

Productivity and Safety Team  
National Transport Commission  
Level 3/600 Bourke Street  
Melbourne VIC 3000

26 February 2019

Attention Anthony Pepi

Thank you for the opportunity to comment on the Issues Paper: *Barriers to the safe use of innovative vehicles and mobility devices* Jan 2019.

Please note that this submission is confined to the issues around power wheelchairs and does not attempt to comment on other powered mobility devices other than to clarify that for people, like me, who have a permanent and severe disability, devices other than power wheelchairs are very often not a viable and safe option.

### **Urgency**

I have resided with my wife in a retirement village in a “self-care” unit since 2010.

I used a power wheelchair when we moved in. There was no indication that restrictions on my right to move freely throughout the village existed or were contemplated.

The operators of the village, Australian Unity, have released a draft policy document (Att 1) which *inter alia* will seek to impose the NSW Road Rules onto residents of the village – in particular, the maximum allowable unladen mass of motorised mobility devices (which includes power wheelchairs) of 110kg.

As I indicate in my response to that draft policy (Att 2), its effects on me could be dire:

- remain house-bound with adverse effects on my mental health, or
- use an unsuitable and unsafe wheelchair which meets the maximum unladen mass limit (but likely leading to extended hospital stays to treat pressure ulcers), or
- move to another residence (unaffordable), or
- cause me to lodge a claim of discrimination on the basis of disability against both the NSW Government and Australian Unity for having discriminatory regulations or policy in place.

None of those options appeals to me.

Please note that, following discussions with Australian Unity, the policy may be amended to remove the 110kg mass limit within Constitution Hill Retirement Village, if not more broadly.

But it will still remain applicable on public footpaths in NSW.

### **Questions for comment:**

Please note that I have responded only to those questions where I have some knowledge.

#### **Question 2**

##### **What differences between motorised wheelchairs and mobility scooters need to be recognised by this project?**

In general, motorised wheelchairs are controlled by a “joy stick” and are steered by differential power to one of two motors, whereas mobility scooters typically have one motor and are steered by “handle bars”.

Simply replacing the handle bars with a joy stick will not make a scooter into a motorised wheelchair.

Very few, if any, mobility scooters have the capacity to “tilt in space”, raise or lower their footplates, or change their seating height using an electric actuator. Most wheelchairs offer all these features as options.

#### **Question 7**

##### **What barriers and health or safety risks are associated with the use of a motorised mobility device that does not meet the needs of a user because of the current restrictions?**

In general, motorised wheelchairs are prescribed by Occupational Therapists or Bio-medical Engineers to meet the clinical needs of the user. This is done on an individual basis.

Also, in general, motorised wheelchairs are paid for by a government agency or an insurance company.

If a person is required to forego particular features of their motorised wheelchair because the use of them would push the mass beyond the mandatory maximum, this could result in ulcers from pressure points leading to months in hospital, or perhaps allow scoliosis to worsen and require surgery.

The cost to the health system could be extreme, the person may not be able to work and pay taxes, the person’s mental health may deteriorate, again causing stress to person and cost to the health system.

#### **Question 9**

##### **Is there a need for construction and performance requirements for motorised mobility devices to ensure safe use on public transport infrastructure?**

Standards Australia has issued AS TS 3695:3 2018 which covers these issues.

It is recommended that all the provisions of the above Technical Specification be adopted and called up in relevant Federal legislation and any associated regulations, and that States be encouraged to follow suit.

#### **Question 10**

**What evidence is available on the road safety risks associated with motorised mobility devices that could be used to inform the way motorised mobility devices are regulated?**

There seems to be no published data that specifically addresses the issue of safety of motorised wheelchairs.

The Monash University study conducted at the behest of the Productivity Commission **specifically excludes** data on accidents and injuries related to power wheelchairs. (*Motorised Mobility Scooters - A report commissioned by the Australian Competition and Consumer Commission 2011*. <https://www.accc.gov.au/media-release/mobility-scooter-injuries-examined-in-accc-report>)

The NSW Government submission to the Senate *INQUIRY INTO THE NEED FOR REGULATION OF MOBILITY SCOOTERS, ALSO KNOWN AS MOTORISED WHEELCHAIRS* (Sub 106) combines data related to power wheelchairs and power mobility scooters, thus throwing no light on the relative safety and accident records of each of these types of mobility devices.

Nevertheless, that submission does indicate that accidents resulting in injury of another pedestrian is a very rare event – two (2) such incidents in a four (4) year period are recorded.

No attempt is made by the NSW Government to indicate the type of powered device involved in these two incidents (Scooter or Wheelchair), and no attempt is made to apportion blame.

As I (Sub 56) and others noted in submissions to the inquiry, many pedestrians do not pay attention to their whereabouts in crowded areas and often place themselves in the path of powered mobility devices, sometimes by walking backwards out of shops, by using a mobile phone while walking, by looking in shop windows while walking, or even walking into devices that are stationary.

In other words, it seems blame for incidents is automatically and often unfairly assigned to the wheelchair or scooter user.

#### **Timetable for Review**

The NTC timetable indicates that it will not settle on a position until late 2020.

This timetable needs to be reviewed, even if only for powered wheelchairs, to avoid the absurdity of State Governments providing wheelchairs for people who are not permitted to use them outside their home.

## **Interim solution**

I recommend that the NTC reach a finding that any maximum unladen mass of motorised wheelchairs be removed from the Australian Road Rules as a matter of urgency, and that State Governments be urged to take similar action where their road rules have a maximum unladen mass limit.

This is in the interests of users of motorised wheelchairs who need extensive clinically required options which raise the unladen mass above current maximums.

We cannot wait until after late 2020 for our needs to be recognised and met.

Our health and the economy will suffer if this aspect of the inquiry is not addressed urgently.

Thank you for this opportunity to comment.

I would be happy to discuss this in person if clarification is required.

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## Appendix 1

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# Motorised Mobility Devices

## About

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Australian Unity is committed to enhancing the safe participation and health and wellbeing of customers who use motorised mobility devices so that they can maximise their independence and remain active and engaged in community life.

Australian Unity will promote and plan for safe use of motorise mobility devices in the community for all.

## Application

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This policy applies to Community Management, staff and customers.

### **Policy**

Australian Unity acknowledges the value of motorised mobility devices (electric scooters and motorised wheelchairs) as a means by which some customers are assisted to maintain independence and mobility in and around the community.

The safety of all customers, staff and visitors will be taken into account in managing the use of the motorised equipment. The safety of all residents and staff is the responsibility of Australian Unity and the management of the community will take whatever steps are necessary to ensure this safety.

In order to ensure the safety of all, it is a requirement that all motorised mobility device users abide by the following condition;

- Under the Australian Road Rules, a customer using a motorised mobility device is classified as a pedestrian and:
  - Cannot travel at a speed greater than 10km/h on level ground
  - Must have an unladen weight of less than 110kg
  - Can only travel on the road where a footpath is not available, is being repaired or is unsafe due to damage
  - Must observe all the same road riles that apply to pedestrians
  - Must not carry any passengers
  - Staff must act to appropriately disable the motorised mobility device if observing any unsafe or erratic usage of the unit by a resident to ensure the safety of the customer using the device and to prevent injury to other customers, visitors and/or staff.

- o Only customers who have signed the Motorised Mobility Device Policy may use a motorised mobility device within the community grounds.
- o Advise the Community Manager of intention to obtain a motorised device.
- o Provide documentation that Contents Insurer is providing cover for any liability related to the use of a motorised device (either endorsement notice or policy wording) ■ Customers drive in a safe and responsible manner at all times
- o Details of make and model, with photograph are to be provided to the Community Manager for easy identification in the event of an emergency or theft.
  - o Motorised mobility devices are not permitted in the common areas unless special permission by the Community Manager has been given

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- Motorised mobility device batteries are to be charged from power within the customer's own dwelling not common property facilities,
- Motorised mobility devices are at no time to obstruct any fire doors or equipment, thorough fares, entrances of common areas or any customer dwellings.
- Any damages caused as a result of the used of a motorised mobility device will be the sole responsibility of the customer.

## Definitions

See AU Glossary (RES020)

Term	Definition
Motorised Mobility Devices (MMD's)	Refers to the following devices commonly known as: Mobility scooters A battery powered three or four wheeled mobility device that specifically designed to travel on footpaths. Motorised wheelchairs An electric wheelchair or electric powered wheelchair which is propelled by the means of a battery operated electric motor rather than manual power.

## References & Resources

Commonwealth Disability Discrimination Act 1992  
Victorian Disability Act 2006  
Road Safety Act 1986  
Road Rules — Victoria  
Road Rules - NSW  
Scooters Australia Mobility Scooter Safety 2009

## [Related Documents](#)

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This policy should be read in conjunction with:  
Motorised Mobility Device Guide

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# Motorised Mobility Device Guide

## [About](#)

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This document provides a guide on the type of motorised devices that are permitted to use in a community.

## [Application](#)

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This guide is to be read in accordance with the Motorised Mobility Device Policy.

Table below shows an illustration of different types of motorised mobility devices that may be used in a community.

Type of device	Details	Image
<p><b>Motorised scooter</b></p>	<p>A battery powered three or four wheeled mobility device that specifically designed to travel on footpaths.</p>	
<p><b>Motorised wheelchair</b></p>	<p>An electric wheelchair or electric powered wheelchair which is propelled by the means of a battery operated electric motor rather than manual power.</p>	

## References & Resources

Scooters Australia Mobility Scooter Safety 2009

## Related Documents

This guideline should be read in conjunction with:

Motorise Mobility Device Policy

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## Appendix 2

The Health and Safety Manager  
Australian Unity  
114 Albert Road  
South Melbourne VIC 3205

8 February 2019

Dear Madam or Sir

I would like to respond to the draft Australian Unity document headed Motorised Mobility Devices, dated 18 Sept 2018.

I have been a resident at Constitution Hill Retirement Village since 2010. My wife and I occupy a self-care unit.

I have quadriplegia which was sustained in 1970.

As a user of a "Motorised Wheelchair" as you refer to Power Wheelchairs, this policy, if implemented and enforced, will impact very adversely on my health and lifestyle.

I believe it is discriminatory (despite some provisions mirroring the NSW and Australian Road Rules). The policy seems to be based on safety grounds, but whose safety is not specified.

If this draft policy is voted on by residents and implemented, it seems I will have four choices:

1. **Move to another location** – actually, it's not an option as we cannot afford to do so,
2. **Purchase and use a chair that weighs less than 110kg.** This is certainly NOT a viable option. The Power Wheelchair that I use has been prescribed for me based on my clinical needs, and is heavy because those needed features add weight to the chair.

The features are designed to maintain my health by allowing me to tilt the chair to relieve pressure on particular areas of skin to prevent pressure ulcers which can result in months of hospital stay or even death.

The chair is also designed to correct my posture and prevent my scoliosis from becoming more severe.

My power wheelchair gives me the ability to independently get into and out of bed, to drive my motor vehicle, to travel by public transport (buses, trains, light rail, and ferries).

My power wheelchair enables me to participate in the community by volunteering at Parramatta Computer Pals for Seniors, to attend a monthly Book Club meeting with colleagues at Parramatta City Library, to participate in Parramatta Council's Access Advisory Committee, to attend theatre events at Riverside Theatre and attend plays produced by the Sydney Theatre Company, among other activities.

3. **Be confined to my unit** – effectively being sentenced to “house arrest”.  
I would not be able to visit doctors, family, friends, catch the bus, hire a taxi, get my hair cut. Nothing that cannot be done in my home will be possible, except at great expense.  
The effect on my mental health would be extreme.  
All of the benefits in point 2 would be lost to me.
4. **Lodge a complaint** of discrimination with the NSW Anti-Discrimination Board and or with the Human Rights Commission.

I understand your concern re safety and I concur. Safety of all is paramount.

But how much danger is there from users of power wheelchairs?

Firstly we need to very clearly differentiate between motorised scooters (costing \$5k to \$10k and typically purchased “off the shelf”) and power wheelchairs (costing between \$25k to \$50k and almost always purchased by a government body - e.g. Enable NSW, or by an insurance company – following extensive assessment by a qualified and authorized prescriber – typically, an Occupational Therapist or biomedical engineer).

Power wheelchairs that meet the clinical requirements of people with complex needs typically weigh well in excess of 110kg – some as much as 200kg.

In Australia, if they are imported, they are routinely “de-tuned” from the European standard of 12 or 15kph to a maximum speed of 10kph. In Europe there is no maximum unladen mass restriction.

## **Safety**

The NSW Government’s submission to the 2018 Rural and Regional Affairs and Transport Reference Committee enquiry into “*The need for regulation of mobility scooter also known as motorised wheelchairs*” (sic) had the following to say about accidents involving pedestrians and power wheelchairs and mobility scooters:

### **“4.2.1 Incidents involving mobility devices**

TfNSW’s Centre for Road Safety is able to report on crashes involving mobility devices from crash data where they are reported to Police. In the four years from the beginning of 2014 to the end of 2017 (preliminary 2017 data) there were six fatalities from crashes involving mobility devices, one of which occurred in 2017. Fatalities involving mobility devices were 0.4 per cent of the NSW road toll over this four year period.

There were 106 casualties involving mobility devices over this period compared to over 87,000 (preliminary) casualties on NSW roads. Casualties involving mobility devices accounted for 0.001 per cent of all casualties on NSW roads. Reflecting the vulnerability of people using these types of devices, 96 of the 106 casualties were the driver of the mobility device. Eight casualties involved the driver of another motor vehicle, and two pedestrians were injured in a crash with a mobility device. The 106 casualties arose from 101 separate

incidents. The mobility device was travelling along the footpath immediately prior to the crash in 76 per cent of these incidents. The mobility device was entering the carriageway from the footpath in 48 per cent of these incidents.

The number of recorded casualty crashes involving mobility devices is comparatively low. While crashes involving non-registered motorised vehicles, including mobility devices, may be under-reported the crash numbers are very low in comparison to other vulnerable road user groups such as pedestrians, cyclists, motorcyclists and vehicle occupants.”

*NSW Government Submission to Inquiry into the need for regulation of scooters, also known as motorised wheelchairs. March 2018 Page 12*

The above data indicates very clearly that injuries to other pedestrians involving powered mobility devices (motorised scooters and motorised wheelchairs) is very rare. And, in any case, there is NO indication that the user of the mobility device was at fault when those two (2) pedestrians were injured. Nor is there an indication that either of the two incidents involved a power wheelchair, rather than a mobility scooter.

We have to conclude that the risk to other pedestrians from being hit by a power wheelchair is extremely low – much lower than the risk of being injured by a motor vehicle when crossing a road.

In fact, according to the Australian Bureau of Statistics 3303.0 2017, more people died from falling out of bed than died from falling from a wheelchair.

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3303.02017?OpenDocument>

This matter of the maximum mass and speed potential of scooters and wheelchairs is now and has been for some years under active discussion at the federal level. National Transport Commission (NTC), AustRoads, Standards Australia have all conducted inquiries and the NTC one is ongoing with submissions closing at the end of February 2019. It is not due to report until 2020.

I am aware that both the Australian Road Rules and the NSW Road Rules have requirements regards a 10kph speed limit and a 110kg mass limit.

Those agencies (e.g. the NSW Government) that impose an arbitrary maximum unladen mass on Power Wheelchairs (where no alternative assistive technology is available) are probably acting in breach of the NSW Anti-Discrimination Act 1977, the Disability Discrimination Act 1992, and the United Nations Convention on the Rights of Persons with Disability (ratified by Australia),

*AustRoads, who determine the Australian Road Rules, in its submission to the Inquiry into the need for regulation of scooters, also known as motorised wheelchairs*

8 March 2018 Page 5, had this to say about the then proposed, now final, Standards Australia Technical Specification SATS 3695.3:2018:

The increased maximum unladen mass for motorised scooters recognises the needs of larger people to be able to purchase a mobility aid that can support them. The 170kg was determined having regard to the adult population; 95% weighing no more than 100kg, meaning that the vast majority of users, plus a load of 30kg would be under the 300kg limit for a blue label.

The removal of the maximum unladen mass for traditional motorised wheelchairs recognises that users of such devices have no alternative for mobility on public infrastructure. It would be discriminatory to prevent their lawful access to paths where their motorised wheelchair must weigh in excess of 170kg when fitted with batteries, powerlifts and other equipment essential to the effective use of the wheelchair.

Any powered wheelchair, including motorised scooters, accessing passenger transport conveyances must not exceed a gross mass of 300kg. This is consistent with the requirements under DSAPT for ramps and lifts to support a minimum safe working load of 300kg.

So, AustRoads itself supports the SATS 3695.3:218 and further is of the view that imposing a weight limit on Power Wheelchairs would be (and therefore is) discriminatory.

This indicates that AusRoads does not in fact support the Australian Rules, at least with respect to the current max unladen mass limit of 110kg.

This is probably why there appear to be no prosecutions for using a power wheelchair on public footpaths.

### **Compulsory Liability Insurance for owners of motorised mobility devices.**

This provision in the draft policy is also discriminatory against people who require mobility devices to participate in village life.

It seems to me that there is just as likely to be a collision between two people who do NOT use a motorised mobility device as there is between a motorised mobility device and a pedestrian. A pedestrian who bumps into another pedestrian who is frail and, perhaps using a “walker” may injure that person quite severely – perhaps where a hip is broken or a head injury is sustained.

Yet, there no requirement for compulsory liability insurance for anyone except the users of motorised mobility devices. That is discriminatory.

There are certainly residents who do not take out household insurance, and one assumes therefore, that they have no third-party property or personal liability insurance. And there is no requirement in this draft policy that they must.

### **Conclusion**

This draft policy seems to be based on the unsound assumption that motorised mobility devices are inherently dangerous to other pedestrians. Data does not support this assumption.

In particular, power wheelchairs are lumped together with motorised scooters (which do have some inherent dangers to the users, if not the general public). There is

evidence that users of motorised scooters are at risk of personal injury by tipping the scooter over, falling while dismounting, or being hit by a motor vehicle.

Users of power wheelchairs (which are inherently more stable than motorised scooters due to their lower centre of gravity) have no alternative but to use their power wheelchair if they wish to participate in their community, both locally and more broadly.

### **Recommendation**

The Australian Unity Health and Safety Manager should revisit this policy, consult widely, and remove its discriminatory elements, particularly those aimed at Power Wheelchair users.

### **A final word.**

Copies of relevant documents are attached.

I would be delighted to discuss these issues face to face.

Please note that I do not wish to escalate this matter, but I feel I should advise you that if this policy is adopted and enforced or becomes incorporated into the Village Rules for Constitution Hill, following a vote by residents or by any other means, I will lodge a formal complaint with the NSW Anti-Discrimination Board and or the Human Rights Commission naming Australian Unity and the NSW Government as respondents.

John Moxon

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