

Select Committee on Personal Choice and Community
Safety
Parliament Hours
4 Harvest Terrace
WEST PERTH WA 6005
pccs@parliament.wa.gov.au

Jai Cooper

October 4, 2018

Dear Honourable Members

I welcome the establishment of the Select Committee on Personal Choice and Community Safety and wish to address the second term of reference with regard to outdoor recreation (cycling) and specifically bicycle helmet policy as it applies to Western Australia and other jurisdictions.

I am a published sociologist specialising in mobilities and cycling culture and a researcher in the social sciences. As a sessional lecturer, I deliver course materials in topics including social science research methodology and the sociology of health. Australian helmet policy presents a useful case study during my classes. Australian helmet policy is a clearly counter-productive form of health promotion and regulation and a failure of objective analysis by researchers and road safety bureaucrats. For decades, it has been a poor use of the resources of the state and it remains an ongoing and costly failure for public health, personal liberty and even for the safety of those people who continue to cycle in compliance with the law. As Culver (2018, p.1) has recently asserted, 'this helmet fixation ... arguably hampers efforts to actually improve bicycle safety.'

Prior to the introduction of the law, no adequate regulatory impact assessment was conducted. Since the introduction of mandatory bicycle helmet laws into Victoria and, subsequently, other jurisdictions including Western Australia, the following has occurred:

- Data used to justify regulation has been exposed to have significant methodological flaws;
- No periodic review or sunset clause has been applied;
- Civil disobedience to the laws remains widespread;
- Reforms have occurred in the Northern Territory, Mexico, Israel and Bosnia-Herzegovina without observed increases in trauma;
- 'Doubling down' on the laws by an increase of penalties (as has occurred in New South Wales) has negatively impacted upon cycling participation and culture and a further reduction in cyclist safety; and
- Whilst helmet *efficacy* has been subjected to systematic review, no systematic review of studies into the merit of helmet policy and population health effects has been conducted.

These factors present compelling evidence that the ongoing penalisation of Western Australia's citizens for riding a bicycle as is considered normal throughout most of the world can no longer be justified. Further, as a researcher in the social sciences, it is sadly disappointing to observe justification for the law being based in a denial of its effect upon human behaviour; to see totalising and normative logics readily applied by helmet law advocates; and to observe a minority of academics lacking in reflexivity in their support for the laws.

Australia's mandatory bicycle helmet laws (MHLs) underlie an inherent misery within our cycling culture. Australia suffers a heightened sense of *velophobia* – a phenomenon including both the fear of cycling as a practice and fear of cyclists as a social out-group. Velophobia has been worsened by the MHLs. Many types of cycling which are globally considered normal are illegal in Australia rendering many Australian cyclists as criminals unnecessarily. It is only the sub-cultural practice of *helmeted-cycling* which is permitted in most states of Australia. Significant damage has been done to mobility culture in Australia by negative promotion and regulation of cycling over recent decades. This damage should be reversed immediately for the benefit of civil society. Reform of the laws are overdue. Modernity is littered with examples of state schemes which were intended to improve the human condition but failed (Scott, 1998). History is likely to add the MHLs to this list. The sooner we move forward, the better.

The MHLs are a classic example of counter-productive state overreach, totalising logics and armour as normative. These laws have not proven their worth. Although they were introduced to improve public health, they are no more than borderline and possibly even counter-productive to these ends (DeJong 2009). In the absence of a discernible public health benefit and the clear loss of liberty, a utilitarian calculation must see their continuation as a societal cost and their reform as a social good.

Personal experience

Ironically, my personal compliance with helmet use was encouraged by my dear Nanna. Nan was not a cyclist but feared for my safety because she had been affected by velophobic discourses in popular media and government campaigns. She decided to tell me to wear a helmet. I commenced helmet use prior to the introduction of the laws. I was concerned about the consequences of the law upon safety-in-numbers, yet I did not consider wearing a helmet to be a great personal inconvenience.

I continued to support the MHLs for many years accepting the normative view that cycling was a dangerous activity that must be regulated and in the hope that the laws would help to normalise helmeted-cycling. Over time, the broader arguments have surfaced and in the process of conducting academic research in the sociology of cycling, it became apparent that the helmet laws were a hotly contested issue amongst cyclists, public health experts and transport safety officials. I discovered academics and others questioning the value of these laws (Anon.consultant European.Commission, 2015; Horton, 2007; Rissel, 2012a, 2012b; Rissel & Wen, 2011; Turner, 2012).

I have changed my position which formerly supported these laws. My failure to question state intervention was a personal oversight contributing to the social construction of the 'Nanny State'. I now seek reform of these laws, welcome this committee and look forward to a better future.

In addition to being a published academic and teaching the sociology of health at the University of Newcastle, I have worked extensively as an outdoor adventure educator and workplace trainer specialising in workplace health and safety. I am highly aware of the dynamics of situational risk management. I am a Level 1 qualified mountain bike coach affiliated with Mountain Bike Australia – the peak sporting body for mountain biking in Australia. I have worked voluntarily and professionally in my capacity as a sole trader including intimate work with Aboriginal communities in NSW in cycling programs. I have initiated and established significant infrastructure improvements for cyclists and am a graduate of the IMBA (International Mountain Biking Association) 'master-class'.

I am an experienced bicycle advocate in my local community and am a 'cyborgian' cyclist – in that I use bicycles to compensate for a mobility impairment. I have a lengthy history as a sporting, commuter and working cyclist extending to my youth. I have ridden extensively within all states and territories of Australia and abroad and am aware of the wide diversity of cultures of mobility. I am personally acquainted with bicycle academics and advocates worldwide including both mainstream and counter-cultural movements.

I am an active contributor to advocacy groups: 'Freestyle Cyclists' and 'Cycle' and support their calls for review and reform of the MHLs.

Helmet law discourse as a manifestation of totalitarian ideology

The logics that are applied to justify mandatory helmet laws are often totalitarian. I have closely questioned many who support these laws including fellow cycling advocates, academics and government bureaucrats. These arguments could be divided into six forms:

1. The law is deified. In this argument, the law is justified because it is the law. It is suggested that those who break the law are bad people and, therefore, failure to wear a helmet must be socially sanctioned. This is a circular argument based in a normative view.
2. Subjects must be governed. The goal-posts are moved indefinitely. Even those who advocate for helmet laws (and may even recognise that there is an impact upon participation) never identify a threshold at which reform of the laws is possible. There is a tendency to deflect this question and state that more infrastructure is needed and reform may come at some unidentified future time. However, the 'magic threshold' at which 'enough' infrastructure has been reached is never identified. An ongoing process of moving the threshold is in place that never questions why it was set in the first place. This argument positions the citizen subject as 'naturally' governed, not free.
3. Punishment fetishism. Those who advocate for helmet laws often retreat to a position treating all humans as subjects who must be governed 'for their own good' and, when I question this, accuse me of being an intellectual as a means to undermine my expertise. If someone believes that the reason to govern others is because they are of low intelligence yet they themselves decry intelligence, this person is a dubious source of advice. It is paternalism from the unqualified and constitutes the punishment fetishism typical of totalitarianism. As also found by Culver (2018), this is often accompanied with threats of violence.
4. Fear trumps objectivity. In this argument, a constant focus upon the potential trauma that may occur from crashing detracts from assessing the net worth of riding a bike to overall health outcomes including cardio-vascular benefit. The focus of this argument is upon injury and loss, not participation and health. This is an argument that justifies regulation out of fear, not objectivity.
5. Identity politics. An argument based in the dominant identity (motoring) is applied. An example of this is the use of motoring-centric metrics in which the mandating of seat-belts is held as justification to mandate bicycle helmets. Often, a reference to the social contract is made in which all separate 'identities' of motorists and cyclists must do something to protect themselves. The health benefits of cycling are ignored in that calculation of the social contract. This is an argument framed in a dominant group identity.
6. The glory of regulation. A good example of this is from Ms Robyn Seymour, Director of Vehicle and Road Use Policy, VicRoads at the 2015 Commonwealth Senate Inquiry 'Personal choice and community impacts' in which she stated, 'VicRoads is very committed to ensuring that we do protect our vulnerable road users and our other road users, which sits well with the premise under Safe System and the Towards Zero strategy...' (Commonwealth of Australia, 2015, p.60). The basis for their policy is a 'systemic' approach targeting a goal of 'zero' harm. This comment followed a narrative expressing the pride of VicRoads in being a world leader with regulation, 'we have led the world with a number of regulations'. This argument seeks absolute success and fetishizes regulation.

The ideological appropriation of the MHLs for excessive state control is no better exemplified than by the former NSW Minister for Transport, Duncan Gay. When interviewed by Al Jazeera (2014) in May 2014 and challenged with the notion that MHLs may be counter-productive to cyclist safety, Gay's response includes:

Why don't I give them a choice of saving their lives. Either wear a helmet or not ride a cycle... I've saved their life... If you want to go free willy, rage everywhere, have the anarchists run the world, that's fine, that's not what I'm trying to do, I'm trying to save lives!"
(AlJazeeraEnglish, 2014, p. 4.30mins onwards)

Gay's defence of MHLs refuses to address the journalist's question which posited that MHLs are counter-productive due to reduced safety-in-numbers. Instead, Gay saw reform of the law as an invitation to social disintegration. His velophobic hyperbole includes a morbid fear of the practice of cycling – that cycling is tantamount to certain death unless wearing a helmet. When choice is discussed, Gay overrides this suggestion by dictating that our welfare is his decision. In this way, he fails to acknowledge the possibility of negative consequences of the law, demonises his opponents as anarchists and he asserts the primacy of control. Gay returns the discussion in this interview regularly to his preferred topic of the registration and licensing of cyclists thus deflecting attention from the failure of MHLs. He is predetermined that he must not relinquish, but further assert, strong state control of alleged subversives. In perspective, it could be viewed that it is not cyclists who form a threat to others, it is 'control' which is getting out of control. The MHLs are thus an example of the state seeking to exceed appropriate boundaries to its authority.

The combined presence of arguments that deify the law as an end in itself, present regulation as a natural state, suggest punishment fetishization, hold a focus upon fear, and fetishize increased regulation suggest that ongoing attachment to mandatory helmet laws are based in features prominent in totalitarianism. This is echoed by Fleming's (2015) discussion of helmet regulation for social markedness.

Further examples of MHLs as Nanny State Manifestation

This committee and similar inquiries are colloquially referred to as challenging the "Nanny State". This concept is a social construction. Social constructions differ from conspiracy theories in that a social construction is a non-intentional combination of factors leading to a set of conditions rather than those conditions being sought through wilful collusion. Cycling has historically been appropriated by various social and political movements (Horton, 2006). In 2014, Ker (Ker & Haynes, 2014) described the ideological appropriation of cycling in a presentation to 'Velocity' the international cycling conference in Adelaide.

The following additional evidence that the "Nanny State" is manifest through the MHLs and is largely based upon my submission to the 2015 Federal Senate Inquiry (see Hansard - Commonwealth of Australia, 2015).

The MHLs exemplify the application of Hobbesian notions of human nature and the control of an unruly population by a Leviathan state. Through these laws, corporate interests have influenced the state which further abuses ideologically-based fear to assert the need for their control. Helmet laws

are thus an easily visible means to panoptically control the cycling population and are likened to the phenomena of “markedness” (Fleming, 2015) in which the state can easily monitor and discriminate against a sector of the population which is already marginalised.

In the late 20th Century, Australia’s grand narrative shifted from a vision of a socially progressive antipodean utopia towards being a leader in state-intervention in public health. We abandoned grand visions for more immediate goals. The provision of safe public utilities, improvements in workplace safety and, most strikingly, transport safety evolved as central to our international reputation. In transport policy, we led with initiatives such as motorcycle helmets, seat belts, random breath testing, speed cameras and bicycle helmet laws. Eventually, the point of state over-reach and counter-productive policy-making would inevitably be reached. The all-age, all location, MHLs for bicycles represent that point.

Commercial influence

A very effective way to improve the sales of your product is to support its enforcement by the state. In discussion with an experienced bicycle advocate, it was reported to me that a financial incentive was offered to influence the position of a peak bicycle advocacy body in Victoria to thus garner their support for the original introduction of MHLs. I was informed that fear of libel impeded revelation of further detail. As a Victorian during the time of the introduction of MHLs, I recall the closure of Malvern Star and the loss of domestic bicycle manufacturing accompanying a movement towards the repositioning the Australian bike industry into the manufacture of accessories. Late last century, Victoria positioned itself with a strong narrative of public health innovation particularly with regard to mobility. As examples, Victoria led in motorcycle helmets, seat belts, breath-testing and other innovations. The allegation that commercial influences from the helmet industry were effective at influencing state politics (to permanently implement a regulation without an evidence base) is thus highly plausible.

State over-reach

These laws do not exist only for public health. Despite many of the advocates of the MHLs having purely good intentions for the health of others, there is, without doubt, an agenda for social control and a desire to forcefully influence the lives of others which accompanies these laws. For example, the state uses traffic violations to regulate other aspects of society including race, class, age and other prejudices. Studies have confirmed the potential to implement discriminatory ideology via application of mobility legislation (Green, Steinbach, Datta, & Edwards, 2010; Stehlin, 2013). Hence, discriminatory policing of constructed offences to enforce class, race or other prejudices such as “biking-while-black” or “biking-while-young” are potential applications of traffic violations. It is both the mainstream and marginal populations which can be affected negatively. The abuse of the MHLs for: prejudicial policing (against both the poor and the wealthy and against both black and white); as a catchcry for political resistance; and as a decoy for other crime is observable.

The sincerity of the state is called into question during the implementation of MHLs. One example is through cynicism towards revenue-raising. Another example questions the motives: a helmet might be worn incorrectly fitted over a beanie or baseball cap and provide little or no safety benefit. In this way it is merely a symbolic concession to the police that the wearer is compliant. In situations where police avoid challenging the offender, it demonstrates that the interest of police is in compliance to

the law rather than in the wearer's safety. Through such conclusions, the populace loses faith in the sincerity of the state.

State overreach is further exacerbated through a process of disavowal which accompanies the MHLs. An assumption that MHLs are 'normal' progressively leads to calls for corporatisation of the commons. For example, cyclists in collisions are often attributed blame for not wearing a helmet even though the collision was caused by someone else. True responsibility is avoided. The absence of a helmet becomes an automatic perception of guilt and endorses the rationalisation by the perpetrator and their supporters that the cyclist 'deserved' to be injured (this is similar to arguments used to oppressively support the societal capture of women). In situations where helmet compliance is assumed as normal, denialism of responsibility leads to further victim-blaming. Licensing and registration are then proposed as the next 'solution' to save cyclists from injury. By this process of victim-blaming, enhanced governmentalisation of mobility and the prosecution of offences which do not cause injury to others, the state incrementally corporatises the commons. Currently, the NSW Transport Minister is responding to populist calls for licensing and registration of cyclists. Below, I will demonstrate how his logic is remarkably close to his aversion to addressing helmet laws.

Nanny state institutionalisation and policy inertia

The original adoption of the MHLs was experimental. Australia was the first country to adopt such laws and no dataset existed at the time. We were international guinea pigs. The absence of review of the laws and an assumption of their permanence has underscored the position of successive governments. Review amongst academics has proven inconclusive. No sunset clause was included in the legislation. Hence, the burden of proof for retaining the MHLs has been largely avoided by regulators. The responsibility for change now lies with those seeking reform. Yet, a deep-seated fear underlies political discussion to question these laws. Successive politicians have baulked at reform of the MHLs for fear of being held responsible for individual deaths/injuries. Fear of individual incidents has limited a reasoned debate of a population-level policy. The adoption of the MHLs have been normalised as the default political position thus further embedding institutional dedication to the laws. In other countries, the debate of MHLs appears to be vastly different in construction because the default position is one of free choice.

A cycle of enforcement has become established. Police 'services' around the nation produce media statements touting numerable offences by cyclists, the majority of which are helmet offences. This reinforces the demonisation of cyclists as 'scofflaws', thus strengthening the call for targeted enforcement. If the MHLs did not exist (as in most of the world) these people would not be committing an offence. The laws thus, not only criminalise, but lead to the vilification of many people unnecessarily.

State investments in these laws are now extensive and have occurred over decades. Institutional commitment to their retention is somewhat entrenched. It will take some struggle to override historic prejudices. Further, the benefits of reform of this law might be slow to take full effect. The inertia from decades of MHLs might continue to impede the repair process to the culture of Australian transport and mobility. Further delays will not be helpful.

It is refreshing that the inquiry seeks to review the value of these laws. A reflective view of government policy is well overdue.

Personal data

In this section, I would like to present the personal effects upon me from the MHLs. These include:

- My choice to live in a warm and humid locality is less comfortable. Riding on the low gradient paths by the river with the sea breeze flowing freely on a warm summer's night without breaking the law would be so pleasant.
- I am less safe due to the loss of safety in numbers. I rode with a helmet prior to the MHLs and know of many people who rode less afterwards but not one who has taken up cycling thanks to the laws. My individual safety has been lessened.
- I have lost a personal liberty.
- I feel treated like an idiot or a child. The indoctrination into the discursive construction of the fear of cycling (Horton, 2007) begins early. For example, I was recently berated by a boy of no more than five who aggressively shouted at me "where's your helmet!" It is reminiscent of indoctrinated zealotry which might be experienced in countries where acts such as alcohol consumption are offensive to religious sensibilities. I blew him a raspberry.
- If anything, I feel more like taking up resistance against an overly-controlling state. I often ride without a helmet as a deliberate provocation against the law. It is *noblesse oblige* to resist these laws. Minister Duncan Gay's fear of anarchism (referred to above) is the manifest stigmatisation of libertarianism.
- As a cyborgian cyclist, the social abnormality caused by my impairment is exacerbated.
- I am criminalised when I choose to remove my helmet.
- I am more at risk of skin cancer due to helmets providing insufficient shade compared to a good sun hat.
- I have felt scared to speak out and have received aggressive personal abuse from others for merely questioning these laws. The Nanny State is accompanied by an aggressive "Big Brother" who threatens physical violence. For example, threats of such extremity as "I will smash your head into the concrete to teach you to wear a helmet" have been levelled at me. This occurs even though I already wear a helmet and am merely questioning the law.
- I continue to ride with my helmet when taking high risks.
- I have observed risk compensatory behaviour including more sedate behaviour by both myself and others when not wearing a helmet.
- My options for personal expression are limited. Cycling is a performative act. Essentially, normal cycling is illegal and only helmeted-cycling is legal thus limiting how I can perform cycling.

Informal extra-personal data

Throughout my experience, I have observed a number of impacts upon others as a result of the MHLs. The data I provide has been obtained through informal conversations and observation. As a bicycle advocate, many people choose to discuss these issues without my solicitation.

Data collection on “invisible cyclists” is notoriously difficult to ascertain in the field of mobilities research (Stehlin, 2013, p. 12). It is these “invisible cyclists” who are not members of organised groups, regular commuters or who generally avoid state scrutiny who are most likely to oppose the MHLs but not be outspoken about the matter. Hence, I feel somewhat justified in representing their positions.

Some of the impacts I have observed include:

Non-participation in cycling: as one friend (a public health academic) remarked, **“I gave up cycling when they brought that law in”**.

Introduction of youth to chronic debt: as one youth in a NSW country town explained to me, **“I got five thousand dollars in bike helmet fines. I was [expletive] by then.”** It was reported to me by an Aboriginal male in my home town that he received a custodial sentence simply based upon his inability to pay bicycle helmet fines, **“I got sent-up just for not paying helmet fines.”**

Suspicion of police motivation: as one Aboriginal youth in a NSW country town explained to me, **“you see that car, that’s their unmarked one, we know it, when the cops want to give us some grief, they just do a helmet run, but we see ‘em coming.”**

Suspicion of police reluctance: as one non-Aboriginal male in a NSW country town explained to me, **“they only fine the white folks because we’re the only ones who can pay and, if they fined the blacks, there’d be a riot.”**

Suspicion of police abuse: as one non-Aboriginal male from a NSW country town explained to me, **“he (the police officer) chased me around all day. I ended up with thirteen tickets, thirteen!”**

There are mixed opinions amongst the constabulary. I have discussed the application of the law with two local police who expressed their weariness of it and recognise it is both counter-productive for public health but also a cost to police resources. However, some challenges continue. For example, when chatting about my tandem bike with a police officer mounted on his bike, he explained his role as being, **“we’re mostly out here to do community liaison.”** Coincidentally, a cyclist rode by without a helmet, at which the community liaison ended and he engaged in pursuit and imposed a penalty: it’s a strange form of community liaison.

Resistance to the law is a form of provocation to authority. As one friend explained, **“we used to sit at the end of the street waiting for the cops so they’d chase us.”**

While coaching youth in mountain biking, I have learned never to use the quote, “it’s the law” with regard to helmets. The laws are a deterrent to participation in the healthy sport of mountain biking. The moral discourse which encourages obedience to the law is a disincentive to youth. Instructing some people to do something just because it is the law is a challenge to the individual’s autonomy. Fight or flight responses result in contest of the law or not participating. Consequently, I use the

phrase, **“if you’re not wearing a helmet, you’re not riding hard enough”** as a wry challenge to their competitive spirit. This approach consistently elicits a positive response. I am confident that this approach is far more effective at both encouraging helmet use and retaining participation. In mountain biking, helmets are a practical object. In the bush, there are no police, practicality trumps a law. In the bush, the law does nothing but leave the sour taste of state control in the minds of those seeking liberation and empathy with nature.

Australian bike culture and MHLs

Social polarisation

There is a notable polarisation in the culture of Australian cycling which has been entrenched by the MHLs through the phenomenon of “velophobia”. The practice of cycling is associated with moral discourses (Green, Steinbach, & Datta, 2012). The delineation between the elitist healthism of the archetypal road cyclist replete with all accessories is further imbued with a pious morality. The laws support the argument that their morality and their performance of cycling are legitimate while the deportment of the casual cyclist is morally wrong. There are good cyclists and bad cyclists (Aldred, 2013) and the helmet laws help to determine this moral dichotomy. It is not surprising that Australian cyclists attempt to satisfy emotional needs through both enhanced commodity fetishism and competitive expression in stoic ‘sufferfests’. The ‘avid cyclists’, those who are obsessed with a perceived ‘correct’ deportment and performance of the physical presentation of cycling, present the hegemonic face of Australian cycling culture. Those who enjoy the values of freedom are represented as a minority and are threatening to social cohesion. The population-scale indoctrination into compliance with MHLs which occurs in childhood should not be underestimated for its affective potential upon the identity of all Australians. It is possible that the MHLs are a significant vehicle through which a statist mentality polarises individuals within our population at an early age to form lifelong prejudices against fellow Australians.

Gender inequity

Australia is renowned for a poor gender ratio in cycling amongst developed nations with women having a comparative lower representation (Bonham & Wilson, 2012; Heesch, Sahlqvist, & Garrard, 2012). I have observed the difficulty in engaging women in cycling due to helmet resistance. Despite helmet-hair and vanity not being a big thing to me, it is to others.

Participation comparison

The Northern Territory has some level of exclusion from the MHLs and co-incidentally as a higher participation rate. No Australian city can exceed comparatively low levels of participation in world terms, even Canberra, despite elaborate investment in infrastructure.

Race conflict

Based on the perspectives presented above of the dynamics between race, class, age and authority, it is plausible that the contest of the helmet laws may contribute to significant race conflict in Australia. For example, the contest of the MHLs may have been a contributing factor to events leading to the 2004 Redfern Riots and might somewhat explain incongruous witness accounts and police reports. The truth of this speculation is inherently difficult and contentious to objectively assess.

Class advantage

Another perspective on the class dynamics of the MHLs is in Byron Bay where the law goes largely unprosecuted. This could possibly be explained by a combination of international tourists who flout

the law and avoid prosecution by leaving the country, alternative life-stylers who are difficult to prosecute and a tourism industry which seeks to protect income.

International disrepute

Amongst international visitors, Australia is seen as a cycling pariah. This is likely to already be affecting our tourism as many people see cycling in Australia as more dangerous (and far less of a romantic adventure) than interacting with our deadly wildlife. Australia often features as a 'cycling pariah-state' in international media. The world-reknowned bicycle blogger and comedian "Bike Snob NYC" (Weiss, 2015) recently explained in reference to Australia that, "the only way they could nanny people more would be to breastfeed them."

City-country divide

My own qualitative research has addressed cycling in regional communities. Most quantitative data on the topic of helmet use and legislation has a city-centric focus. Data is often not counted/reported from regional/rural towns. It is possible that the social impacts of the MHLs upon regional/rural localities are far greater than in the cities. The phenomena of prejudicial policing and entry into criminal behaviours via the MHLs are likely to be exacerbated where there is greater personal familiarity between the police and the population.

Bike share schemes impeded

While other cities around the worldwide are rolling out successful bike share schemes, they have struggled in Melbourne and Brisbane. Sydney has not invested at all. I personally attempted to use a bike hire in Adelaide last year and was inhibited by the requirement for a helmet as there were none available.

Cost-shifting within government

As an advocate and a former employee of local government positioned adjacent to a state-funded road safety officer, I observed an avoidance of infrastructure projects in favour of spending smaller sums on 'cycling promotion'. In actuality, these were which strongly promoted the fear of cycling and possibly scared people out of cycling. Helmet promotion is the easy way out for governments and has cost genuine improvements to cycling. When I read the item 'cycling promotion' in government documents, I have learned to suspect a form of Orwellian Newspeak.

Academic dispute

There is an ongoing schism amongst bicycle advocates and academics. It is possible that confirmation bias has affected data collection and representation (Elvik, 2011). There appear to be opposing encampments within Sydney University and the University of NSW regarding MHLs. The denialism that the MHLs have affected cycling participation is reminiscent of the history of the tobacco lobby's denial of the effects of smoking. The data used to substantiate the retention of the MHLs is highly disputable. For example, the effects of MHLs are likely to be under-estimated during surveys. Respondents who cite a fear of motoring as a reason not to cycle may be disguising a fear of helmet use as the former would be considered a more socially acceptable response. Further, they may be echoing decades of helmet promotion which has indoctrinated a generation into a belief

that collision with a motor vehicle is inevitable. There is also a paucity of qualitative data particularly with regard to the effects upon regional/rural communities. Most data in this field of investigation is city-centric. An attempt to provide a formulaic public health calculation of MHLs was provided by Newbold (2012). The complexity of the calculations presented by Newbold demonstrates the uncertainty over MHLs as a policy instrument. Further, any calculation should also consider the effect upon a population's health from the loss of a liberty.

Risk compensation

Risk compensation is an established social fact. Risk compensation regarding helmet use can be divided into four categories and is partially supported by existing studies:

1. lower care taken by motorists around cyclists who are wearing helmets (Walker, 2007);
2. risky behaviours by cyclists who believe that they're invincible (Phillips, Fyhri, & Sagberg, 2011);
3. greater endangerment of others by cyclists such as a culture of speed on shared paths at the expense of pedestrian safety; and
4. cause-migration to motoring whereby the criminalisation via MHLs lead to anti-social patterns being established prior to driver licensing.

Ongoing disobedience

Despite decades of the laws, disobedience continues on a large-scale. It is possible that the revocation of the MHLs would not have a significant negative effect on helmet usage. Usage rates could be attributed more to helmet promotion than to helmet regulation. In some localities, the condition of desuetude (in which authorities wilfully neglect to enforce the law and disobedience has been normalised) is emerging. In addition, a legal defence of desuetude against prosecution for these laws will be strengthened by the existence of this inquiry.

Vigilantism

Other actors exercise their desire for social control through the MHLs as a form of vigilantism. For example, people sometimes yell at cyclists, "where's your helmet!" The MHLs give laypeople an opportunity to exercise their deeper status frustrations through velophobic posturing and to emulate the police officers they regularly observe starring in both fictional and reality television programs.

Losing the ability to objectively assess risk

In Australia, many MHL supporters often resort to the final argument: "it's the law". This is not a reason, it is a fact and it is implicitly: an order. It is an admission that fear has not been effective to win the argument. It is common to see signage in holiday parks reinforcing the law. This is based in the fear of litigation should someone be injured while riding without a helmet and they might be sued for not policing the law. Moving to this position neglects the reason to wear a helmet: protection in a collision. In comparison, in countries where this statement is untrue, helmet proponents must rely on substantiating their arguments and individuals are empowered to develop their own skills in risk calculation. Learning how to objectively determine risk for oneself is a

fundamental part of human growth. This is being denied to the whole of the Australian population through the MHLs.

Other factors

Other factors in Australian culture which are not direct evidence but correlate to poor practice in cycling promotion include:

- an ongoing obesity crisis;
- entrenched car dependence and high levels of fuel consumption;
- an increasing militarisation of bicycle culture (similar to motorcycle culture including roaming gangs of males);
- inhibition of intuitive risk calculation – the state decides;
- disavowal of responsibility – an obsession with legal compliance rather than cause of collision.
- enhanced cause-migration to other forms of persecution of cyclists exemplified by calls for licensing and registration to “solve the cyclist problem”.

Some straw men

In this section, I will address common arguments in favour of MHLs.

“This is not Amsterdam”

Correct, Australia is not Amsterdam. This position often underlies a deeper stance that the laws should not be reformed under any circumstance. Often the argument “you could fall going slow” accompanies this position.

Australia is a very flat place with far more space than Amsterdam. There are abundant places to ride which are much safer than Amsterdam. In my area, there are sedate foreshore paths and remote roads through forests. Our streets are wide enough to turn bullock drays and we have access to advanced bikes with elaborate gearing and hydraulic braking systems. Further, our climate is far less conducive to helmet wearing than Amsterdam because it’s much warmer and we could over-heat.

The difference is that our culture is less cycling-friendly. To further de-normalise cycling by mandating helmet use has made the cultural differences greater. MHLs have not effectively normalised helmeted cycling and they have de-normalised (criminalised) basic cycling.

“Well, then you might as well throw out the seat belt laws”

Every analogy has a limp. Seat belts laws should also be assessed on their merits. Importantly, it is unlikely seat belts affect motoring participation or culture in the same ways that MHLs have affected cycling.

“What about the children?”

Good point. Allowing children to see adults behaving in compliance with counter-productive laws is a bad example to set. We have a moral duty to our children to question these laws. Further, age-

specific restrictions are a possible policy option to address this dilemma, for example, the laws might be reformed to only apply to those under 16 years of age.

“How are you going to feel when someone dies because they weren’t wearing a helmet?”

People are still dying with the MHLs. It is likely to be a lower ratio of deaths and the net public health outcome will be greater if we reform these laws. We should not make public health decisions based on the fear of individual deaths. This is a basic principle of public health.

“You have a responsibility to society to keep yourself healthy.”

Social contract theory would view cycling as a healthy activity and a very good way of keeping ourselves healthy with or without a helmet, thus reducing the burden on the health system. Further, the metrics of motoring should not be the yardstick for safety. Otherwise, we would all be externalising our costs in a struggle of might-is-right. Further, our social responsibility is met by a reduction in fuel use, emissions, congestion and other resource consumption plus an increase in passive surveillance and social inclusion – barriers to cycling should be removed, not added. The social contract is more than adequately being met – particularly by the casual cyclist. Again, this issue should be addressed as a public, not individual, health equation.

“We need to build infrastructure first and this helmet debate is distracting.”

We can walk and chew gum at the same time. Despite this call, the helmet debate does not go away. Reforming it might actually lessen it as a distraction - so the sooner the better. The more paths we build, the closer we get to a situation where anyone should feel comfortable reforming the law. Alternatively, if they are never going to be comfortable reforming this law no matter how many paths are built, it is sensible to question that as a permanent state. Worldwide experience has shown that best practice in cycling policy does not include MHLs.

Policy options

Status quo

The current all-age all-location mandatory helmet laws are described by Professor Chris Rissel (Rissel, 2014) as a “blunt policy instrument”. This option has dubious public health outcomes and is not recommended.

Sunset Clause and Desuetude

Many regulations are now enacted with a sunset clause. This is not the case for MHLs. One option is for the introduction of a sunset clause at which point only a strong argument for the retention of this constraint upon civil liberty must be presented or the laws are revoked. Desuetude is the non-policing of an existing law. This is already occurring in some localities and selectively elsewhere depending upon police resources and prejudices.

Criminalising helmets

Making bicycle helmets illegal would be an unfair restriction on a healthy activity and counter-productive. However, it might be a way to encourage some individuals to take up helmet use as a risk-seeking behaviour.

Full repeal

Complete repeal of all helmet laws on cyclists is an option. Further, helmet promotion could also be eliminated due to its contribution to the discursive construction of the fear of cycling. This is unlikely to be accepted without incremental stages.

Partial exemptions

A national expansion of conditions in the Northern Territory could be trialled. Helmets are not required for adults cycling off-road in the NT.

Exemptions based on bike types could be trialled. For example, hire bike schemes. Alternatively, the law could apply only to narrow-tyred road bicycles.

Geographic exemptions could be trialled. For example, such as when leaving town limits.

An age-based exemption could be trialled. For example, a two year exemption for over 16s as proposed by the recent Queensland Parliamentary inquiry (QldParliament, 2013) and is also supported by Professor Chris Rissel (Rissel, 2014). This option would also allow for ongoing social control of youth – which may be seen as an attractive policy option for some jurisdictions. This option could also form an incremental step towards full repeal of the MHLs.

Conclusion

The fear of cycling is socially constructed. This particular fear has been ideologically appropriated by commercial interests and governments and enacted through the MHLs. A position has been legislated which is both counter-productive to public health and to personal freedom.

Since the introduction of the MHLs, we have made, and continue to make, significant improvements to conditions for cyclists in Australia particularly with regard to infrastructure works. However, we continue to compare poorly against other developed nations for 'best practice' in cycling policy. We formerly imagined that 'best practice' included helmet-use. History is beginning to prove Australia wrong. The helmet argument is seen as a distraction from further infrastructure improvements. However, the argument does not appear to be going away. Instead, it appears to be increasing. The debate will not end while the law is in place. Hence, reforming the law is an effective means to reduce the debate and move on to more important improvements for cycling.

Review of these laws has been long overdue and this inquiry is welcomed. I look forward to the removal of an underlying malaise to Australia's cycling culture and to our national identity. The reform of the MHLs is now the most obvious move forward for the benefit of cycling in all of Australia. A national trial of exemption for adults from helmet laws is recommended and Western Australia is a most suitable place to begin.

Yours sincerely,

Jai Cooper BA, MA, Hons, PhD candidate

Sources:

Aldred, R. (2013). Incompetent or Too Competent? Negotiating Everyday Cycling Identities in a Motor Dominated Society. *Mobilites*, 8(2), 252-271.

AlJazeeraEnglish. (2014, May 28, 2014). Duncan Gay and cycling. Retrieved from <https://www.youtube.com/watch?v=EbvYkATHYMQ>

Anon.consultant European.Commission. (2015). Pros and Cons regarding bicycle helmet legislation. Retrieved from http://ec.europa.eu/transport/road_safety/specialist/knowledge/pedestrians/promote_cycling_and_bicycle_helmets_or_not/pros_and_cons_regarding_bicycle_helmet_legislation_en.htm

Bonham, J., & Wilson, A. (2012). Bicycling and the Life Course: the Start-Stop-Start Experiences of Women Cycling. *International Journal of Sustainable Transportation*, 6, 195-213.
doi:10.1080/15568318.2011.585219

Culver, G. (2018). Bike helmets – a dangerous fixation? On the bike helmet's place in the cycling safety discourse in the United States, *Applied Mobilities*, DOI:10.1080/23800127.2018.1432088

DeJong (2012) The Health Impact of Mandatory Bicycle Helmet Laws, *Risk Analysis*, 32 (5) 782-790.

Elvik, R. (2011). Publication bias and time-trend bias in meta-analysis of bicycle helmet efficacy: A re-analysis of Attewell, Glase and McFadden, 2001. *Accident Analysis and Prevention*, 43, 1245-1251.

Fleming, S. (2015). Helmet laws explained through the concept of Markedness Cycle Space (Vol. 2015).

Green, J., Steinbach, R., & Datta, J. (2012). The Travelling Citizen: Emergent Discourses of Moral Mobility in a Study of Cycling in London. *Sociology*, 46(2), 272-289.

Green, J., Steinbach, R., Datta, J., & Edwards, P. (2010). Cycling in London: a study of social and cultural factors in transport mode choice; a final report to Smarter Travel Unit, Transport for London. London: London School of Hygiene and Tropical Medicine.

Heesch, K. C., Sahlqvist, S., & Garrard, J. (2012). Gender differences in recreational and transport cycling: a cross-sectional mixed methods comparison of cycling patterns, motivators, and constraints. *International Journal of Behavioral Nutrition and Physical Activity*, 9(106), 1-12.

Horton, D. (2006). Social Movements and the Bicycle. Retrieved from <http://thinkingaboutcycling.com/social-movements-and-the-bicycle/>

Horton, D. (2007). Fear of Cycling. In D. Horton, P. Rosen, & P. Cox (Eds.), *Cycling and Society* (pp. 1-23). Hampshire, England: Ashgate.

Ker, I., & Haynes, M. (2014). Neo-Political Action and a New Public Policy Paradigm: A case study of mandatory bicycle helmet laws. Paper presented at the Velo-city 2014, Adelaide.
<http://www.perthurbanist.com/category/transport-3>

Newbold, S. C. (2012). Examining the Health-Risk Tradeoffs of Mandatory Bicycle Helmet Laws. *Risk Analysis*, 32(5).

Oliver, J., Wang, J.J.J., Walter, S. Grzebieta, R. (2014), Anti-helmet arguments: lies, damned lies and flawed statistics, *Journal of Australasian College of Road Safety* 25(4) 10-23.

Phillips, R. O., Fyhri, A., & Sagberg, F. (2011). Risk Compensation and Bicycle Helmets. *Risk Analysis*, 31(8).

QldParliament. (2013). A new direction for cycling in Queensland - Report No.39 - Inquiry into Cycling Issues. Retrieved from <http://www.parliament.qld.gov.au/documents/committees/THLGC/2013/INQ-CYC/rp-39-29Nov13.pdf>.

Rissel, C. (2012a). The impact of compulsory helmet legislation on cyclist head injuries in New South Wales: A rejoinder. *Accident Analysis and Prevention*, March(45), 107-109.

Rissel, C. (2012b). Wrong Headed Laws. *MJA InSight*. Retrieved from <https://www.mja.com.au/insight/2012/15/chris-rissel-wrong-headed-laws>

Rissel, C. (2014). Australian mandatory helmet legislation is a clear example of failed public health policy. Paper presented at the Velo-City 2014, Adelaide, South Australia.

Rissel, C., & Wen, L. M. (2011). The possible effect on frequency of cycling if mandatory bicycle helmet legislation was repealed in Sydney, Australia: a cross sectional survey. *Health Promotion Journal of Australia*, 22(3), 178-183.

Scott, J. C. (1998). *Seeing Like A State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven and London: Yale University Press.

Stehlin, J. (2013). Regulating Inclusion: Spatial Form, Social Process, and the Normalization of Cycling Practice in the USA. *Mobilities*. doi:10.1080/17450101.2013.784527

Turner, L. (2012). Australia's Helmet Law Disaster. ipa.org.au

Walker, I. (2007). Drivers overtaking bicyclists: Objective data on the effects of riding position, helmet use, vehicle type and apparent gender. *Accident Analysis and Prevention*, 39(2), 417-425.

Weiss, E. (2015). The Tintinnabulation of Bicycle Bells. In B. S. NYC (Ed.), (Vol. 2015).