

**Submission
No 166**

INQUIRY INTO USE OF E-SCOOTERS, E-BIKES AND RELATED MOBILITY OPTIONS

Organisation: Justice and Equity Centre

Date Received: 18 August 2024

18 August 2024

Portfolio Committee No. 6 – Transport and the Arts
Legislative Council
Parliament of New South Wales
6 Macquarie Street
SYDNEY NSW 2000

Dear Committee

Submission to the inquiry into the use of e-scooters, e-bikes and related mobility options

The Justice and Equity Centre ('JEC') welcomes the opportunity to make this submission to the Portfolio Committee No. 6 – Transport and the Arts ('Committee') inquiry into the use of e-scooters, e-bikes and related mobility options.

The JEC (formerly the Public Interest Advocacy Centre), is a leading social justice law and policy centre. We work with people and communities who are marginalised and facing disadvantage – including people with disability. We have a long history of involvement in public policy development and advocacy promoting the rights and equal participation of people with disability, working in consultation with disability advocates and disability representative organisations. Accessible public transport is a current priority of our work, and we have considerable experience in disability discrimination litigation and public policy development.

Our submission responds to various elements of the inquiry's Terms of Reference, including:

- opportunities to reform the regulatory framework to achieve better and safe outcomes;
- stakeholder perspectives on the impact of e-mobility devices;
- opportunities to improve safety for the community; and
- opportunities across government to improve outcomes.¹

Impacts on people with disability

The JEC recognises the potential for new forms of active transport, including e-mobility devices, to bring substantial benefits to the community, for example, by encouraging physical activity, increasing social and community interaction, reducing road traffic, and reducing greenhouse gas emissions from passive transport options like cars. However, every effort

¹ NSW Legislative Council, Terms of Reference (6 June 2024) (b), (c), (d) and (g).

should be made to achieve these benefits in a way that also prioritises, and does not compromise, accessibility for people with disability.

Across Australia, there have been reports of accidents involving e-scooters and injuries to pedestrians (particularly on footpaths).² In addition to accidents, there are also other issues with the parking of e-scooters which block access within public spaces. While these issues and accidents are relevant to all members of the public as pedestrians, through our work we are aware this issue disproportionately impacts people with disability and is of significant concern to them.³

For example, there have been collisions and accidents between e-scooter riders and people who are blind or vision impaired. Improper parking of e-scooters blocks access to footpaths and kerb ramps, particularly for wheelchair users, or access to Tactile Ground Surface Indicators and audio-tactile traffic indicator buttons for people who are blind or vision impaired.

These issues have led to a reported lack of confidence among people with disability accessing public spaces, perpetuating barriers to the inclusion of people with disability in our community. We refer the Committee to the submission from the Physical Disability Council of NSW, which further outlines concerns from people with disability in NSW.

We urge the Committee to consider how the continued use of e-scooters and other e-mobility devices can prioritise accessibility for all people, and how infrastructure for the use of e-scooters can avoid reducing accessibility of shared spaces.

The need for regulation and enforcement to ensure safety

Ongoing issues associated with riding and parking e-scooters, as well as accidents involving e-scooters, demonstrates the need for a stronger regulatory framework in NSW to protect the safety of all people.

Existing legal mechanisms, including anti-discrimination laws, are not sufficient to ensure the safety of people with disability. Requirements in the *Disability Discrimination Act 1992* (Cth) ('DDA'), including the *Disability Standards for Accessible Public Transport 2002* (Cth) ('DSAPT') are not designed to regulate e-mobility devices and infrastructure for their use. It is also unclear what responsibility different levels of government, as well as private operators or providers of e-mobility devices and services, bear for ensuring accessibility.

While people may be able to complain after the event that an e-mobility related experience was discriminatory, this puts the onus on people with disability to raise deficiencies in the

² See for example, Milad Haghani and Clara Zweck, 'E-scooters are linked with injuries and hospital visits – but we can't say they are riskier than bikes yet', *News* (Web Page, 2 February 2024) <<https://www.unsw.edu.au/newsroom/news/2024/02/e-scooters-are-linked-with-injuries-and-hospital-visits---but-we->>; Cevik et al, 'The impact of electric scooters in Melbourne: data from a major trauma service' (2024) 94(4) *ANZ Journal of Surgery* 572.

³ See for example, submissions from the Physical Disability Council of NSW and Vision Australia to this inquiry.

regulatory framework and comes too late in the process to ensure accessibility and safety for all are priority considerations in the design of these new forms of transport.

There are clear opportunities to develop an effective regulatory framework which promotes accessibility and safety. To illustrate, technology can and has been used to govern the use of e-scooters (eg geo technology to limit speed limits, stop users riding on footpaths and prevent improper parking of e-scooters). The NSW Government should consider how the use of such technology could be incorporated within the regulatory framework to achieve safe outcomes.

Importantly, the regulatory framework must also introduce enforcement measures to encourage compliance by e-mobility operators and riders.

E-mobility devices offer a convenient and sustainable mode of transport. To avoid issues in other jurisdictions, such as the recent ban of e-scooter rentals in the City of Melbourne,⁴ the NSW Government should proactively ensure the framework regulating e-scooters is adequate to protect the safety of all people.

Limited ability to seek compensation for third parties injured in an e-scooter accident

We also highlight to the Committee the importance of ensuring accident compensation measures are adequate to protect people in the event of e-mobility related accidents. We refer the Committee to our submission on this to the NSW Standing Committee on Law and Justice inquiry into the 2022 Review of the CTP insurance scheme (copy attached).

In NSW, e-scooter operators are required to have appropriate insurance cover for their e-scooters.⁵ Generally, rider insurance policies provide some cover for third parties who sustain injury or property damage in an accident, but they require the third party to claim against the rider (rather than directly under the insurance policy) and are often limited in scope by various exclusions. Third parties in this context are not able to access the motor vehicle Compulsory Third Party ('CTP') insurance scheme.

If the e-scooter insurance policy does not provide coverage, or the rider does not have insurance, a third party may be limited to legal recourse against a negligent rider directly. This then depends on the third party being able to obtain the rider's personal details, the cooperation of the rider, and whether the rider has the means to compensate the third party. As a result, injured third parties could be left with significant out-of-pocket expenses and no

⁴ Adeshola Ore and Daisy Dumas, 'Melbourne bans e-scooter rentals as mayor says he has "run out of patience"', *Guardian Australia* (online, 13 August 2024) <<https://www.theguardian.com/australia-news/article/2024/aug/13/melbourne-e-scooter-ban-council-meeting-trial>>.

⁵ NSW Centre for Road Safety, Transport for NSW, 'E-scooters', *Road Users* (Web Page, 2024) <<https://www.transport.nsw.gov.au/roadsafety/road-users/e-scooters>>.

legal recourse. City of Melbourne's Lord Mayor has acknowledged this is an 'unacceptable loophole'.⁶

To address this issue, the NSW Government should ensure third party members of the public are covered in the event they are injured because of an e-scooter (or similar e-mobility device) accident by the CTP insurance scheme or an equivalent.

Please do not hesitate to contact me if you would like to discuss any of the matters raised in this submission.

Yours sincerely

Ellen Tilbury
Principal Solicitor

Encl: Submission to the NSW Standing Committee on Law and Justice inquiry into the 2022 Review of the Compulsory Third Party Insurance Scheme

⁶ Patrick Hatch, 'Walking in Melbourne, an e-scooter left Julia with serious injuries and a massive hospital bill', *The Age* (online, 9 July 2022) <<https://www.theage.com.au/national/victoria/walking-in-melbourne-an-e-scooter-left-julia-with-serious-injuries-and-a-massive-hospital-bill-20220707-p5azxe.html>>.

**Submission
No 5**

INQUIRY INTO 2022 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: Public Interest Advocacy Centre (PIAC)

Date Received: 23 September 2022

23 September 2022

Standing Committee on Law and Justice
Upper House Committees, Legislative Council
Parliament of New South Wales
Parliament House
6 Macquarie Street
SYDNEY NSW 2000

Dear Committee

Submission letter to the Standing Committee on Law and Justice inquiry into the 2022 Review of the Compulsory Third Party insurance scheme

The Public Interest Advocacy Centre (**PIAC**) welcomes the opportunity to make this short submission to the Standing Committee's inquiry into the 2022 Review of the Compulsory Third Party (**CTP**) insurance scheme.

PIAC is a leading social justice law and policy centre that works with people and communities who are marginalised and facing disadvantage. PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. One of our priority areas includes tackling barriers to justice and equality experienced by people with disability.

Our submission concerns the Standing Committee's review of the Motor Accidents Scheme (Terms of Reference, 1(c)), in the context of injuries to pedestrians or other third parties arising from accidents involving electric scooters (**e-scooters**).

Use of e-scooters in NSW

As the Committee will be aware, NSW is currently trialling 'hire-and-ride' e-scooters in certain locations. There are several hire-and-ride e-scooter operators (**operators**) in NSW.¹

Currently, the trial permits e-scooters in selected trial locations to be ridden in bicycle lanes and paths, on shared paths and on roads with a speed limit up to 50km/h. It is illegal to ride e-scooters on footpaths.²

¹ This submission does not intend to make adverse comments about any specific operator and issues raised in this submission are intended to be general.

² Centre for Road Safety, Transport for NSW, 'E-scooters' (Web Page, 27 July 2022) <<https://roadsafety.transport.nsw.gov.au/stayingsafe/e-scooters/index.html>>.

Accidents involving e-scooters

Across Australia, there have been an increasing number of reports of accidents involving e-scooters and injuries to pedestrians (particularly on footpaths).³

PIAC is aware this issue is of particular concern for people with disability, for whom footpaths can already be hazardous. Given PIAC's experience working with people with disability, we have investigated issues of liability arising from the use of e-scooters. These issues are relevant to all members of the public as pedestrians or third parties in the event of an e-scooter related incident.

Avenues, or lack thereof, for injured third parties to seek compensation

In NSW operators are required to have appropriate insurance cover for their e-scooters.⁴ Generally, each operator has a rider insurance policy including for liability arising out of an accident involving a third-party. These policies provide that a third-party who has sustained injury or property damage can make a claim against the rider and the rider can then seek indemnity against the insurance policy. A third-party injured in an accident involving an e-scooter cannot make a claim directly under the rider's insurance policy.

However, generally the insurance policies offered by operators are limited in scope by various exclusions. For example, coverage may not be provided if at the time of the accident a rider: was not wearing a helmet, was not following *all* local road rules or breached the operator's rental agreement. Such exclusions could significantly and detrimentally limit the circumstances in which an injured third-party could be compensated under the rider's insurance policy.

If the insurance policy does not provide coverage, an injured third-party could seek legal recourse against a negligent rider – assuming the third-party has been able to attain the riders' personal details. However, the outcome of any claim will depend on the cooperation of the negligent rider, if any proceedings are required to enforce the payment of the claim, and whether the rider has the means to compensate the third-party.

Under the motor vehicle CTP insurance scheme in NSW, ordinarily, if a pedestrian is injured by a motor vehicle, they can make a claim for compensation under the CTP scheme. However, as e-scooters are not required to be registered,⁵ there is no requirement for compulsory third-party insurance coverage and accidents involving e-scooters do not fall within the ambit of the NSW motor vehicle CTP insurance scheme.

As the use of e-scooters continues to increase, the risk that e-scooters present to pedestrians and other third parties also increase. Likewise, as the e-scooter trial in NSW expands to more

³ See for example: Cara Waters, 'Battle for footpaths drives increase in injuries linked to e-scooters', *The Age* (online, 10 February 2022) <<https://www.theage.com.au/national/victoria/battle-for-footpaths-drives-increase-in-injuries-linked-to-e-scooters-20220210-p59vbx.html>>; Caitlin Cassidy, 'Solution or hazard? Australia's e-scooter debate gains speed, but the rules are a mess', *The Guardian* (online, 23 July 2022) <<https://www.theguardian.com/australia-news/2022/jul/23/solution-or-hazard-australias-e-scooter-debate-gains-speed-but-the-rules-are-a-mess>>; Rachael Merritt, 'E-scooters help Australia's net-zero goals, but medics warn about long-term injuries', *ABC News* (online, 15 August 2022) <<https://www.abc.net.au/news/2022-08-15/escooter-accident-injury-trauma-alcohol-townsville-emergency/101312142>>.

⁴ Centre for Road Safety, Transport for NSW, 'E-scooters' (Web Page, 27 July 2022) <<https://roadsafety.transport.nsw.gov.au/stayingsafe/e-scooters/index.html>>.

⁵ *Motor Accident Injuries Act 2017* (NSW), s 2.2(a).

areas with the prospect that e-scooters will be permanently allowed, there is an actual and increasing risk to members of the public in NSW as pedestrians.

Notwithstanding that it is currently illegal to ride e-scooters on footpaths in NSW, there is a real likelihood riders could flout the rules and cause an injury to pedestrians. Even so, the risks are not limited to accidents on footpaths – the risks apply to all areas in NSW where e-scooters are allowed.

Without an insurer to claim from, the limitations associated with suing a rider and no access to the motor vehicle CTP insurance scheme, a third-party injured in an accident involving an e-scooter can be left with significant out-of-pocket expenses and no legal recourse. To illustrate, it has been reported that a pedestrian in Melbourne was hospitalised following an accident involving an e-scooter, leaving the pedestrian with a broken right shoulder and a broken elbow. As the e-scooter rider was not wearing a helmet, the pedestrian has been left with over \$15,000 in out-of-pocket medical expenses.⁶

Recommendation

Where the NSW Government allows and regulates e-scooter use, the NSW Government should ensure that members of the public are covered in the event they are injured because of an e-scooter accident.

Following the accident referred to above, the City of Melbourne's acting Lord Mayor, Nicholas Reece acknowledged that the accident 'appears to have highlighted an unacceptable loophole in the current arrangements'.⁷

The motor vehicle CTP insurance scheme recognises that compensation for injury cannot be dependent on the means of drivers of vehicles. This same principle should apply to people injured in accidents involving e-scooters. There must be effective protection for pedestrians under a public insurance scheme.

Unless a scheme similar to the motor vehicle CTP insurance scheme is developed for accidents involving e-scooters, PIAC recommends that the motor vehicle CTP insurance scheme should be extended and amended to ensure pedestrians injured in an accident involving an e-scooter can claim compensation.

⁶ Damien Carrick and Sophie Kesteven, 'Julia was knocked down by an e-scooter and her medical bill was \$15,000. So who's financially liable?', *ABC News* (online, 30 August 2022) <<https://www.abc.net.au/news/2022-08-30/who-is-lialbe-for-e-scooter-accident-rider-or-hire-company/101341196>>.

⁷ Patrick Hatch, 'Walking in Melbourne, an e-scooter left Julia with serious injuries and a massive hospital bill', *The Age* (online, 9 July 2022) <<https://www.theage.com.au/national/victoria/walking-in-melbourne-an-e-scooter-left-julia-with-serious-injuries-and-a-massive-hospital-bill-20220707-p5azxe.html>>.

Yours sincerely

Sheetal Balakrishnan
Senior Solicitor
Public Interest Advocacy Centre