

EXPLANATORY STATEMENT

Approved by the Hon Kevin Hogan MP, Assistant Minister to the Deputy Prime Minister

Motor Vehicle Standards Act 1989

Motor Vehicle Standards (Road Vehicles) Amendment Determination (No. 1) 2021

Legislative authority

The Motor Vehicle Standards (Road Vehicles) Amendment Determination (No. 1) 2021 (the Determination) is made under the Motor Vehicle Standards Act 1989 (the Act). The Act establishes nationally uniform standards that apply to new road vehicles when they are first supplied to the market in Australia to ensure they are safe, environmentally friendly, energy efficient and secure from theft. These vehicle standards are called the Australian Design Rules (ADRs) and they cover aspects of vehicle design such as braking, lighting, impact occupant protection and the emission of pollutants. The Act applies to such vehicles whether they are manufactured in Australia or imported.

The Act defines a ‘road vehicle’ as a road motor vehicle designed solely or principally for the transport on public roads of people, animals or goods or a motor vehicle that is permitted to be used on public roads. A motor vehicle is defined as a vehicle that uses, or is designed to use, volatile spirit, gas, oil, electricity or any other power (not being human or animal power) as the principal means of propulsion. Section 5B(1) of the Act allows the Minister to determine, by legislative instrument, that vehicles of a particular class or description are not road vehicles for the purposes of the Act and so are not required to meet the ADRs (or any other part of the Act). One intention of this section is to prevent wheeled machines that are not designed principally for the transport on public roads of people, animals or goods or permitted to be used on public roads from being inadvertently captured under the definition of a road vehicle under the Act.

Purpose and operation of the instrument

Overview of the Act and Regulations

The Act provides a regulatory framework for the importation and provision of road vehicles for the first time in Australia, and ensures these road vehicles meet standards for safety, environmental performance and theft protection.

The Regulations provide the regulatory framework of the Act, including by providing for the grant of a number of approvals relating to the importation and supply of road vehicles. The Regulations set out matters that support the regulatory framework of the Act.

Purpose

The Determination amends the Motor Vehicle Standards (Road Vehicles) Determination 2017. Since the Determination was made, significant advances to design and technology have allowed for an expansion in the design of light weight motorised devices. It therefore updates and replaces definitions that no longer reflect the diversity of light weight motorised devices on the market and also removes references to materials not freely available. These changes clarify the Determination’s application for importers, manufacturers and members of the public about vehicle classes not required to meet the Act, effectively formalising existing administrative processes and streamlining their outcomes.

These types of vehicles have undergone substantial technological and design advances in recent

years. The changes to affected definitions ensure the Determination's ongoing relevance in a period of rapid technological development and greater availability of motor vehicles not designed primarily for use on public roads.

The classes of vehicle specified in the Determination are not exhaustive. While it identifies vehicle classes not subject to the Act, any other vehicle or vehicle class may continue to be assessed on its own merits on an administrative basis.

Inclusion in the Determination of particular vehicle classes does not provide permission for use. State and territory governments regulate in-service use and, as such, vehicle users will need to familiarise themselves with local requirements.

Effect of the instrument

The Determination provides clarity to vehicle manufacturers, importers and members of the public about vehicle classes which are not required to meet the Act.

A Statement of Compatibility with Human Rights for the Determination is at [Attachment A](#).

A section by section explanation of the Determination is at [Attachment B](#).

Operation of the instrument

Regulatory frameworks must be updated periodically to ensure that they continue to effectively serve their intended purpose. The current wording of the Determination does not reflect the great diversity of light weight motorised devices. The Determination amends and updates a range of vehicle classes that are not primarily designed for use on a public road. Making the content of the Determination more relevant and clearer will enable importers of such vehicles in deciding if they need to seek advice on the status of their vehicle under the motor vehicle standards legislation.

The amended Determination facilitates the supply of devices with these technological developments by updating a number of key definitions. The definitions of 'Motorised Scooter' will be replaced with 'Personalised Mobility Device' (PMD), whilst 'Motorised Wheelchair' will be replaced with 'Motorised Mobility Device' (MMD). The replacement of these definitions better aligns with the greater diversity in the design of these classes of vehicles. It also limits the scope for confusion due to colloquial use of the term 'Motorised Scooter' to signify a broader range of vehicles than contained in the original definition of 'Motorised Scooter'. For example, a motorised scooter is a term commonly used now to refer to a vehicle with a seat, designed to be used by only one person, propelled by an electric motor and with a steering control and classed as a MMD in the Determination, but it traditionally refers to a vehicle that has a motor fitted to it, designed with a footboard supported by wheels and steered by handlebars. Broadening the definition of motorised wheelchair to include devices designed for people who have difficulty walking as well as people who are unable to walk reflects that this class of vehicle is usually treated the same from the point of view of a technical assessment and access to the road related network.

The amended Determination also updates the 'Power-Assisted Pedal Cycle' definition. This change broadens the focus from relying solely on the power output rating to include certain design features. The reason for this update is to clarify that the policy intent of the definition relates to bicycles of a traditional build, albeit assisted by electric motor power, but not to take in other types of two wheeled vehicles designed with pedals that may assist propulsion, such as certain types of mopeds, more appropriately deemed as LA category vehicles according to the Definitions and Vehicle Categories ADR.

The amended Determination also replaces reference to 'pedelec' with a definition of an 'Electrically power-assisted cycle' or 'EPAC'. This is because the term 'Electrically power-

assisted cycle' links it directly with the European Committee for Standardization EN15194:2009 or EN15194:2009+A1:2011 or EN15194:2017, which was the international standard referenced in the previous Determination. It is still the policy intention that vehicles that have been demonstrated to meet European Committee for Standardization EN15194:2009 or EN15194:2009+A1:2011 or EN15194:2017 should be considered not to be road motor vehicles for the purpose of the Act. The reason to replace the term 'pedelec' with a definition of 'Electrically power-assisted cycle' is that since the definition of 'pedelec' was first included in the Determination the term EPAC is settled as the official term for the class of vehicle intended to be covered. Whereas the term 'pedelec' is used for a variety of classes of vehicles, including some that are pedal assisted power cycles, as opposed to power assisted pedal cycles.

Accordingly, the change in terms should remove the possibility of ambiguity in the application of the Determination. This change also shifts key features not explicitly set out in the definition from documents incorporated by reference and accordingly removes reliance on incorporating documents into the Determination that are not freely accessible or subject to copyright.

Documents incorporated by reference

N/A

Consultation

It has been longstanding practice to consult widely on changes to legislative instruments. For many years there has been active collaboration between the Australian Government and the state/territory governments, as well as consultation with industry and consumer groups. Much of the consultation takes place within institutional arrangements established for this purpose. The analysis and documentation prepared in a particular case, and the bodies consulted, depend on the degree of impact the new or amended standard is expected to have on industry or road users.

Given the relatively minor nature of the proposed changes, consultation focused on the Strategic Vehicle Safety and Environment Group (SVSEG). SVSEG consists of senior representatives of government agencies (Australian and state/territory), the National Transport Commission and the National Heavy Vehicle Regulator, the manufacturing and operational arms of the industry (including organisations such as the Federal Chamber of Automotive Industries and the Australian Trucking Association) and of representative organisations of consumers and road users (particularly through the Australian Automobile Association). No objections were raised to the proposed changes during the consultation.

The Department also consulted with the Australian Small Business and Family Enterprise Ombudsman, the Department of Foreign Affairs and Trade, the Treasury and the Australian Competition and Consumer Commission on the development of the Determination and established that since the Determination clarifies its operation by replacing or revising certain definitions it would not have a material impact on industry.

Regulation Impact Statement

This vehicle standard will have minimal regulatory impact, with definitions in the Determination being either replaced or updated to clarify that lightweight motorised devices do not fall within the purview of the Act. The replacement and revision of definitions in the Determination will not change existing practices in assessing vehicles and will serve to formalise the existing approach taken and outcomes reached, clarifying for industry participants which devices are to be treated as non-road vehicles. The replacement definitions enable greater harmonisation and alignment of the Determination's terminology with defined terms used in most jurisdictions. These changes should not have any impact on pricing of related products and should ensure that

consumers are more accurately informed of the nature and operation of the devices that are available to them, as well as the responsibilities associated with the use of such devices. Accordingly, the Determination will have a neutral impact on businesses.

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR ID 42969).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Motor Vehicle Standards (Road Vehicles) Amendment Determination (No. 1) 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Motor Vehicle Standards (Road Vehicles) Amendment Determination (No. 1) 2021 updates the Motor Vehicle Standards (Road Vehicles) Determination 2017. The Determination provides clarity to vehicle manufacturers, importers and members of the public about vehicle classes which are not required to meet the Act. It does this by identifying characteristics of vehicles that are not considered to be designed for use on a public road, defining them and listing them.

Human rights implications

The determination supports the regulatory framework of the *Motor Vehicle Standards Act 1989* (the Act) to ensure vehicles on public roads meet safety and environmental standards to support the realisation of the human rights to life and health.

The rights to life and health are express limitations because the objects of the *Motor Vehicle Standards Act 1989* includes the provision of road vehicles to Australian consumers that meet safety and environmental expectations of the community.

The Determination does not alter the promotion or limitation of these rights.

Conclusion

This Disallowable Instrument is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Assistant Minister to the Deputy Prime Minister

Mr Kevin Hogan

**Section by section explanation of the Motor Vehicle Standards (Road Vehicles)
Amendment Determination (No. 1) 2021**

1 — Name

1. This section provides the name of this instrument is Motor Vehicle Standards (Road Vehicles) Determination (No. 1) 2021 (the Determination).

2 — Commencement

2. Section 2 provides the Determination is to commence the day after it is registered.

3 — Authority

3. Section 3 provides the Determination is made under paragraph 5B of the *Motor Vehicle Standards Act 1989*.

4 — Schedules

4. Section 4 provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

5 — Definitions

1. This section omits the words ‘in this determination’ from section 5(1) and replaces it with ‘in this instrument.’
2. This section inserts the new definition of ‘electrically power-assisted cycle’. The purpose of the new definition of ‘electrically power-assisted cycle’ is to include key features, not explicitly set out previously, from documents incorporated by reference. This update accordingly provides greater detail regarding design features and removes reliance on incorporating documents into the Determination that are not freely accessible or subject to copyright. This is because the Senate Standing Committee for the Scrutiny of Delegated Legislation prefers documents incorporated by reference to be available free of charge to all persons affected by or interested in the law. It is the intention that ‘electrically power-assisted cycles that meet European Committee for Standardization EN15194:2009 or EN15194:2009+A1:2011 or EN15194:2017 will be considered not to be road motor vehicles for the purpose of the Act.
3. This section repeals the definition of ‘motorised wheelchair’ and inserts the new definition of ‘motorised mobility device’. Motorised mobility devices include vehicles designed for people unable to walk and/or who need assistance with walking and accordingly are designed with seats. The purpose of the new definition of ‘motorised mobility device’ is to reflect significant changes in technologies related to and design development of such devices. The definition of a ‘motorised mobility device’ is broader than the current definition of ‘motorised wheelchair’ that it replaces. It reflects that motorised mobility devices and motorised wheelchairs are treated the same with regard to their technical assessment, their treatment under the Disability Standards for Accessible Public Transport 2002, access to public spaces and how they are often perceived by the general public. It is intended that ‘motorised mobility devices’ generally not be considered road vehicles for the purposes of the Act.

4. This section repeals the definition of ‘motorised scooter’ and replaces it with a new definition of ‘personal mobility device.’ The purpose of the new definition of ‘personal mobility device’ is to reflect that such devices designed for personal mobility, and the purposes for which they are used, have developed significantly since the motorised scooter definition was established. The ‘personal mobility device’ definition ensures that the Determination maintains its relevancy by reflecting design advancements within this segment of vehicles. It also reflects developments in certain jurisdictions that now allow the use of ‘personal mobility devices’ on road related areas. This makes it impractical for the Commonwealth to continue to treat them as road motor vehicles.
5. This section repeals the definition of ‘power assisted pedal cycle’ and replaces it with a new definition of ‘power-assisted pedal cycle.’ The purpose of the new definition is to include a number of design features to clarify that the policy intent of the definition only covers traditional bicycles and not other two-wheeled vehicles such as mopeds or motorcycles. Specifically, this definition makes clear that a ‘power-assisted pedal cycle’ has at least two wheels and is primarily powered by the physical exertion of the person on that vehicle (most commonly through a pedal system). The motor system that provides power may only aid pedalling i.e. the definition does not include a vehicle that relies predominantly on the motor itself. This would accordingly exclude moped, motorcycle or even bicycle designs with pedals where those pedals might be used to add to the power of the vehicle.
6. This section inserts a new definition of tare mass. The purpose of the new definition of ‘tare mass’ is to clarify how to accurately calculate the mass of a vehicle for purposes of determining if it is a ‘power-assisted pedal cycle’ within the meaning of the Determination.
7. This section repeals the definition of ‘wheelchair.’ Vehicles that include ‘motorised wheelchairs’ (and so relied on a definition of ‘wheelchair’) are caught by a separate amendment under section 5(1) that substitutes the definition of ‘motorised wheelchair’ with the definition of ‘motorised mobility device’.
8. This section repeals section 6 and substitutes a new section 6. The purpose of this section is to reflect the removal of certain definitions and the inclusion of new definitions in the Determination, i.e. the definitions for ‘motorised scooters’ and ‘motorised wheelchairs’ have been removed, and paragraphs 6(1)(e) (‘motorised mobility devices’) and 6(1)(g) ‘personal mobility devices’ have been introduced.