

Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Explanatory notes for SL 2021 No. 114

made under the

Petroleum and Gas (Production and Safety) Act 2004

Police Powers and Responsibilities Act 2000

Rural and Regional Adjustment Act 1994

State Penalties Enforcement Act 1999

Tow Truck Act 1973

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Authorising laws

Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004*

Section 809 of the *Police Powers and Responsibilities Act 2000*

Section 44 of the *Rural and Regional Adjustment Act 1994*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 43 of the *Tow Truck Act 1973*

Section 155 of the *Transport Operations (Passenger Transport) Act 1994*

Section 171 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act)

Policy objectives and the reasons for them

The objective of the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (the proposed Regulation) is to provide a legislative framework that improves road safety and protects community amenity by managing the risks associated with defective light vehicles (including from gaseous and noise emissions) and unsafe loading of light vehicles.

A vehicle can become defective due to wear and tear, damage from a crash or a noncompliant modification. In terms of road safety, it is estimated that unsafe defective vehicles contribute to approximately four per cent of road crashes. In the 12-month period from 1 March 2020 to 28 February 2021, there were 300 lives lost on Queensland roads, equating to potentially 12 lives lost due to vehicle defects.

There is also evidence to show that ensuring light vehicles comply with the nationally harmonised Australian Light Vehicle Standards Rules 2015 (ALVSRs), is improving road safety over time. Analysis conducted by the Australasian New Car Assessment Program (ANCAP), using Australian Bureau of Statistics' Motor Vehicle Census data from 2016, showed that light passenger vehicles built before 2000, which accounted for 20 per cent of the Australian fleet, were involved in 33 per cent of fatalities. This compared with vehicles built between 2011 and 2016, which made up 31 per cent of the fleet but were only involved in 13 per cent of fatalities.

While the vehicle standards do not apply retrospectively (that is, vehicles are not required to be updated to meet changing standards), they ensure the Australian Design Rules (ADRs) that apply when the vehicle is built or imported into Australia continue to apply throughout the lifespan of a vehicle. In other words, vehicles must never be less safe than when they were built, even if modified.

Modifications to vehicles that do not meet legislative standards carry road safety risks. In addition, complaints about vehicle modifications, for example those relating to excessive noise or the brightness of after-market headlights, are common issues raised by the public in correspondence and enquiries to the Department of Transport and Main Roads (TMR) demonstrating they are real and persistent issues for the community. While vehicle modifications may be legitimately done for personal, commercial or recreational purposes, they must still comply with accepted vehicle standards to ensure safety and protection of community amenity.

Vehicle theft is also an ongoing concern for the community. There were 13,288 vehicles stolen in Queensland in 2020. This compares to 12,153 vehicles stolen in 2016 and equates to an increase from 2.54 to 2.92 per 1,000 vehicle registrations. Vehicle standards requirements for theft reduction devices in motor vehicles (for example, engine immobilisers) reduce the opportunity for unlawful use of those motor vehicles.

Vehicle loading (such as mass, projections or load restraint and placement) and coupling (between vehicles in a combination) also affect road safety. Exceeding the manufacturer's specifications for mass impacts vehicle stability and may impact the performance of the vehicle's steering or braking or cause the failure of another vehicle component, potentially leading to a crash. Projecting loads may also impact vehicle stability and cause a hazard to other road users. In addition, incorrectly coupled vehicles may detach, also causing a risk to other road users.

Loads that are not placed or restrained properly are also a serious road safety risk as they can impact vehicle stability or fall from the vehicle which can be dangerous to other road users. This continues to be an ongoing road safety issue and as recently as April 2020, there was an incident involving a ladder falling from a light vehicle causing the death of a motorcyclist.

In recent years, there has been significant growth in light vehicles towing caravans. The Caravan Industry Association of Australia estimates that since 2011 the number of caravan registrations has grown by 30 per cent and the number of campervans by 20 per cent. Aftermarket accessories for four-wheel-drives and caravans is also a growing industry. Effective regulation of mass, dimension and modification requirements for these vehicles is needed to support industry growth and ensure road safety is not compromised in this escalating area of light vehicle use.

Light vehicle standards, modifications, projections and load security, and light and heavy vehicle inspections are currently regulated under the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010* (the 2010 Regulation).

The 2010 Regulation will automatically expire on 31 August 2021 under Part 7 of the *Statutory Instruments Act 1992*.

Achievement of policy objectives

The proposed Regulation replaces the 2010 Regulation and will generally provide for continuity of the standards, requirements and processes that applied under the 2010 Regulation. To achieve the policy objectives, the proposed Regulation includes provisions to:

- apply nationally-harmonised, light-vehicle standards to light vehicles in Queensland (schedule 1);
- minimise the use of defective light vehicles on roads and ensure defective vehicles are repaired or removed from service;
- manage light vehicle modifications to allow flexibility without compromising minimum safety standards;
- guide drivers about requirements for light vehicle coupling and loading, including minimum standards for load restraint and placement, mass limits, and limits for projecting loads;
- require light and heavy vehicle inspections at appropriate intervals to verify vehicle identity and to check whether the vehicle is defective;
- ensure the integrity of inspection certificates issued for light and heavy vehicles; and
- allow flexibility to accommodate commercial, industrial or recreational interests while maintaining safety.

The proposed Regulation also enhances the existing regulatory framework by:

- applying mass limits for light vehicles (by transferring and clarifying mass provisions that previously applied under section 76 of the *Traffic Regulation 1962*);
- removing the need for safety certificates to be obtained and displayed before vehicles are offered for sale (although a safety certificate is still required at disposal);
- ensuring modified vehicles that have not had the modification approved or certified as required can be subject to a defect notice;
- clarifying that modifying a vehicle contrary to the vehicle standards is prohibited;
- applying an increased infringement notice penalty for corporations who illegally modify vehicles;
- allowing the chief executive to approve modifications made in other jurisdictions based on desktop analysis without requiring a further physical inspection prior to certification in Queensland;
- removing the requirement for Approved examiners to check engine numbers where more effective vehicle identification methods exist;

- removing the need to carry paper versions of safe movement permits and certificates of inspection;
- enabling easier and faster harmonisation of modification standards with other Australian jurisdictions;
- aligning the Queensland provisions more closely with the nationally harmonised standards (ALVSRs); and
- updating provisions to better reflect local government boundaries and access to vehicle inspection facilities, operational processes and policies.

The proposed Regulation has also been updated to reflect contemporary Queensland drafting protocols.

Part 1 Preliminary

Part 1 outlines how the proposed Regulation applies, and the key concepts used throughout the proposed Regulation.

Application of the proposed Regulation

The proposed Regulation applies to most light vehicles (that is, vehicles with a gross vehicle mass or aggregate trailer mass of 4.5 tonnes (t) or less). Consistent with the 2010 Regulation, some light vehicles (described as miscellaneous vehicles, including for example, animal drawn vehicles and personal mobility devices) are not subject to provisions relating to defects, load security, coupling, mass or requirements for vehicles inspections.

The proposed Regulation also applies to heavy vehicles (that is, vehicles with a gross vehicle mass or aggregate trailer mass of more than 4.5t) for mandatory vehicle inspections and to facilitate certification of modifications relating to life extensions for heavy buses. Otherwise, heavy vehicle standards, defective heavy vehicles and modifications to heavy vehicles are regulated through the *Heavy Vehicle National Law (Queensland)*.

Vehicle standards

The proposed Regulation prescribes the following as vehicle standards for light vehicles: *light vehicle standards (model provisions)*, *light vehicle standards (safety inspection)* and *light vehicles standards (modification)*. These vehicle standards are further described below:

- The *light vehicle standards (model provisions)* are found in schedule 1 of the proposed Regulation and are based on the nationally harmonised ALVSRs. The ALVSRs were developed through consultation at a national level with road agencies, police services, automotive industry bodies, motoring organisations and members of the public. These standards incorporate:
 - the ADRs (reflecting international design and performance standards);
 - standards for light vehicles built before the ADRs were introduced; and
 - other matters not covered by the ADRs.
- Schedule 1 standards cover a range of matters including general safety requirements, vehicle markings, vehicle configuration, lights and reflectors, braking systems, control of emissions, alternative fuel systems and mechanical connections between vehicles. The changes to the model provisions through the proposed Regulation are primarily to improve alignment with the model provisions while adopting Queensland drafting protocols.

- The *light vehicle standards (safety inspection)* will be in the Queensland Light Vehicle Inspection Manual (the Inspection Manual). The Inspection Manual will replace the existing Code of Practice – Light Vehicle Inspection Guidelines. Despite the change of name, the substance of the Inspection Manual has not changed. The Inspection Manual will reflect many of the nationally harmonised vehicle standards and, importantly, provide practical, easy to understand information for identifying if a vehicle is defective. The Inspection Manual is also the basis for light vehicle inspections for the issue of inspection certificates by approved examiners. Approved examiners are accredited to provide vehicle inspections under the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015* (the Accreditation Regulation).
- The *light vehicle standards (modification)* will be in the Queensland Road Vehicle Modification Handbook (the Modification Handbook). The Modification Handbook will combine the current National Code of Practice for Light Vehicle Construction and Modification with the Queensland Code of Practice: Vehicle Modifications to provide a single source of information about vehicle modifications in Queensland. The Handbook will assist vehicle owners and modifiers when modifying vehicles and approved persons (who are accredited under the Accreditation Regulation) when certifying modifications.

When a light vehicle is defective

A light vehicle will be defective if any of the following apply:

- the vehicle does not comply with the vehicle standards;
- a component of the vehicle:
 - does not comply with the vehicle standards;
 - does not perform its intended function;
 - cannot reasonably be relied on to perform its intended function (for example, through wear and tear); or
 - prevents another component of the vehicle from complying with the standards or performing its intended function;
- the vehicle has been modified in a way that does not comply with the Modification Handbook and has not been approved by the chief executive; or
- the vehicle, or a component of the vehicle, is unsafe.

The new provision merges the aspects of vehicle condition previously found in sections 5 and 7 of the 2010 Regulation and ensures that vehicles with unapproved modifications can be subject to a defect notice.

In relation to whether a vehicle is unsafe, while any defect increases the safety risk posed by the vehicle, whether or not a vehicle or a component of a vehicle is unsafe, is determined in the context of the definition of *unsafe* in schedule 4 of the TORUM Act.

Part 2 Defective light vehicles

Part 2 provides for the offence of driving or parking, or permitting someone else to drive or park, a defective vehicle on a road (see section 8) and for the issue of defect notices (see section 9).

The new offence provision was previously section 5 of the 2010 Regulation. The new offence

will work with section 7 (When is a light vehicle defective) to ensure there is improved alignment between when defect notices can be issued and when the offence is committed.

The aspects of vehicle condition that were previously covered by section 5 of the 2010 Regulation will still be subject to an offence under the proposed Regulation. For example,

- a light vehicle that was not in a safe condition under section 5(1)(a)(iv) of the 2010 Regulation will now be considered defective under section 7(1)(d) of the proposed Regulation;
- a vehicle that is not fitted with all its parts and equipment under section 5(1)(a)(i) of the 2010 Regulation, will be defective because it fails to comply with the light vehicle standards under section 7(1)(a) of the proposed Regulation;
- a vehicle that had a stationary noise level that did not comply with the vehicle standards under section 5(1)(a)(vi) of the 2010 Regulation will be defective under section 7(1)(a).

Section 8 also outlines circumstances that are exceptions to the commission of the offence. Importantly, under subsection (3), the offence will not apply to a driver who is not the owner of the vehicle where the *only* reason the vehicle was defective is that a modification had not been certified or had not been approved by the chief executive. If the vehicle was also defective for a reason under section 7(1)(a), (b) or (d) the driver will not be able to rely on the exception in subsection (3).

There is no longer a definition of *drive* in the proposed Regulation. Instead, the Act definition will apply. As the Act definition is inclusive, the application to the proposed Regulation will build on the ordinary meaning of the term. Consistent with the Macquarie Dictionary online (2021) definition, drive includes "to cause and guide the movement of (an animal, vehicle, etc.)". As a result, drive, throughout the proposed Regulation, can apply to a trailer being towed.

Defect notices

If an authorised officer (such as police officer or transport inspector) reasonably believes that a light vehicle is defective, they may issue a defect notice and may attach a defective vehicle label to the vehicle. A defect notice requires the owner of a vehicle to rectify the defects within a specified period, unless the vehicle is de-registered or disposed of to a motor dealer. The defect notice may also include conditions about the use of the vehicle while it is defective, including that the vehicle should not be driven. For example, if the vehicle is defective because of a broken headlight, a condition of the notice may be that it can only be driven during daylight hours.

A defect notice will be an approved form and it will include a declaration to be completed when the defects have been rectified. The defect notice will nominate who can complete the declaration. For example, if the defects relate to body panels, the notice may indicate a panel beater can complete the declaration.

A defective vehicle label may be attached to a vehicle if the authorised officer considers there is a risk that the vehicle may be used on a road in contravention of the conditions. The label provides a visual indicator to others, including authorised officers and other potential drivers, of limitations on the use of the vehicle.

Part 3 Modifications of light vehicles and code S13 modifications of heavy buses

A light vehicle is modified if it is changed from the manufacturer's specifications, for example, by adding, removing or altering a component of the vehicle. While vehicle modifications may be legitimately done for personal, commercial or recreational purposes, vehicles that are registered or are to be used on roads should still comply with the relevant vehicle standards to ensure safety and protection of community amenity. As mentioned above, the Modification Handbook outlines the standards that apply to common modifications, including whether a modification needs to be certified by an approved person who is accredited under the Accreditation Regulation.

To provide some flexibility for complex or unusual modifications and emerging technologies, if the Modification Handbook does not cover a modification, a person may apply to the chief executive for approval of the proposed modification. The chief executive's approval will only be granted in limited circumstances. Conditions may be included in any approval. For example, conditions of the approval may require the modification to be certified by an approved person, limit the way the vehicle can be used, or that the vehicle cannot be sold without the modification being removed.

The proposed Regulation also allows the chief executive to approve modifications that were made in other jurisdictions without the modification needing to be certified in Queensland. For an interstate modification to be approved, the person must have an engineering report or other documents that allow the chief executive to assess the appropriateness of the modification. If the chief executive is not satisfied that the information is sufficient to determine whether the modification should be approved, the person will have to get the modification certified by an approved person.

The proposed Regulation also provides for certification of modifications to certain heavy buses to allow them to be updated to continue in service under the *Transport Operations (Passenger Transport) Act 1994*.

Part 4 Compliance with light vehicle mass and load etc. requirements

Requirements for light vehicle loading, including mass, load projections and load restraint, and placement and coupling (when vehicles are in combination) are also specified in the proposed Regulation.

Mass limits

The proposed Regulation replaces and clarifies mass requirements for light vehicles previously contained in the *Traffic Regulation 1962*. The mass limits are generally determined by the vehicle manufacturer or the component manufacturer (such as a tyre manufacturer). For most late model on road vehicles, certain mass limits will be found on the compliance plate for the vehicle, or in the vehicle's manuals. For vehicles provided to the Australian market from 1 July 2021, the information previously located on the compliance plate will be available through the Commonwealth Government's Register of Approved Vehicles (a publicly accessible online database).

In addition, if a vehicle has been modified to allow a higher mass limit, the mass limit will be recorded in the chief executive's approval or modification certificate or plate issued by an approved person.

The mass provisions apply limits to the vehicle, its axles and tyres and to the combination (if there is more than one vehicle in combination). A vehicle must comply with all limits. For example, compliance with the gross vehicle mass (commonly known as the GVM) is not sufficient if the axle and tyre mass limits are exceeded as each has a separate impact on the safe operation of the vehicle.

Projecting loads

As with the 2010 Regulation, the proposed Regulation limits the distance a load can project beyond the dimensions of light vehicles including motorbikes, animal-drawn vehicles and other light vehicles. In addition to the provisions in part 4, the load cannot exceed the dimension provisions that apply under schedule 1 regarding vehicle dimensions. Visibility requirements, including flags, lights and reflectors, may also apply for projecting loads.

Load restraint and placement

The proposed Regulation continues the requirements that applied under the 2010 Regulation regarding load restraint and placement. The proposed Regulation also directs people to the Load Restraint Guide for Light Vehicles 2018 that is published on the website of the National Transport Commission (NTC) for examples of appropriate methods for loading vehicles.

Dimensions for miscellaneous vehicles

The provisions about vehicle dimensions that apply to most light vehicles have been moved from the body of the 2010 Regulation (previously Part 2A, division 2) to schedule 1 in the proposed Regulation. Dimension provisions will continue to apply to all light vehicles. Miscellaneous vehicle dimensions are regulated through section 47.

Part 5 Safe movement approvals for light vehicles

There may be circumstances where a particular light vehicle or a type of light vehicle needs an exemption from the normal vehicle standards and other obligations under the proposed Regulation so that it can be used on a road to perform a specific function that cannot be performed by a compliant vehicle. For example, some vehicles may need to have flashing lights when working in hazardous locations, but these lights may not be permitted under the vehicle standards.

The proposed Regulation allows for the issue of permits and guidelines to exempt vehicles from particular provisions of the proposed Regulation as long as the vehicle complies with the conditions of the approval.

The chief executive has broad discretion regarding the conditions that may be imposed to mitigate the increased risk that the noncomplying vehicle poses. This ensures the conditions can be crafted to accommodate new types of vehicles, changing technologies and the particular circumstances of use applying to the vehicle. Underpinning any permit or guideline, under section 55, the chief executive must consider the impact on safety and ensure that compliance with any conditions will be at least as effective as compliance with the provisions of the proposed Regulation.

Part 6 Vehicle inspections—inspections and inspection certificates

The proposed Regulation requires vehicle inspections for certain registered vehicles at specific intervals to verify vehicle identity and monitor whether vehicles are defective. Most registered vehicles must have an inspection certificate on disposal. Vehicles that require a certificate of inspection (including heavy vehicles, vehicles providing public passenger services and tow trucks) need to be inspected more regularly (as outlined in section 66). These vehicles are considered higher risk because of their design or nature of their use.

Exemptions to inspection certificate requirements apply for new vehicles, vehicles in particular remote areas where inspection facilities are not reasonably available (see schedule 2), or where the vehicle is participating in an approved maintenance management scheme under the *Heavy Vehicle National Law* (HVNL) or an alternative compliance scheme related to vehicle maintenance under the TORUM Act. These documented and auditable maintenance schemes facilitate proactive maintenance procedures that reduce the likelihood that the vehicle will be defective.

The exempt areas found in schedule 3 have been updated to reflect current local government area boundaries and availability of inspection facilities. Only residents in the former Shire of Warroo will be impacted to any real extent by the changes to exempt areas. The former Shire of Warroo is no longer an exempt area because of its proximity to available inspection services in Surat, Roma and St George. Those residents who would have been eligible for an exemption under the 2010 Regulation will have 12 months in which to obtain a certificate of inspection for their vehicles.

The proposed Regulation will also remove the requirement in the 2010 Regulation to obtain and display a safety certificate before the vehicle is offered for sale. This change will accommodate the modern practice of advertising vehicles for sale online. A safety certificate will still be required before the vehicle is disposed of to another person, unless the vehicle is unregistered.

As mentioned above, the Inspection Manual provides direction to approved examiners regarding inspections of light vehicles for the issue of inspection certificates. In addition, authorised officers who are not police officers may issue certificates of inspection. To ensure the integrity of the inspection certificate scheme, the proposed Regulation also outlines requirements regarding the inspection of vehicles (including ensuring vehicles are properly identified) and when inspection certificates can be approved and issued.

Part 7 Compliance, identification and modification plates

Part 7 of the proposed Regulation provides for compliance and identification plates and includes an offence for altering, defacing or removing identification or modification plates.

Identification and modification plates are sources of information to determine vehicle identity and whether a modification has been certified. Identification plates contain important information such as the vehicle's year of manufacture, its approval number and its vehicle identification number, all of which help to identify the vehicle standards that apply to the vehicle and also whether it has previously been written off (which may indicate it is not suitable for ongoing use on the road). These vehicle identification plates are also an important tool in identifying stolen vehicles.

Section 100, which includes requirements about compliance and identification plates, supports complementary requirements under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*.

Part 8 Provisions for applications

Part 8 of the proposed Regulation includes provisions that allow the chief executive, by publishing a notice on the TMR website, to approve a way in which an application under the proposed Regulation may be made. This would include, for example, approving applications being made orally by telephone or over the counter at a Customer Service Centre (CSC) or being made by electronic communication such as by email.

Part 9 General

The proposed Regulation also includes the following:

- an offence for persons who make, possess or use a document under the proposed Regulation that they know to be false or misleading (section 108);
- a provision allowing for the waiving of fees in special circumstances (such as floods or other natural disasters); and
- a provision allowing a certificate to be evidence in court of the calibration of noise testing equipment.

Part 10 Transitional provisions

Part 10 ensures the continuity of matters done under the 2010 Regulation. Inspection certificates, modification certificates and plates, defect notices, permits and guidelines issued under the 2010 Regulation will continue as if issued under the proposed Regulation. Offences committed under the 2010 Regulation will continue to be enforced. In addition, vehicle owners in the former Shire of Warroo will have a 12 month transitional period to obtain a certificate of inspection for their vehicles.

Parts 11 – 15 and schedule 5

Parts 11 to 15 and schedule 5 make consequential changes to other regulations and update section numbering and other cross references.

Other schedules

As outlined above, schedule 1 (Light vehicle standards (model provisions)) reflects the nationally harmonised vehicle standards as they are to apply in Queensland. The schedule has been updated to reflect contemporary Queensland drafting protocols.

Schedule 2 (Exempt areas) outlines the areas, including the current local government area names, where vehicles may be exempt from certain inspection certificate requirements under the proposed Regulation.

Schedule 3 (Fees) sets out the fees payable under the proposed Regulation.

Schedule 4 (Dictionary) defines particular terms used in the proposed Regulation.

Consistency with policy objectives of authorising law

The provisions of the proposed Regulation are consistent with the policy objectives outlined in section 3 of the TORUM Act. In particular, the amendments are consistent with:

- section 3(1)(b)(i) of the TORUM Act by promoting the effective and efficient movement of people goods and services around Queensland;
- section 3(1)(b)(iii) relating to improving road safety and environmental impact of road use in ways that contribute to overall transport effectiveness and efficiency; and
- section 3(1)(b)(iv) supporting a reasonable level of community access and mobility in support of government social justice objectives.

In addition, the proposed Regulation is a central part of the scheme to allow identification of vehicles, performance standards for vehicles and management of non-performing vehicles (see section 3(2)(a), (b) and (e) of the TORUM Act).

The consequential amendments to other regulations maintain the status quo and are consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

The amendments, including the consequential amendments, are consistent with the objectives of other legislation.

Benefits and costs of implementation

In 2018, the economic cost of fatalities and hospitalised casualties as a result of road crashes was estimated to be more than \$5 billion. It was also estimated that defective vehicles contribute to approximately 4 per cent of all road crashes (with an economic cost of approximately \$200 million). These figures do not represent the non-financial impacts of road trauma on families and to the community.

The benefit of remaking the proposed Regulation will be to continue to provide a robust framework for regulating light vehicle standards and vehicle inspections which benefit road safety and community amenity, including reducing the economic impacts of road crashes.

The cost of remaking the proposed Regulation will be minimal and will be met from existing resources.

The fees set out in schedule 3 of the proposed Regulation include fees relating to various tasks associated with vehicle inspections by TMR and in Approved Inspection Stations.

Consistency with fundamental legislative principles

Fundamental legislative principles issues raised by the proposed Regulation are discussed as follows.

Rights and liberties of individuals – human rights – section 4(2)(a) Legislative Standards Act 1992) (LSA)

Compatibility with human rights under the *Human Rights Act 2019* is discussed at length in the Human Rights Certificate of Compatibility prepared under part 3 of that Act and tabled with the proposed Regulation and these explanatory notes.

Rights and liberties of individuals – access to laws – section 4(3)(k) LSA

The *vehicle standards (model provisions)* in schedule 1 incorporate the ADRs by reference, together with a number of Australian Standards, British Standards and standards produced by other countries. As a result, there is external information underpinning certain provisions of the proposed Regulation. This may raise issues of an individual's access to the relevant laws.

However, the matters in schedule 1 reflect the ALVSRs, which have been developed at the national level based on considerable consultation. The standards that apply are, by their nature, based on engineering assessments and are lengthy and detailed in nature. For example, there are over 90 Australian Design Rules dealing with individual components of vehicles such as tyres, steering, brakes, emission controls and lights. These rules are freely available on the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications' website. It would not be appropriate or practical to reproduce this large number of documents in the proposed Regulation and it is noted that all other Australian States and Territories incorporate these documents into their vehicle standards legislation by reference as a result of adopting the ALVSRs.

To assist industry, however, the proposed Regulation incorporates by reference the Modification Handbook and the Inspections Manual which are published by TMR on its website. These documents will provide information about the standards in a practical and easy to understand way. Provision of these documents will ensure that vehicle owners, drivers, approved persons and approved examiners are provided with accurate and up-to-date information to meet their obligations and ensure their vehicles are not defective. As a result, the approach taken in the proposed Regulation is justified.

Rights and liberties – administrative power not sufficiently defined – section 4(3)(a) LSA

Sections 101 and 102 of the proposed Regulation prohibit a person from removing a vehicle identification plate or a modification plate from a light vehicle without the written approval of the chief executive. Section 103 allows a person to apply to the chief executive to obtain that approval. Section 103 does not specify criteria for the chief executive to have regard to in deciding those applications and, as such, this may raise an issue of administrative power not being sufficiently defined.

Vehicle identification plates have long been fundamental to verifying vehicle identity and providing information pertinent to the standards that apply to the vehicle. The identification plate includes vehicle identifiers (such as the vehicle identification number), the vehicle approval number when it was imported, date of manufacture, seating capacity and manufacturer's stated mass limits.

Modification plates provide proof that a modification has been made and certified. They provide detail about the vehicle identifier, date the modification was certified, approved person's authorisation, codes used to identify the type of modification, and any increased mass limits if they are to apply.

Removing either an identification plate or modification plate will have a detrimental effect on the ability of those inspecting vehicles, vehicle purchasers, drivers and enforcement officers to verify the identity of the vehicle, the standards and mass limits that should apply to the vehicle and whether a modification is legal. Once attached to a vehicle, these plates should not be removed.

If circumstances arise, however, where an identification or modification plate may need to be legitimately removed, it is important to allow an avenue for a person to obtain the chief executive's approval to undertake that action. The circumstances in which this might arise are likely to be unusual and could be quite varied in their nature. As such, it would be unreasonably limiting to only specify set criteria for the chief executive to grant such an approval. In addition, the ultimate decision may rely on balancing a range of issues and, therefore, it is appropriate to provide the chief executive with discretion when determining whether or not to approve an application under section 103.

Rights and liberties – decisions not subject to appropriate review – section 4(3)(a) LSA

Consistent with the 2010 Regulation, under the proposed Regulation, the chief executive may make the following decisions that are not subject to review:

- Refusal of application for modifications not covered by the Modification Handbook (section 24);
- Refusal of extension of time to comply with defect notice or certificate of inspection requirements (sections 15, 16 and 72 to 74); and
- Refusal of application to remove modification plates and vehicle identification plates (section 103).

In addition, under the proposed Regulation, decisions about conditions on safe movement permits or conditions on a modification approval will only be subject to internal review.

Importantly, persons involved in these decision-making processes are accountable under the *Code of Conduct for the Queensland Public Service* and a statutory order of review of the decisions will be available under section 20 of the *Judicial Review Act 1991*.

Modified vehicle decisions – refusal

The chief executive's approval of modifications is only required for vehicles that are registered or are to be used on roads and where the modifications do not fall within the Modification Handbook. The Handbook aims to cover the field from minor to complex modifications for vehicles for road use. Generally, in the interests of safety, it is not considered desirable to allow modifications that are not covered by the Modification Handbook. However, allowing the chief executive to approve modifications not covered by the Modification Handbook provides some flexibility and ensures a practical approach can be applied to meet individual or commercial needs, while still protecting road user safety and public amenity.

Any modification that is not covered by the Modification Handbook will be complex, requiring technical expertise to assess safety impacts and appropriate conditions. In practical terms, these applications are uncommon, and the unusual nature of the modifications sought will require a number of reviewers, meaning the outcome is not based on a single individual's assessment. In addition, applications involve a consultative process with the applicant where possible. As a result of the complex technical nature of these applications, the expertise required, the consultative approach to resolving them and the safety impacts if an approval was granted inappropriately, it is justifiable that they are not subject to review.

Modified vehicle decision – conditions

If an application for modification is granted, the chief executive may impose conditions on that approval. In that circumstance, the proposed Regulation requires the chief executive to give the owner of the vehicle, or the owner's agent, a written notice stating the decision, the reasons for the decision to impose conditions and that the person may ask for the decision to impose conditions to be reviewed. The decision on this internal review, however, is final and cannot be challenged in the Queensland Civil and Administrative Tribunal.

The internal review will allow a second person with experience in vehicle standards and safety issues to assess whether the decision to impose conditions on the approval was appropriate. Importantly also, providing the applicant with the reasons for the original decision will allow them, when they apply for internal review, to provide any additional material they believe is relevant to consider at review and to directly address any issues raised by the chief executive when coming to the original decision.

Considering the potential impact to road safety and others' property and the expertise required in making a decision, only allowing internal review of conditions of a modification approval is justified.

Refusal to extend time to comply with a defect notice or obtain a certificate of inspection

Where a vehicle owner is unable to comply with a defect notice or obtain a certificate of inspection for their vehicle within the required timeframes, they may apply for an extension of time to avoid enforcement action. If the person's application is refused, the decision is not reviewable.

The purpose of defect notices and certificates of inspection are to ensure that vehicles are safe for use on the road. For practical reasons, conditions may be applied to allow limited use of vehicles subject to defect notices (see sections 9 and 14). However, even limited use beyond the required timeframes may cause defects to deteriorate and so may further impact safety. Extending the time to comply with a defect notice or requirement for a certificate of inspection extends the time when a vehicle that is known to be defective or is potentially defective (because it has not been inspected for a certificate of inspection) is able to be used on Queensland roads. As a result, where the chief executive has assessed that the timeframe for compliance with a defect notice or obtaining a certificate of inspection should not be extended, the decision should not be reviewable and this is justified in the interests of safety.

Approval to remove modification and identification plates

As discussed above, modification or identification plates are used to verify the standards that apply to a vehicle, whether the vehicle has been written off (and so may not be suitable for use on the road), whether a modification has been certified to meet vehicle standards and vehicle identity. The fundamental importance of these plates remaining on vehicles means that, if the chief executive decides not to allow removal, there should be no avenue for review. Circumstances that would justify removal are extremely rare. As a result, not allowing review of these decisions is justified in the interests of safety and protecting vehicle identity.

Reversal of onus of proof – circumstances that provide exceptions or excuses – section 4(3)(d) LSA

The proposed Regulation reverses the onus of proof by applying exceptions to some offences through sections 8(2) and (3), 11(2), 18(3), 71(2), 75(2) and 76(2).

Traditionally, the onus is on the prosecution to establish all elements relevant to an offence, including prima facie evidence that exceptions do not apply. However, if section 76 of the *Justices Act 1886* is applied during a prosecution of these offences, the onus of proving the matters in the exceptions will be on the defendant. Reversing the onus of proof impacts the presumption of innocence.

Importantly, each of the above exceptions relate to matters where the defendant is in the best place to provide the evidence needed. For example, for section 8(2), the defendant is the only person who would know whether they were genuinely driving to a place for repair or inspection of the vehicle or using the vehicle illegally. Similarly, for section 8(3), the person will be best placed to establish whether or not they are the owner of the vehicle, since the registered operator of the vehicle is not always the vehicle's owner. For example, a parent may register their child's vehicle in their name for insurance purposes, even though the child owns the vehicle. While the parent would technically meet one form of the definition of owner in the TORUM Act, it does not mean the child is not also an owner who should be held accountable for driving an unapproved modified vehicle.

Similarly, the proposed Regulation places an evidentiary onus on a defendant who has breached an obligation under section 10, 11 or 12 of the proposed Regulation to establish that they had a reasonable excuse for that breach. Providing a reasonable excuse defence ensures that people are not unjustly held liable for these offences. As with the exceptions discussed above, however, the defendant is in the best place to provide evidence about the reasons for their conduct. In many cases, that information will be solely within their knowledge. If they do establish a reasonable excuse on the balance of probabilities, the onus then returns to the prosecution to disprove that excuse beyond a reasonable doubt.

In practice, if a defendant provides enough information at the time of interception, the matters are sufficiently objective that an authorised officer will be able to determine whether an exception applies and whether enforcement action should be commenced. However, if the person does not provide information at the time of interception, and the matter proceeds to hearing, it would be impracticable, if not impossible, for the prosecution to produce evidence to address a defendant's potential claims and the prosecution would not be successful.

The purpose of allowing the reversal of onus is to provide a balance between allowing some limited reasonable use of vehicles that would otherwise not be allowed on the roads, while still ensuring prosecutions can be effective. If prosecutions are ineffective, the deterrent value of the offences is undermined. As a result, the reversal of onus is justified in the interests of road safety, property protection and community amenity objectives of the proposed Regulation

Reversal of onus of proof – presumptions – section 4(3)(d) LSA

Section 44(1) requires that a person who drives or parks a light vehicle on a road must ensure that a load on the vehicle:

- is not placed in a way that makes the vehicle unstable or unsafe;
- is secured in a way that makes it unlikely to fall or be dislodged from the vehicle; and
- is restrained using an appropriate method.

It will be up to the prosecution to prove that this requirement has been contravened.

Section 44(2), however, provides that evidence in a proceeding for an offence that a load did not meet the load performance standards is evidence of a contravention of the requirement in section 44(1). Further, evidence that a load has fallen from a vehicle is evidence that it was not properly secured. In addition, a court must presume a document that purports to be the Load Restraint Guide for Light Vehicles is the Load Restraint Guide. These matters may limit the presumption of innocence.

As mentioned above, inappropriate loading can impact the performance of the vehicle, including braking and stability and loads can fall from vehicles causing a hazard to other road users risking safety and property damage.

Most people using light vehicles are not engineers and do not have access to professional advice each time they load their vehicle. As a result, the offence in section 44(1) does not require strict compliance with the load performance standards but instead applies practical obligations. If a person complies with these obligations, they will not breach the load performance standards. However, if there was an incident and the investigation determined that the performance standards were not met, then, section 44(2)(a) allows a court to conclude the offence in subsection (1) had been committed. The load performance standards are objective measures and, evidence would be based on expert testimony.

Section 44(2)(b) provides that evidence that a load or part of a load has fallen from a vehicle is evidence that the load was not properly secured. During a court prosecution, the direct evidence of an authorised officer or civilian witness that a load had fallen from a vehicle may not be sufficient to establish a prima facie case that the load was not properly secured. Expert evidence may be required. If witnesses need to be called, the process of giving evidence takes time and increases the costs of the proceeding. Ultimately, if there is a finding of guilt, it may also significantly increase potential costs payable by the defendant. This rebuttable presumption will assist with efficient court processes.

The Load Restraint Guide for Light Vehicles 2018 has been developed by the NTC in consultation with engineers and loading experts to provide guidance to light vehicle drivers about appropriate loading and load restraint methods. It does not purport to be the only way of loading vehicles, but it provides a useful tool explaining complex loading concepts including options that may be available. Section 44(2)(c) ensures a document purporting to be the Load Restraint Guide for Light Vehicles 2018 is presumed to be the Load Restraint Guide and this can assist both the prosecution and the defendant in explaining loading concepts.

The above provisions provide a logical, efficient and cost-effective means of producing evidence and information to courts for loading issues. They do not compromise the defendant's ability to call additional or contrary evidence. Allowing these provisions to apply is considered justified in the interests of road safety and efficient court processes.

Reversal of onus of proof – evidentiary provisions – section 4(3)(d) LSA

In effect, evidentiary provisions reverse the onus proof to the extent that they remove the need for the prosecution to call witnesses about particular matters. Importantly, none of the evidentiary provisions in the proposed Regulation provide that the evidence provided by an evidentiary provision is conclusive and cannot be challenged.

Section 109 allows for certificate evidence to be provided about the calibration of noise testing equipment. Certificate evidence may be viewed as reversing the onus of proof, as it allows the evidence to be presented to court without witnesses being called. Certificate evidence is generally acceptable, however, where the matter dealt with in the certificate is technical and non-contentious. Allowing certificate evidence for the calibration of noise testing equipment reduces the need for the prosecution to call expert witnesses where the calibration of the equipment is not contested. However, the defendant is still able to challenge the calibration certificate through providing notice under section 123 of the TORUM Act so that the prosecution can organise appropriate witnesses.

Promoting efficient court process benefits all parties and so the certificate provision is justified.

Legislation should have sufficient regard to the institution of Parliament (LSA section 2(b))

Appropriateness of penalties

A number of offences in the proposed Regulation have a maximum penalty that exceeds 20 penalty units. This may be inconsistent with the policy of the former Scrutiny of Legislation Parliamentary Committee which was that the maximum penalties in subordinate legislation should generally be not more than 20 penalty units.

However, section 171(2) of the TORUM Act provides that a regulation may be made prescribing offences for a contravention of a regulation and fixing a maximum penalty of not more than 80 penalty units. This reflects the suite of legislation that exists under the TORUM Act. Specifically, the Act contains broad regulation-making powers under which the majority of the proposed Regulation, of not only Queensland's light vehicle standards but also the vehicle registration scheme, the driver licensing scheme and the Queensland Road Rules, is all done through subordinate legislation rather than the principal Act. As a result, it is considered the penalties in the proposed Regulation are appropriate and proportionate to the seriousness of the offences they relate to and within the scope sanctioned by Parliament for offences under the TORUM Act scheme.

Subordinate legislation – sub-delegation of power – incorporating by reference (section 4(5)(e) of LSA)

The proposed Regulation incorporates by reference:

- the Vehicle Inspection Manual;
- the Modification Handbook;
- the ADRs; and
- Australian Standards or, as alternatives standards from other countries' standards organisations (such as the British Standards or American National Standards Institute).

These documents directly affect the vehicle standards and vehicle inspection requirements under the proposed Regulation. As they are updated over time, the documents will not be subject to the scrutiny by the Legislative Assembly.

The ADRs are national standards for vehicle safety, anti-theft and emissions that reflect international best practice and apply to any vehicle manufactured or imported into Australia. They are developed by the Commonwealth Government through consultation with technical experts from all jurisdictions, manufacturers and industry groups. Public comment is invited when the ADRs are updated and new ADRs or significant changes are subject to a vote by Transport Ministers from each jurisdiction before the Commonwealth Minister for Infrastructure, Transport, Regional Development and Communications determines the new or amended standard.

The ADRs demonstrate Australia's commitment to international harmonisation of the proposed Regulation of wheeled vehicles and their equipment and parts under the 1958 and 1998 United Nations Economic Commission for Europe agreements and harmonisation with international standards is also important to fulfilling World Trade Organisation and Asia Pacific Economic Cooperation commitments.

With the Australian and jurisdictional government's commitment to harmonisation of vehicle standards, through the ALVSRs, the ADRs continue to apply to a vehicle for its lifespan to ensure it is never less safe than when it first provided to market. As mentioned above, the ADRs are not applied retrospectively (so vehicles are not required to be updated to meet changing standards).

Australian Standards are developed by Standards Australia or are international standards endorsed by Standards Australia. Not all Australian Standards have been applied through the proposed Regulation, however, those that are applied, such as the standards for windscreens, are well accepted as appropriate standards by the engineering community.

The information in the ADRs, Australian Standards (or other standards) are complex and developed using technical expertise and are only applied through the ALVSRs after consideration by technical experts from all jurisdictions. It would not be appropriate or practical to redraft them for inclusion in the proposed Regulation.

Importantly, the proposed Regulation also incorporates by reference, the Modification Handbook and the Inspection Manual. These documents will be developed by TMR and published on the department's website. They will provide practical, and easy to understand information about the ADRs and standards and inspection requirements. The Modification Handbook will incorporate the National Code of Practice for Light Vehicle Construction and Modification (which is developed by technical experts in consultation with all jurisdictions). These documents will assist vehicle owners, drivers, approved persons and approved examiners to have enough information to meet their obligations so that vehicles are not defective. Publication on the TMR website will ensure that these documents are freely available to members of the public.

Due to the technical nature of the ADRs and standards, and the need for flexibility for the Inspection Manual and Modification Handbook, the sub-delegation of legislative power is justified.

Subordinate legislation – sub-delegation of power – notice about applications (section 4(5)(e) of LSA)

Part 8 of the proposed Regulation provides that the chief executive may, by publishing a notice on the TMR website, approve a way in which an application under the proposed Regulation may be made or require stated information to be included in, or to accompany, an application.

As this allows the chief executive, rather than the proposed Regulation itself, to specify an application process, it may raise issues of sub-delegation of power.

Any infringement of the fundamental legislative principles is, however, justified by the increased flexibility it provides to not only the chief executive but also, very importantly, to customers of TMR. For example, it potentially allows the chief executive to approve applications being made orally by telephone or over the counter at a CSC or being made by electronic communication such as by email.

This process has been in place for four years for a number of driver licensing and vehicle registration matters and the feedback from both TMR staff and customers has been overwhelmingly positive. The majority of transactions undertaken by customers with the Queensland Government are undertaken through TMR. TMR places a great emphasis on its customers' experience when dealing with TMR and the flexibility provided by this provision is essential in ensuring TMR can be responsive to customers' needs and can utilise modern technology in its interactions with customers.

Any infringement of the fundamental legislative principles is justified by the benefits to the Queensland public by these provisions.

Subordinate legislation – sub-delegation of power – chief executive powers (section 4(5)(e) of LSA)

The proposed Regulation allows the chief executive to approve modifications (Part 3) and issue safe movement guidelines and permits (Part 5). This sub-delegation of power allows the chief executive to approve the use of vehicles that may not comply with the vehicle standards or loading requirements that would otherwise apply to a vehicle under the proposed Regulation.

The circumstances where the chief executive can approve a modification that is not otherwise covered by the Modification Handbook are limited to where the modification is needed by a person (for example, to assist a person with a disability) or if there is a benefit to the community. In both instances the modification must not make the vehicle unsafe. The provisions allow the chief executive to impose conditions on any approval to ensure road safety is not compromised.

Similarly, safe movement approvals only apply in limited circumstances and conditions and will be imposed to ensure the movement of the vehicle does not compromise road safety.

Allowing the chief executive to approve these matters facilitates practical and responsive processes that recognise the need to consider individual circumstances and changing technologies, without compromising road safety.

Consultation

Since the 2010 Regulation was made, it has been subject to ongoing maintenance and amendments to address emerging issues and respond to expectations of the community and courts.

The light vehicle standards (model provisions) contained in Schedule 1 of the proposed Regulation are based on the ALVSRs, which are reviewed and updated on an ongoing basis to ensure currency, efficiency and relevance. The ALVSRs are model rules that regulate in-service vehicle standards for light vehicles and form the basis for each state and territory to implement vehicle standards rules in their jurisdiction. The ALVSRs are reviewed each year by the NTC. The NTC leads the development of amendments in consultation with relevant stakeholders at a national level, in parallel with State-based consultation undertaken by TMR. The most recent update to the ALVSRs commenced in November 2020.

Consultation on the proposed Regulation was undertaken by TMR with a wide range of stakeholder groups. Consultation on matters relating to defect notice provisions, the consolidation of modification codes, road-testing and approval of modifications, vehicle inspections, including the inspection process and remote area exemptions, safety certificate reforms and mass requirements for light vehicles in the proposed Regulation was undertaken with the:

- Australian Automotive Aftermarket Association;
- Australian Recreational Motorists Association;
- Australian Street Rod Federation – Queensland Divisional Council;
- Caravan Trade and Industries Association of Queensland;
- Four Wheel Drive Association Queensland;
- Historic Motor Cycle Club of Queensland;
- Institute of Automotive Mechanical Engineers;
- MG Car Club of Queensland Inc.;
- Motor Trades Association of Queensland;
- Mustang Owners Club Australia – Queensland Branch;
- Queensland Historic Motoring Council Inc.; and

- Royal Automobile Club of Queensland Ltd.

In the responses received, there were no significant concerns raised. A number of stakeholders sought ongoing communication with TMR in the lead-up to implementing these reforms and those discussions are continuing.

In addition to the above, TMR also consulted approximately 5,900 approved examiners and Approved Inspection Stations (AIS) regarding the removal of the requirement for a safety certificate, and display of safety certificate labels, when a vehicle is offered for sale, and the signing of inspection certificates by approved examiners. The overwhelming majority of approved examiners and AISs that responded were supportive of the proposed changes.

TMR contacted the registered operators of vehicles potentially impacted by changes to the former Shire of Warroo's remote area exemption and did not receive any objections.

The Office of Best Practice Regulation (OBPR) was consulted on the proposed Regulation and advised that the proposed amendments were unlikely to result in significant adverse impacts. OBPR further advised that the objectives for sunset reviews, as set out in the *Queensland Government Guide to Better Regulation* (the Guidelines), had been met and no further regulatory impact analysis was required.

In accordance with the Guidelines, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis on the consequential amendments based on Category A – Regulatory proposals that make consequential amendments and Category G – Regulatory proposals that are of a machinery nature.