

TO:

Select Committee on Personal Choice and Community Safety
Legislative Council
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FROM:

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Submission to the Select Committee on Personal Choice and Community Safety – Legislative Council**INTRODUCTION**

Our submission concerns mandatory bicycle helmet laws.

These laws exist in one form or another throughout the States and Territories of Australia, and have been in place for almost thirty years. The Northern Territory reformed their legislation early on to allow adults choice on footpaths and bike tracks. Other than that, Queensland is the only State to have undertaken a significant review of their legislation. That review [1] resulted in a recommendation that adults be allowed helmet choice when riding on footpaths, cycle paths and public roads with a posted speed limit of 60Km/hr or less, and that users of public bike schemes also be exempted. Unfortunately the minister responsible chose to ignore this recommendation. Since that time, the Federal Senate conducted an inquiry (Personal Choice and Community Benefit 2015-16) which included mandatory bike helmets in its terms of reference. That inquiry was abandoned without releasing a final recommendation as a result of the double dissolution of 2016.

This leaves West Australia in the position whereby it has an opportunity to lead Australia in reforming this counter-productive legislation. We would like to see reform throughout Australia. Much of what we have to say in our submission applies across the whole country. We are however hopeful that the current inquiry may lead to significant reform in WA, with a future flow on to the rest of the country.

VISION

Freestyle Cyclists' vision is to see cycling as a favoured choice for short journeys throughout Australian cities, suburbs and towns. To see our urban landscapes transformed by active transport across all ages, cultures and gender and to see an Australia where we can cycle without fear for ourselves or our children.

We consider Australia's bike helmet laws to be a major obstacle to achieving this vision. Australia's record over the past thirty years of achieving significant growth in

the use of the bicycle has been pitiful. While we have been going nowhere, there are plentiful examples from around the world of cities and countries that have achieved significant levels of bicycle use, particularly in Northern Europe. There are Dutch cities where over 40% of all trips are made by bicycle, and many other European cities achieving levels of 10%. In none of these places are helmets required, or extensively worn. Their safety record is also significantly better than Australia's.

Our submission addresses the issue of mandatory helmet laws as a significant barrier to cycling participation. We also address the misleading and exaggerated claims made for the effectiveness of helmet compulsion in reducing injuries to cyclists, and highlight how the measure can in fact be counter productive in terms of safety outcomes.

We would like to make clear at the outset that we have no issue with bicycle helmets as such, only with mandatory helmet laws and their effect on cycling participation and safety.

HISTORY

In 1990, Victoria became the first place in the world to require that anyone riding a bike must wear a helmet. The rest of Australia followed soon after. Regrettably, the other states, including WA, did not wait for an evaluation of the effects of the legislation in Victoria before passing their own laws, but succumbed to pressure from the Federal Government to pass such laws as part of a package tied to the release of Federal funding for Black Spot programmes. There was little rigorous research done prior to Victoria's initiative – it appears to have been a case of policy based on hope rather than knowledge.

SAFETY

Almost thirty years on, there is still a lack of international consensus on the effectiveness of a helmet *in the event of an accident*, with the protective effects frequently overstated. The positive effects of mandatory helmet legislation were assumed to be a reduction in the extent and severity of head injuries to cyclists, including mortality. Whilst there is some evidence that there is a benefit in wearing a helmet *in the event of an accident* (emphasis crucial), the effect *on a whole population* of mandating helmet wearing has been to make cycling, per unit distance travelled, slightly less safe overall, with no significant improvement in head injury rates or severity [2][3].

Some Australian road safety commentators and traffic authorities continue to claim significant benefits not only from helmet wearing, but more specifically from *enforced* helmet wearing. This has not persuaded the rest of the world to follow our "lead", such as they did with seat belts. To date, only NZ and the United Arab Emirates have joined in nationally enforced all ages helmet laws. We know of four countries (Israel, Mexico, Malta and Bosnia-Herzegovina) that seriously entertained national helmet laws, but chose later to repeal them for the very reasons we put forward here. Aside from those, bike helmet laws outside Australia and New Zealand exist in only a tiny minority of local and provincial legislatures, and even these mostly apply only to children.

Canada is an interesting case where there is a mix of provinces with all ages helmet laws, children only laws, and no helmet laws. This offers a unique "laboratory" to test

claims made for helmet laws across culturally similar jurisdictions. Recent peer reviewed research conducted by Professor Kaye Teschke found no evidence that the existence of a helmet law had any effect in reducing the rate of head injuries [4]. We think this speaks for itself.

Australia's cycling safety record is quite poor when compared to the OECD average. If mandatory helmet laws had indeed been the important road safety initiative that their apologists still claim, this would be very hard to explain. With almost thirty years of mandation, preceded by ten years of propaganda, it is perhaps hard for Australians to appreciate that mandatory helmet laws may not have been the silver bullet of cycling safety, but in fact a bit of a dud. For a well balanced introductory summary of research from an international perspective, we recommend the editorial in the British Medical Journal of June 2013 by Goldacre and Spiegelhalter, which is attached as an appendix to this submission. Their conclusion that the benefits of helmets "...seem too modest to capture..." would suggest that the robust evidence, which would normally be required to justify the enforcement of an intervention, is simply lacking. But bicycle helmets appear to be one of those bizarre areas of culture where required onus of proof is avoided by the protagonists, where tunnel vision is applied to evidence, and where respect for diversity simply vanishes in the face of a passionate desire to force conformity on a minority.

A further failing of mandatory helmets is that, by concentrating so exclusively on what cyclists wear, inadequate attention has been paid to the things that really improve safety, and the onus has been shifted from the truly dangerous to the already vulnerable. Cyclists are *vulnerable* road users (not *dangerous* road users). Dealing with this vulnerability by *requiring* as a first line defence that cyclists wear protective headwear of doubtful effectiveness, which at the same time may cause other *dangerous* road users to treat them with less care[5], is both ineffective as a safety measure, and unethical.

In a safe systems approach, personal protective gear is the last and least important measure – indeed its very requirement is proof of failure of the system. Australian cyclists have been well and truly swindled by the legislation and enforcement, which have raised "wearing a helmet" to the sole proxy for safe cycling, at the expense of the measures and behaviours which really count.

PUBLIC HEALTH

There is pretty much universal agreement that enforcing helmet legislation leads to a significant reduction in cycling *participation*, and as such is bad public health policy. For this reason, most of the rest of the world has turned away from Australia's experiment, and does not punish citizens for the healthy activity of riding a bicycle regardless of what is worn on the head. The latest report to the European Parliament found no evidence to recommend mandating helmets [6], whilst both the European Cycling Federation [7] and the UK's CTC [8] have policies which actively discourage even the promotion of helmet wearing. Once again, if mandating helmets was such a great success, why, after almost thirty years, have only two other countries followed us down this path, with nationally enforced all ages helmet laws?

PARTICIPATION IN CYCLING

Following helmet mandation the numbers of Australians cycling dropped dramatically, particularly amongst women and teenagers. Even today, despite years of “cycling promotion” by governments and public health agencies, participation in cycling is less per head of population than it was in 1986 [9]. The notion that cycling has somehow “recovered” is simply not supported by the evidence. Though there have been signs in recent years of an increase in sports or recreational cycling, the bicycle as a common or everyday means of transport is now practically non-existent in most parts of the country. ABS figures from 1986 up till the most recent census data from 2016 show a sustained reduction in cycling as a means of transport following helmet mandation, accounting now for a trivial 1% of all trips to work. Regional areas were hit hardest. In regional WA, bicycle use for trips to work, already on an upward trend, peaked at 2.5% in 1991, just prior to the enforcement of mandatory helmet legislation. This fell to 1.2% in 1996 following helmet mandation, and has since further declined to 0.9% [10]

This sorry tale is further confirmed by the latest National Cycling Participation Survey, conducted on behalf of Austroads as part of the evaluation of the National Cycling Strategy, which shows a continued decline in participation from 2011 through 2013, 2015 to 2017 [11].

To understand the ongoing barrier to participation posed by mandatory helmet laws, surveying needs to be carried out amongst the population as a whole, who do not cycle regularly. Preliminary findings by Rissel and Wen [12], indicate that one in five Australians are put off riding a bike by the helmet requirement.

LAW ENFORCEMENT

Policing of cycle safety is almost exclusively restricted to handing out fines for helmet non-compliance. Mandatory helmet legislation led to an increase of over 90% in traffic infringement notices issued to cyclists. With this focus on one minor behavioural issue, police have often failed to focus on the matters that really put cyclists' lives at risk - driver behaviour. It also represents a ludicrous over policing of a choice which is left to individual adult discretion almost everywhere else in the world. Though there is evidence of a decline in the rate of enforcement in WA since around 2000, this should no be taken as a cause for complacency. While the law is in place, there is always the risk that an assistant commissioner with a mind to do so may ramp up enforcement, or that a misguided parliament may substantially increase the fines, as has happened in Victoria and New South Wales.

LIBERTY

There is a balance between our individual liberty, and the constraints put upon it as members of a civil society. In a society which calls itself liberal and tolerant, the default position, in the absence of any clear harm to others, should be one of choice. The enforced wearing of a bicycle helmet is in no way a liberal or tolerant position. Indeed it is our view that Mandatory Bike Helmet Laws are a text book example of where the State overreaches itself in imposing norms of behaviour (in this case a dress code) where the matter should be left to the individual. We can think of no comparable example where healthy behaviour (riding a bicycle) is banned on such flimsy grounds. We can think of no worse example of the stubborn intransigence of government in refusing to acknowledge the widespread collateral harm caused by a well intentioned though misguided intervention. What sets Mandatory Helmet Laws

apart from other clumsy attempts to micro manage behaviour, and what makes them totally indefensible on any reasonable ethical grounds, is that the banned activity is demonstrably healthy. Swapping the car for a bike is good not only for the individual but also for the wider society.

CONCLUSION

The requirement to wear a helmet at all times while riding a bicycle is a significant barrier to the use of the bicycle as a means of active transport. It sets “cyclists” apart from the general population, and adds to the perception that riding a bike is significantly risky behaviour.

Helmet mandation and promotion, with its exaggerated claims and excessive level of enforcement has distracted from the main game of genuine safe cycling, which has much more to do with safe systems and the avoidance of collisions. Indeed we believe that requiring all cyclists to wear helmets, by giving all concerned an exaggerated sense of invulnerability, may put them at greater risk of suffering a collision than would otherwise be the case.

The bicycle is a cornerstone of active transport, and its use is actively encouraged throughout the developed world. Quite simply, it is better to ride without a helmet than not to ride at all. The places in the world with high levels of bicycle use do not mandate, or even actively encourage, the use of a helmet while riding. These high participation countries also enjoy the safest cycling conditions. We should learn from such world’s best practice, and remove this unproductive barrier to active transport.

In recommending the reform of WA’s (and Australia’s) bicycle helmet laws, we only wish to bring our cycling conditions back within the norms enjoyed throughout the rest of the world. It is our hope that this Parliamentary Inquiry can lead to effective change, and that down the track the rest of Australia can learn from WA’s lead.

I would be willing to appear before the committee either in person or by phone link should I be asked.

Alan Todd

President

Freestyle Cyclists Inc.

4/10/2018

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EDITORIALS

Bicycle helmets and the law

Canadian legislation had minimal effect on serious head injuries

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We have both spent a large part of our working lives discussing statistics and risk with the general public. We both dread questions about bicycle helmets. The arguments are often heated and personal; but they also illustrate some of the most fascinating challenges for epidemiology, risk communication, and evidence based policy.

With regard to the use of bicycle helmets, science broadly tries to answer two main questions. At a societal level, “what is the effect of a public health policy that requires or promotes helmets?” and at an individual level, “what is the effect of wearing a helmet?” Both questions are methodologically challenging and contentious.

The linked paper by Dennis and colleagues (doi:10.1136/bmj.f2674) investigates the policy question and concludes that the effect of Canadian helmet legislation on hospital admission for cycling head injuries “seems to have been minimal.”¹ Other ecological studies have come to different conclusions,² but the current study has somewhat superior methodology—controlling for background trends and modelling head injuries as a proportion of all cycling injuries.

This finding of “no benefit” is superficially hard to reconcile with case-control studies, many of which have shown that people wearing helmets are less likely to have a head injury.³ Such findings suggest that, for individuals, helmets confer a benefit. These studies, however, are vulnerable to many methodological shortcomings. If the controls are cyclists presenting with other injuries in the emergency department, then analyses are conditional on having an accident and therefore assume that wearing a helmet does not change the overall accident risk. There are also confounding variables that are generally unmeasured and perhaps even unmeasurable. People who choose to wear bicycle helmets will probably be different from those who ride without a helmet: they may be more cautious, for example, and so less likely to have a serious head injury, regardless of their helmets.

People who are forced by legislation to wear a bicycle helmet, meanwhile, may be different again. Firstly, they may not wear the helmet correctly, seeking only to comply with the law and avoid a fine. Secondly, their behaviour may change as a

consequence of wearing a helmet through “risk compensation,” a phenomenon that has been documented in many fields.^{4,5} One study—albeit with a single author and subject—suggests that drivers give larger clearance to cyclists without a helmet.⁶

Even if helmets do have an effect on head injury rates, it would not necessarily follow that legislation would have public health benefits overall. This is because of “second round” effects, such as changes in cycling rates, which may affect individual and population health. Modelling studies have generally concluded that regular cyclists live longer because the health effects of cycling far outweigh the risk of crashes.⁷ This trade-off depends crucially, however, on the absolute risk of an accident: any true reduction in the relative risk of head injury will have a greater impact where crashes are more common, such as for children.⁸

The impact on all cause mortality, and on head injuries, may be even further complicated if such legislation has varying effects on different groups. For example, a recent study identified two broad subpopulations of cyclist: “one speed-happy group that cycle fast and have lots of cycle equipment including helmets, and one traditional kind of cyclist without much equipment, cycling slowly.” The study concluded that compulsory cycle helmet legislation may selectively reduce cycling in the second group.⁹ There are even more complex second round effects if each individual cyclist’s safety is improved by increased cyclist density through “safety in numbers,” a phenomenon known as Smeed’s law.¹⁰ Statistical models for the overall impact of helmet habits are therefore inevitably complex and based on speculative assumptions.¹¹ This complexity seems at odds with the current official BMA policy, which confidently calls for compulsory helmet legislation.

Standing over all this methodological complexity is a layer of politics, culture, and psychology. Supporters of helmets often tell vivid stories about someone they knew, or heard of, who was apparently saved from severe head injury by a helmet. Risks and benefits may be exaggerated or discounted depending on the emotional response to the idea of a helmet.¹² For others, this is an explicitly political matter, where an emphasis on helmets reflects a seductively individualistic approach to risk

management (or even “victim blaming”) while the real gains lie elsewhere. It is certainly true that in many countries, such as Denmark and the Netherlands, cyclists have low injury rates, even though rates of cycling are high and almost no cyclists wear helmets. This seems to be achieved through interventions such as good infrastructure; stronger legislation to protect cyclists; and a culture of cycling as a popular, routine, non-sporty, non-risky behaviour.

In any case, the current uncertainty about any benefit from helmet wearing or promotion is unlikely to be substantially reduced by further research. Equally, we can be certain that helmets will continue to be debated, and at length. The enduring popularity of helmets as a proposed major intervention for increased road safety may therefore lie not with their direct benefits—which seem too modest to capture compared with other strategies—but more with the cultural, psychological, and political aspects of popular debate around risk.

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