



Compliance & Enforcement Review

E-Scooters (Declaration Not to be Motor Vehicles) Notice 2018 Review

15 September 2023

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More information

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Introduction

- 1 In a well-functioning regulatory system, the level of compliance with applicable rules is consistently high and the need for corrective interventions is generally limited. If we look at wider regulatory requirements in the land transport system, such as driver licensing, vehicle registration and licensing, speed limits, traffic signals, warrant of fitness inspections, road user charges etc. we observe non-compliance at levels consistently below about 10%.
- 2 With e-scooters, non-compliance with user behaviour rules (*i.e.*, safe speeds, considerate parking) started poorly but has been improving with time. Improvement has occurred through increased user education and awareness about the negative impacts on non-users, and through controls such as no-go zones implemented between local authorities and rental e-scooter operators. Publicity about this current review is probably also behind an observable lift in compliance. For instance, it is likely that rental e-scooter operators have increased their follow-up with errant users. However, the overall picture about compliance with regard to e-scooters is that “there is room for improvement”.
- 3 Whilst there is regulatory design improvement work in progress, through the Accessible Streets package, there is also a need to look at what can be done now, under the regulatory regime which exists today.

Compliance

- 4 Safety outcomes for e-scooter users and other road users, including pedestrians, will be materially affected by the level of compliance with the rules that govern operation of e-scooters in public places. The rules that currently apply include:
 - 4.1 the general behavioural rules for wheeled recreational devices set out in the Road User Rule, which are designed primarily to protect the safety of other road users but will also increase the safety of e-scooter users if followed;
 - 4.2 licensing requirements imposed by local authorities on e-scooter use for hire. This may include speed limits, requirements for wearing helmets, and other limitations on how and where e-scooters may be used; and
 - 4.3 limitations on devices included in the s 168A declaration, in particular the maximum power limit set by the definition of wheeled recreational devices and the declaration.
- 5 Compliance with riding and parking rules is essential for both safety and the social license of shared e-scooters. Most local authorities are not equipped to assign officers to focus on e-scooter usage, and Police reasonably focus their efforts on larger issues.
- 6 Not all these rules apply equally to all e-scooter users. In particular, licensing requirements will depend on the location in which the e-scooter is used and generally do not apply to private e-scooters. However, as the significant majority of e-scooters and e-scooter journeys are anticipated to occur on hire scooters in regions where local authorities have imposed licensing requirements, the efficacy of licensing remains an important consideration.
- 7 In New Zealand, shared e-scooter schemes are primarily regulated by local government through Trading in Public Places bylaws and codes of practice. Local authorities may grant a licence for shared e-scooter schemes to operate their business in a public place. Codes of practice may be incorporated into the conditions of those licences.

- 8 The current local authority approach to compliance is functional in that operators of shared e-scooter schemes are legally allowed to operate their business in a public place and there is some monitoring against requirements (imposed by both the Rule and contract). For instance, contracts typically require operators to review 20% of parked e-scooter photos for monitoring of “considerate parking” and follow up with electronic messages to errant users. However, there are inconsistencies in approach and the degree of compliance monitoring which occurs.
- 9 While rental operators are subject to local authority imposed no-go zones, slow zones and no-parking zones, privately operated e-scooters are not. However, private operators are generally considered to operate more considerately with respect to speed around other footpath users, and parking issues are virtually non-existent on account that devices are not parked on streets but taken indoors and stored.
- 10 Our analysis and the responses to the stakeholder survey suggest that there is room to improve current levels of compliance with general behaviour rules and limitations on devices. The data indicates that a high proportion of e-scooter accidents, and negative feeling towards e-scooters is caused by non-compliance with general behaviour rules and limitations on devices. This includes factors such as high (condition inappropriate) speeds, failing to give way to pedestrians and poor parking practices.
- 11 We are also aware that a number of retailers are offering private e-scooters for sale that appear to exceed the maximum power limit unless fitted with controllers that will limit the maximum power output. It is unclear whether retailers are notifying purchasers that those devices cannot be used in public places. Some retailers and online publications have also expressed confusion about the maximum power limit and the rules that apply.
- 12 The effective power output of e-scooters in New Zealand can be kept below 300 W through the use of maximum speed limits. Even where the devices have labelled ratings in excess of 300 W, the speed control software de-rates actual maximum power output to below 300 W. The adequate speed and power performance (balancing the safety of users and non-users alike) is becoming well established in New Zealand by share schemes. Devices with a greater power output remain illegal to use in public places.
- 13 The European Transport Safety Council (ETSC) and the UK Parliamentary Advisory Council for Transport Safety (PACTS) published recommendations for e-scooters earlier this year. These include a 250 W power limit. They note that this would align with current rules in Denmark, Germany, Italy, Norway, Sweden and Switzerland.
- 14 While s 168A(3) of the Land Transport Act provides Waka Kotahi with the power to declare that a device with a maximum power output of greater than 300 W and up to 600 W is also not a motor vehicle, the current view is that such a declaration would not be appropriate at this time to promote an effective, efficient and safe land transport system.
- 15 We consider that there is room for improvement in building a culture of compliance with rules that govern e-scooter use, and that this improvement will result in improved safety outcomes for e-scooter users and other users of the road and footpath. In deciding whether to make a further declaration, we have taken into account the potential for improvement. In particular, potential for improvement has been considered in two ways:
- 15.1 First, we consider that the declaration should be accompanied by steps encouraging a culture of lifting compliance. We discuss this further below.
- 15.2 Second, we have proposed limiting the time period in which the declaration will apply to a further two years. This will allow us to review the steps we have proposed be taken to identify whether improvements have been achieved. This seeks to

incentivise local authorities, hire companies and e-scooter users to improve their compliance.

Enhancing compliance

- 16 A culture of lifting compliance for e-scooter use, as for other vehicles used in public, can be promoted using a range of tools. Waka Kotahi will seek to promote the culture of compliance within the framework of:
- 16.1 The overarching Waka Kotahi regulatory strategy – *Tū ake, tū maia* – which sets out the key risks and Waka Kotahi’s approach to reducing harm on the network.
 - 16.2 Subsidiary to that strategy, the Waka Kotahi *Compliance Response Framework* sets out the principles that underpin Waka Kotahi’s compliance decision-making and the behaviours regulated parties can expect to see when Waka Kotahi implements those decisions.
- 17 Interventions to achieve compliance range from education and engagement to support voluntary compliance; to working with other stakeholders to develop further conditions on use of e-scooters for hire; to enforcement action if rules are not followed. Waka Kotahi should take steps to develop these interventions.

Education and engagement

- 18 Based on the stakeholder feedback we have received and some of the public materials we have reviewed, it is apparent that there is a lack of clarity about the rules that apply to e-scooter use in public spaces. We consider that, as part of the decision to make a further declaration, Waka Kotahi should develop a plan to make sure that system participants have clarity regarding their responsibilities.
- 19 Elements of this plan will include:
- 19.1 ensuring that up-to-date information is publicly available concerning e-scooter device requirements, including maximum power limit requirements, and Road User Rule requirements;
 - 19.2 engagement with local authorities to provide information on device requirements, including maximum power limit requirements and Road User Rule requirements, as well as on steps that can be taken through licensing requirements to improve the safety of e-scooter users and other road users. For example, in considering speed limits or antisocial behaviour in busy, mixed environments, it may be that advisory signage or system design could be used to influence behaviours rather than geo-speed limiting a share scheme e-scooter and leaving speed to the discretion of riders of privately-owned devices;
 - 19.3 engagement with e-scooter hire companies to provide information on device requirements, including maximum power limit requirements and Road User Rule requirements, as well as on steps that can be taken through technology constraints to improve the safety of e-scooter users and other road users; and
 - 19.4 engagement with retailers of e-scooters to provide information on device requirements, including maximum power limit requirements.
- 20 Waka Kotahi will also engage with other regulators, including the Commerce Commission, to promote accurate information concerning device requirements and ensure that advertising of e-scooters for sale provides accurate information about whether the device can be used in public places.

- 21 Waka Kotahi will also look at how complaints about dangerous riding and poor parking, which are typically made to local authorities, can be collated and passed to Waka Kotahi for more consistent and effective treatment.
- 22 The Ministry of Transport has produced draft best practice guidance for regulating shared micro mobility for local authorities. Waka Kotahi will look to take over and refine these guidelines with a view to publishing them for national use across New Zealand.

Additional conditions and use of technologies

- 23 Waka Kotahi does not have the power to impose constraints on the use of e-scooters where the maximum power limit of the device does not exceed 300 W, as is the case for e-scooters that fall within the definition of wheeled recreational devices.
- 24 However, an increasing feature of local authority licensing requirements is that e-scooter hire companies impose technological limits on their devices. These can include controls on maximum speed and power within geographic regions, and helmet wearing requirements. In addition, e-scooter hire companies increasingly use financial incentives to promote safe use and storage of the devices. Waka Kotahi intends to work with local authorities to promote use of these technologies.

Enforcement

- 25 Enforcement activity has occurred in New Zealand with regard to high-powered e-scooters operating on public roads. For instance, in two separate incidents (one in 2018 and one in 2023) Police stopped riders crossing the Auckland Harbour Bridge. Police also stopped a rider on the Auckland motorway near Grey Lynn in 2023. Such vehicles sit outside the Declaration Notice because their power output exceeds 300 W. Clear non-compliance with maximum power requirements and vehicle licensing and registration requirements will continue to attract Police enforcement action.

Behavioural rules

- 26 As part of the process of making the 2018 Notice, Waka Kotahi considered enforcement of the terms of the Notice. During this process, Waka Kotahi:
- 26.1 consulted with Police on that issue;
 - 26.2 considered the possibility of appointment of enforcement officers via its LTA powers; however
 - 26.3 ultimately concluded that Police were best placed to be the primary means of enforcing the terms of the Road User Rule.
- 27 Police advised Waka Kotahi that the focus of its resources would be on enforcement of behavioural rules in the Road User Rule. Waka Kotahi has engaged with Police in the context of this renewal and confirmed that this remains the position of the Police.
- 28 The Waka Kotahi expectation is that Police will enforce the requirements of the Road User Rule and apply penalties where conduct is not consistent with the requirements of the Rules. Waka Kotahi will pass complaints about e-scooters it receives on to Police.

Maximum power limit

- 29 Renewing the Notice does not enable e-scooters with a maximum power output of greater than 300 W to be lawfully used in public places. To the extent that these e-scooters are in the market, they are unlawful now and would remain unlawful under a new Notice.
- 30 Police have advised that they do not have the resources to test, if necessary, the maximum power output of particular devices. Accordingly, Waka Kotahi has taken steps to consider whether it can access or develop facilities to undertake testing on particular devices.
- 31 Waka Kotahi has engaged Dr Jaspreet Dhupia, a senior lecturer in mechanical engineering at the University of Auckland, to assist in the development of a testing protocol for devices, with the intention of developing a nationally deployable method and associated technology for assessing power output compliance with the Notice.
- 32 Waka Kotahi will develop an enforcement plan to test the maximum power output of e-scooters in accordance with the testing procedure. This will include consideration of public complaints, or requests from suppliers or hire-companies to undertake testing.