

Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019

Report No. 33, 56th Parliament

Transport and Public Works Committee

February 2020

Transport and Public Works Committee

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Ted Sorensen MP, Member for Hervey Bay
Members	Mr Colin Boyce MP, Member for Callide
	Mr Robbie Katter MP, Member for Traeger
	Mr Bart Mellish MP, Member for Aspley
	Mrs Jo-Ann Miller MP, Member for Bundamba

Committee Secretariat

Telephone	+61 7 3553 6621
Fax	+61 7 3553 6699
Email	tpwc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/TPWC

Acknowledgements

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Abbreviations

ADPS	Australian Disability Parking Scheme
BCC	Brisbane City Council
the Bill	Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019
the committee	Transport and Public Works Committee
the department/DTMR/TMR	Department of Transport and Main Roads
GDQ	Guide Dogs Queensland
HVNL	Heavy Vehicle National Law
LSA	<i>Legislative Standards Act 1992</i>
the Minister	Minister for Transport and Main Roads
NPNPC	No Permit No Park Campaign
NSW	New South Wales
PINs	Penalty Infringement Notices
Private Member's Bill	Transport Legislation (Disability Parking Permit Scheme) Amendment Bill 2019
QDN	Queenslanders with Disability Network
QPS	Queensland Police Service
RACQ	Royal Automobile Club of Queensland
TORUM Act	<i>Transport Operations (Road Use Management) Act 1995</i>

Chair's foreword

This report presents a summary of the Transport and Public Works Committee's examination of the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019.

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.

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

I commend this report to the House.

A handwritten signature in black ink that reads "Shane King". The signature is written in a cursive, slightly slanted style.

Shane King MP

Chair

Recommendations

Recommendation 1 **3**

The committee recommends the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019 be passed.

Recommendation 2 **8**

The committee recommends the Minister for Transport and Main Roads work with other Australian jurisdictions to undertake a review of the definitions contained in the Australian Disability Permit Scheme to include vision impaired persons who are legally blind in the eligibility criteria.

Recommendation 3 **15**

The committee recommends the Minister for Transport and Main Roads undertake a review of the amendments to the disability parking permit scheme 12 months after commencement. The committee recommends that this review include whether the amendments have had an impact on the accessibility of disability parking spaces and whether alternative measures, including demerit points, need to be implemented.

Recommendation 4 **18**

The committee recommends that legislative amendments be considered to authorise council officers' access to areas where disability parking spaces are situated for enforcement purposes.

1 Introduction

1.1 Role of the committee

The Transport and Public Works Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility are:

- Transport and Main Roads
- Housing, Public Works, Digital Technology and Sport.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

The Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly by the Minister for Transport and Main Roads, Hon Mark Bailey MP (the Minister), and referred to the committee on 26 November 2019. The committee was required to report to the Legislative Assembly by 7 February 2020.

1.2 Inquiry process

On 4 December 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Five submissions were received. Refer to Appendix A for a list of submissions.

The committee received a public briefing about the Bill from the Department of Transport and Main Roads (the department/DTMR) on 22 January 2020. Refer to Appendix B for a list of officials. The committee held a public hearing on 22 January 2020. Refer to Appendix C for a list of witnesses.

The committee received written advice from the department in response to matters raised in submissions.

The submissions, correspondence and transcripts are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- To extend the disability parking eligibility criteria to include vision impaired persons who are temporarily or permanently blind
- To increase the penalty that applies for using a disability parking area without a permit
- To omit the Queensland specific definitions of *level crossing* and *rail or road crossing*
- To provide that grounds to amend, suspend or cancel an approval can be specified in a regulation under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act).

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.4 Achievement of the policy objectives

The Bill proposes to achieve its policy objectives by amending the following legislation:

- TORUM Act
- Traffic Regulation 1962
- State Penalties Enforcement Regulation 2014
- *Rail Safety National Law (Queensland) Act 2017*²

1.5 Transport Legislation (Disability Parking Permit Scheme) Amendment Bill 2019

On 16 October 2019, the Member for Hinchinbrook, Mr Nick Dametto MP, introduced the Transport Legislation (Disability Parking Permit Scheme) Amendment Bill 2019 (Private Member's Bill). The Private Member's Bill was referred to the committee for detailed consideration. The committee is required to report by 16 April 2020.

The policy objective of the Private Member's Bill is to expand the Queensland Disability Parking Permit Scheme criteria to include those persons with vision impairments. The Private Member's Bill proposes to achieve its policy objective by amending the Traffic Regulation 1962 and the *Transport Operations (Road Use Management) Act 1995* to expand the criteria for those eligible to apply for a disability parking permit to those persons with a total loss of vision, permanent severe visual impairment or a temporary visual impairment that must be of at least six months' duration, as certified by a doctor.³

When introducing the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019, the Minister acknowledged that the Member for Hinchinbrook had introduced a Private Member's Bill which also proposed to amend the eligibility criteria for the Disability Parking Permit Scheme.⁴

The committee will report separately on the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019.

1.6 Government consultation on the Bill

1.6.1 Disability parking permit scheme

The explanatory notes advise that '[r]epresentations have been received from members of the community and organisations representing vision impaired persons about including vision impairment in the eligibility criteria for the scheme'.⁵

DTMR advised the committee:

*Following this feedback, a review was conducted to assess the feasibility of expanding the eligibility criteria to include people with vision impairment and the impact this would have on the current scheme and existing permit holders. The outcomes of the review, which included feedback from members of the community, vision-impaired stakeholder organisations, and state and territory government departments, recognised that the vision-impaired community face heightened and specific mobility challenges that other disability groups may not.*⁶

² Explanatory notes, p 3.

³ Transport Legislation (Disability Parking Permit Scheme) Amendment Bill 2019, explanatory notes, pp 1-2.

⁴ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3762.

⁵ Explanatory notes, p 5.

⁶ Public briefing transcript, Brisbane, 22 January 2020, pp 1-2.

The following organisations were consulted on proposed changes to the disability parking permit scheme: Queensland Blind Association, Vision Australia, Guide Dogs Queensland (GDQ), Spinal Life Australia, Physical Disabilities Australia, the Local Government Association of Queensland, 14 individual local governments, and the Royal Automobile Club of Queensland (RACQ).⁷

The explanatory notes advise the following regarding the feedback received:

The Queensland Blind Association, Vision Australia, Guide Dogs Queensland and Physical Disabilities Australia were supportive of the proposal to expand the eligibility criteria to include legal blindness.

Spinal Life Australia expressed concerns about the inclusion of vision impaired persons in the scheme. It felt that vision impaired persons may not have the same needs as those who have a more traditional mobility impairment and could use alternatives such as drop-off areas. However, it is considered that legally blind people present with unique mobility issues and would have their safety improved through the use of disability parking bays.

Spinal Life Australia and some local governments raised concerns about the potential impact on existing permit holders. However, it is expected that this expansion will not have a significant impact on the availability of disability parking bays.

*While the RACQ was not opposed to an increase in the fine, it indicated that any increase should be made in conjunction with other activities such as increased enforcement and education.*⁸

1.6.2 Rail Safety National Law – reliance on national definitions

The Office of the National Rail Safety Regulator and GoldLinQ, which operates and maintains the Gold Coast light rail system, support the amendments proposed in the Bill.⁹

1.7 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the department, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019 be passed.

⁷ Explanatory notes, p 5.

⁸ Explanatory notes, p 5.

⁹ Explanatory notes, p 5.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Proposed amendments

2.1.1 Disability parking permit scheme – eligibility

The Australian Disability Parking Scheme (ADPS) was implemented in 2010 following a Commonwealth review of all state and territory disability parking permit schemes. National eligibility criteria were developed and it was agreed by jurisdictions that the scheme was a mobility scheme and the assessment process should focus on the applicant's functional ability to walk. The explanatory notes identify that Queensland adopted the national eligibility criteria. However, harmonisation was not achieved and some jurisdictions who had previously extended the permits to other impairment types, including blindness, retained these eligibility categories in their schemes.¹⁰

In regard to the disability parking permit scheme, the explanatory notes advise:

Eligibility for a disability parking permit is currently based on the applicant's ability to walk. That is, only those individuals who cannot walk and always use a wheelchair, or those whose functional ability to walk is severely restricted, are eligible to apply for a permit.

Members of the community and organisations representing vision impaired individuals have requested that those who have a vision impairment be included in the scheme. In recognition that the vision impaired community faces heightened and specific mobility challenges, the Bill expands the eligibility criteria for a disability parking permit to include vision impaired persons who are legally blind. The definition of blind that has been included in the Bill is the same as that contained in the Social Security Guide which is used for the purposes of the Social Security Act 1991 (Commonwealth). Individuals who are permanently blind will be eligible to apply for a permit. Individuals who have temporary blindness will also be eligible to apply provided that their condition is of at least 6 months duration as certified by a doctor, ophthalmologist or optometrist.¹¹

DTMR advised the committee:

The parking concessions make it easier for permit holders to go about their daily business by providing access to conveniently located disability parking bays, which are wider than the standard parking bays and are available at many locations such as shopping centres, medical centres, train stations and entertainment venues. The parking concessions also allow permit holders free parking in local government metered and regulated parking bays for longer than the time stated on a sign. Where the sign shows less than 30 minutes, parking is allowed for 30 minutes. Where the sign shows 30 minutes or more, parking is allowed for an unlimited time.¹²

With regard to consistency across Australian jurisdictions, the explanatory notes state:

The amendments in the Bill will provide consistency with schemes in New South Wales, the Australian Capital Territory, South Australia and Tasmania.¹³

...

¹⁰ Explanatory notes, p 6.

¹¹ Explanatory notes, p 1.

¹² Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 1.

¹³ Explanatory notes, p 1.

*Queensland's current focus on functional ability to walk is consistent with Western Australia, Northern Territory and Victoria. However, New South Wales, the Australian Capital Territory, South Australia, and Tasmania include legal blindness as an express eligibility criterion for their schemes. This can lead to some confusion, particularly where people live close to the New South Wales border.*¹⁴

Clause 8 of the Bill amends the eligibility criteria to include persons who are permanently or temporarily blind and inserts relevant definitions.

Submissions support the proposal to extend the disability parking eligibility criteria to include persons with a vision impairment who are legally blind.¹⁵

GDQ advised the committee that a person's ability to walk is determined by more than their functional movement. It includes the ability to walk safely, free from harm and for orientation and obstacle avoidance. GDQ considered that carpark environments are a major risk and a major cause of anxiety and stress to the vision impaired.¹⁶

GDQ advised:

*We welcome the introduction of the Transport Legislation (Disability Parking and Other Matters) Amendment Bill that will vastly improve the safety and independence of VI [vision impaired] Queenslanders by removing their current exclusion from the disability parking permit scheme, meeting wider community expectations and helping standardise access for permit holders between states.*¹⁷

...

*Providing access to disability parking for the blind and vision impaired members of our community will go a long way towards promoting opportunities for all Queenslanders and help build a fairer, more inclusive Queensland.*¹⁸

Brisbane City Council (BCC) supported the proposed amendments on the basis that they will help to improve access and inclusion for people with permanent or temporary vision impairments by providing opportunities to park in convenient locations.¹⁹

Queenslanders with Disability Network (QDN) stated:

*... carparks in crowded shopping centres and on busy roads can be hazardous environments for people who are blind or vision impaired to negotiate independently and applauds any effort to create safer environments for all Queenslanders.*²⁰

QDN advised:

*QDN believes the Bill goes some way towards addressing issues associated with accessible parking and making the Disability Parking Permit Scheme more effective and would support the Bill being passed by the Queensland Parliament.*²¹

¹⁴ Explanatory notes, p 6.

¹⁵ Refer to submission nos 1, 2, 3, 4 and 5.

¹⁶ Submission 4, p 3.

¹⁷ Submission 1, p 3.

¹⁸ Submission 1, p 5.

¹⁹ Submission 4, p 1.

²⁰ Submission 5, p 2.

²¹ Submission 5, p 3.

However, submissions raised a number of other issues, including public education, the ADPS, the increase in the number of permit holders impacting on parking space accessibility, application forms and the impact of non-permit holders using disability parking spaces. These issues are discussed below.

The No Permit No Park Campaign (NPNPC) advised that while they support the proposed amendments they considered there are more effective ways to eliminate disability parking offences and suggested a number of amendments.²²

Committee comments

The committee supports the proposed amendments to the eligibility criteria to include vision impaired persons who are legally blind.

2.1.1.1 Public education

With regard to educating the public regarding the proposed amendments, DTMR confirmed that it will:

*... work with local governments and relevant Queensland Government agencies to improve education and communication to support awareness of the penalty increase and deter misuse of disability parking bays. It is expected that the increase to this parking offence will impact the basic risk to reward assessment a person makes before offending.*²³

RACQ expressed the view that the proposed changes need to be supported by increased enforcement and education.²⁴

BCC agreed, advising the committee:

*Given that Council officers will be involved in the enforcement of these offences, it is considered critical that the Queensland Government's Department of Transport and Main Roads undertake an effective education and communication campaign to ensure that drivers are aware of the increased fines both prior to and after introduction and to discourage misuse of disability parking spaces.*²⁵

NPNPC also advocated for funding for relevant agencies to run education campaigns via media and social media about the risk of detection when committing disability parking offences.²⁶

At committee's public briefing DTMR advised:

... the Minister for Transport and Main Roads has already written to all local governments and the Local Government Association to encourage them to get on board with us and work with us around either increasing their own penalties or making sure we get communications out there. We will apply the normal process that we would apply as a department for any communications of this type of reform. Certainly we want to communicate through the vision representatives and Guide Dogs to get this out to their members and let them know what they can do, subject to the legislation passing through the parliament.

*We would through general media and social media do things like radio interviews. The minister would obviously do a media release and so forth to make sure we get the information out. We use a number of different channels with these types of reforms to get the information out and to make sure everyone who is eligible knows they are eligible and those who are not know what the rules are.*²⁷

²² Submission 3, p 5.

²³ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 3.

²⁴ Submission 2, p 2.

²⁵ Submission 4, p 2.

²⁶ Submission 3, p 5.

²⁷ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 5.

DTMR also confirmed that a key part of its communication campaign will target people who are not eligible or disobey disability parking laws on purpose. DTMR advised that they want to make sure people are fully aware that a significant fine will be imposed on those caught doing the wrong thing.²⁸

Committee comments

The committee notes the department's intention to undertake an education and communication campaign to support the implementation of the expanded eligibility criteria and proposed increase in penalties.

The committee also encourages stakeholders to support the government's education and communication campaign among their own client base.

2.1.1.2 Australian Disability Parking Scheme

With regard to the ADPS, GDQ acknowledged the efforts to set a nationally consistent eligibility criteria and national minimum parking concessions to help reduce the barriers to permit holders when travelling interstate. GDQ also noted that the ADPS gives the States and Territories the flexibility to provide additional concessions to meet the needs of local permit holders.²⁹

GDQ advised that the current application of the ADPS in Queensland to only meet the minimum required national standards does not meet the community's needs or expectations as the eligibility criteria does not provide a broad enough scope of inclusion.³⁰

GDQ's submission states:

The more inclusive scope of ADPS eligibility in these jurisdictions highlights a serious inequity for blind and vision impaired Queenslanders, as well as anyone who moves to Queensland, as they cannot access the same support that the parking scheme offers in other jurisdictions.

The Queensland exclusion therefore works against the intentions of the ADPS, which was designed to simplify and standardize the access that permit holders would have when moving between states. The expansion of the eligibility criteria in Queensland to include legally blind persons and subsequently provide access to the disability parking scheme will help remove this inconsistency and allow seamless transition between jurisdictions.³¹

The committee sought information from the department regarding the inconsistency between Australian jurisdictions under the ADPS and any plans to amend the definitions to ensure consistency. DTMR advised:

The Australian vision-impaired scheme was a review done in around 2010. It was looking at trying to align all of the schemes at that time. Some schemes—New South Wales, ACT, South Australia and Tasmania—all kept their vision-impaired element because, understandably, they did not want to put a new scheme in place that disadvantaged people who already had access. It is certainly something we can raise with our jurisdictional colleagues. Subject to this legislation being passed by the parliament, we too will have vision impairment included. That will largely mean that a large portion of the jurisdictions will have that in place. I think only three will remain without it in place, or something around that mark. I think that is enough to encourage potentially a relook. Again, it may not be necessary if we are generally aligned.³²

²⁸ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 6.

²⁹ Submission 1, p 3.

³⁰ Submission 1, p 12.

³¹ Submission 1, p 11.

³² Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 6.

Committee comments

The committee is of the view that a review of the definitions contained within the ADPS should be undertaken in order to ensure consistency across all jurisdictions as was the intent of the original scheme.

The committee considers that the Minister should bring the proposed changes contained in the Bill to the attention of the Transport and Infrastructure Council and raise the potential for a more consistent national approach to disability parking eligibility, standards and penalties.

Recommendation 2

The committee recommends the Minister for Transport and Main Roads work with other Australian jurisdictions to undertake a review of the definitions contained in the Australian Disability Permit Scheme to include vision impaired persons who are legally blind in the eligibility criteria.

2.1.1.3 Number of permit holders and disability parking spaces

With regard to the impact on the existing scheme, the Minister noted:

... it is estimated that there will be approximately 14,400 new applicants for a permit—which represents only a 7.5 per cent increase on the current scheme membership. This expansion is not expected to have a substantial impact on the availability of disability parking spaces.³³

However, GDQ advised that they believe the increase in the numbers of permit holders forecast in the Minister’s introductory speech will be less than anticipated and suggested an estimate of approximately 4000 new applications. They advised these figures take into consideration that many older people have age-related degenerative conditions which affect their mobility.³⁴

QDN advised:

QDN has sought feedback from our members in preparing this submission. While support for the Bill has been overwhelmingly positive, members are concerned that increasing the number of permits without reviewing current numbers or quotas for accessible parking may result in not enough available parking spaces for permit users.³⁵

Whilst acknowledging the complexity of the issue of disability parking spaces and that the number of on-street disability parking spaces is a local government matter, the QDN urged the government to undertake a review of the current requirement of two disability parking spaces per 100 spaces. QDN advised:

... providing guidance to local governments and other key stakeholders on the optimum number and location for disability parking spaces would lead to greater inclusivity and consistency across the state.³⁶

³³ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3762.

³⁴ Submission 1, p 13.

³⁵ Submission 5, p 2.

³⁶ Submission 5, p 2.

QDN also advised:

... off-street parking is regulated by the National Construction Code. In 2010, a national review was conducted of disability parking schemes across all states and territories. This review resulted in the introduction of a nationally recognised disability parking permit and minimum standards for disability parking concessions and required the approval of the COAG Ministerial Council. QDN notes that it has been a decade since this national approach was established and urges the Minister for Transport and Main Roads to lobby to have COAG review current disability parking schemes. In particular, consideration should be made to increasing quotas under the National Construction Code, and adopting a nationally consistent approach around the eligibility requirements for those who are blind or vision impaired, similar to those outlined in the Bill currently before the Committee.³⁷

NPNPC also identified this as an issue, advising:

As the number of permit holders continues to increase while the Access to Premises standards have made no adjustment to the minimum requirements for ratios of accessible spaces, there is increasing competition in some high traffic areas such as hospitals, shopping centres and recreational facilities for these spaces and thus eliminating the abuse of these spaces has become a necessity.³⁸

In regard to the increase in the number of permits to be issued, DTMR advised:

The independent review found that a definite number of people who are diagnosed as legally blind in Queensland could not be established conclusively from one data source and consequently used data from a number of sources. The independent review estimated that there could be approximately 18,000 Queenslanders who would be eligible to apply for a permit if the criteria was expanded to include people who are diagnosed as legally blind. Based on this number the independent review broadly estimated a potential take up rate of 14,000 new applications.

TMR acknowledges that not all people diagnosed as legally blind will apply for a disability parking permit, and that some vision impaired people may already hold a permit due to mobility impairment or other medical conditions affecting mobility.³⁹

With regard to the number of disability parking spaces, DTMR advised:

The rules governing the minimum requirement for spaces are in federal law. It is under the Commonwealth Disability (Access to Premises—Building) Standards 2010. That requires a certain minimum number of parking bays for certain types of locations. For example, nursing homes and schools require a minimum of one disability parking bay per 100. Often they will go above and beyond, depending on the number.

Certainly when it comes to public transport there are no planned changes, but in consideration of any construction for new parking facilities that certainly is something that is high on the department's priority list—making sure there are enough bays. Generally speaking, we will go above and beyond the minimum requirement with new structures. It is obviously very difficult with older facilities, if you think about things such as your local shopping centre that might have only 20 car spaces. If they have one, they meet the requirements. However, it is also very difficult sometimes to retrofit more than one, depending on the layout of the facility.⁴⁰

³⁷ Submission 5, p 2.

³⁸ Submission 3, p 2.

³⁹ Department of Transport and Main Roads, correspondence dated 21 January 2020, pp 2-3.

⁴⁰ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 3.

DTMR also confirmed that they have not received complaints that the current requirements are onerous for carpark providers to comply with and in many cases facilities either meet or go out of their way to exceed the requirements.⁴¹

RACQ advised that they consider that the ratio of disability parking spaces probably needs to be researched in order to determine if there is a need for an increase.⁴²

Committee comments

The committee notes the department's intention to undertake a review of the amendments to the disability parking permit scheme 12 months after commencement. The committee considers that this should include a review the number of permits issued and whether this has had an impact on the number of disability parking space requirements.

2.1.1.4 Application forms

GDQ suggested amending the application form for the Vision Impaired Travel Pass to include a section for access to an ADPS permit.⁴³ In response to this issue, DTMR advised:

TMR has established different IT and supporting systems for the administration of the Disability Parking Permit Scheme and the Vision Impaired Travel Pass Scheme. While this complicates having one application that can service both schemes, in order to reduce the burden on legally blind applicants, those who have a Vision Impaired Travel Pass, will be able to provide a copy of their card as evidence of eligibility for the Disability Parking Permit Scheme. This will mean that applicants will not require a separate assessment by their health professional to access the scheme. TMR is happy to further assess the feasibility of combining or further streamlining the application process for the two schemes.⁴⁴

Committee comments

The committee notes that this issue is outside the scope of the Bill. However, the committee is of the view that any reduction in the administrative burden on stakeholders is of value and the committee is satisfied that the department is working to address this concern.

2.1.1.5 Use of disability parking spaces by non-permit holders

When introducing the Bill the Minister noted:

What can impact the availability of those parking bays, however, is people who do not hold a permit and unlawfully occupy these parking spaces, thereby depriving those with a genuine need.⁴⁵

...

⁴¹ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 3.

⁴² RACQ, Public hearing transcript, Brisbane, 22 January 2020, p 3.

⁴³ Submission 1, p 13.

⁴⁴ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 3.

⁴⁵ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3762.

While people may think they are only going to be a few minutes when they use a disability parking space illegally, it effectively means that a person who truly needs to access a space may be forced into a situation where they have to abandon their outing altogether or try and navigate unsafely among traffic. For persons with a vision impairment, walking through traffic lanes to reach their destination is dangerous. The person with a vision impairment and a sighted guide must walk two abreast, which means that one of them may be exposed to car park traffic if they cannot get a disability parking space. Also, persons with a vision impairment who have a guide dog need the extra space to get the guide dog out of the car so they can fit the harness in the safety of a parking bay.⁴⁶

NPNPC advised their campaign was launched to raise awareness in the community about the issue of misuse of disability parking spaces and permits.⁴⁷ NPNPC advised:

At the beginning of the No Permit No Park Campaign much of our focus was on educating the community. While there was a general [sic] of the community who felt this offence in some circumstances was a harmless offence, our campaign helped them to understand the impact it can have on permit holders to not be able to find an accessible park.⁴⁸

...

There is still the small element of the community who are, for whatever reason, oppositional to compliance with the law. Disability parking spaces are a common target for their abuse of the law, mostly because of the assumption of convenience. This is found most commonly in areas where disability parking is in the proximity of supermarket entrances, bottle shops, ATMs and the like. It was also found there is an attitude that affected disability parking abuse at places the community assumes people with disabilities don't go such as night venues and gyms.⁴⁹

NPNPC advised the committee:

Disability parking is not just a parking issue; it is an access and inclusion issue. It is a disability rights issue, and until we start addressing that we will continue to have the problem on the same scale we had in 2013 and the same scale we have today.⁵⁰

QDN advised:

People with disability have been impacted for years by the inappropriate use of disability parking spaces by some members of the general public.⁵¹

...

The importance of an effective Disability Parking Permit Scheme and the availability of accessible parking spaces for people with disability cannot be overstated. QDN members have repeatedly raised examples of when the lack of accessible parking spaces has prevented them from buying basic groceries or attending doctors' appointments. This has broader flow on effects for the entire community, including poorer health outcomes, less money being spent in local businesses and an increase in social isolation.⁵²

⁴⁶ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3762.

⁴⁷ No Permit No Park Campaign, Public hearing transcript, Brisbane, 22 January 2020, p 2.

⁴⁸ Submission 3, p 2.

⁴⁹ Submission 3, p 2.

⁵⁰ No Permit No Park Campaign, Public hearing transcript, Brisbane, 22 January 2020, p 2.

⁵¹ Submission 5, p 2.

⁵² Submission 5, p 3.

GDQ advised the committee that their experience and research indicates that the biggest thing that impacts access is people misusing the spaces and if this can be addressed through increased fines and better enforcement, there will be better access for permit holders.⁵³

Committee comments

The committee supports any measures that improve accessibility to disability parking spaces for disabled persons. The committee concurs with the view that accessibility to disability parking spaces for people with a disability, including the vision impaired, improves both their safety and inclusion.

2.1.2 Disability parking permit scheme – penalties

In regard to the proposed increase to the penalty that applies for using a disability parking area without a permit, the explanatory notes state:

Currently, the police-issued infringement notice fine for the offence of stopping in a disability parking bay without a permit is \$266 (2 penalty units). Local governments can set their own parking fines and issue tickets under a local law. Many local governments have adopted the same fine as the state-based law.

The availability of disability parking bays is impacted by people who do not hold a permit unlawfully occupying existing parking spaces, depriving those who have a genuine need.

Therefore, the amendments in the Bill increase the police-issued fine amount to \$533 (4 penalty units). This is aimed at helping to deter the misuse of disability parking bays. It is recognised that the penalty itself is only one element of deterrence. Therefore, in addition, the Department of Transport and Main Roads will continue a range of targeted measures, including education and communications, to support awareness and deter misuse.⁵⁴

The explanatory notes identify that Queensland's current fine is one of the lowest in Australia, and the proposed increase will make Queensland's fine one of the highest in Australia.⁵⁵

The Minister noted, when introducing the Bill, that the significant increase in penalties is to address the issue of non-permit holders parking illegally in a disability parking space. The Minister stated:

To address this concern, the bill increases the current penalty for illegally parking in a disability parking space from \$266 to \$533—a doubling of the fine. In the five years to 30 April 2019, police officers in Queensland issued over 7,500 fines to people who illegally parked in a disability parking space. This figure is only a fraction of the fines issued for this offence, as local governments issue the majority of parking fines in this regard. I recognise that local governments set their own penalty amounts and these vary across Queensland, but setting a higher penalty recognises the seriousness of illegally parking in a disability parking space. I note that a considerable number of local governments take the state law as their own.⁵⁶

...

It is expected that the prospect of a \$533 fine will dissuade people from unlawfully using these valuable parking spaces. The penalty itself is only one element of deterrence, and for this reason a range of targeted measures will be deployed.⁵⁷

⁵³ Guide Dogs Queensland, Public hearing transcript, Brisbane, 22 January 2020, p 3.

⁵⁴ Explanatory notes, pp 1-2.

⁵⁵ Explanatory notes, p 6.

⁵⁶ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3762.

⁵⁷ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3762.

DTMR advised the committee that whilst local government can implement their own penalties, it is anticipated that local schemes will follow the proposed penalty amounts. DTMR advised:

Quite a number of local governments—Brisbane City Council, for example—already follow the police issued penalty amount of \$266. The Minister for Transport and Main Roads has written to local governments as well as the local government authority encouraging them to follow suit and also work with us around communication and ensuring we effectively enforce disability parking. We expect a large number of them will likely follow suit. They are applied under local laws so they do not have to follow that same penalty amount. We tend to see certainly the bigger councils in the bigger city areas do that.⁵⁸

At its public briefing, DTMR advised the committee that the intention of the proposed increase in penalties is to discourage people who intentionally park in a disability parking space without a permit. They explained that it is difficult to quantify exactly what the impact of the proposed amendments will be, but they will be monitoring and seek feedback as part of a 12 month review of implementation.

Whilst general supporting the proposed increase in penalties, submitters raised issues including alternative penalty measures and policing of disability parking space usage. These issues are discussed below.

Committee comments

The committee supports the increase in infringement notice fines from two penalty points (currently \$266.90) to four penalty points (currently \$533.80). The committee is optimistic that the proposed increase in penalties will deter the socially unacceptable behaviour of people illegally parking in disability parking spaces.

The committee encourages local governments to adopt the proposed penalty increases in their own jurisdictions.

2.1.2.1 Alternative penalty measures

NPNPC advocated for the inclusion of one demerit point as an additional penalty. They advised that a number of global studies support the finding that demerit points are more effective in deterring offenders than monetary penalties.⁵⁹

NPNPC acknowledged the arguments that the reason for not including a demerit point penalty in the past was that demerit point penalties are reserved for dangerous driving offences. NPNPC challenged this citing a number of examples of offences which attract demerit points, that they considered to be non-dangerous offences.⁶⁰

DTMR provided a response, advising:

Penalties for traffic offences in Queensland are determined according to the risks and dangers associated with the behaviour by linking the severity of the penalty with the degree of the crash risk. Coupled with financial penalties, demerit points sanction drivers who persistently drive in an unsafe manner.

While demerit points are still applied to a wide range of offences, they are primarily directed at offences where there is a serious road safety or crash risk that flows from driver behaviour.⁶¹

⁵⁸ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 4.

⁵⁹ Submission 3, p 3.

⁶⁰ Submission 3, p 4.

⁶¹ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 4.

QDN advised that its members broadly support increased fines for the inappropriate use of a disability parking space. However, they advised that some of their members support the idea of demerit points for disability parking offences. QDN stated:

*QDN supports this idea for on-street parking and acknowledges that further thought would be required on how to achieve this for off-street parking. QDN recommends enforcing inappropriate use of on-street disability parking spaces as a traffic offence that attracts a fine and demerit points, and that further research be undertaken as to how this would apply to off-street parking.*⁶²

QPNPC noted that New South Wales (NSW) implemented a scheme allowing council officers to issue a demerit point for infringements under disability parking permit laws in 2014.⁶³ NPNPC advised that they understand that the NSW legislation allows councils to issue infringements in private car park areas and disability parking infringements are the only infringement that councils can issue a demerit point for.⁶⁴

DTMR advised that there has been no indication that the inclusion of a demerit point for the offence in NSW has resulted in a significant reduction in the number of fines issues.⁶⁵ DTMR also advised that NSW has a different system to Queensland in that all penalties go through a single portal.⁶⁶

In response to the suggestion that a demerit point be included with the penalty, DTMR advised:

Demerit points provide drivers with a strong incentive to correct unsafe driving behaviours before it escalates into a harsher consequence, such as a licence suspension. While demerit points are still applied to a wide range of offences, they are primarily directed at offences where there is a serious road safety or crash risk that flows from driver behaviour.

If a driver accumulates more demerit points than their licence type allows, their licence may be suspended, or they may have the option to serve a 12-month good driving behaviour period. A learner and a P1/P2 provisional or probationary licence holder will be subject to a licence sanction notice if they accumulate four or more demerit points within any one-year period. The demerit points threshold for an open licence holder is 12 or more demerit points within any three-year period.

Driver licences are recognised for the benefits they provide in accessing employment and social opportunities. For this reason, the impacts of offences on this must be carefully considered against the real road safety risk. Similarly, offences with a comparable road safety risk generally incur the same demerit points.

*Parking fines in Queensland do not currently incur demerit points due to the significantly reduced road safety risk associated with the behaviour.*⁶⁷

DTMR also advised:

In relation to demerit points, we obviously like to apply demerit points to road safety related or safety related infringements. There will always be the odd example where that may not necessarily be the case or may not look like it is the case, but the vast majority of penalties that have demerit points are for safety related offences.

⁶² Submission 5, p 2.

⁶³ Submission 3, p 4.

⁶⁴ No Permit No Park Campaign, Public hearing transcript, Brisbane, 22 January 2020, p 5.

⁶⁵ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 5.

⁶⁶ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 5.

⁶⁷ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 5.

*The other thing about demerit points is that local governments cannot apply demerit point offences. In that case you might find you have a situation where a police issued PIN would have a demerit point and a local government one would not. That is a problem in itself for consistency. Most jurisdictions do not apply demerit points.*⁶⁸

In addition, DTMR noted that:

*... given the critical role of local governments role in the enforcement of parking offences, implementation of a demerit point penalty would require complex information technology (IT), administrative, and information-sharing arrangements to connect 77 individual local government jurisdictions. Full IT impacts, costs and timeframes are likely to be significant, and local governments may not participate in such a system, if available.*⁶⁹

The committee sought the views of RACQ on the inclusion of demerit points. RACQ considered the issues, including the ability for councils to impose demerit points, to be impediments that would need to be overcome. They considered the proposed increase in the fine to be a significant penalty.⁷⁰

NPNPC acknowledged that they do not know if demerit points would work even though it has been shown that demerit points deter the high-risk drivers and it may not deter everyone. NPNPC consider that enforcement of penalties is the most important issue.⁷¹

Committee comments

The committee notes the difficulties cited by the department in relation to the inclusion of demerit points as part of the penalties. However, the committee is of the view that if the review of the disability parking permit scheme 12 months after commencement does not identify significant improvement in accessibility due to non-permit holders continuing to occupy disability parking spaces, demerit points should be considered by the government as an alternative solution. Specifically, the committee considers that the government should consider whether the offence of using a disabled parking space without a permit should attract demerit points.

Recommendation 3

The committee recommends the Minister for Transport and Main Roads undertake a review of the amendments to the disability parking permit scheme 12 months after commencement. The committee recommends that this review include whether the amendments have had an impact on the accessibility of disability parking spaces and whether alternative measures, including demerit points, need to be implemented.

2.1.2.2 Policing of disability parking space usage

NPNPC advised that the main entities authorised to issue parking infringement notices (PINs) in Queensland are the Queensland Police Service (QPS) and local government compliance officers.⁷²

⁶⁸ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 5.

⁶⁹ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 5.

⁷⁰ RACQ, Public hearing transcript, Brisbane, 22 January 2020, p 7.

⁷¹ No Permit No Park Campaign, Public hearing transcript, Brisbane, 22 January 2020, p 7.

⁷² Submission 3, p 1.

NPNPC advised that their analysis of police infringement data shows the following:

*While there has been consistent decline in the number of infringements issued by police in Queensland over all in the past 5 years, we don't believe this is linked to a decline in behaviour, but rather other influencing factors. The years which the No Permit No Park Campaign had a stronger presence in media and those which we worked directly with Queensland Police had higher numbers of penalty issues than other years where the campaign has been less visible. Public pressure has proven to have a direct influence on QPS blitzes and increased awareness of officers themselves.*⁷³

NPNPC advised that data is limited because council data is not readily available, and NPNPC believes that councils issue 50 to 150 per cent more infringements than police for disability parking offences.⁷⁴

NPNPC advised that their discussions with both QPS and local government identified difficulties when issuing PINs. NPNPC advised:

*Queensland Police Service members expressed the attitude that issuing PINs was beneath their qualifications and could be better handled by council to leave police available to deal with matters councils cannot deal with.*⁷⁵

And:

*Councils express their frustration in the restriction to the areas they can monitor outside of council jurisdiction. For example a shopping centre car park where under the building code and Access to Premises Standards they are required to provide disability accessible parking police are able to patrol freely as the carpark, being accessible to the public, falls under the Road Rules Legislation definition of a road related area, which police are able to monitor for the purpose of upholding traffic laws. Council however cannot monitor or issue PINs as it is not a council controlled area. They require permission of the building owner or manager. While some councils have successfully negotiated agreements with shopping centres to patrol, many have also objected. It's also a deterrent with time consuming paperwork for councils to actually undertake this action.*⁷⁶

In response to this issue, DTMR acknowledged:

The vast majority of regulated parking enforcement falls within the responsibility of local government and for this reason local government issue the majority of parking fines. TMR is appreciative of the many parking fines that are still issued by Queensland Police Officers and recognises there are a wide variety of reasons why enforcement of some offences, compared to others, can vary year-by-year or over time. TMR is understandably limited to the degree it can comment on operational policing matters.

*Nevertheless, TMR will work with local governments and relevant Queensland Government agencies, such as Queensland Police Service, to promote awareness of the penalty increase and encourage enforcement efforts, in order to further deter misuse of disability parking bays.*⁷⁷

⁷³ Submission 3, p 1.

⁷⁴ Submission 3, p 1.

⁷⁵ Submission 3, p 1.

⁷⁶ Submission 3, p 2.

⁷⁷ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 4.

With regard to the ability to issue penalties for parking in a disability parking space, DTMR explained that a Queensland police officer can issue a penalty for someone parking in a disability parking bay on any road or road related area. Police can also issue penalties in shopping centres if there is general access to anyone driving a car as it is classed as a road related area.⁷⁸

DTMR also advised:

*If it is not public access—for example, it has a boom gate and you cannot access unless you meet certain conditions or requirements—then a shopping centre can enter into an agreement with the local government to allow them to have access to issue penalties on their property. A number of those do. Certainly some of the bigger shopping centres around Brisbane, for example, do that. They enter into agreements that allow local government officers to do that.*⁷⁹

In order to resolve the issue of the restriction on local government patrol areas, the NPNPC proposed that state legislation be amended to allow council parking inspectors access to areas where disability parking spaces are located for the purpose of monitoring disability parking without restriction. They consider that this would take pressure off police and allow more effective management of disability parking laws.⁸⁰

QDN supported NPNPC in regard to this issue.⁸¹

NPNPC advised the committee that if local government officers were added as an authorised person under the road rules legislation, they could issue fines and no-one could stop them going in.⁸²

In response DTMR advised:

Owners of private property (such as car parks at shopping centres) may enter into an agreement with local governments, to allow parking inspectors to access their private land and issue parking infringement notices. Many local governments have entered in such arrangements for example Logan City Council's website details 18 properties where such an agreement exists. TMR understands that such agreements are also in place in other jurisdictions.

*TMR believes that the current requirement for agreement between parties is appropriate, given competing considerations of the private property owner and council. Further, transport legislation does not prescribe the form of any agreement or minimum matters it must contain. Councils and property owners are free to have such arrangements suit their own purposes. Finally, TMR has not received feedback that the requirement to seek permission or an arrangement amounts to a deterrent to enforcement.*⁸³

RACQ advised the committee that in order for the proposed changes to be successful they need to be enforced. RACQ advised:

*... as far as enforcement goes, it is pointless having laws if you do not actually enforce them. Therefore, any changes have to be both communicated and enforced.*⁸⁴

⁷⁸ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 4.

⁷⁹ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 4.

⁸⁰ Submission 3, p 2.

⁸¹ Submission 5, p 3.

⁸² No Permit No Park Campaign, Public hearing transcript, Brisbane, 22 January 2020, p 4.

⁸³ Department of Transport and Main Roads, correspondence dated 21 January 2020, p 6.

⁸⁴ RACQ, Public hearing transcript, Brisbane, 22 January 2020, p 6.

However, RACQ also advised:

... increasing the penalty for this is something that educates people on its own. We have seen the fine increases. Once people hear about that, they take notice of the law they will get that penalty for if they break it. It is important to remember that even the current penalty is still significant for the average Queenslanders. You are talking about a couple of hundred dollars. A lot of people are not budgeting for that fine. They do not want to pick up that penalty; they want to try to do the right thing. There are people out there who do the wrong thing, as has been mentioned today, but the majority of people, once they hear that that penalty is going up significantly, will want to avoid that, which is what we are aiming for.⁸⁵

QDN also supported an increase in the number of inspectors or police to monitor the use of disability parking spaces. QDN acknowledged that the response to this issue may differ between private and public spaces.⁸⁶

Committee comments

The committee agrees with the view that enforcement of the proposed penalties is necessary to ensure the best outcomes for achieving the policy objectives of the Bill. The committee considers that the uncertainty regarding council officers' ability to access areas such as shopping centres creates an additional impediment to enforcing the proposed amendments. The committee considers that amendments allowing council officers additional access should be implemented.

The committee considers that the government should investigate options which would enhance the ability of local government to enforce the offence of using a disabled parking space without a permit, including on private property such as shopping centre carparks. Specifically, the committee considers that the government should investigate whether it would be possible to make local government employees 'authorised persons' under the road rules for the purpose of enforcing the offence of using a disabled parking space without a permit.

Recommendation 4

The committee recommends that legislative amendments be considered to authorise council officers' access to areas where disability parking spaces are situated for enforcement purposes.

2.1.3 Rail Safety National Law – reliance on national definitions

The Bill also proposes amendments to the *Rail Safety National Law (Queensland) Act 2017* to omit the Queensland specific definitions of *level crossing* and *rail or road crossing* so as to rely on the national law definitions. The amendments do not introduce any policy change but ensure that 'current safety requirements relating to rail or road crossings, such as interface coordination and the ability to close or regulate crossings, continue unchanged'⁸⁷. The Rail Safety National Law, as drafted in South Australia, has been applied as a law of Queensland, NSW, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory and has been mirrored in Western Australia.⁸⁸

⁸⁵ RACQ, Public hearing transcript, Brisbane, 22 January 2020, p 6.

⁸⁶ Submission 5, p 2.

⁸⁷ Explanatory notes, p 2.

⁸⁸ Explanatory notes, p 6.

The explanatory notes further explain:

The Rail Safety National Law is set out in the schedule to the Rail Safety National Law (South Australia) Act 2012. The Rail Safety National Law (Queensland) Act 2017 adopts the Rail Safety National Law as a law of Queensland. When the law was adopted in Queensland in 2017, specific Queensland definitions of level crossing and rail or road crossing were inserted. This was to reflect that there are different requirements applying to signed and unsigned crossings for heavy rail and for trams, as already provided for in the Queensland Road Rules. These different rules reflect the different traffic controls that exist at unsigned crossings, such as traffic lights that direct the right of way for trams and other vehicles at the crossing.

On 1 July 2019, amendments were made by the South Australian Parliament to the Rail Safety National Law to change definitions to cater for these different requirements. However, these amendments impacted upon the legislative mechanism applying in Queensland. Therefore, a transitional regulation was made to retain Queensland's definitions until amendments could be made to Queensland's application law to recognise the new national law definitions. The transitional regulation expires on 30 June 2020.⁸⁹

The Minister advised:

The amendments are technical in nature and will remove definitions of level crossing and rail or road crossing from that legislation. The effect of that is that the definitions contained in the Rail Safety National Law will apply in Queensland, ensuring a consistent national approach.⁹⁰

DTMR confirmed that there are no impacts from the proposed changes and advised that at the time of the adoption of the Heavy Vehicle National Law (HVNL) in 2017 there were some differences between definitions. However, since then the HVNL has been updated to include the relevant definitions. The amendments will ensure there is no duplication.⁹¹

Committee comments

The committee supports the proposed amendment.

2.1.4 Grounds to amend, suspend or cancel an approval

The Bill also proposes to amend the TORUM Act to provide that grounds to amend, suspend or cancel an approval can be specified in a regulation. The explanatory notes state:

The chief executive issues various approvals, such as registrations and exemptions, under the Transport Operations (Road Use Management) Act 1995. Section 18 of the Act currently provides a list of grounds on which approvals may be amended, suspended or cancelled under the procedure set out in section 19 of the Act. Regulations made under the Act contain provisions dealing with various approvals and provide additional grounds on which those approvals may be amended, suspended or cancelled. For legislative clarity, the Bill amends section 18 of the Act to insert an express regulation-making power to support those grounds set out in regulations.⁹²

⁸⁹ Explanatory notes, p 2.

⁹⁰ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3763.

⁹¹ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 3.

⁹² Explanatory notes, p 2.

The Minister stated:

The bill also makes a minor amendment to ensure that where a person no longer meets the eligibility criteria for a disability parking permit, if necessary there is a ground for amending, suspending or cancelling that permit. For other kinds of approvals such as vehicle registration, an explicit regulation-making power is being included in the Transport Operations (Road Use Management) Act 1995 to recognise that regulations may also prescribe grounds for amending, suspending or cancelling approvals.⁹³

Committee comments

The committee supports the proposed amendment.

⁹³ Queensland Parliament, Record of Proceedings, 26 November 2019, p 3763.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

Clauses 4, 6 and 14 of the Bill raise issues of fundamental legislative principle.

The following table provides a summary of the breaches of fundamental legislative principle in the Bill, which are then discussed below.

SUMMARY TABLE OF ISSUES OF FUNDAMENTAL LEGISLATIVE PRINCIPLE

CLAUSES	ISSUES OF FUNDAMENTAL LEGISLATIVE PRINCIPLE
Clause 6 increases the penalty for illegally parking in a disabled space from 2 penalty units (\$266.90) to 4 penalty units (\$533.80).	<p>Rights and liberties of individuals – penalties should be relevant and proportionate.</p> <p>The committee is satisfied sufficient justification has been provided for the increase in penalty, such that any breach of fundamental legislative principle is justified.</p>
Clause 16 will allow a regulation to specify the eligibility criteria for the grant of a disability parking permit and standard conditions for disability parking permits	<p>Delegation of legislative power – a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.</p> <p>The committee is satisfied that the delegation to regulation of the power to specify the eligibility criteria and conditions of a disability parking permit is appropriate.</p>
Clause 4 removes the Queensland specific definitions and applies the national definitions of ‘level crossing’ and ‘rail or road crossing’.	<p>National scheme legislation – a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.</p> <p>Adopting national scheme legislation may mean there is little capacity of the Parliament to amend, refuse to pass or disallow the law.</p> <p>The committee is satisfied sufficient regard has been given to the institution of parliament.</p>

3.1.1 Rights and liberties of individuals

3.1.1.1 Clause 6

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals – proportionality and relevance of penalties.

Summary of provisions

Clause 6 increases the penalty for illegally parking in a disabled space from 2 penalty units (\$266.90) to 4 penalty units (\$533.80).

Issue of fundamental legislative principle

Proportion and relevance

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.⁹⁴

The fine for parking in a disabled space without a permit has doubled to \$533.80. This is a significant increase and raises the issue of whether the penalty is relevant and proportionate.

The explanatory notes recognise that the fine is higher than for other parking offences, but considers this as justified:

... as the potential impact of misusing a disability parking area is significantly greater than the impact of failing to comply with other parking restrictions. Specifically, using a disability parking area without a permit potentially deprives a person with a disability from participating in basic everyday activities such as shopping or attending medical appointments.⁹⁵

The explanatory notes continue:

It is expected that the penalty increase will impact the basic 'risk to reward' assessment a person makes before they offend. That is, the potential for the existing \$266 fine may not be sufficient to deter the 'reward' of a convenient car parking space, especially during peak periods. However, a significant increase to the fine is likely to impact this calculation and help outweigh the perceived benefits of misusing the parking space.⁹⁶

Committee comments

The committee is satisfied sufficient justification has been provided for the increase in penalty, such that any breach of fundamental legislative principle is justified.

3.1.2 Institution of Parliament

3.1.2.1 Clause 16

Section 4(4)(a) *Legislative Standards Act 1992* requires that legislation allow the delegation of legislative power only in appropriate cases and to appropriate persons.

⁹⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

⁹⁵ Explanatory notes, p 3.

⁹⁶ Explanatory notes, p 4.

Summary of provisions

Clause 16 will allow these matters to be specified in regulation:

- the eligibility criteria for the grant of a disability parking permit, and
- standard conditions for disability parking permits.

Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.⁹⁷

Clause 16 allows the executive to specify certain matters in regulation. The issue arises as to whether it is appropriate for such matters to be provided for in regulation.

Clauses allowing a regulation to prescribe eligibility criteria and conditions are relatively common in bills.

The explanatory notes provide this justification:

*Allowing the criteria to be prescribed by a regulation is considered appropriate to ensure sufficient flexibility to respond to future changing society expectations in relation to eligibility for a disability parking permit. Standard conditions for disability parking permits are administrative in nature and therefore are appropriate to be specified in a regulation.*⁹⁸

The explanatory notes further state:

*Any regulations made as a result of the amendments in this Bill must be tabled in Parliament as part of the usual regulation-making processes. They will be subject to Queensland Parliamentary scrutiny and are subject to disallowance.*⁹⁹

Committee comments

The committee is satisfied that the delegation to regulation of the power to specify the eligibility criteria and conditions of a disability parking permit is appropriate.

3.1.2.2 Clause 4

National scheme legislation – If the Bill implements a national scheme, are any limitations on the sovereignty of the Queensland Parliament justifiable?

Summary of provisions

Clause 4 removes the relevant Queensland specific definitions and applies the national definitions of ‘level crossing’ and ‘rail or road crossing’.

Issue of fundamental legislative principle

A bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.¹⁰⁰

On past occasions, committees have been wary of national scheme legislation because it believed that when the legislation is introduced or tabled in Parliament following national agreement on the laws, there is little real capacity of the Parliament to amend, refuse to pass, or disallow the law.

⁹⁷ *Legislative Standards Act 1992*, section 4(4)(a).

⁹⁸ Explanatory notes, p 4.

⁹⁹ Explanatory notes, p 4.

¹⁰⁰ *Legislative Standards Act 1992*, section 4(4)(b).

The adoption of national scheme legislation, such as is involved in using the definitions in the *Rail Safety National Law (Queensland) Act 2017*, can involve the application of legislative provisions which are predetermined, or determined, in another jurisdiction. This raises the issue of whether the legislation has sufficient regard to the institution of Parliament.

The explanatory notes provide this justification:

*Maintaining consistency in the application of the Rail Safety National Law delivers efficiencies to government and industry, particularly operators working across different states and territories.*¹⁰¹

Further, in relation to the implementation of changes, the explanatory notes state:

*To ensure changes to the Rail Safety National Law are not made without the support of the Queensland Government, the Intergovernmental Agreement of Rail Safety Regulation and Investigation Reform as signed by the Council of Australian Governments, provides that amendments and additions to the RAILS Safety National Law and regulations will be carried upon the unanimous agreement of Ministers of the relevant Standing Council, currently the Transport and Infrastructure Council.*¹⁰²

With regard to the capacity to amend, refuse to pass or disallow the law, DTMR advised:

*Because the national rail law is legislated through the South Australian parliament, it is done at the national level so it is automatically adopted into Queensland law. However, the decisions for that legislation are made at the Transport and Infrastructure Council. Our minister is a voting member on that council and has the power to vote against or require amendments to any national law. It is applied in the same way as the national heavy vehicle law, and Queensland is the lead for that law.*¹⁰³

Committee comments

The committee is satisfied sufficient regard has been given to the institution of parliament.

3.2 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.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and 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.

¹⁰¹ Explanatory notes, p 4.

¹⁰² Explanatory notes, p 5.

¹⁰³ Department of Transport and Main Roads, Public briefing transcript, Brisbane, 22 January 2020, p 3.

Appendix A – Submitters

Sub #	Submitter
001	Guide Dogs Queensland
002	Royal Automobile Club of Queensland
003	No Permit No Park Campaign
004	Brisbane City Council
005	Queenslanders with Disability Network

Appendix B – Officials at public departmental briefing

Department of Transport and Main Roads

- Mr Andrew Mahon, General Manager (Land Transport Safety and Regulation), Customer Services, Safety and Regulation Division
- Mr Nigel Ellis, Executive Director (Legislation, Standards and Accreditation), Customer Services, Safety and Regulation Division

Appendix C – Witnesses at public hearing

Guide Dogs Queensland

- Mr Jock Beveridge, General Manager - Community Engagement
- Mr Matthew Barwick, Marketing & Communications Manager

RACQ

- Mr Joel Tucker, Manager Motoring Advice
- Mr Russell Manning, Principle Technical Researcher

No Permit No Park Campaign

- Ms Elisha Matthews, Advocate

PO Box 1968
Mount Isa QLD 4825

Mount Isa
74 Camooweal Street
P: 07 4730 1100

Charters Towers
Stock Exchange Arcade
2/76 Mosman Street
P: 07 4787 2139



Robbie Katter MP Member for Traeger



6 February 2020

Mr Shane King MP
Chair, Transport and Public Works Committee
Via email: tpwc@parliament.qld.gov.au

Dear Chair,

RE: Statement of Reservation

I write to provide you with a Statement of Reservation about the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019, particularly in the way it relates to the Transport Legislation (Disability Parking Permit Scheme) Amendment Bill 2019

While I don't disagree with the bill put forward by the Government, I would like to make clear my belief – and the belief of my fellow Katter's Australian Party (KAP) MPs – that the Government should have simply supported the original KAP bill and added the necessary amendments to achieve the same goals.

I would like to make clear that we do not feel it was necessary to create another bill for the sake of ownership of the issue.

Yours sincerely,

Robbie Katter
Member for Traeger