to target older road users and may need to be modified if delivery includes people with a disability who are amongst other age groups.

The *Walking Safely* education program also supports the pedestrian safety element of the Government's new *Long Term Transport Master Plan* which also integrates the *NSW Government Ageing Strategy* to support safer travel for older pedestrians and older drivers.

Insurance implications of injuries and fatalities sustained and caused by non-registered motorised vehicles

Compulsory Third Party (CTP) motor vehicle insurance is mandatory in all Australian states and territories and is designed to ensure that compensation is available to those who are injured in motor vehicle accidents. Insurers set their Green Slip premiums based on available data combined with their individual claims experience within Guidelines set by the Motor Accidents Authority (MAA). They may offer a discount or impose a loading based on objective risk-rating factors, which are not compulsory and applied at the discretion of individual insurers based on their business model and claims experience.

6.3 Proposed changes to the CTP scheme operating in New South Wales

The Premier released the Government's policy document outlining significant proposed reforms to the New South Wales CTP Green Slip Insurance Scheme on 17 February 2013. The Government has proposed the new Scheme in order to reduce the cost of CTP Green Slips for New South Wales motorists and ensure that injured people receive benefits sooner. The Scheme will provide defined statutory benefits for anyone injured in a motor vehicle accident, irrespective of fault, similar to the model operating in Victoria. The proposed new Scheme will retain common law for injured people with more serious injuries, where their 'whole person impairment' is greater than 10 per cent.

The proposed Scheme heralds a fundamental shift from an adversarial system to one with a greater emphasis on recovery outcomes for injured people. The universal coverage to be provided by the new Scheme will mean approximately 7,000 more people per annum will be able to access benefits (currently people injured in motor vehicle accidents who are at-fault, or involved in single vehicle accidents are only eligible for benefits up to \$5,000 or, if they are catastrophically injured, for participation in the Lifetime Care and Support Scheme).

This will be offset by a considerable reduction in technical legal disputes over fault, liability and contributory negligence that add to the cost and denial of benefits. In moving towards a no-fault scheme, it will be necessary to review the current premium setting arrangements to ensure that affordability and equity are maintained.

A copy of the policy document is available at www.maa.nsw.gov.au.

6.4 Relationship between vehicle registration and injury insurance schemes

Under the existing arrangements in New South Wales, compulsory third party personal injury insurance (CTP or Green Slip insurance) will be required for any new types of vehicles entering the registration system, as it is for all currently registered vehicles.

This is because in NSW, as in all other Australian and many comparable International jurisdictions, there is a nexus between the vehicle registration scheme

and the motor accidents scheme. It is a legal requirement that a Green Slip, covering a specified motor vehicle, must be purchased by the owner before Roads and Maritime Services can register or renew the vehicle's registration.

In NSW, Section 10 of the *Motor Accidents Compensation Act 1999* provides that a Green Slip insures the owner of a registered vehicle, or another person driving that vehicle, against liability in respect of the death of or injury to a person caused by the driver's fault, in any part of the Commonwealth (whether or not on a road). This includes claims from road users (drivers, passengers, pedestrians, cyclists, motor cyclists and pillion passengers), injured in a collision involving the motor vehicle.

In recent years, however, additional benefits have been introduced to the Motor Accidents Scheme in NSW, which have assisted injured motorists, regardless of who was at fault in causing the crash and include motorists injured in single vehicle accidents.

6.5 Green Slip prices

The CTP scheme in NSW is underwritten by private insurers. There is no Government subsidy to the Scheme, meaning that the full cost of the Scheme must be met by the Green Slip premiums collected from owners of registered vehicles. Queensland and the Australian Capital Territory are the only other Australian jurisdictions where CTP is privately underwritten.

The seven licensed insurers set their own Green Slip premiums based on a detailed actuarial assessment of all available industry data and their claims experience. The insurers set their prices in a competitive market, within Guidelines set by the MAA. The prices for different types of vehicles reflect the cost and frequency of injury claims against a particular vehicle class (e.g. standard passenger vehicle, motorcycle, taxi cab) in one of the five CTP rating districts.

Accordingly, there would likely be considerable pricing uncertainty with any new vehicle class entering the Scheme, as the associated risks must be estimated in the absence of accurate data relating to that vehicle class' actual claims experience. The CTP price for a new vehicle class could be volatile for several years until the claims data for the new class stabilised.

6.6 Current CTP status of the vehicle registration classes in New South Wales

6.6.1 Registered vehicles

In NSW, all vehicles with a motor that meet national and design safety standards must be registered for use on a road or road-related area unless they are specifically exempt from the registration system.

6.6.2 Conditionally registered vehicles

The NSW registration system provides for a system of 'conditional registration' which allows certain vehicles that do not comply with the construction and equipment requirements of the Australian Design Rules (ADR's) and Vehicle Standards, limited access to the road network to perform specific functions. Examples of conditionally registered vehicles include agricultural vehicles, construction vehicles, purpose built

vehicles such as golf buggies, historic vehicles participating in club events and street rods.

CTP coverage for conditionally registered vehicles is sold by QBE Insurance on a tender basis and is purchased from RMS in a single transaction at the time of vehicle registration. CTP coverage for conditionally registered vehicles only extends to use of the vehicle on roads or road-related areas (e.g. footpaths, nature strips, public driveways and public car parks), but not on private property.

6.6.3 Unregistered Vehicle Permit (UVP's)

The vehicle registration system in New South Wales also provides a system whereby motorists may purchase a permit, valid for up to 28 days, under which they may drive or ride an unregistered vehicle on the road network for a specific journey, for example:

- A single journey from A to B.
- A return journey from A to B to A.
- A number of defined trips to be completed within 28 days, eg from A to B to C to D.
- For a specific purpose over a number of days up to a maximum of 28, e.g. for harvesting during a defined period.

Vehicles carrying a commercial load and vehicles exempt from registration are excluded from the UVP scheme.

6.6.4 Vehicles exempt from registration

While the vehicle registration system generally requires that all motorised vehicles that meet national design and safety standards be registered for use on a road or road-related area, there are certain vehicles that are specifically exempt from registration and do not require CTP insurance.

Examples of vehicles exempt from registration include power-assisted pedal cycles designed as a bicycle to be propelled by human power with the motor attached as a supplementary aid (see Part 3.2 above).

Motorised wheelchairs and other types of disabled persons' conveyances are exempt from registration provided that they do not weigh more than 110 kilograms, they are not capable of travelling faster than 10km/h and that they are used solely for the conveyance of a person with impaired mobility.

People injured as a result of an accident with an at-fault vehicle exempt from registration on a road or road-related area, are however eligible for benefits under the Nominal Defendant provisions of the motor accidents scheme.

6.6.5 Prohibited vehicles (on road and road-related areas)

As discussed above in Part 3 and Part 5, some motorised vehicles, irrespective of their power output, are prohibited from use on roads or road-related areas and are neither eligible nor exempt from registration.

Prohibited vehicles are non-ADR compliant and were not designed for on-road use or contemplated for vehicle registration at the time of manufacture. Examples of prohibited vehicles include:

- Motorised foot scooters (with or without a seat) - electric/petrol engine
- Mini bikes or monkey bikes
- Motorised human transporters such as the WheelMan, or Segway
- Motorised skateboards - electric/petrol engine

As there is no capacity to register these vehicles, the purchase of CTP insurance is not required.

While it was previously assumed that there was no CTP coverage for people injured as a result of an accident with an at-fault driver of a (non-ADR compliant) prohibited vehicle, a recent decision of the New South Wales Court of Appeal in *Nominal Defendant v Uele* [2012] NSWCA 271 has highlighted ambiguity in the meaning of 'capable of registration' in the Motor Accidents Compensation Act 1999, (commentary follows under 'Nominal Defendant Scheme' in Part 7.6).

6.7 Current CTP status of the non-registered motorised vehicles

6.7.1 Mobility scooters

Mobility scooters and power-assisted pedal cycles are currently exempt from registration and do not require CTP insurance for use on public roads, footpaths and public land (although usage is subject to specific road rules).

People injured as a result of an accident with such a vehicle, on a road or road-related area, are however eligible for benefits under the Nominal Defendant provisions of the Motor Accidents Scheme.

6.7.2 CTP coverage for mobility scooters in Queensland

In Queensland, mobility scooters and motorised or power wheelchairs fall within the vehicle registration vehicle category of 'motorised wheelchairs'. These vehicles must be registered for use on public footpaths and roads. The cost of registration and CTP insurance is free for this vehicle class on the conditions that the scooter is limited to a speed of 10 km/h, has a maximum unladen mass of 110 kilograms and is used by a sole operator who has submitted medical certification of their restricted mobility.

The Nominal Defendant operation in Queensland is funded by a levy within the CTP insurance premium. The levy is set on the basis of an actuarial assessment of claim trends. From 1 July 2011, the levy for Class 1 vehicles was \$12.35. Nominal Defendant claims in Queensland differ than those in New South Wales in that the claims management function is handled by the Queensland Motor Accidents and Insurance Commission and payments are made from the Nominal Defendant Fund. In New South Wales, however, Nominal Defendant claims are allocated to the insurer proportionately to market share.

6.7.3 CTP coverage for mobility scooters in South Australia

The motor accidents scheme in South Australia is underwritten by the Government. As a service to members of the community with disabilities, the Motor Accidents Commission of South Australia provides users of motorised wheelchairs with third party bodily injury insurance cover at no cost. Use of motorised wheelchairs on public roads or footpaths is limited to those vehicles which are not capable of travelling

faster than 10 km/h; have an unladen mass not exceeding 110 kilograms and where the user has a physical condition with a reasonable need to use the motorised wheelchair.

6.7.4 Segways

Segways are prohibited vehicles which cannot be registered and their owners are not required to purchase CTP insurance. Under the existing vehicle registration scheme, motorised foot scooters (electric or petrol engine), human transporters including Segways, miniature motorbikes such as mini-bikes, pocket bikes or monkey bikes and other motorised recreational devices such as motorised skateboards (electric or petrol) do not meet minimum Australian design standards for safety and so are prohibited vehicles for registration purposes and cannot be registered for use on roads or in any public areas including footpaths, public driveways, car parks and parks.

There is no CTP coverage for a person injured as a result of an accident with a Segway on a road or road-related area unless the injured person could establish that the vehicle was capable of (conditional) registration.

6.7.5 Quad bikes

Quad bikes, require conditional registration and CTP insurance under the existing arrangements in NSW. Conditional registration for quad bikes is available only where the vehicle meets the following general conditions of limited use on public roads.

For use in mostly off-road or off-road related areas, but where limited access to the road network is needed:

- Where there is limited mixing with general traffic on sealed roads, and
- Where the vehicle will be floated from site to site unless specific approval is otherwise granted

CTP coverage for conditionally registered vehicles only extends to use of the vehicle on roads or road-related areas (e.g. footpaths, nature strips, public driveways and public car parks), but not on private property.

6.7.6 Off-road motorcycle

Currently trail bikes are not covered by CTP. If a new vehicle class for off-road motorcycles were established in NSW, it follows that CTP insurance will be required. The MAA has, however, identified a number of issues arising from the proposal to provide a new class of CTP insurance to recreational riders. It is uncertain whether it would result in cheaper registration and CTP insurance.

The critical issue affecting the provision of a reduced premium for such a new class of vehicles is CTP coverage. The CTP Scheme provides full benefits to those injured by the fault of a vehicle that is eligible for registration, even if it is being used in breach of the conditions of recreational registration.

Accordingly, the full risk associated with the use of such motorcycles, notwithstanding the conditions of their use, must be taken into account in setting a CTP premium for a recreational registration vehicle class.

As Green Slip prices are set by the insurers, the Government cannot guarantee a reduced premium or fixed 'flat rate' for any registered vehicle class. Additionally, given the motor accidents scheme's legislative requirement that insurers' liabilities are fully funded from premiums, reduced premiums for this proposed additional motorcycle class would potentially require significant subsidisation by other road users.

As mentioned, there is considerable uncertainty with any new vehicle class entering the scheme, as the associated risks must be estimated in the absence of accurate claims experience. The CTP price for any proposed additional motorcycle class could be volatile for several years.

6.8 Nominal defendant scheme

The Nominal Defendant provisions of the Motor Accidents Scheme cover motor vehicle injury claims resulting from accidents occurring on a road or road-related area, where the vehicle at fault is unidentified or unregistered (and therefore uninsured). One example of a claim necessarily involving the Nominal Defendant is a hit and run accident.

6.8.1 Vehicles capable of (conditional) registration still entitled to nominal defendant benefits

For an uninsured vehicle to be covered by the Nominal Defendant scheme, (unless it is exempt from registration in which case it will be covered), it must be or have been:

- required to be and capable of being registered at the time of manufacture, or
- capable of being registered at the time of manufacture with minor adjustments, or
- previously capable of registration but is no longer so due to its disrepair.

Nominal Defendant claims against vehicles such as motocross bikes, not presently designed for on-road use or contemplated as being eligible for any kind of registration under the *Road Transport (Vehicle Registration) Act 1997*, without adjustments, expose the motor accidents scheme to an unfunded liability.

The Court of Appeal, in *Nominal Defendant v Uele*, highlighted the ambiguity of the current legislation in the meaning of 'capable of registration' under section 33(5) of the Act.

While off-road motorbikes are not able to be fully registered for on-road use without major adjustments, the Court of Appeal found that the subject motocross bike met the definition of a 'motor vehicle' for the purpose of a Nominal Defendant claim as it was capable of registration (being conditional registration) at the time of manufacture, notwithstanding that it was not being used in accordance with RMS' requirements for conditional registration.

The effect of this, and similar decisions, on future claims is resulting in upward pressure on Green Slip prices paid by motorists in order to meet the cost of these liabilities (including potentially substantial costs to the Lifetime Care and Support

Scheme) as it is not possible to collect premiums from the owners of vehicles that are not otherwise covered by the registration scheme.

6.8.2 Increased claims against the Nominal Defendant

The Nominal Defendant Scheme operates as an invaluable mechanism, protecting injured motorists against illegal drivers at fault in motor vehicles accidents causing injury.

As all claims are however funded by the CTP insurers operating in the broader Motor Accidents Scheme in New South Wales, the provision of a safety net for Nominal Defendant claimants is paid for in the Green Slip price of motorists in all other vehicle classes.

The MAA is concerned about the increase in the cost to the community as a result of the strain on the Nominal Defendant scheme following claims where the at-fault vehicle has not contributed to the Scheme's premium pool because of its exemption from registration.

The MAA notes that the Courts are increasingly of the view that the Scheme is universal in nature and that the interpretation of eligibility for Green Slip coverage has broadened to include marginal vehicles as the new threshold of Scheme participation.

6.8.3 Certainty and the management of risk in the CTP Scheme

The MAA notes that while conditional registered vehicles and UVP's do contribute to the premium pool, the more vehicle types and classes introduced subject to conditions, exemptions or prohibitions, the more uncertainty there is for insurers in estimating costs and therefore Green Slip pricing.

CTP insurers, as do general insurers, build uncertainty into their pricing structure, often with a very conservative view. Uncertainty in vehicle definition adds to costs through the amount of time taken to resolve disputes and, in the worst case, to the cost of obtaining legal advice or of legal proceedings.

The MAA and the Lifetime Care & Support Authority (LTCSA) hold limited data relating to claims where the at-fault vehicle is outside of the vehicle registration classes. Certainty in the definition of vehicle registration and insurance classes would be a significant step to increase the premium pool by requiring motorists able to receive benefits from the Scheme to contribute, thereby sparing the remainder of the community the higher prices caused by pressure on the Nominal Defendant Scheme.

6.8.4 Costing for high risk vehicles

CTP insurance is often the most expensive component of a vehicle's registration. Any consideration of a new vehicle class should, as a primary factor, take into the account the estimated cost of insurance (notwithstanding the difficulties in pricing for a vehicle group without a previous claims experience).

Any new vehicle registration class will be costed for CTP insurance. There may, however, be unintended cost impacts for a particular type of vehicle entering the vehicle registration scheme. A situation could emerge where the cost insuring high

risk vehicles (high speed, high power, difficult terrain) is prohibitive in that insurance coverage for such a vehicle class is better organised outside of scheme through the purchase of personal liability insurance or a permit system for fulfilling specific functions.

6.9 WorkCover investigations into quad bike safety

It is noted that the inquiry is focused on non registered vehicles on public roads, however in recognition of the risks associated with quad bikes in a work health and safety context, WorkCover has also undertaken some initiatives.

Quad bikes are now the leading cause of death on Australian farms accounting for one third of fatalities. WorkCover has considered quad bike safety as a key issue for many years and has taken a number of steps to raise awareness with both suppliers and the farming industry.

This has included ongoing work with FarmSafe regarding 'after-market' attachments, funding of safe riding techniques, displays at field days, release of a Fact Sheet and the development of a Safety Alert and Safety Checklist.

In October 2009, New South Wales joined other regulators to form a trans-Tasman working party to examine all aspects of quad bike operations and develop a broad industry strategy to reduce fatality and serious injury associated with use on farms. Membership includes representatives from motorcycle manufacturers, farmers associations, farm dealers, unions, Farmsafe Australia, accessory manufacturers, Motor Traders Association and the Federal Chamber of Automotive Industries. The working party was established under the auspices of the Heads of Workplace Safety Authorities (HWSA).

The working group have formed the opinion that multiple controls, including engineering controls, where they have been appropriately designed and tested, would be most effective in addressing quad bike stability in the workplace.

In July 2012, WorkCover committed to spending \$1 million to engage the University of New South Wales to undertake crash performance testing and research on quad bikes. This research will help to fill this knowledge gap and determine whether safety enhancements and design improvements can be made.

This research and crash performance testing is part of the National Quad Bike Safety Strategy on behalf of WorkCover and the Heads of Workplace Safety Authorities to examine design features to improve vehicle safety as well as protective devices and accessories. The first stage of the testing was launched on 8 March 2013, at the University of New South Wales Transport and Road Safety Research facilities.

7 Initiatives taken by local Councils and other jurisdictions to certify, register and regulate the use of currently non-registered motorised vehicles

Regulatory involvement by local councils in relation to non-registered motorised vehicles is limited. Local councils are able to use the *Local Government Act 1993* (the Act) to regulate the use of motor vehicles in public places, by issuing a notice under section 632 preventing the driving, parking or use of a vehicle. Failure to comply with such a notice is an offence under the Act attracting 10 penalty units.

Many councils across NSW are facing significant infrastructure backlogs. Councils prioritise infrastructure spending through integrated planning and reporting frameworks, which establishes priorities based on community consultation.

It is noted that with the NSW ageing population projected to grow, local government programs are in a position to provide support to ensure that older road users with limited mobility can access their local services safely.

The NSW Government's Ageing Strategy identifies the need for the NSW Government to continue to work with the Commonwealth and improve motorised wheelchair safety. The NSW Disability Action Plan identifies the benefits of pedestrian access for the disabled and older road users at major transport interchanges. The Transport for NSW Older Driver Taskforce will also identify age-appropriate communication strategies and consider the role of councils in promoting local access, transport and mobility options. As mentioned earlier in the submission, local council road safety officers funded under the Local Government Road Safety Program, already provide older pedestrian safety presentations with information delivered about the safe use of mobility scooters and motorised wheelchairs.

7.1 Holroyd City Council's 'Getting Around' pilot

In 2011, Transport for NSW funded the Holroyd City Council's 'Getting Around' pilot project as part of the NSW Local Government Road Safety Program which focused on skills training. This pilot project delivered key road safety messages in a local framework supported by the involvement of local businesses that sell motorised wheelchairs and occupational therapists as health professionals who have expert knowledge on the movement needs of people with limited mobility.

Additionally, the Holroyd Project provided links to public transport information, local facilities and trip planning. Local surveys and road safety audits also informed council planning and infrastructure to meet the needs of the ageing population in NSW. This localised project approach for older pedestrian was not a unique undertaking.

In 2012, road safety officers as part of the NSW Local Government Program delivered presentations in Ballina, Bankstown, Burwood, Camden, Canada Bay, Canterbury, Gosford, Goulburn-Mulwaree, Greater Queanbeyan, Greater Taree, Holroyd, Hornsby, Kogarah, Kur-ing-gai, Lane Cove, Leeton, Lismore, Maitland, Marrickville, Port Stephens, Rockdale, Sydney, Wollongong and Yass Valley Councils. By the end of the 2011-2012 financial year over 39 pedestrian

presentations had been delivered in local government areas with a further 15 presentations addressing motorised wheelchair safety.

The Centre for Road Safety will be continuing to fund road safety projects through the NSW Local Government Road Safety Program in the 2012-2013 financial year and beyond. In this way, it will continue to support local government education programs for older pedestrians and motorised wheelchair users.

Information to the general public is also available on the Roads and Maritime Services website and through the distribution of the Transport for NSW brochure, 'A guide to motorised wheelchairs'.

7.2 City of Ryde Council trial project

A trial of the use of personal mobility devices (PMDs) within the grounds of Macquarie University as part of a research project for the City of Ryde Council is expected to commence in April 2013. The research project will provide insight into the use of selected PMDs, human factor elements, interaction of the devices with other road users and technical aspects of the devices themselves

8 Any other related matters

8.1 Objectives of motor vehicle registration and driver licensing schemes

The aim of motor vehicle registration is to ensure that:

- Safe and compliant vehicles that can be identified are operated on NSW roads;
- Vehicles have third party injury insurance in the event of injury to other road users;
- The registration scheme provides a source of funding to sustain the ongoing development and maintenance of the road network.

The main objectives of licensing drivers/riders of motor vehicles is to ensure that:

- All operators of motor vehicles have demonstrated the requisite skills and competencies required to operate the type or types of vehicle relevant to their licence class in accordance with the road rules;
- The licence holder is medically fit to operate the type of motor vehicle for which they are licensed.

Although safety objectives are paramount, issues about mobility, access and freedom of movement for users of non-registered motorised vehicles are also relevant. People with a disability and older people who require mobility devices should not be subjected to unnecessary compliance with registration, training (licensing) and other requirements in order to be mobile, or have a better quality of life.

8.1.1 Factors to be considered for establishing registration and licensing schemes for alternative vehicles

Transport for NSW is currently undertaking customer research to assist in the development of walking and cycling mode strategies. The research will explore the key drivers and barriers to walking and cycling, including attitudes towards sharing paths with alternative vehicles such as mobility scooters and also the likelihood of using or considering to use a wheeled vehicle such as a scooter, Segway, electric bicycle etc.

Applicants for a motor vehicle licence and motor vehicle registration must be at least 16 years of age as it is acknowledged that minors do not possess the cognitive elements of perception needed to responsibly operate a motor vehicle. This same age limit would need to apply if consideration was given to registering or licensing the operation of alternative vehicles. Many non-registered motorised vehicle owners and operators are under 18 years of age.

Operation of many non-registered motorised vehicle types would be in areas that are not roads or road related area thus road transport legislation would not be enforceable. Such locations include parks, reserves, and shopping malls. Such locations will require other appropriate solutions to ensure safe interaction between pedestrians and vehicle operators.

8.2 Evidence regarding vehicle status and exemptions from registration requirements

As previously discussed in earlier parts of the submission, when the rider of an electric cycle maintains that he or she is exempt from registration requirements, or that his or her vehicle falls within the legal definition of a 'bicycle' and not a 'motor vehicle', police do not have the capacity at the roadside to verify and refute this.

Police Prosecutors will at times utilise section 417 of the *Crimes Act 1900* (Proof of lawful authority or excuse) in relation to unregistered or unlicensed and disqualified driving charges. This requires an accused person to show to the Court that his or her vehicle fitted the criteria for registration exemption. Police have confirmed that this approach has met with mixed success.

Additionally, this approach can only be taken once a matter is before the Courts. It would be more effective (for all parties) if proof of status and registration exemption were available to police at the roadside.

Furthermore, section 417 does not assist at the roadside in terms of whether a random breath test may be conducted, whether the vehicle can be legally ridden on the road or footpath, and which road rules apply.

A significant amount of effort, time and money is being spent prosecuting or defending matters that, in essence, turn on the legal status of the vehicle. If the question of the vehicle's legal status has been resolved, riders will then be charged with the appropriate offence without wasting valuable court time and the offence or behaviour can readily be dealt with.

8.2.1 Community perceptions that police are not upholding the law

Another concern for police is the public perception that they are not enforcing the law when it comes to motorised bicycles.

If the general public observes riders repeatedly avoiding prosecution for offences (such as driving on the footpath, disobeying traffic lights, driving while intoxicated or disqualified), this generates resentment and undermines public confidence in police and the law.

Ultimately, successful enforcement of the law enables road and public safety objectives to be met. A simplification of the laws applying to non-registered motorised vehicles would aid police in undertaking this role.

8.3 The safety of mobility devices on public transport

While not specifically referenced in the Staysafe Committee terms of reference, the safety of mobility devices on public transport is an issue for transport providers. The Accessible Public Transport Jurisdictional Committee (APTJC) has written to express support for Austroads review towards a nationally consistent approach to the use of motorised wheelchairs and other motorised mobility vehicles and to formally request the inclusion of mobility vehicle labelling scheme issues to be included within the scope of the project.

In June 2011, the Australian Government publicly released the first review of the *Disability Standards for Accessible Public Transport 2002* and the Government response to the review. Recommendation 5 of the Government response concerned the development of a mobility device labelling scheme which identified the weight of the aide and whether its dimensions fit within the dimensions for allocated space, boarding devices, access paths and manoeuvring areas on conveyances, as specified in the Transport Standards.

APTJAC was tasked with implementing the recommendations, including Recommendations 5. In October 2012 a sub-group was formed comprising membership from the mobility aid industry, public transport industry and associated health sector and APTJC to discuss a possible way forward. The process has involved monitoring developments on the issue in the UK, which will be used to inform the next phases of implementing the recommendations. Key findings are listed below.

8.3.1 The Confederation of Passenger Transport UK Code for the Use and Acceptance of Mobility Scooters on Low Floor Buses

- A voluntary code of practice was developed jointly by the Confederation of Passenger Transport UK (CTP) and the Department of Transport.
- Commenced 14 September 2011
- Code applies to scheduled bus services outside London.
- Simplifies and puts in place standardised procedures for operators to carry mobility scooters safely.
- Introduces a permit system for mobility scooter users.
- Mandatory training is provided to the scooter user by the operator and their ability to manoeuvre on and off the bus safely is assessed.
- The Operator also assesses the size and manoeuvrability of the scooter.
- Maximum weight of the scooter and user combined is 300kg, but these are not assessed.

8.3.2 London buses mobility aid recognition scheme

- All London buses have access ramps and an allocated space for one wheelchair or scooter.
- Most wheelchairs can fit on a bus but only certain models of mobility scooter can.
- The Mobility Aid Recognition Scheme offers a permit system with the issue of a "Mobility Aid Card".
- Customers contact the Travel Mentoring Service who check the suitability of the scooter.
- Officers from the Mentoring Service assess the suitability of the scooter and accompany customers on a journey to check the suitability and size of the scooter.
- If the vehicle is considered to be suitable, a Mobility Aid Card is issued to the customer.
- No dimension or weight criteria are published.
- Contact email address is travelmentor@tfl.gov.uk.

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