

ROAD TRAFFIC AMENDMENT (KEEPING SAFE DISTANCES FROM BICYCLES) BILL 2014

Introduction and First Reading

Bill introduced, on motion by **Hon Lynn MacLaren**, and read a first time.

Second Reading

HON LYNN MacLAREN (South Metropolitan) [10.03 am]: I move —

That the bill be now read a second time.

Cyclists need a protective buffer when sharing roads with motorists. Current Western Australian road rules require drivers of motor vehicles to allow sufficient overtaking distance when passing a bicycle rider. “Sufficient” is an inadequate and unclear description that has repeatedly failed to protect bicycle riders. Amendments to road rules to specify a minimum distance are critical to improving the safety of bicycle riders. As specified in the Road Traffic Code 2000, a safe passing distance between a cyclist and a motor vehicle is considered to be “a sufficient distance to avoid a collision with that vehicle or to avoid obstructing the path of that vehicle.” In addition, a safe distance behind a vehicle is considered to be a distance at which it “will enable the driver to stop the vehicle in an emergency with safety, and without running into the vehicle in front of him or her.”

Legislative amendment, with appropriate education and enforcement, to mandate a minimum distance that motorists must keep from bicycle riders is currently the single most important action needed to reduce bicycle rider fatalities. There is an ethical issue when comparing dangerous behaviour by motorists to risky behaviour by cyclists. The driver endangers the cyclist, not vice versa, and it is rare for a cyclist or pedestrian to injure another road user. As reported on the ABC’s 7.30 W.A. program last Friday night, there is no doubt who comes off second best when a car and a bike collide.

In the decade 2004 to 2013 there were 34 cyclist deaths on WA roads. The highest number in all those years was last year, in 2013, with six deaths—a shocking record. Of these 34 deaths, 19 occurred on roads where the posted speed limit was 60 kilometres an hour or below, 11 on roads above 60 kilometres an hour, and the remaining four on roads where the posted speed limit was unknown. This year there has already been one death of a cyclist on WA roads. Australia-wide, the average annual drop in cyclist deaths has slowed to less than one per cent in the past decade. In the 1980s there was an average annual drop in cyclist deaths by six per cent. In the 1990s this drop was 4.5 per cent. Whether this is due to increased motor vehicle traffic is not clear, as congestion certainly is increasing. However, what is clear is that currently safety measures for vulnerable road users are not sufficient to bring down the road toll further.

The terrible role of motor vehicles in severe injuries and fatalities for cyclists is obvious in a range of injury data from studies across the world. As the injury severity increases, a greater proportion of injuries is attributable to motor vehicle collisions. Although only 15 per cent of injured cyclists presenting at emergency rooms were hit by motor vehicles, 36 per cent of those hospitalised were hit by motor vehicles. A range of studies has shown that approximately 90 per cent of cyclist deaths involve motorists. It is clear that protecting the health of cyclists requires measures to prevent motorists from colliding with them.

When it comes to saving lives, a metre matters. This is the campaign of the Amy Gillett Foundation and the purpose of the bill today. I vividly recall when in 2005 members of the Australian women’s road cycling team were hit by a car in Germany. Amy Gillett was killed and five others were injured. This bill and others similar to it are being introduced around Australia in response to the advocacy work of the Amy Gillett Foundation. I want to acknowledge the work of the foundation on this issue. The foundation has worked on building support for minimum overtaking distances for five years now, driven by one purpose—to reduce the incidence of death and serious injury of bicycle riders. The genesis of the campaign arose from the literature reviewed in an AGF-sponsored research project—the Safe Family Research scholarship. In particular, a report from the Australian Transport Safety Bureau found that being hit from behind was the crash type that resulted in the highest number of bicycle rider fatalities.

The campaign has a simple premise: to prevent drivers from hitting bicycle riders. This is the fundamental change needed to improve bicycle rider safety. From 2009 to 2012 the focus of the foundation’s campaign was on education and awareness. However, in 2013 this shifted. A court finding following the death of Richard Pollett was the catalyst to extend their campaign and take direct action to push for legislative change. In 2011, Richard Pollett, aged 22, was riding his bicycle on Moggill Road in Kenmore, Brisbane, when he was killed after being hit by a cement truck that was travelling in the same direction. The driver thought he had enough space to safely overtake. He was wrong and the rear tyres of the truck struck Richard. The driver of the truck was accused of driving dangerously and causing the death of a cyclist. In May 2013, a Brisbane District Court jury returned a

not guilty verdict and decided that it was reasonable that the driver presumed to have adequate space. The driver was freed without charge. This outcome convinced many that existing laws and the levels of awareness of the need for motorists to keep a safe distance away from cyclists are not enough to keep bicycle riders safe. Greens members of Parliaments around Australia are responding to the Amy Gillett Foundation's request to present bills to Parliament to legislate minimum safe passing distances. The foundation has briefed ministers in many states, stating —

Australian Road Rules are failing bicycle riders. In particular Rule 144 does not protect bicycle riders when being overtaken by drivers.

The foundation's website also has letter template to be sent to local MPs that states —

The government is committed to doubling the number of people cycling by 2016—which is great for health, leisure, the environment, congestion and community wellbeing.

But with 35 bicycle riders killed and 9,577 injured in the same year—the human trauma costs of cycling in Australia are unacceptable.

...

At present every state transport authority (excluding Queensland and the ACT) 'recommends' drivers leave at least one metre when overtaking bike riders. This communication is clear and easily understood.

However, there is no active or prolonged encouragement for this recommended behaviour. At the same time transport authorities support that the road rules are designed to prescribe and enable enforcement of required safe behaviour.

Consequently translating what is already recommended driver behaviour into legislation is a logical and practical step to changing behaviour.

The existing Australian Road Rules including Rule 144, do not protect bicycle riders when being overtaken by drivers. Drivers are permitted to make judgement calls regarding a 'sufficient distance to avoid a collision'.

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A **minimum** overtaking distance of **1 metre** provides absolute and practical clarity. It:

Recognises that bicycle riders are physically vulnerable and need the protection of space.

Provides drivers with a clear, easily recognised measure when overtaking bicycle riders — otherwise they must slow down and wait.

Reduces the risk of bicycle rider–driver crashes, and bicycle rider crashes resulting from being side-swiped (but not hit) by motor vehicles.

Is enforceable; it allows a law enforcement officer or witness to readily observe a driver's actions.

...

Will ultimately reduce bicycle rider fatalities and serious injuries.

I would like to rebut one of the common responses to this initiative so far in Western Australia—"But it is not enforceable"; how many times have we heard that? This law already exists in countries in Europe and in 27 states in the United States. It is implementable and enforceable. We are seeing the emergence of a new tool in enforcement. With rear cameras, such as the Fly6, fitted to bicycles and being sold internationally from a start-up in Subiaco, cyclists themselves are beginning to document incidents that in the past went flying by without opportunity for recourse. This combined tail-light and high-definition camera watches a bike rider's back so that drivers watch what they do. Now they are able to supply the proof that will be valuable in enforcing good motorist behaviour; people do the right thing when they know they are being watched.

However, there are other approaches WA could employ. For example, in Portland, Oregon in the USA they employ plain-clothes police to catch motorists guilty of endangering cyclists, and then require the offending motorist to take a Share the Road Safety Class. Police in Arizona on bicycles are trained in policing the actions of drivers.

Amy Gillett's mother, Mary Safe, said on the occasion of the introduction of Hon Mark Parnell, MLC's Road Traffic (Overtaking Bicycles) Bill into the South Australian Parliament last July —

"Anyone who has lost a loved one on a road never forgets and that's why people are passionate about this," ...

“This law can be policed like any other on the road — such as tailgating or using a mobile phone — and I’m appealing to MPs to support the Bill because it’s about saving lives.”

In the mid-90s the Cyclist’s Protection Association—now the Bicycle Institute of South Australia—coined the slogan “give cyclists a metre”; 20 years on we are witnessing some progress. Late last year the Queensland government announced an overhaul of cycling rules that included a safe passing distance provision, drawn from a recommendation by the Transport, Housing and Local Government Committee. Transport and roads minister, Scott Emerson, said the safe passing rule “was heavily supported by the cycling community”, and that he was “prepared to conduct a two-year trial”. The Queensland report also made numerous other recommendations to improve the interaction between cyclists and other road users.

Also at stake is the future of active transport, metropolitan congestion and our health. Both the real and perceived dangers discourage cycling, and the safety of cycling is related to the number of cyclists on the road. Improving safety increases the number of cyclists, and the presence of more cyclists improves their safety.

The RAC, seeing bicycle riding as a legitimate form of transport, released its “Business Case for Investment in Cycling in Western Australia” in 2012. It found the rates of return on investment in cycling projects are higher than some of those achieved by urban transport investments. The economic, social, health and environmental benefits for the community range from 3.4 to 5.4 times the costs incurred for cycling infrastructure. A detailed study by Heinrich Benz and the Bicycle Transport Alliance, “Cycling in Traffic”, looks at the opportunities in increasing cycling’s share of transport in Perth, and compares that with local hospitalisation data. The report found that —

The strongest approach for West Australia would be the legislation of a safe passing distance, followed by a campaign that shows motorists how vulnerable people on bicycles are, explains the need for a generous passing distance, and makes motorists aware of the benefits cyclists bring to the community in terms of environment and congestion.

The proportion of households with a working bicycle—61 per cent—is greater in Western Australia than the national average. The 2013 National Cycling Participation Survey found that 18 per cent of WA residents ride a bicycle in a typical week. However, the survey also found that the WA cycling participation rate decreased between 2011 and 2013. People want to cycle here, but something big is holding them back. Despite the opportunity in Perth for increasing cycling’s share of transport, the RAC’s cycling survey found that 91 per cent of cyclists fear sharing the roads with motorists—a major barrier to even further improvements in the transport mode share of cycling.

The bicycle is personal. It is flexible. It is a mode of transport, in addition to its value for sport and recreation. As Greens Senator Scott Ludlam said —

The bicycle is, I think, one of the most elegant inventions of the industrial age.

Senator Ludlam, working with numerous stakeholders, has published the comprehensive “Bike Vision — The Greens 2029 Perth Bike Plan”, which outlines how Perth can become a world-class cycling city. We have the natural advantages of climate and topography that favour bicycle riding, but action is needed to deliver that vision. The first point under “How to fix Perth’s Bike Network” is making our bicycle network safe. This Road Traffic Amendment (Keeping Safe Distances from Bicycles) Bill 2014 is aimed squarely at that goal; however, there is much more to be achieved. The plan proposes to realign and complete the principal shared paths network along with the local bike route network. Glaring holes in maintenance should be fixed through the introduction of a recurring maintenance budget and a quick-response team. The CBD should welcome bikes, with facilities for commuters and visitors. The plan also provides for safe routes to schools. Bike facilities such as parking, signage, lighting and changing facilities should be improved. The plan also outlines how to improve coordination with public transport. Next, bike hire schemes should be established across the CBD and activity centres. To glue it all together are improved education and promotion programs for riders and motorists. These measures include penalties for dangerous behaviour by motor vehicle drivers, particularly on opening doors in front of bicycle riders and keeping safe distances from bicycle riders.

The Road Traffic Amendment (Keeping Safe Distances from Bicycles) Bill 2014 provides a protective space for bicycle riders that will significantly reduce the risk of crashes or incidents that are likely to lead to serious injury or even death. This bill addresses the key problem of the danger posed to bicycle riders from motor vehicle traffic by introducing a simple amendment to the Road Traffic Act 1974 that requires drivers of motor vehicles to keep a distance from bicycle riders: one metre on roads up to 60 kilometres, and 1.5 metres on faster roads. Drivers of motor vehicles are provided with a clear, easily recognised measure when overtaking bicycle riders; otherwise, drivers must slow down and wait. This reduces bicycle rider vehicle crashes, and bicycle rider crashes resulting from being sideswiped by motor vehicles. It provides a measure for law enforcement officers and witnesses to readily evaluate a driver’s actions. It also provides bicycle riders with space to avoid obstacles. The

commencement date is set to one month after assent to allow a period of time for the purpose of educating road users about the new rule and establishing police procedures. Regarding bicycle lanes, it is important to note that a road includes a bicycle lane and the distance needs to be maintained, nonetheless.

The bill applies to drivers of motor vehicles only, so exempting riders of bicycles from having to keep a distance from other bicycles. Power-assisted pedal cycles, which are 200 watts and under, are considered bicycles. This is an important distinction, because the potential for injury is related to the kinetic energy involved. The mass of a car or truck, travelling at considerable speed, is the danger to vulnerable road users. The bill intentionally makes no mention of overtaking a bicycle rider to the right of the middle of an unmarked road or a solid line. These matters are best dealt with by way of amendment to the Road Traffic Code 2000 when this bill becomes an act. As members will be aware in Western Australia, subsidiary legislation is rarely amended by an act of Parliament. The necessary amendments to the Traffic Code will need to be made at an appropriate time.

Recommendation 14 of the Queensland report, “A New Direction for Cycling”, spells out details of when a driver of a motor vehicle may drive to the right of the centre of the road to overtake the rider of a bicycle. The minister may well consider the applicability of such amendments to relevant subsidiary legislation in Western Australia.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It will not ratify or give effect to an intergovernmental or multilateral agreement to which the government is a party, nor will it, by reason of its subject matter, introduce a uniform scheme or uniform law throughout the commonwealth. I commend the bill to the house, and I table the explanatory memorandum.

[See paper 1324.]

Debate adjourned, pursuant to standing orders.