

# **Transport and Other Legislation Amendment Bill 2023**

**Report No. 43, 57th Parliament**  
**Transport and Resources Committee**  
November 2023

## **Transport and Resources Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by the Department of Transport and Main Roads.

All web address references are current at the time of publishing.

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## Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Transport and Other Legislation Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and officers of the Department of Transport and Main Roads.

I commend this report to the House.



Shane King MP

Chair

## Recommendations

### Recommendation 1

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The committee recommends the Transport and Other Legislation Amendment Bill 2023 be passed.

### Recommendation 2

24

The committee recommends the Department of Transport and Main Roads liaises further with industry if the Bill is passed to strengthen industry understanding of the purpose and implications of section 67(K) of the Bill, and therefore enhance compliance.

## Executive summary

### About the Bill

The Transport and Other Legislation Amendment Bill 2023 (Bill) was introduced into the Legislative Assembly by the Hon Mark Bailey, the Minister for Transport and Main Roads and Minister for Digital Services on 12 October 2023, and it was referred to the Transport and Resources Committee (committee) for consideration.

The Bill proposes to facilitate the transition of certain regulatory services from the Department of Transport and Main Roads (DTMR/department) to the National Heavy Vehicle Regulator (NHVR), and improve road safety, streamline and improve administrative and legislative processes, and clarify existing requirements.

The committee recommends that the Bill be passed.

### Summary of stakeholder views

During the course of the inquiry, the committee heard from representatives for motorists, cyclists, surgeons, the tourism industry, and the Queensland bus industry.

In regard to the transition of certain regulatory services from DTMR to the NHVR, including the transfer of some staff, we were pleased to note that all employee benefits, entitlements and remuneration would be preserved, and that approximately 100 employees had elected to transfer if the Bill is passed.

Most submitters were generally supportive of provisions to improve road safety and to create a consistent safety duty regulatory framework for road-based public passenger services. However, some submitters expressed concern about how some of the provisions would be implemented.

Several submitters contended that the definition of riding a bike or personal mobility device (PMD) with 'due care' was not clear, and the Bill should be amended to define what constitutes due care, including providing specific guidelines for e-scooter riders. Some submitters were also of the view that the road safety provisions would negatively impact cyclists and deter people from cycling due to the subjective nature of the offence, that the offences were disproportionate to other jurisdictions, and the penalties were not proportionate to the nature of the offence.

However, we support the view that the consequences of riding without due care and attention can be equally severe regardless of where incidents may occur, particularly given that road-related areas are also used by pedestrians of all ages and abilities. We agree that rider obligations should be applied consistently regardless of the type of vehicle or location of offending. Furthermore, we note that the proposed provision to ride with due care already exists for PMD and bicycle riders on roads under section 84(2) of the TORUM Act, and the Bill would extend the requirement to road-related areas.

In relation to the application of the maximum penalty (\$6,192) for not riding with due care and attention, we note that courts will have discretion to impose specific penalties based on the severity of the offending and the circumstances relating to it. We believe this is an appropriate approach and would reflect the potential severity of offences that could lead to injury or even death.

Concerns were raised regarding the Bill's interaction with other safety laws. We note, though, that the requirements to comply with the safety duties under the proposed amendments are tempered by 'so far as is reasonably practicable'. However, we also note industry's concerns and have recommended the Department of Transport and Main Roads liaises further with industry to ensure the purpose and the implications of section 67(K) of the Bill for industry are clearly understood.

**The Bill has sufficient regard to fundamental legislative principles.**

We considered the Bill's compliance with the *Legislative Standards Act 1992* including consideration of several fundamental legislative principle issues including penalties and reversal of onus of proof. We are satisfied in all cases that any potential breaches of fundamental legislative principles are reasonable and sufficiently justified in the circumstances.

**The Bill is compatible with human rights.**

We considered the Bill's compatibility with the *Human Rights Act 2019* and found that it was compatible.



## 1 Introduction

### 1.1 Policy objectives

The objectives of the Transport and Other Legislation Amendment Bill 2023 (Bill) are to:

- facilitate the transition of certain regulatory services from the Department of Transport and Main Roads (DTMR/department) to the National Heavy Vehicle Regulator (NHVR)
- improve road safety, streamline and improve administrative and legislative processes, and clarify existing requirements.<sup>1</sup>

### 1.2 Background

The Bill proposes to achieve the above objectives by:

- accommodating the transfer of up to 135 full-time equivalent employees of DTMR who are currently performing regulatory services to the NHVR
- expanding the requirement under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to require personal mobility device (PMD) and bicycle riders to ride with due care and attention and reasonable consideration of other road users to also apply on road-related areas, such as footpaths, bicycle paths, shared paths, malls, nature strips, median strips, road shoulders, dedicated cycle tracks, car parks and certain public trails
- inserting a new section into the TORUM Act for the purpose of consistently managing safe interactions between vehicles and vulnerable users and recognises that PMDs and bicycles are frequently used on road-related areas, where careless riding poses a significant risk to users such as pedestrians, including people with mobility impairments
- providing a consistent safety duty regulatory framework for road-based public passenger services
- providing a consistent audit and direction framework for road-based public passenger services
- modernising and simplifying the compliance of tolling demand notices
- and other minor and technical amendments, including:
  - amending the *Cross River Rail Delivery Authority Act 2016* to remove a quorum reference to modernise the quorum requirements to a simple majority, in line with conventional practice and ensure the efficiency of board meetings.<sup>2</sup>
  - amending the *Maritime Safety Queensland Act 2002* to provide for the remuneration of the General Manager, Maritime Safety Queensland, to be decided by the Governor in Council.
  - amending the *Sustainable Ports Development Act 2015* to provide for the inclusion of areas of land subject to tidal waters outside of port limits in a priority port's master planned areas.
  - amending the *Transport Planning and Coordination Act 1994* to provide for the recognition and use in Queensland of foreign digital licences from a recognised

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<sup>1</sup> Explanatory notes, p 1.

<sup>2</sup> DTMR advised: The proposed amendment to remove Section 44 (3) of the *Cross River Rail Delivery Authority Act 2016* would modernise the quorum requirements to a simple majority in line with conventional practice, reflects the current composition of the board, and ensures the efficiency of board meetings. Refer to answer to question on notice, public briefing, Brisbane, 23 October 2023.

country approved by the chief executive and published on a Queensland government website that comply with a standard prescribed by regulation.<sup>3</sup>

### 1.3 Key proposals in the Bill

#### 1.3.1 National Services Transition

Following the commencement of operational provisions of the Heavy Vehicle National Law (HVNL) in February 2014, the NHVR relied on state and territory agencies to deliver most of its frontline heavy vehicle regulatory services under a Service Level Agreement with each jurisdiction.

Under its National Services Transition program, the NHVR has progressively assumed responsibility for direct delivery of heavy vehicle regulatory services in South Australia (2017), Tasmania (2018), the Australian Capital Territory (2019), Victoria (2019), and New South Wales (2022). Queensland will be the final participating jurisdiction to transition regulatory services to the NHVR.<sup>4</sup>

To ensure the continuity of regulatory services in Queensland post-transition, following an engagement process with impacted staff and relevant unions, up to 135 full-time equivalent employees of DTMR who are currently performing regulatory services may transfer to the NHVR on a voluntary basis. To facilitate this transition, the Bill proposes to:

- allow the Minister to create ministerial transfer schedules for transferring employees and vehicles, and *Public Sector Act 2022* directives that will apply to staff choosing to transfer to the NHVR
- complement the operation of *Fair Work Act 2009* (Cth) provisions to preserve transferred employees' benefits, entitlements and remuneration
- provide authority for the NHVR authorised officers to undertake state-based non-HVNL regulatory services to maintain efficient and quality service delivery for industry
- support post-transition information access arrangements between TMR and the NHVR.<sup>5</sup>

##### 1.3.1.1 Consultation

In relation to the transfer of DTMR employees to the NHVR, DTMR consulted with the employees likely to be impacted by the Bill and Together union and its members. Together union provided feedback on the proposed process for identifying employees to be transferred to the NHVR, and DTMR adjusted the process accordingly. DTMR advised that Together union and affected employees will continue to be engaged after the passage of the Bill if passed and prior to any transfers occurring. The NHVR was also consulted and provided its support for the amendments.<sup>6</sup>

#### 1.3.2 Road safety

To realise the commitment of zero deaths on Queensland roads by 2050, Queensland's transport related legislation must evolve to accommodate changing risk profiles, cater for new and emerging technologies such as personal mobility devices (PMDs),<sup>7</sup> such as e-scooters, and ensure enforcement authorities have appropriate powers and can impose meaningful sanctions to alter behaviour.<sup>8</sup>

Amendments to the Transport Operations (Road Use Management—Road Rules) Regulation 2009 were progressed in 2022 in response to the emerging popularity of PMDs in Queensland. To facilitate

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<sup>3</sup> Explanatory notes, pp 4, 5, 6.

<sup>4</sup> Explanatory notes, p 1.

<sup>5</sup> Explanatory notes, p 1.

<sup>6</sup> Explanatory notes, p 17.

<sup>7</sup> A PMD is a vehicle that is designed to be used by 1 person; has 1 or more wheels; is propelled by an electric motor; meets specified dimensions and weight; and is not a low powered toy scooter or a motorised mobility device or a vehicle with pedals. TORUM Act, sch 4; Road Rules, s 15A as amended by Bill, cl 66.

<sup>8</sup> Explanatory notes, p 2.

these changes, PMDs were re-classified as vehicles under the regulation (previously they were considered pedestrians).<sup>9</sup>

Following those amendments, further review of provisions in the TORUM Act identified the following issues with the Act:

- Section 84(2), which relates to the driving of vehicles (other than motor vehicles) without due care and attention or without reasonable consideration for other road users, does not apply to road-related areas such as bike paths and footpaths.
- Section 92, which imposes duties on drivers and riders to stop and render assistance in the event of an incident resulting in death or injury, does not apply to drivers of vehicles (other than motor vehicles) on road-related areas such as bike paths and footpaths.
- Section 93, which requires the drivers and riders of vehicles to provide certain information, including their name and address, in the event of a crash, does not apply to PMD riders.<sup>10</sup>

The Bill proposes to extend the scope of these provisions to enhance the safety of PMD riders and other members of the public that those riders may interact with.<sup>11</sup>

#### 1.3.2.1 *Consultation*

The department advised that the PMD Safety Reference Group was established as the mechanism to support consultation on all PMD reforms, and this group was consulted ‘extensively’ through the development of the proposed laws. Representation within the group include several local governments, the Royal Automobile Club of Queensland (RACQ), Jamieson Trauma Institute, Queensland Walks, Bicycle Queensland, Queenslanders with Disability Network, Vision Australia, Scooter Hut, Electric Scooter Squad Brisbane, Evolve Skateboards, and the Queensland Family and Child Commission. The department reported that stakeholders were supportive of the proposed changes.<sup>12</sup>

While the Brisbane Central Business District Bicycle User Group reported a lack of consultation on the new ‘careless riding’ penalty,<sup>13</sup> DTMR noted that ‘bicycle and PMD stakeholders see the amendments as further legitimising their modes of transport by ensuring that those who do the wrong thing, are appropriately dealt with’.<sup>14</sup>

### 1.3.3 Consistent safety duty regulatory framework for road-based public passenger services

As part of the 2017 reform of Queensland's personalised transport industry, a general safety duty was adopted in the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) for persons involved in providing personalised transport (taxi and booked hire) services, ensuring a modern, risk-based approach to managing the safety of these services. For most other road-based public passenger services (such as bus services), the Transport Operations (Passenger Transport) Standard 2010 (PT Standard) imposes a general obligation on drivers and operators to operate a vehicle safely, as well as various other prescriptive safety requirements.

However, the current prescriptive requirements applying to non-personalised transport services may not encompass the full breadth of potential hazards and risks. In addition, a prescriptive approach may not effectively anticipate or manage emerging safety risks associated with rapidly changing vehicle technology (and fuels) and emerging passenger transport service models. As a result, it is intended to adapt and extend the existing safety duty provisions that currently only apply to

<sup>9</sup> Explanatory notes, p 2.

<sup>10</sup> Explanatory notes, p 2.

<sup>11</sup> Explanatory notes, p 2.

<sup>12</sup> Explanatory notes, p 17; DTMR, correspondence, 7 November 2023, p 3.

<sup>13</sup> Brisbane Central Business District Bicycle User Group, submission 5, p 1 of attachment.

<sup>14</sup> DTMR, response to submissions, November 2023, p 4.

personalised transport services, to provide a consistent framework for safety duties across road-based public passenger services.

Additionally, the Bill would introduce a requirement for safety management plans for the purpose of supporting industry to take a preventative and targeted approach to managing safety risks that can be scaled to their particular circumstances.<sup>15</sup>

#### 1.3.3.1 Consultation

A discussion paper titled *Legislation Changes to Support Creating Better Connections for Queenslanders* was released for public consultation on 24 October 2022 for a period of 4 weeks. Key stakeholder consultations were also held with industry peak bodies such as the Queensland Bus Industry Council (QBIC) and the Queensland School Bus Alliance (QSBA) in November 2022. Feedback on the discussion paper was also sought from Services Australia (National business gateway) and the Department of Veterans Affairs.

Seventy-six stakeholder submissions were received, including 63 submissions from industry providers and peak bodies. The department advised that submissions on the discussion paper broadly supported having a safety duty across all road-based public passenger services. The department also reported that peak bodies for the bus industry and the personalised transport industry both strongly supported the proposals, indicating that most of their members already comply with the existing requirements.

Other organisations, such as a large booking entity for personalised transport services, supported a principle-based approach, which would provide flexibility in how they meet the requirements of the safety management plan. However, they expressed concerns around the impracticality of the proposed requirement to consult with other duty holders, which they believed was beyond their existing WHS Act requirements.

The QSBA stated it would have concerns if the changes resulted in additional requirements for operators. Peak industry bodies such as QBIC and QSBA requested that DTMR continue to collaborate with peak industry bodies as part of the implementation of the safety duty and during the review of the PT Standard to identify any specific concerns they have.

Providers of operator accreditation services raised some concerns that the proposal duplicated existing requirements in other legislation like the WHS Act or the HVNL. This is discussed further in section 2.3.1. Much of the feedback related to industry providers seeking detail about the requirements and compliance framework, identification of impacts, and seeking communications in different languages. The department advised that these issues will be addressed through implementation.<sup>16</sup>

During the public hearing, QBIC advised that following the initial consultation on the discussion paper, the Council did not hear anything further from the department and was surprised to hear that the Bill had been introduced. Jason O'Dwyer, Executive Director of QBIC, advised

From my point of view, the gap between providing submissions and then this bill and nothing in-between I think is a lost opportunity in terms of being prepared to go to industry and give them that information, because they will need it.<sup>17</sup>

QBIC advised that an education campaign would be needed to ensure the bus industry in Queensland was across the proposed changes.

We are looking at an area of very high change occurring in a very short period of time, and we are concerned about the lack of consultation coming out through that process. We are supportive, as I said,

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<sup>15</sup> Explanatory notes, pp 2, 3.

<sup>16</sup> Explanatory notes, p 18.

<sup>17</sup> Public hearing transcript, Brisbane, 9 November 2023, pp 21, 22.

of the need for safe travel and operations, and have for over 100 years, and we have always worked with governments to improve safety.<sup>18</sup>

### **1.3.4 Consistent audit and direction framework for road-based public passenger services**

As part of the reforms in 2017, audit and direction provisions were established for investigating personalised transport service compliance, verifying information provided relating to the provision of the service and directing remedial action if needed. However, other road-based public passenger services operate under different provisions which allow for audits of records and the giving of directions in relation to the PT Standard. The Bill proposes to amend the TOPTA to ensure there is a consistent audit and directions framework for road-based public passenger services.<sup>19</sup>

### **1.3.5 Process simplification and modernisation – Tolling demand notice compliance**

The Bill proposes to amend the *Transport Infrastructure Act 1994* (TIA) to simplify and modernise the process to comply with a notice issued to the registered operator under either sections 99 or 105ZH or issued to the person identified as the driver under sections 101 or 105ZK (referred to as a demand notice).<sup>20</sup>

Currently, the TIA only provides for nomination via a statutory declaration in the approved form. This is in contrast to the process for nominating another driver for camera-detected offences under the TORUM Act, which provides for online declarations as well as standard statutory declarations. Transurban Queensland has been trialling an online nomination facility, which allows recipients of demand notices to nominate another person online instead of completing a statutory declaration in the approved form, with Linkt advising the online nomination process has been well-received with over 75 per cent of nominations made each month by utilising the online nomination facility. The online nomination facility has enabled it to contact the appropriate driver in a timely manner.<sup>21</sup>

The amendments to the TIA will provide that online nominations and standard statutory declarations are accepted methods to deal with tolling demand notices and reflect customer expectations and technological advancements.<sup>22</sup>

## **1.4 Legislative compliance**

In accordance with s 93 of the *Parliament of Queensland Act 2001*, our examination of the Bill included consideration of the policy to be given effect by the legislation, the application of fundamental legislative principles contained in the *Legislative Standards Act 1992* (LSA), and compatibility with the *Human Rights Act 2019* (HRA).

### **1.4.1 Legislative Standards Act 1992**

Our assessment of the Bill's compliance with the LSA included consideration of several fundamental legislative principle issues: penalties (discussed further in sections 2.2.1.6, 2.2.2.2, 2.3.2 and 2.4.1) and reversal of onus of proof (discussed further in section 2.2.2.3).

We are satisfied in all cases that any potential breaches of fundamental legislative principle are reasonable and sufficiently justified in the circumstances.

#### **1.4.1.1 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

<sup>18</sup> Public hearing transcript, Brisbane, 9 November 2023, p 21.

<sup>19</sup> Explanatory notes, p 3.

<sup>20</sup> Explanatory notes, p 3.

<sup>21</sup> Explanatory notes, p 4.

<sup>22</sup> Explanatory notes, p 4.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

#### **1.4.2 Human Rights Act 2019**

We also considered the Bill's compatibility with the HRA and found that it was compatible. We considered the following human rights in relation to the Bill:

- equality before the law
- property rights
- privacy
- children
- liberty and security of the person
- fair hearing
- criminal proceeding processes.

##### **1.4.2.1 *Statement of compatibility***

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

We conclude that any potential effect on the rights in the HRA are clearly outweighed by the purpose of the amendments, particularly with respect to road safety, but also with respect to providing congruence with existing regulations. In this regard, we are satisfied that any potential limits to human rights are reasonable and demonstrably justified in the circumstances.

#### **1.5 Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Transport and Other Legislation Amendment Bill 2023 be passed.

## **2 Examination of the Bill**

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

### **2.1 National Services Transition**

The Bill proposes to facilitate the transition of certain regulatory services from DTMR to the NHVR and would do this by allowing for the transfer of up to 135 full-time equivalent employees of DTMR who are currently performing regulatory services to the NHVR.

The NHVR welcomed the Bill, advising that Queensland would be the last of the heavy vehicle regulatory services to transition to the NHVR. The NHVR explained that the transition would result 'in a more streamlined approach to service delivery, compliance and enforcement, and a greater degree of consistency in how heavy vehicles are regulated in these [South Australia, Tasmania, Victoria, Australian Capital Territory, New South Wales and Queensland] jurisdictions'.<sup>23</sup>

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<sup>23</sup> Submission 1, p 1.

DTMR advised that staff will transfer to the NHVR on a ‘voluntary basis’ and that the Bill provides that all accrued rights to leave—such as sick leave, long service leave and recreation leave—will transfer across. Furthermore, the Bill provides that the transfer of employment will not interrupt an employee’s continuity of service, which is ‘critical to calculating staff’s entitlement to long service leave and other benefits’. The Bill expressly provides that the transfer will not affect the employee’s benefits, entitlements and remuneration.<sup>24</sup> DTMR also advised that staff who transfer to the NHVR will not be required to move localities i.e. from one city to another.<sup>25</sup>

DTMR explained the benefits of the transition to both the regulation of heavy vehicles across participating jurisdictions and on the use of its resources:

Given the very close working relationship between the state and the NHVR, these reforms will yield efficiencies in the enforcement of both heavy and light vehicle enforcement. Authorised officers of the regulator will also be appointed authorised officers under relevant state legislation. Therefore, in addition to on-road heavy vehicle enforcement, those officers will also be able to check, for example, on heavy vehicle driver licensing requirements, vehicle registration requirements and dangerous goods compliance. The bill will also support post-transition information access arrangements between TMR and the NHVR. This will continue to ensure efficient delivery and maintain quality service outcomes for industry.

... Following the transition, the department will focus its resources on delivering light vehicle compliance activities, including vehicle safety, industry accreditation and personalised and passenger transport services.<sup>26</sup>

The NHVR advised that approximately 100 DTMR employees had elected to transfer to the NHVR.<sup>27</sup>

## 2.2 Road safety

The Bill proposes a range of road safety amendments for the purpose of improving the safety of PMD riders, cyclists and other path users. The Bill introduces a new offence for driving bikes and PMDs without due care and attention on road-related areas. This offence already exists for these riders on roads; the Bill would extend the requirement to road-related areas.<sup>28</sup> ‘Road-related areas’ include areas such as ‘footpaths, bicycle paths, shared paths, malls, nature strips, median strips, road shoulders, dedicated cycle tracks, car parks and certain public trails’.<sup>29</sup> The department advised that the provision would ensure ‘that careless riding can be enforced on all relevant infrastructure where PMDs and bikes are often used’.<sup>30</sup> Persons failing to comply with the new requirement would face a maximum penalty of 40 penalty units (\$6,192).<sup>31</sup>

The Bill would also introduce obligations for all drivers and riders involved in incidents resulting in injury or death to ensure the same rules apply regardless of where the incident occurs. Currently, the requirement to stop and render assistance to an injured party applies to a crash on a road. Riders are also currently required to exchange their name and address in such situations. The Bill will expand these obligations to anyone involved in a crash no matter where the crash occurs.<sup>32</sup>

<sup>24</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 2.

<sup>25</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 4.

<sup>26</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 2.

<sup>27</sup> Public hearing transcript, Brisbane, 9 November 2023, p 1.

<sup>28</sup> Bill, cl 55 inserts TORUM Act, new s 84AA; Bill, cl 66 amends Road Rules, s 15A.

<sup>29</sup> Explanatory notes, p 7; Road Rules, s 13.

<sup>30</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 2.

<sup>31</sup> The value of a penalty unit is \$154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

<sup>32</sup> DTMR, public briefing, Brisbane, 23 October 2023, pp 2, 3.

While some submitters expressed concern about these provisions, which are detailed below, other submitters supported the amendments. Queenslanders with Disability Network (QDN) supported the amendments in relation to road safety as its members have raised concerns since 2021 about the impact of e-scooters and the way they are used. Concerns relate mainly to the adverse impacts felt by pedestrians with disability, particularly those who are deaf or hard of hearing, blind or have low vision or use a wheelchair or other mobility device.<sup>33</sup>

The Queensland Tourism Industry Council (QTIC) was particularly interested in the provisions relating to road safety and 'micromobility' (including e-scooters and bicycles), stating that micromobility 'fulfils a specific role in the Queensland tourism landscape' by offering 'a convenient, sustainable, and affordable means of transport'. QTIC stated that micromobility, defined as a personal transport device such as a bike, scooter, one-wheel vehicle or a skateboard,<sup>34</sup> 'encourages visitors to explore precincts beyond well-known tourism offerings, facilitating engagement with a wider range of businesses'. QTIC was supportive of ensuring the safety of e-scooter and e-bike use.<sup>35</sup>

RACQ advised that in its most recent *Annual Road Safety Survey*, the majority (80.3 per cent) of Queensland respondents felt that while e-scooters and other PMDs have increased mobility options and improved travel affordability, almost 9 in 10 (88.6 per cent) believed the introduction of these devices had resulted in a less safe road and pathway environment. In this regard, RACQ supported the proposed road safety amendments in the Bill.<sup>36</sup>

In response to concerns about PMDs blocking paths and negatively impacting safety and amenity issues for other path users, DTMR advised:

To keep paths safe, accessible and inclusive for everyone including pedestrians with disability, TMR launched the e-Mobility Parking Plan in late 2022 to improve e-mobility parking and prevent riders from parking their PMDs in a way that would create a hazard or obstruction to other path users. The e-Mobility Parking Plan actions are specific to raising awareness about the impact of poorly parked PMDs on people who have blindness, low vision, mobility impairment or other disabilities. In addition, the Plan also contains an action to trial designated e-mobility parking areas to provide dedicated parking space in high pedestrian areas.<sup>37</sup>

In addition, DTMR advised that PMD reforms introduced in 2022 included a 'reduction of the footpath speed limit to 12km/h, along with new tougher penalties for speeding offence to improve the safety of PMDs for all path and road users'.<sup>38</sup>

## **2.2.1 Driving bikes and personal mobility devices without due care and attention on road-related areas**

### **2.2.1.1 *Definition of 'due care'***

Several submitters contended that the definition of 'due care' was not clear, and the Bill should be amended to define what constitutes due care, including providing specific guidelines for e-scooter riders.<sup>39</sup> QTIC stated that 'directly translating motor vehicle laws to PMD use lacks allowing the newest experience of using a bike or e-scooter on a sidewalk'. QTIC continued:

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<sup>33</sup> Submission 7.

<sup>34</sup> Dr Richard Buning, The University of Queensland – on behalf of QTIC, public hearing transcript, Brisbane, 9 November 2023, p 7.

<sup>35</sup> Submission 3, p 1.

<sup>36</sup> Submission 8, p 1; public hearing transcript, Brisbane, 9 November 2023, p 17

<sup>37</sup> DTMR, response to submissions, November 2023, p 6.

<sup>38</sup> DTMR, response to submissions, November 2023, p 7.

<sup>39</sup> Queensland Tourism Industry Council, submission 3, p 2; Brisbane Central Business District Bicycle User Group, submission 5, p 1; Bicycle Queensland, submission 9, p 2.



The infrastructure, education and process to learn to ride a bike or a scooter is just completely different than vehicles. Specifically, the definition of ‘due care’ lacks a clear definition in the bill concerning e-scooter usage that is not directly applicable to motor vehicle use. Consideration needs to be made around the specifics and nuances of what it is like to ride a bike or a scooter on a shared path or a sidewalk while attempting to avoid pedestrians, dog walkers, infrastructure defects, street furniture, cafes and all of those things that are on the sidewalk.<sup>40</sup>

DTMR advised that ‘[r]iding with due care and attention means to be aware of the safety of other road or path users around them’, stating further that ‘[w]hat constitutes an offence will depend on the individual circumstances of an incident that is assessed by the enforcing QPS officer and by courts’.<sup>41</sup> To clarify, the department provided the following example: ‘it could include someone dangerously swerving in and out of pedestrians on a crowded path or riding at an unsafe speed around a blind corner where pedestrians and other vulnerable users might be present’.<sup>42</sup>

We note that the proposed provision to ride with due care already exists for PMD and bicycle riders on roads under section 84(2) of TORUM Act, and the Bill would extend the requirement to road-related areas where other users, such as pedestrians, may be more vulnerable to incidents, including injury and death from a collision with a PMD. We also note the department’s advice that the current requirement for PMD and bicycle riders to ride with due care and attention is not causing any enforcement challenges.<sup>43</sup>

#### *2.2.1.2 Impact of provisions on cyclists*

Several submitters were concerned that the Bill would have a negative impact on cyclists and cycling. Professor Soar stated that the proposed penalty for the offence of not driving bikes and PMDs with due care and attention would discourage cycling<sup>44</sup> with the Brisbane Central Business District Bicycle User Group stating the proposed offence was an ‘over-reaction that is unnecessary, disproportionate’ and could be ‘applied capriciously’ to have ‘negative unintended consequences’.<sup>45</sup>

Professor Soar reported that the evidence does not support the need for greater fines for cyclists, stating ‘the incidence of bicycle riders involved in conflicts with pedestrians is small’ and that ‘over the past ten years there does not appear to have been a substantial increase in the number of pedestrian injuries resulting from collisions with cyclists despite the surge in participation in cycling’.<sup>46</sup> The Brisbane Central Business District Bicycle User Group agreed, stating that the evidence showed a ‘lack of risk to pedestrians from bicycle riders’, and it would be more appropriate for the penalty to be a maximum of 5 penalty units (if a penalty had to be introduced for cyclists).<sup>47</sup> Bicycle Queensland held similar views stating that ‘[i]t appears that bike riders have been “caught in the net” of the government’s legitimate efforts, fuelled by community concern, to clarify the safety obligations of scooter and other PMD users on bike paths’.<sup>48</sup>

Bicycle Queensland stated further:

While obviously we support the principle that bike riders should exercise due care and attention, we note that the need for these amendments has arisen since the introduction of e-scooters. Government is

<sup>40</sup> Dr Richard Buning, public hearing transcript, Brisbane, 9 November 2023, p 5.

<sup>41</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 2; DTMR, response to submissions, November 2023, p 2.

<sup>42</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 2.

<sup>43</sup> Explanatory notes, p 2. DTMR, response to submissions, November 2023, p 10.

<sup>44</sup> Professor Jeffrey Soar, submission 4.

<sup>45</sup> Brisbane Central Business District Bicycle User Group, submission 5, p 1.

<sup>46</sup> Professor Jeffrey Soar, submission 4.

<sup>47</sup> Submission 5, p 2 and p 4 of attachment.

<sup>48</sup> Submission 9, p 1.

acting here to fix a scooter problem, not a cycling problem and we would hate to see an unintended consequence in which misguided or over-zealous policing serves to discourage bike riding.

Active transport (walking and cycling) provides myriad individual and social benefits – it is healthy, fun, cuts congestion and reduces carbon emissions. The policy levers of government should be directed towards getting more people riding more often, not inadvertently acting the other way.<sup>49</sup>

While not directly addressing the potential impact of the amendments on cyclists, the Royal Australasian College of Surgeons (RACS), however, supported the proposed amendments to ensure that PMD riders ‘are treated in the same way as other road users’. RACS argued that the Bill would protect the individual rider and other road and footpath users, including pedestrians. RACS provided evidence in the form of ‘compelling statistics in relation to scooter injuries in Queensland’, which reflected ‘a growing injury toll over the past 5 years’, ranging from 38 cases in November/December 2018 to 1033 cases in 2022. The upward trend has continued in 2023 with a reported 716 cases from January to July 2023.<sup>50</sup> Dr Mathew Hope of RACS stated that ‘sensible regulation, manufacturing, software and road usage is imperative to protect the individual user and other road and footpath users, including pedestrians’ to ‘ensure the safety of all’.<sup>51</sup> Dr Hope advised that data collection remains an issue:

We remain concerned about the changing pattern of usage towards more private vehicles and the ongoing increase in injuries. We are seeing a greater number of significant, life-changing injuries, indicating there is a change and influence in increased speed related incidents. There is a difficulty because we do not have good national data collection. We really rely on collection at the hospital level. At this stage there is no national code for personal mobility devices to allow data collection.<sup>52</sup>

Dr Hope concluded that the Bill ‘is an important step towards the users of personal mobility devices being treated the same way as other road users’.<sup>53</sup>

In response to submitter statements regarding a lack of evidence to support cyclists being included in the cohort subject to the Bill’s provisions, DTMR stated that there was ‘significant under reporting in bicycle rider and pedestrian accidents along with complexities in differentiating the location of an incident’. DTMR advises that 300 bicycle riders were hospitalised due to a crash in 2022, and ‘reports from stakeholders and police have found that pedestrians and vulnerable path users continue to feel unsafe when using paths’. DTMR acknowledged that risks on road and road-related areas may be different, but the consequences of riding without due care and attention ‘can be equally severe, including serious injury and death’, particularly on pathways used by pedestrians of all ages and abilities. This is why DTMR considered that driver and rider obligations should be applied consistently, regardless of the type of vehicle or location of offending.<sup>54</sup>

DTMR argued that the maximum penalty for a breach of driving bikes and PMDs without due care and attention ‘represents an escalation in seriousness from most road rule offences and appropriately reflects the potential severity of these offences’. DTMR noted that the penalties associated with these offences are maximum penalties only, given courts have discretion to impose specific penalties based on the severity of the offending and the circumstances relating to it.<sup>55</sup>

In response to concerns that the Bill would detrimentally impact the number of people cycling, DTMR acknowledged the health, environmental and tourism benefits of cycling, as well as the benefits to

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<sup>49</sup> Submission 9, p 2.

<sup>50</sup> Submission 6, p 2.

<sup>51</sup> Public hearing transcript, Brisbane, 9 November 2023, p 14.

<sup>52</sup> Public hearing transcript, Brisbane, 9 November 2023, p 14.

<sup>53</sup> Public hearing transcript, Brisbane, 9 November 2023, p 14.

<sup>54</sup> DTMR, response to submissions, November 2023, pp 3, 4.

<sup>55</sup> DTMR, response to submissions, November 2023, p 3.

connecting communities. However, DTMR noted that bike riders also have full access to the road network and generally make use of roads in areas where there is likely to be a high level of interaction with pedestrians. To encourage the safe use of active transport, DTMR stated it was important ‘to ensure that a clear and robust regulatory framework exists to promote safe riding practices and protect all road and path users’.<sup>56</sup>

### 2.2.1.3 Subjective nature of offence

Professor Soar was concerned that the new offence would be subjective in its enforcement, providing the example that a cyclist could be issued an infringement during a peak travel time on the Goodwill Bridge for drinking from their water bottle while riding.<sup>57</sup> The Brisbane Central Business District Bicycle User Group also agreed:

Unlike driving under the influence and speeding offences, which can be definitively quantified via measuring instruments, the vagueness of this new rule means that other than in the obvious case of crashing with another path user - riders can’t be certain when they will or won’t be riding legally.<sup>58</sup>

Bicycle Queensland also urged ‘circumspection in police enforcement of due care and attention provisions in relation to cyclists on bike paths and shared paths’.<sup>59</sup>

In response to submitter comments stating that the new provisions would be open to capricious use/misuse by police because of their subjective nature, DTMR advised that the requirement to ride with due care and attention is ‘necessarily subjective as it is dependent on the rider and the rider environment’. The requirement for PMD riders and cyclists already applies on roads, but the Bill would require it to apply also on road-related areas. DTMR clarified that there are no on-the-spot fines for hit and run laws given the subjective nature of the offence.<sup>60</sup>

### 2.2.1.4 Disproportionate with other jurisdictions

The Brisbane Central Business District Bicycle User Group stated the ‘careless riding’ penalty is disproportionate with other jurisdictions.<sup>61</sup> DTMR advised that a similar offence exists in NSW for riding a bicycle negligently, furiously or recklessly. In regards to the Bill, DTMR advised that the ‘maximum penalty of 40 penalty units has been retained as this represents an escalation from most road rule offences and appropriately reflects the potential severity of careless riding’. The maximum penalty is up to the discretion of the courts. DTMR added that the Bill does not include ‘a penalty infringement notice for this offence to ensure proportionate penalties are imposed on a case-by-case basis’.<sup>62</sup> Penalties are discussed further from a fundamental legislative principle perspective in section 2.2.1.6.

### 2.2.1.5 Education campaign

Because PMD laws and policies ‘greatly vary across city, state and country’ with visitors often relying on their knowledge from their home communities when using PMDs in Queensland, QTIC stated that a communication plan should be developed to share all current and proposed PMD laws with tourists.<sup>63</sup> QDN also considered that a ‘robust education and awareness campaign around the changed rules and regulations and the impact of e-scooters on people with disability’ was required if the Bill is

<sup>56</sup> DTMR, response to submissions, November 2023, p 4.

<sup>57</sup> Submission 4.

<sup>58</sup> Submission 5, p 6 of attachment.

<sup>59</sup> Submission 9, p 2.

<sup>60</sup> DTMR, response to submissions, November 2023, p 6.

<sup>61</sup> Submission 5, p 9.

<sup>62</sup> DTMR, response to submissions, November 2023, pp 6, 7.

<sup>63</sup> Submission 3, p 2.

passed.<sup>64</sup> Bicycle Queensland also recommended ‘an appropriate public information campaign be undertaken to advise bike riders and PMD riders’ of their new obligations if the Bill is passed.<sup>65</sup>

In this regard, QDN recommended:

- Co-design of education and awareness raising strategies and actions with people with disability
- Communications materials translated into languages other than English for the high proportion of tourists hiring e-scooters particularly in the lead up to the 2032 Olympic and Paralympic Games
- Text message communications reminding people who have hired e-scooters about road rules and safety
- Signage in areas of high e-scooter traffic communicating new road rules particularly for private owners of e-scooters who may not otherwise be aware of changed legislation.<sup>66</sup>

Additionally, QTIC advised that an opportunity existed to use the tourism visitor centres network across Queensland to ‘ensure consistent messaging’, and recommended the approach should ‘be clear and accessible, employing various communication channels, including websites, mobile apps, and physical signage’. QTIC also recommended that micromobility providers educate users on road rules before they can use their devices and that providers collect necessary documentation from riders in case of later incidents.<sup>67</sup>

DTMR noted the recommendation for a communication plan to share all current and proposed PMD laws with tourists and other riders and advised that a communication campaign would be implemented in support of the proposed changes. This will include social media posts, clear web content and updated educational material, such as brochures that outline the rules and penalties for PMD riders.<sup>68</sup>

Regarding comments about the varying PMD laws and policies across jurisdictions and the issues this raises for riders dealing with multiple requirements, DTMR advised that it has written to the National Transport Commission to advocate for consistent PMD rules to be adopted across Australia.<sup>69</sup>

In regard to the use of tourism visitor centres to disseminate information, DTMR advised that it will work closely with the PMD Safety Reference Group to ensure communication material is distributed effectively. DTMR will also contact the Department of Tourism, Innovation and Sport to discuss supporting communication of the new laws, particularly to tourists.<sup>70</sup>

Finally, DTMR advised that it works closely with micromobility providers to ensure users are aware of the rules and that they are clearly communicated and easy to access. In relation to collecting information, DTMR advised:

The collection and sharing of private data by shared scheme providers is not something that TMR administers through the Queensland Road Rules. Shared scheme providers enter into agreements with local government to operate in certain areas, data sharing arrangements may be captured within these arrangements.<sup>71</sup>

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<sup>64</sup> Submission 7, p 2.

<sup>65</sup> Submission 9, p 2.

<sup>66</sup> Submission 7, p 2.

<sup>67</sup> Submission 3, p 2.

<sup>68</sup> DTMR, response to submissions, November 2023, p 2.

<sup>69</sup> DTMR, response to submissions, November 2023, p 2.

<sup>70</sup> DTMR, response to submissions, November 2023, p 2.

<sup>71</sup> DTMR, response to submissions, November 2023, p 3.

### 2.2.1.6 *Fundamental legislative principles - penalties*

The committee considered whether the Bill was potentially inconsistent with fundamental legislative principles regarding the introduction of a new offence into the TORUM Act that would require cyclists and riders of a PMD to drive with due care and attention and with reasonable consideration of other persons in road-related areas.<sup>72</sup>

To have sufficient regard for the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.<sup>73</sup>

The department justified including the proposed new offence in the TORUM Act on the grounds that it is consistent with existing section 84(2) of the Act and the penalty is proportionate for the offence:

It is closely aligned with the existing offence in section 84(2) to drive a vehicle (other than a motor vehicle), a tram, a train, or an animal on a road without due care or attention or without reasonable consideration for other persons using the road. Section 84(2) already applies to bicycles and PMDs when used on a road.

Section 84(2) has a maximum penalty of 40 penalty units or 6 months imprisonment. The consistent maximum financial penalty of 40 penalty units for the new section 84AA and the existing section 84(2) reflect that these offences regulate the same behaviour where the only difference is whether offending occurs on a road-related area or a road. It was not considered appropriate to impose an imprisonment term for offending on a road-related area under section 84AA.<sup>74</sup>

#### **Committee comment**

We note concerns from cyclist organisations regarding the Bill's proposal to introduce a requirement for PMD and bicycle riders to ride with due care and attention on road-related areas. However, we support the view that the consequences of riding without due care and attention can be equally severe regardless of where incidents may occur, particularly given that road-related areas are also used by pedestrians of all ages and abilities. We agree that rider obligations should be applied consistently regardless of the type of vehicle or location of offending. Furthermore, we note that the proposed provision to ride with due care already exists for PMD and bicycle riders on roads under section 84(2) of the TORUM Act, and the Bill would extend the requirement to road-related areas.

In relation to the application of the maximum penalty (\$6,192) for not riding with due care and attention, we note that courts will have discretion to impose specific penalties based on the severity of the offending and the circumstances relating to it. We believe this is an appropriate approach and would reflect the potential severity of offences that could lead to injury or even death. We also note concerns about the subjective nature of the offence; however, the Bill provides for this as there will be no on-the-spot fines for hit and run laws with courts having to consider the circumstances.

In regard to educating PMD riders about changes to the law, we are pleased that DTMR will implement a communication plan to ensure PMD laws are shared and understood by riders, particularly tourists. Given the varying requirements of PMD riders across jurisdictions, we are also pleased that DTMR is advocating with the National Transport Commission for consistent PMD rules to be adopted around Australia.

In regard to considering penalties and their consistency with fundamental legislative principles, given that there is an existing offence, including a penalty for bicycles and PMDs when used on a road, and

<sup>72</sup> Bill, cl 55 inserts TORUM Act, new s 84AA; Bill, cl 66 amends Road Rules, s 15A; explanatory notes, p 2.

<sup>73</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC Notebook* (Notebook), p 120. See also LSA, s 4(2)(a).

<sup>74</sup> Explanatory notes, pp 11-12.

that the penalty of 6 months imprisonment will not apply to offending on a road-related area, we are satisfied that the new offence has sufficient regard for the rights and liberties of individuals.

## **2.2.2 Duties and liabilities of drivers involved in incidents resulting in injury or death**

The Bill proposes to extend the current requirement for drivers of non-motor vehicles, such as e-scooter riders and cyclists,<sup>75</sup> to be consistent with that of motor vehicle drivers. That is, they will be required to stop and render assistance at incidents resulting in injury or death on road-related areas as well as on roads.<sup>76</sup> The department described these post-crash obligations as ‘important hit and run laws’ which currently apply to all drivers and riders but only apply to PMD and bicycle riders when operating on a road.<sup>77</sup>

If a person fails to comply with this requirement, the maximum penalty ranges from 20 penalty units (\$3,096) or one year’s imprisonment to 120 penalty units (\$18,576) or 3 years imprisonment.<sup>78</sup> If in determining a complaint for an offence, the court is satisfied that the defendant showed a callous disregard for the needs of a person injured in the incident, the court must impose, as the whole or part of the sentence, a period of imprisonment. If the incident results in the death of or grievous bodily harm to a person and the court convicts a person of the offence, the court must disqualify the person from holding or obtaining a Queensland driver licence for a period of at least 6 months.<sup>79</sup>

The department advised that ‘[t]hese offences aim to address and deter dangerous behaviours on road-related areas, where a failure to comply can be the difference between life or death for an injured person’. Furthermore, the department stated that ‘[w]hile the risk of crash and injury may be different on a road when compared to a road-related area, the consequences are equally severe, including serious injury or death’.<sup>80</sup>

In response to concerns about penalties, DTMR advised that it had considered the application of them during development of, and consultation on, the Bill.<sup>81</sup>

The department concluded with the following:

There have been incidents where PMDs and bicycles have collided with pedestrians requiring hospitalisation of the pedestrian and the rider has left the crash scene without rendering assistance. If the PMD or bicycle rider leaves the scene, the pedestrian may be left without medical assistance that could save their life. Further, as the rider will not be able to be identified, the pedestrian may be unable to take further steps to support compensatory claims.<sup>82</sup>

### **2.2.2.1 Vulnerable users**

The Brisbane Central Business District Bicycle User Group stated that the offence should be limited to riders who are involved in a crash with another path user and should not apply to children.<sup>83</sup>

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<sup>75</sup> This includes any transport that moves on wheels, such as PMDs, bicycles, motorised mobility devices, wheelchairs, skateboards, toy scooters and other similar wheeled devices. Explanatory notes, p 7.

<sup>76</sup> Bill, cl 57 amends TORUM Act, s 92; explanatory notes, p 7.

<sup>77</sup> Department of Transport and Main Roads, correspondence, 7 November 2023, p 1.

<sup>78</sup> Bill, cl 57 amends TORUM Act, s 92. The greater maximum penalties apply if the incident results in the death or grievous bodily harm of a person.

<sup>79</sup> TORUM Act, s 92(2).

<sup>80</sup> DTMR, correspondence, 7 November 2023, p 1.

<sup>81</sup> DTMR, correspondence, 7 November 2023, p 1.

<sup>82</sup> DTMR, correspondence, 7 November 2023, p 1.

<sup>83</sup> Brisbane Central Business District Bicycle User Group, submission 5, p 1.

The department advised that the Bill gives due consideration to vulnerable people, including children, who may be unable to exchange information with other people involved in crashes because the disclosure of their personal details may place them at considerable risk. The department advised:

In these circumstances, a driver or rider will be able to withhold their personal information but must report the incident to a police officer, including providing their personal information, to support further investigation for enforcement or insurance purposes. These protections to support the safety of vulnerable people like the victims of domestic and family violence and children will apply on roads and road related areas for all types of vehicles.<sup>84</sup>

RACQ expressed support that the requirement for a child or a vulnerable road user to provide their particulars to the police had been addressed.<sup>85</sup>

#### 2.2.2.2 *Fundamental legislative principles - penalties*

The committee considered the Bill's proposal to require PMD riders and cyclists to stop and render assistance at incidents resulting in injury or death on road-related areas when examining the rights and liberties of individuals and whether the penalties imposed by the proposed legislation are proportionate to the offence and consistent with other penalties.

The maximum penalties that could be imposed on PMD riders and cyclists<sup>86</sup> under the proposed extended offence provision are significant, with persons potentially facing imprisonment or a hefty fine. However, the penalties that would be imposed are consistent with the current obligation on motor vehicle drivers in non-road areas, and with the current obligation on non-motor vehicle drivers on roads.

Road-related areas include areas such as footpaths, bike paths and certain public trails,<sup>87</sup> so it is likely that there will be a wider range, in both age and skill level, of non-motor vehicle drivers on those areas than on roads. For example, children and people with disability are more likely to ride on a footpath or bike path than on a road. The department recognises that the new requirement has the potential to be problematic for some vulnerable people, such as children, who 'may not be capable of understanding or complying with their obligation to render assistance at the scene of a crash causing injury or death'.<sup>88</sup> The explanatory notes stated that protections exist in legislation to mitigate these risks:

- Section 92(1)(b) balances the level of assistance a driver must provide with their capacity to do so. In the event of a crash causing death or injury, a driver is required to 'render such assistance as the driver can' and 'make reasonable endeavors to obtain medical and other aid'. This strikes an appropriate balance to ensure injured persons receive timely aid, where possible, while not unreasonably placing obligations on young people that they may not have the maturity, capacity or capability to understand and comply with the obligation; and
- a young person riding a PMD is required to be at least 12 years of age, and if under the age of 16 is required to be accompanied by an adult. It is envisaged that an accompanying adult would assist a young person in meeting the requirements ...<sup>89</sup>

While the Bill would simply extend the existing duties of non-motor vehicle drivers involved in incidents from just roads to roads and road-related areas, the maximum penalties for the offence include imprisonment and sizeable fines. It is also likely that some members of the community, such

<sup>84</sup> DTMR, public briefing, Brisbane, 23 October 2023, p 3.

<sup>85</sup> Submission 8, p 1.

<sup>86</sup> Or other non-motor vehicle drivers.

<sup>87</sup> Explanatory notes, p 7; Road Rules, s 13.

<sup>88</sup> Explanatory notes, p 7.

<sup>89</sup> Explanatory notes, pp 7-8.

as children, who are not subject to the existing law would be subject to the extended offence. In this regard, the committee sought further information from DTMR.

DTMR responded that '[t]he proposed penalties for post-crash obligations in the Bill are the same penalties that currently apply to PMD and bicycle riders on roads' and '[t]he expansion of these obligations and their associated penalties ensures that everyone involved in a crash has the same rights and responsibilities, no matter where the crash occurs or who was involved'.<sup>90</sup>

In response to concerns about penalties, DTMR advised that throughout the Queensland Road Rules (QRRs), the penalties for rider offences are the same regardless of the infrastructure that an incident occurs on or the age of the rider. Consistency in the regulatory framework is necessary to ensure the safe use of devices in all public areas. In regard to concerns about the maximum penalties associated with hit and run offences, DTMR noted that the Bill proposes these as *maximum* penalties only and the courts have discretion to impose specific penalties based on the severity of offending and the circumstances relating to it. DTMR advised further that '[t]here is no on-the-spot fine for hit and run laws given the subjective nature of the offence'.<sup>91</sup>

DTMR concluded by stating:

There is a need for a strong deterrent to encourage safe riding everywhere, which aligns with the long-standing principle of consistent penalties for transport offences, regardless of driver age, vehicle type or location of offending.<sup>92</sup>

In relation to penalties and vulnerable users such as children, DTMR advised that during the development of the Bill, it considered that PMD and bicycle riders can include minors who often ride on road-related areas. The current PMD regulatory framework under the QRRs applies to all riders, regardless of age, on both road and road-related areas. For example, minors are currently required to wear helmets and abide by speed limits on all roads and road-related areas.<sup>93</sup>

However, DTMR stated that 'there is ultimately no need to expressly address minors within the Bill as there are other mechanisms available to ensure laws are applied to minors appropriately' and provided the following example:

For example, the requirement to stop and render assistance in the event of a crash is subjective and balances the level of assistance a driver or rider must provide with their capacity to do so. This strikes an appropriate balance to ensure injured persons receive timely aid, where possible, while not unreasonably placing obligations on young people who may not have the maturity, capacity or capability to respond.<sup>94</sup>

DTMR advised that the Bill also includes safeguards for vulnerable people, including minors, who may be exposed to potential harm if the provided personal details to another party involved in a crash. The Bill would allow for a minor who is riding a PMD or bicycle and does not feel comfortable providing their name and address to an unknown adult in the event of a crash to instead report the incident and provide their details to a police officer.<sup>95</sup> DTMR stated there were further considerations that could be applied to children:

In addition, alternative enforcement options are available and commonly used for offences committed by children. These include diversionary options under the *Youth Justice Act 1992* such as; taking no action,

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<sup>90</sup> DTMR, correspondence, 7 November 2023, p 1.

<sup>91</sup> DTMR, correspondence, 7 November 2023, pp 1, 2.

<sup>92</sup> DTMR, correspondence, 7 November 2023, p 2.

<sup>93</sup> DTMR, correspondence, 7 November 2023, p 2.

<sup>94</sup> DTMR, correspondence, 7 November 2023, p 2.

<sup>95</sup> DTMR, correspondence, 7 November 2023, p 2.



officially cautioning the child, or referring the child to a restorative justice conference. The Queensland Police Service has established processes for dealing with minors that include these diversionary options.<sup>96</sup>

DTMR advised that the Queensland Family and Child Commission was consulted about the proposed amendments.<sup>97</sup>

### **Committee comment**

We considered several factors when examining the penalties proposed for a PMD rider who does not stop and render assistance at an incident resulting in injury or death on a road-related area. We note advice that there have been incidents where PMD riders and cyclists have left a crash scene without rendering assistance, which poses a significant threat to the safety and potentially life of the victim. We understand that the amendments in the Bill would rectify the current gaps in the existing framework, creating more consistency which we agree is an essential part of achieving road safety outcomes. We agree that it is important to clarify to the public their obligations regardless of their age, vehicle or the infrastructure they are operating on.

We are pleased that the Bill also provides for vulnerable users.

We note the Bill proposes a maximum penalty for the hit and run offences; however, the courts will have discretion to impose specific penalties based on the severity of offending and the circumstances relating to it.

We are satisfied that the department's justification for penalties is adequate, such that the amendments have sufficient regard to the rights and liberties of individuals.

#### ***2.2.2.3 Fundamental legislative principles – reversal of onus of proof***

In determining whether legislation has sufficient regard to rights and liberties of individuals, one of the matters to consider is whether the legislation reverses the onus of proof in criminal proceedings. Without adequate justification, it should not do so.<sup>98</sup>

#### ***Duties of a driver involved in a crash***

In a proceeding for an offence under the TORUM Act, the defendant bears the onus of proving that they were exempt from a provision of the TORUM Act.<sup>99</sup> The standard required is on the balance of probabilities.<sup>100</sup>

The Bill proposes to provide that the requirement a driver must stop and provide their details<sup>101</sup> after a crash does not apply if the driver reasonably believes stopping and giving their details to a person would be likely to expose the driver or someone else to harm, and they give their details to a police officer within the required time.<sup>102</sup>

The amendment is intended to protect vulnerable drivers from potential harm.<sup>103</sup>

<sup>96</sup> DTMR, correspondence, 7 November 2023, p 2.

<sup>97</sup> DTMR, correspondence, 7 November 2023, p 2.

<sup>98</sup> LSA, s 4(3)(d); OQPC, Notebook, p 36.

<sup>99</sup> TORUM Act, s 123M; explanatory notes, p 12.

<sup>100</sup> Explanatory notes, p 12.

<sup>101</sup> That is, their name and address; the name and address of the owner of the vehicle; the vehicle's registration number, if any; and any other information necessary to identify the vehicle. TORUM Act, s 93(5).

<sup>102</sup> Bill, cl 58 amends TORUM, s 93(4A) to be renumbered s 93(5).

<sup>103</sup> Explanatory notes, p 12.

According to the explanatory notes, reversal of the onus of proof is essential ‘to maintain the integrity of the provision’.<sup>104</sup> The explanatory notes explain:

It is important that vulnerable drivers are protected from providing their information to another person in circumstances that would cause the driver to reasonably expect to result in harm. However, the driver is the only person who has the information to establish that subsection (4A) applied at the time of the offence. A police officer who is not at the scene of the crash, has no ability to determine whether or not section 93(4A) applies to the driver. It is not the policy intention to create a situation where an offence under section 93(2) cannot be proven unless the prosecution can establish beyond a reasonable doubt that there was no reasonable expectation that the driver, or another person, would be exposed to harm.

It is reasonable to expect that if a driver did not comply with a requirement under section 93(2), and they are the only person who has the information needed to establish why they did not comply with section 93(2), then that driver should be required to prove that the offence of section 93(2) did not apply to them at the time of the offence.<sup>105</sup>

### **Committee comment**

We are satisfied that the justification provided in the explanatory notes for the reversal of the onus of proof is adequate, such that the amendments have sufficient regard to the rights and liberties of individuals.

### ***Evidentiary provision for driver distraction offence***

The Bill would widen the potential application of an evidentiary provision in the TORUM Act which reverses the onus of proof.<sup>106</sup>

The Bill provides an extended evidentiary provision to support the enforcement of certain driver distraction offences. There has been a national agreement on the types of electronic devices that drivers should be expressly prohibited from using while driving. These include, for example, portable devices like tablets and media players; wearable devices like smart watches and smart glasses; and certain devices that are inbuilt or physically tethered to a vehicle or motorcycle helmet. Queensland is currently reviewing the proposed changes. An amendment in the Bill would support adoption of these changes into the QRRs at a later stage.<sup>107</sup>

According to the explanatory notes, the object of the amendment is ‘to ensure the continued operation of the evidentiary provision, that supports camera-detected enforcement, if driver distraction offences are broadened in the future. For example, to capture other electronic devices, in addition to mobile phones’.<sup>108</sup> This could include media players, tablet computers and laptops.<sup>109</sup>

The Bill defines ‘driver distraction offence’ to mean an offence prescribed by regulation and involves the use of a mobile phone by a person in a vehicle or the use, operation or holding of an electronic device by, or the resting of an electronic device on, a person in a vehicle.<sup>110</sup>

The amended evidentiary section provides that if the prosecution intends to rely on an image or video made by a photographic detection device as evidence of a matter in relation to the offence, in the

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<sup>104</sup> Explanatory notes, p 12.

<sup>105</sup> Explanatory notes, p 12.

<sup>106</sup> See Bill, cl 62 amends TORUM Act, s 120E.

<sup>107</sup> DTMR, public briefing transcript, Brisbane, 23 October 2023, p 4.

<sup>108</sup> Explanatory notes, p 31.

<sup>109</sup> Explanatory notes, p 5.

<sup>110</sup> Bill, cl 62 inserts TORUM Act, new s 120E(3). The Bill prescribes section 300 of the Transport Operations (Road Use Management—Road Rules) Regulation 2009 as a driver distraction offence. Section 300 provides it is an offence for a driver of a vehicle to use a mobile phone while the vehicle is moving, or is stationary but not parked. See Bill, cl 68 inserts Road Rules, new s 353ABA.

absence of proof to the contrary, the vehicle depicted in the image or video is taken to be moving, or stationary, but not parked.<sup>111</sup>

The explanatory notes set out the justification for reversing the onus of proof, including that a person has the right to contest the evidence presented in the images or video, such as in court, and that road safety benefits would result from efficient enforcement processes.<sup>112</sup>

The statement of compatibility advises that distracted driving ‘on average accounts for approximately 14 per cent of the road toll and almost 20 per cent of serious injuries each year and is one of the ‘Fatal Five’ road behaviours’.<sup>113</sup> It continues:

Research has shown that using a mobile phone while driving is just as dangerous as drink drivers with a blood/breath alcohol content of 0.07 – 0.10. There is empirical evidence demonstrating that driver interactions with mobile phones, in-built vehicle infotainment systems, and wearable technologies can significantly degrade driving performance. Visual-manual interactions (for example, mobile phone texting, manual input of a destination into a navigation system) have a greater potential to interfere with activities critical for safe driving than voice interactions. However, research also found voice interactions have the potential to degrade driving performance compared to driving while not engaged in a secondary task.<sup>114</sup>

The statement of compatibility contends that, ‘[t]he ability for offences to be prosecuted and setting up a system to allow for effective court processes will be critical in reinforcing the deterrent effect and encouraging behavioural change in drivers’.<sup>115</sup>

### **Committee comment**

Noting the additional data from the statement of compatibility regarding the dangers of distracted driving and the statement regarding the need for effective court processes, we are satisfied that the justification provided in the explanatory notes for the reversal of the onus of proof is adequate, such that the amendments have sufficient regard to the rights and liberties of individuals.

### **2.2.3 Other comments outside the scope of the Bill**

QTIC recommended that the Queensland Government ‘consider planning for micromobility-only pathways and incorporating safe wayfinding routes and signage specifically for micromobility use’.<sup>116</sup> RACQ also expressed the view that ‘improvements in infrastructure [such as wider pathways and segregated lanes to reduce incidents] and greater enforcement of the rules are also vital in increasing safe use of e-mobility devices’.<sup>117</sup> DTMR advised that it supported the increased use of physically separated infrastructure and ‘will advocate for all levels of government to accelerate the roll out of physically separated path infrastructure to support safer PMD and bike use in high-volume corridors’.<sup>118</sup> In relation to enforcement, DTMR advised that the Queensland Police Service (QPS) is responsible for enforcement of road rules and has conducted a number of ‘high-visibility enforcement operations to target PMD riders’. DTMR will continue to work with QPS in this regard.<sup>119</sup>

<sup>111</sup> See Bill, cl 62 amends TORUM Act, s 120E.

<sup>112</sup> Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020, explanatory notes, pp 11-12.

<sup>113</sup> Statement of compatibility, p 29.

<sup>114</sup> Statement of compatibility, p 29.

<sup>115</sup> Statement of compatibility, p 30.

<sup>116</sup> Submission 3, p 2.

<sup>117</sup> Submission 8, p 1.

<sup>118</sup> DTMR, response to submissions, November 2023, p 3.

<sup>119</sup> DTMR, response to submissions, November 2023, p 8.

QDN called for future legislative amendments to include stronger regulation through the registration of PMDs and consideration of alcohol use and e-scooter riding.<sup>120</sup> DTMR advised that it was reviewing the legislation that governs under-the-influence offences and investigating ways to make enforcement of drink and drug riding more efficient. This includes ‘considering legislative changes to enable random breath and saliva testing, setting an appropriate breath/blood alcohol concentration limit, and penalties for those offences’.<sup>121</sup>

Greg Robinson was concerned about the safety of riders, particularly young people, of electric scooters and e-bikes, calling for the government to go further in its amendments to improve road safety by banning electric scooters and e-bikes that can exceed the current speed limits for such devices. Mr Robinson stated that ‘[t]ighter rules need to be introduced and enforced, with significant penalties applied to people who illegally modify their scooters or bikes’.<sup>122</sup>

In response to concerns regarding speed and e-scooters, DTMR advised that the package of road rule amendments introduced in November 2022 included a new 12 km/hr speed limit on footpaths and shared paths, unless signed otherwise, and new tiered penalties for speeding offences. DTMR clarified that the maximum speed for PMDs is 25 km/hr, but this only applies when riders travel on dedicated bike infrastructure and on roads, where permitted. DTMR also stated that riders are required to operate a PMD at a lower speed than the maximum capacity of their device, which reflects the way speed is regulated for other motor vehicles.<sup>123</sup>

Mr Robinson also called for DTMR to require riders to have licences for motor scooters, for them to be registered and for riders to undergo training before use.<sup>124</sup> DTMR advised that PMDs, like other recreational vehicles, are not required to be registered and riders do not require a driver licence. DTMR views the administrative and regulatory costs to both users and government would outweigh any benefits to the scheme. Furthermore, DTMR noted that no other Australian jurisdiction requires this.<sup>125</sup>

Mr Robinson also called for tighter rules and enforcement with significant penalties to be introduced for illegal modification of scooters and bikes.<sup>126</sup> DTMR advised that it has advocated for a review of importation requirements to address these broader PMD issues to the Australian Government.<sup>127</sup>

### **2.3 Consistent safety duty regulatory framework for road-based public passenger services**

At present, the safety duty requirements in the TOPTA only apply to personalised transport services, such as taxi services.<sup>128</sup> The Bill proposes to adapt the safety duty framework to establish a consistent framework for safety duties across most road-based passenger services.<sup>129</sup> The safety duties would apply to persons (duty holders) who are in a position to influence the safety aspects of road-based passenger services.<sup>130</sup> According to DTMR, this ‘modern, risk-based’ approach would ‘reduce

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<sup>120</sup> Submission 7, p 2.

<sup>121</sup> DTMR, response to submissions, November 2023, p 8.

<sup>122</sup> Submission 2.

<sup>123</sup> DTMR, response to submissions, November 2023, p 1.

<sup>124</sup> Submission 2.

<sup>125</sup> DTMR, response to submissions, November 2023, pp 1, 2.

<sup>126</sup> Submission 2.

<sup>127</sup> DTMR, response to submissions, November 2023, p 2.

<sup>128</sup> See TOPTA, ch 7, pt 3.

<sup>129</sup> See Bill, cl 38 inserts TOPTA, new ch 6A; explanatory notes, pp 8, 13.

<sup>130</sup> Explanatory notes, p 8.

prescriptive regulation and allow industry to be more proactive about identifying and managing current and emerging safety risks'.<sup>131</sup>

Under the proposed amendments, duty holders would have an obligation to ensure the safety of their services by eliminating risk as far as is reasonably practicable.<sup>132</sup> If duty holders contravene their duties under the proposed framework, they would potentially face significant fines, with the penalties scaled, based on the risk to safety.<sup>133</sup>

The fines range from a maximum penalty of 100 penalty units (\$15,480) for an individual<sup>134</sup> who fails to comply with certain requirements, such as failing to have a safety management plan, through to a maximum penalty of 3,000 penalty units (\$464,400) or 5 years imprisonment for an individual<sup>135</sup> for recklessly contravening a safety duty that exposes individuals to risk of death or serious injury.<sup>136</sup> Executive officers of a corporation who fail to exercise due diligence to ensure the corporation complies with the safety duty would face maximum penalties equivalent to the penalties for individuals.<sup>137</sup> The offences for failing to comply with safety duties<sup>138</sup> are consistent with current sections 90, 91 and 91A of the TOPTA.<sup>139</sup>

The Bill would also provide for offences and penalties relating to compliance with audit notices and directions to comply that would apply to duty holders of road-based public passenger services.<sup>140</sup>

### 2.3.1 Interaction of the Bill with the *Work Health and Safety Act 2011* and HVNL (Qld)

#### 2.3.1.1 *Potential for duplication of regulation*

The Queensland Bus Industry Council (QBIC) was concerned that the Bill would duplicate regulation in relation to safety obligations for passenger transport, and this could lead to unintended 'legal consequences'. QBIC stated the safety duties for road-based public passenger services as proposed in the Bill are similar to those of the *Work Health and Safety Act 2011* (WHS Act) and Heavy Vehicle National Law Qld (HVNL (Qld)).<sup>141</sup> QBIC advised it had not been able to identify any area in the Bill that would not be currently covered by the WHS Act or HVNL (Qld), and that the Bill as presented 'does not provide a clear and precise explanation of the law or other laws that work in conjunction to it'.<sup>142</sup>

QBIC provided an example regarding the definition of 'reasonably practicable' (section 67 of the Bill) and compared it to the definitions in the WHS Act and HVNL (Qld). QBIC concluded that comparing the examples indicated that the Bill is drafted to preference the HVNL (Qld) legislation.<sup>143</sup> QBIC explained further:

The Bill however clearly recognises that the WHS Act and HVNL (Qld) are safety law as defined in section 67. QBIC is unclear how this will interrelate with section 67K of the Bill. There is no indication in the

<sup>131</sup> Public briefing transcript, Brisbane, 23 October 2023, p 3.

<sup>132</sup> Explanatory notes, p 8.

<sup>133</sup> Explanatory notes, p 8.

<sup>134</sup> 1,000 penalty units (\$154,800) for a corporation.

<sup>135</sup> 30,000 penalty units (\$4,644,000) for a corporation.

<sup>136</sup> Bill, cl 38 inserts TOPTA, new ss 67V, 67W, 67X, 67ZC; explanatory notes, pp 8, 14.

<sup>137</sup> Bill, cl 38 inserts TOPTA, new s 67P.

<sup>138</sup> That is, new ss 67V, 67W and 67X.

<sup>139</sup> Explanatory notes, p 26. See also TOPTA, s 89.

<sup>140</sup> Bill, cl 38 inserts TOPTA, new ss 67ZF, 67ZH.

<sup>141</sup> Submission 10, p 1.

<sup>142</sup> Submission 10, pp 5, 7.

<sup>143</sup> Submission 10, p 2.

explanatory note as to why and how these pieces of legislation will interact particularly with the transfer of Queensland compliance and other duties to the NHVR.<sup>144</sup>

DTMR advised that the intent of the amendments is not to duplicate existing requirements under the WHS Act and HVNL but streamline requirements as they apply to the provision of passenger transport services and strengthen industry understanding and compliance. DTMR added that the purpose of the proposed approach is to align with and complement the WHS Act and HVNL—similar to how the HVNL safety duty provisions already work with the WHS Act to regulate heavy vehicles.<sup>145</sup> DTMR explained why the amendments are required for the passenger transport industry:

While most operators of public passenger transport services are already required to comply with a general safety duty under the WHS Act and HVNL, these laws are not contextualised to the passenger transport industry. They sit alongside the current prescriptive TOPTA requirements, making it challenging for operators to comply. Moving to a safety duty approach aims to reduce the level of prescriptive regulation, allowing industry to be more proactive about identifying and managing current and emerging safety risks, while still allowing TMR to take compliance and enforcement action regarding public passenger service related issues.<sup>146</sup>

DTMR advised that it did not expect industry to have to make significant adjustments to apply the new framework as it will be based on the HVNL Chapter 1A which in turn was based on the WHS Act. The department explained why the Bill would decrease red tape for the passenger transport industry:

It is envisaged that only a single safety management plan would be required to satisfy requirements under all three Acts. This will mean less duplication and red tape for industry, and that the safety of passengers and employees in all types of passenger transport vehicles is assured in a consistent manner.<sup>147</sup>

According to DTMR, this approach would bring Queensland ‘into line with other Australian jurisdictions that impose a safety duty, or a plan to manage safety or both on providers of road-based public passenger services through their passenger transport legislation’.<sup>148</sup>

### 2.3.1.2 Definition of terms

QBIC also expressed the need for clarity for the term for the Person Conducting a Business or Undertaking (PCBU) to ensure staff understand their responsibilities. The Bill does not contain a definition of an Executive Officer but the TORUM, WHS Act and HVNL Act do. QBIC queried that, as the Bill and current Acts have different definitions and where PCBUs are subject to all 3 Acts, how they would determine which definition is the correct one in different scenarios of prosecution or disqualification by TMR. This is a situation, QBIC claimed, that could cause legal issues as it is not clear in the proposed legislation.<sup>149</sup>

In regard to the definition of ‘executive officer’, DTMR advised:

- the safety duty amendments refer to ‘executive officer’ rather than ‘officer’ for consistency with the HVNL
- the Bill does not include a definition of ‘executive officer’ because that term is already defined in schedule 3 of TOPTA
- this existing definition is consistent with the definition of executive officer in the HVNL and will apply to the safety duty amendments.<sup>150</sup>

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<sup>144</sup> Submission 10, p 2.

<sup>145</sup> Explanatory notes, p 18; DTMR, response to submissions, November 2023, p 11.

<sup>146</sup> DTMR, response to submissions, November 2023, p 11.

<sup>147</sup> DTMR, response to submissions, November 2023, p 11.

<sup>148</sup> DTMR, response to submissions, November 2023, p 11.

<sup>149</sup> Submission 10, p 4.

<sup>150</sup> DTMR, response to submissions, p 12.

### 2.3.1.3 *Relationship with other safety laws and compliance*

QBIC also expressed concern about section 67K of the Bill – Relationship with other safety laws – in that the proposed section states that *If a provision of this part and a provision of another safety law deal with the same thing and it is possible to comply with both provisions, a person **must** comply with both provisions* (emphasis added). QBIC stated that this provision would result in ‘the extraordinary circumstance that regardless of cost, practicality or common sense even if there is the smallest chance or practicality of complying with both, it must be done otherwise a duty holder is in breach’. QBIC reported that it was unable to find similar provisions in the WHS Act or HVNL (Qld). The WHS Act ‘allows for assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk’. QBIC concluded that the Bill’s proposal ‘is simply untenable’.<sup>151</sup>

However, DTMR advised that the section 67K amendments ‘expressly contemplate the relationship between the amendments in the Bill and the HVNL and WHS Act’ as section 67K is based on section 18 of the HVNL, which has been in place since 2018, and section 85 of TOPTA that has applied to personalised transport services since 2017, with these provisions appearing to work effectively with the WHS Act. DTMR added that section 67K clarifies a) that a person cannot be punished twice for an act, omission or circumstances that constitutes an offence under TOPTA and also under the HVNL or WHS Act, and b) that, where there is a conflict between safety laws, the other safety law will prevail.<sup>152</sup>

In response to concerns that a person must comply with both provisions, DTMR stated that ‘requirements to comply with the safety duties under the proposed amendments are tempered by “so far as is reasonably practicable”’, reflecting the ‘general safety duty approach applying to personalised transport since 2017’.<sup>153</sup>

In support of DTMR’s statements regarding concerns about compliance with all safety law provisions, it is noted that section 67(K)(1) of the Bill states that where it is *possible* a person must comply with both provisions. Further, section 67(K)(2) states that *to the extent it is not possible for the person to comply with a provision of this part and a provision of another safety law dealing with the same thing, the person must comply with—*a) *the provision of the other safety law; or b) if, under the other safety law, the person is required to comply with a provision of another safety law—the provision of the other safety law*. In this regard, it is clear a person **must** comply with both provisions of safety law only to the extent it is possible for them to do so but must comply with the other safety law if they are unable to comply with both.

### 2.3.1.4 *Exclusion of the State from responsibility for contractual arrangements or services*

QBIC was also concerned that section 67J(3) would exclude the State from being responsible for any contractual arrangements or services. QBIC explained:

It is concerning that the organisation in the contractual chain responsible for such a large impact on service delivery and safety are exempting themselves from the safety requirements that all operators and Drivers must abide by. It is our view that the HVNL (Qld) would not be able to enforce the same standard of safety on TMR as it would for other private and public operators if the Bill was to proceed as it stands.

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<sup>151</sup> Submission 10, p 5.

<sup>152</sup> DTMR, response to submissions, pp 11, 12.

<sup>153</sup> DTMR, response to submissions, p 12. See section 67ZC(4) of the Bill.

We believe that the exemption in the Bill is contrary to the State Government's previous position of supporting a harmonisation between the WHS Act and the HVNL.<sup>154</sup>

DTMR explained why the State being excluded from the TOPTA safety duty provisions is 'practical and necessary':

As the State provides services through contract partners, rather than providing services directly, requirements around safety duties and preparation of safety management plans would be artificial, particularly as TMR would be in the role of monitoring and enforcing itself. This differs from the WHS Act for example, where the State is an employer and is directly providing a work environment for its employees. TMR will still need to comply with requirements under the HVNL and WHS Act (noting that section 17 of the HVNL means criminal liability for offences under that Act does not attach to the State). Importantly, TMR has duty of care under general law and will be ensuring contracts with providers are consistent with the safety duty requirements.<sup>155</sup>

### **Committee comment**

One of the key concerns for submitters was that the provisions in the Bill relating to the safety duty regulatory framework for road-based passenger transport would duplicate existing requirements under the WHS Act and HVNL. However, we note the department's advice that while operators of public passenger transport services are already required to comply with a general safety duty under the WHS Act and HVNL, these laws are not contextualised to the passenger transport industry. This makes it challenging for operators to comply. We support the proposed amendments as their aim is to reduce the level of prescriptive regulation to allow industry to more readily identify and manage current and emerging risks. We note the department's advice that by implementing a single safety management plan, as proposed in Part 3 of the Bill, operators will satisfy requirements under all 3 Acts. This will streamline requirements as they apply to the provision of passenger transport services and thereby strengthen compliance.

In regard to concerns about the Bill's interaction with other safety laws, we note that requirements to comply with the safety duties under the proposed amendments are tempered by 'so far as is reasonably practicable'. In other words, a person **must** comply with both provisions of safety law only to the extent it is possible for them to do so but must comply with the other safety law if they are unable to comply with both. Furthermore, we note a) a person cannot be punished twice for an act, omission or circumstances that constitutes an offence under TOPTA, the HVNL or WHS Act; and b) that, where there is a conflict between safety laws, the other safety law will prevail.

However, we note QBIC's concerns regarding this and recommend DTMR liaises further with industry to ensure the purpose and the implications of section 67(K) of the Bill for industry are clearly understood. We consider it vital that industry is clear about their responsibilities should the Bill pass and the benefits to them in terms of reduced regulation and an increased focus on safety for passengers and staff.

### **Recommendation 2**

The committee recommends the Department of Transport and Main Roads liaises further with industry if the Bill is passed to strengthen industry understanding of the purpose and implications of section 67(K) of the Bill, and therefore enhance compliance.

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<sup>154</sup> Submission 10, pp 6, 7.

<sup>155</sup> DTMR, response to submissions, p 12.



### 2.3.2 Fundamental legislative principles - penalties

The explanatory notes state that the impact of failing to comply with a safety duty or safety management plan could have significant safety implications and the penalties are graduated to reflect this.<sup>156</sup>

Recognising that penalties should be proportionate to the offence, and be consistent with other penalties, to have sufficient regard to rights and liberties of individuals, the explanatory notes state:

The penalties for contravention of a safety duty are consistent with the existing penalties for contravention of a general safety duty relating to personalised transport services. Overall, the penalties are proportionate to each other, and the risk involved therefore any breach of fundamental legislative principles is justified.<sup>157</sup>

#### **Committee comment**

We are satisfied that the penalties relating to the safety duties and safety management plans are proportionate and consistent with other penalties, such that there is sufficient regard to the rights and liberties of individuals.

### 2.4 Consistent audit and direction framework for road-based public passenger services

The Bill proposes amendments to audit and direction provisions, as there are 'currently inconsistencies between the audit and direction provisions applying to personalised transport compared with other types of road-based public transport services'. The amendments would apply a more 'modern and consistent approach across all of these services'.<sup>158</sup>

Submitters did not comment on these provisions; however, the committee considered the consistency of the provisions with fundamental legislative principles.

#### 2.4.1 Fundamental legislative principles - penalties

With respect to the offences and penalties relating to compliance with audit notices and directions to comply, the explanatory notes state:

The purpose of the audit and directions provisions are to assess a duty holder's compliance with relevant transport legislation, verify information provided about their business activities relating to the provision of the service and direct remedial action if needed, ideally before any incident has occurred. These provisions are proportionate and justified in these circumstances, as audits and directions are an important part of the approach to ensure high standards of safety for road-based public passenger services.<sup>159</sup>

The proposed maximum penalty for failure to comply with an audit notice is higher than the current maximum penalty that applies to personalised transport services (160 penalty units (\$24,768) compared with the current 100 penalty units (\$15,480)).<sup>160</sup> The explanatory notes identify the increase and advise that 'the proposed penalty is consistent with the penalties for contravening a direction to comply in current sections 91ZQ(5)(b) and 100(7) of the TOPTA, and in new section 67ZH(5)(b) of the TOPTA'.<sup>161</sup>

<sup>156</sup> Explanatory notes, p 14.

<sup>157</sup> Explanatory notes, pp 14-15.

<sup>158</sup> Public hearing transcript, Brisbane, 23 October 2023, p 3.

<sup>159</sup> Explanatory notes, p 14.

<sup>160</sup> See TOPTA, s 91ZO.

<sup>161</sup> Explanatory notes, p 15.

The explanatory notes conclude:

The offence and penalty provisions for audits and directions are appropriate, proportionate and justified, as they ensure high standards of safety for road-based public passenger services, and that the public interest to protect the community prevails.<sup>162</sup>

#### **Committee comment**

We are satisfied that the penalties relating to audits and directions to comply are proportionate and consistent with other penalties, such that there is sufficient regard to the rights and liberties of individuals.

#### **2.4.2 Fundamental legislative principles – reversal of onus of proof**

##### ***Failure to comply with audit notice and direction to comply***

The Bill provides that it is an offence for a duty holder to fail to comply with an audit notice or with a direction to comply, unless the duty holder has a reasonable excuse.<sup>163</sup> As noted in the explanatory notes, the offences reverse the onus of proof as the defendant must prove they had a reasonable excuse for not complying with the requirements.<sup>164</sup>

The explanatory notes justify the reversal of the onus of proof on the basis that ‘the defendant is best placed to provide evidence of the purpose of their conduct’.<sup>165</sup> The explanatory notes add:

The new provisions are largely consistent with existing sections 91ZO and 91ZQ(5) in the TOPTA. The audit and directions provisions are important compliance mechanisms to ensure high standards of safety and compliance with relevant transport legislation for road-based public passenger services. Including enforceable offences for noncompliance with audit and direction provisions are in the public interest to protect the community.<sup>166</sup>

#### **Committee comment**

We are satisfied that the justification provided in the explanatory notes for the reversal of the onus of proof is adequate, such that the provisions have sufficient regard to the rights and liberties of individuals.

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<sup>162</sup> Explanatory notes, p 15.

<sup>163</sup> Bill, cl 38 inserts TOPTA, new ss 67ZF, 67ZH.

<sup>164</sup> Explanatory notes, p 13.

<sup>165</sup> Explanatory notes, p 13.

<sup>166</sup> Explanatory notes, p 13.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
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|----|--|
| 1  | National Heavy Vehicle Regulator       |
| 2  | Greg Robinson                          |
| 3  | Queensland Tourism Industry Council    |
| 4  | Professor Jeffrey Soar                 |
| 5  | Brisbane CBD Bicycle User Group        |
| 6  | Royal Australasian College of Surgeons |
| 7  | Queenslanders with Disability Network  |
| 8  | RACQ                                   |
| 9  | Bicycle Queensland                     |
| 10 | Queensland Bus Industry Council        |

## Appendix B – Officials at public departmental briefing

### Department of Transport and Main Roads

- Mr Simon Hicks, Acting Executive Director, Heavy Vehicles and Prosecutions
- Mr Daniel Kaden, Acting Director, Licensing, Automated Vehicles and Registration
- Mr Andrew Mahon, Deputy Director-General, Policy, Planning and Investment
- Mrs Joanna Robinson, General Manager, Land Transport Safety and Regulation
- Mrs Suzanne Rose, Acting General Manager, Passenger Transport Integration

## **Appendix C – Witnesses at public hearing**

### **National Heavy Vehicle Regulator**

- Mr Sal Petrocitto, Chief Executive Officer

### **Queensland Tourism Industry Council**

- Dr Richard Buning, Senior Lecturer, University of Queensland

### **Brisbane Central Business District Bicycle User Group**

- Mr Paul French, Co-convenor

### **Royal Australasian College of Surgeons**

- Dr Matthew Hope, Chair, RACS Trauma Committee

### **RACQ**

- Mr Joel Tucker, Manager Road Safety and Technical
- Mr Andrew Kirk, Principal Technical Researcher

### **Queensland Bus Industry Council**

- Mr Jason O’Dwyer, Executive Director/Association Secretary

## Appendix D – Abbreviations and acronyms

Bill	Transport and Other Legislation Amendment Bill 2023
committee	Transport and Resources Committee
DTMR/department	Department of Transport and Main Roads
HRA	<i>Human Rights Act 2019</i>
HVNL	Heavy Vehicle National Law
LSA	<i>Legislative Standards Act 1992</i>
NHVR	National Heavy Vehicle Regulator
OQPC	Office of the Queensland Parliamentary Counsel
PCBU	Person Conducting a Business or Undertaking
PMD	personal mobility device
PT	Passenger Transport
QBIC	Queensland Bus Industry Council
QDN	Queenslanders with Disability Network
QPS	Queensland Police Service
QRRs	Queensland Road Rules
QSBA	Queensland School Bus Alliance
QTIC	Queensland Tourism Industry Council
RACQ	Royal Automobile Club of Queensland
RACS	Royal Australasian College of Surgeons
TIA	<i>Transport Infrastructure Act 1994</i>
TOPTA	<i>Transport Operations (Passenger Transport) Act 1994</i>
TORUM Act	<i>Transport Operations (Road Use Management) Act 1995</i>
WHS Act	<i>Work Health and Safety Act 2011</i>