

INQUIRY INTO 2022 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: Public Interest Advocacy Centre (PIAC)

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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-labile-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

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