



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELC:JBml130325

13 March 2025

The Policy Manager
SafeWork NSW
Department of Customer Service
Level 7, 2-24 Rawson Place
Sydney NSW 2000

By email: WHSPolicy@safework.nsw.gov.au

Dear Policy Manager,

REMAKING THE WORK HEALTH AND SAFETY REGULATION 2017

Thank you for the opportunity to provide comments on SafeWork's consultation on the Work Health and Safety Regulation 2017 (**WHS Regulation**) remake. The Law Society's Employment Law Committee contributed to this submission.

We support the harmonisation of work health and safety laws. We welcome any opportunity that review of the NSW legislative framework may bring for further harmonisation, through consideration of the suitability of incorporating any refreshed state-specific provisions with national relevance into the Model provisions where appropriate, so that they may apply to other States or Territories if adopted.

We comment on some of the proposed changes to the WHS Regulation in the following table.

Heading	Section	Law Society comments
<i>Preliminary (Chapter 1)</i>		
Definitions	5	We support the proposed changes.
<i>Hazardous work (Chapter 4)</i>		
Named supervisor must be present	142C	We suggest that the obligations on a licence holder and a supervisor should be contained in one regulation, rather than having separate obligations for a supervisor. In this way,
Removal of supervisor by regulator	143L	



Heading	Section	Law Society comments
		there will be no need for the additional exclusions, for example to subsection 143L(1).
Traffic control work (Part 4.9)		
Issue of traffic control work card	184D	We support retention of the existing obligations in legislation to ensure clarity and compliance. We support the imposition of a time limit on the issue of a card by the regulator.
Food delivery riders (Part 4.11)		
Definitions	184P	The definition of electric scooters in the <i>Road Rules 2014</i> (NSW) is limited to electric scooters that are borrowed or hired through a share scheme. ¹ However, many food delivery drivers purchase and own their electric scooters. We suggest that the WHS Regulation not rely on the definition in the <i>Road Rules 2014</i> but instead includes its own definition of electric scooters to ensure self-owned electric scooters are not unintentionally excluded. In addition, we note that with the electric scooter trials underway, the rules for electric scooter use are subject to potential change. ²
Requirement for food delivery booking provider to ensure food delivery rider has completed food delivery induction training	184S	If the intention is for the food delivery booking provider to provide training to the food delivery rider, we suggest SafeWork consider imposing a timeframe for undertaking the training. For example, the section could provide that the training is only valid if it was completed in the last five years, which is consistent with the time period for the record keeping duty under section 184T.

¹ *Road Rules 2014* (NSW) Dictionary: <https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2014-0758#dict>.

² Transport for NSW, 'Legalising e-scooter riding in NSW': <https://www.transport.nsw.gov.au/projects/current-projects/e-micromobility/legalising-e-scooter-riding-nsw>.



Heading	Section	Law Society comments
Duty to provide food delivery induction training	184R	<p>We repeat our suggestion in relation to the section above – if a food delivery rider has already completed the training provided by another food delivery booking provider, we suggest that SafeWork consider including a requirement that the training must have been undertaken within a certain timeframe.</p> <p>We also suggest including a requirement for the food delivery booking provider to sight the training record provided by another food delivery booking platform.</p>
<i>Hazardous chemicals (Chapter 7)</i>		
Application of Part 7.1	328	<p>We support removing the words ‘copies of which are available at the offices of the regulator’.</p> <p>As subsections (3)(b)-(d) are codifying international documents into the WHS Regulation, we suggest, where possible, that SafeWork includes copies of the documents published by the International Maritime Organisation, International Civil Aviation Organisation, and International Air Transport Association on the SafeWork website.</p> <p>This will allow for certainty in the versions being accessed by an individual, as relying on external sources means the update of the documents are out of the control of the regulator. If the documents are available on SafeWork’s website, an individual may point to the version included on SafeWork’s website at that point in time and rely on it.</p>
<i>Asbestos (Chapter 8)</i>		
Work involving asbestos or asbestos containing material (ACM) – prohibitions and exceptions	419	<p>We believe the proposed insertion to align the WHS Regulation with the WHS Act is unnecessary, as this stipulation is already contained in section 419(3)(k) of the WHS Regulation.</p>



Heading	Section	Law Society comments
Major hazard facilities (Chapter 9)		
This Chapter does not apply to certain facilities	530(2)(a) 520(3)	We support the proposed changes.
Conditions on determination – payment of relevant fee	544A	We support the proposed change.

Please contact Mimi Lee, Policy Lawyer, on 02 9926 0174 or mimi.lee@lawsociety.com.au if you have any questions about this letter.

Yours sincerely,

Jennifer Ball
President