



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:BMsb150824

15 August 2024

Ms Cate Faehrmann, MLC
Chair, Portfolio Committee No. 6 – Transport and the Arts
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: portfoliocommittee6@parliament.nsw.gov.au

Dear Ms Faehrmann

Use of e-scooters, e-bikes and related mobility options

The Law Society is grateful for the opportunity to make a submission to Portfolio Committee No.6 – Transport and the Arts (**Portfolio Committee**) in relation to the inquiry on the use of e-scooters, e-bikes and related mobility options. The Law Society's Injury Compensation Committee contributed to this submission, which is relevant primarily to terms of reference (b) and (e). Complex policy issues arise in attempting to balance the need for a regulatory framework that ensures safe outcomes for riders and the community, without unduly impinging on the individual and community benefits that may accrue from the availability of e-scooters, e-bikes and related mobility options (**e-scooters/e-bikes**).

The Law Society supports the view set out in the NSW Active Transport Strategy that e-micromobility options, including e-bikes and e-scooters, can serve as a 'safe, sustainable and accessible transport option for people of NSW'.¹ From a legal perspective, we are particularly alive to issues of insurance in relation to potential liability from the use of e-scooters/e-bikes.

Current arrangements for e-scooters/e-bikes

The current CTP scheme allows for any person injured in a motor vehicle accident to make a compulsory third party insurance claim for benefits including income support, medical expenses and/or vocational rehabilitation. However, no statutory benefits are payable to injured persons who are charged or convicted of a serious driving offence in relation to the accident or, in the case of an at-fault driver, where the vehicle in question is uninsured.²

The question of whether an e-bike is a 'motor vehicle' under the *Motor Accident Injuries Act 2017* (NSW) (**Act**) is not settled in law. However, we refer the Portfolio Committee to a recent decision in the Personal Injury Commission, where it was held that the e-bike in question was not a motor vehicle for the purposes of the Act: see *CFD v AAI Limited t/as AAMI* [2023] NSWPIC 592. Similarly, in a recent case in the District Court, an e-bike was held not to fall

¹ Transport for NSW, [E-micromobility](#), Webpage, reviewed 13 August 2024.

² See s 3.37 and 3.36 of the *Motor Accident Injuries Act 2017* (NSW).

within the definition of 'motor vehicle' under s 4 of the *Road Transport Act 2013* (NSW): see *R v Fortuna* [2024] NSWDC 328.

Given that it appears that e-scooters/e-bikes may be mostly exempt from the Compulsory Third Party (CTP) Scheme which applies to motor vehicles in NSW, we encourage the Portfolio Committee to recommend early and thorough consultation with stakeholders by Transport for NSW, and/or the State Insurance Regulatory Authority, on how to achieve appropriate and proportionate regulatory settings to respond to serious accidents involving riders of e-scooters/e-bikes, and/or any injured third party. While we appreciate that the inquiry of the Portfolio Committee will canvass some of the high-level issues around regulation, we note that the task of arriving at the right policy settings will require the consideration of detailed consultation proposals, informed by the technical expertise of Transport for NSW and other government stakeholders, coupled with data to understand the financial implications of any relevant insurance options.

In our view, any consultation should canvass the appropriate standards for e-scooters/e-bikes that will be permitted for legal use in NSW. We consider that specifications around structural weight, power output and/or speed would be of particular relevance. Further consideration will also need to be given to whether such specifications apply to manufacturers, and/or to people who modify e-scooters/e-bikes after the point of sale.

If licencing and registration of e-scooters/e-bikes is to be considered, it would be helpful to examine whether such regimes should apply to commercial operators only, so as not to detract from the health and mobility benefits associated with personal/recreational cycling. It would also be important to take into account the impact that licencing and registration would have on certain demographics who rely heavily on e-scooters/e-bikes for mobility, such as people from low socio-economic backgrounds and people with disability.

The consultation should not be confined, however, to an examination of a regulatory model based on, or integrated with, the current CTP scheme. We note our preliminary view that there may be other options that are potentially less costly and burdensome, such as requiring e-scooter/e-bike riders to take out tailored personal accident and public liability insurance, as is currently offered by some cycling membership organisations and other insurance providers. An analysis of the operation of these types of insurance to date would be important in ascertaining whether they offer appropriate protection for riders and injured third parties. Any discussion would need to consider alternatives for a person who sustains serious injuries caused by an e-scooter/e-bike where the rider is uninsured.

Given the proliferation of e-scooters/e-bikes, it will be important to actively monitor the statistics around the number and nature of injuries sustained as a result of accidents. In this respect, we highlight concerns voiced by the Australian Automobile Association earlier this year, which drew attention to 'inconsistencies in data collection and reporting between states and territories' in relation to e-scooter accidents.³ We further encourage consideration of the role of education and safe road user training that will be essential in supplementing any regulatory response.

The Law Society acknowledges that the above issues are complex policy questions. Early consultation, coupled with monitoring of the relevant statistics, will help ensure a proportionate response that does not detract from the benefits of e-scooters/e-bikes, while ensuring that serious injuries are dealt with appropriately.

³ Australian Automobile Association, [Data failings prevent e-scooter safety analysis](#), media release, 29 January 2024.

Thank you for the opportunity to contribute. Please contact Sophie Bathurst, Senior Policy Lawyer, on Sophie.Bathurst@lawsociety.com.au or (02) 9926 0285 in the first instance if you have any queries.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', written in a cursive style.

pp.
Brett McGrath
President