

Select Committee on Personal Choice and Community Safety
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Inquiry on Personal Choice and Community Safety

This submission is provided to the Select Committee on Personal Choice and Community Safety in response to the *Inquiry on Personal Choice and Community Safety*. The submission addresses one particular aspect of the terms of reference as follows: *outdoor recreation such as cycling and aquatic leisure, including any impact on the wellbeing, enjoyment and finances of users and non-users.*

Introduction

I am writing to recommend the removal of the mandatory helmet law for cycling in WA. Alternatively, that this law not apply to those 18 and over. Alternatively, that this law not apply to those using public bicycle share schemes.

Australia's mandatory helmet law was introduced without an appropriate evidence base and has subsequently failed to prove that the benefits of this restriction on personal freedom outweigh the costs both economically and in terms of overall population health. In most areas, governments only restrict personal freedom where there is a clear economic or moral imperative to intervene (even smoking does not warrant prohibition). However, despite the fact that the benefits of cycling far outweigh the potential costs of cycling accidents, Australian governments discourage cycling by enforcing the bicycle helmet law.

There is already significant evidence to support the removal of Australia's mandatory helmet law, however this submission will not focus on a literature review of helmet-related evidence. In truth, much of the so-called "evidence" published on the topic of bicycle helmets has been driven from an ideological standpoint, with a familiar set of researchers publishing paper after paper in support of their entrenched position.

When is there a moral justification for the restriction of personal freedoms?

One way to consider the appropriateness of laws which restrict personal freedoms (such as the mandatory helmet law) is to use the "harm principle". This principle states that citizens should have "the freedom to do everything which injures no one else". Many activities involve personal risk such as swimming in the ocean, climbing ladders, doing home improvements etc. Participation in these activities is left up to the individual, who is in the best position to gauge their skill level, the danger posed by the activity and to make a choice as to whether they accept responsibility for the risks involved. The choice of whether to wear a bicycle helmet should fall into the same category as the choice to swim in the ocean. The individual should be free to have control over their own life.

While many activities satisfy the "harm principle" and are (sensibly) left unregulated, there are also many activities that fail the "harm principle" and yet do not meet the significant harm threshold required for the government to prohibit the activity. Smoking and drinking have significant negative consequences for both the individual and society, however, these activities are all legal, while cycling without a helmet has inexplicably been identified as an area for special strictness.

The Participation Imperative

Cycling participation is the key to unlocking a raft of benefits for both individuals and society. Individuals are healthier, happier, more independent and better off financially when they choose to cycle. Society can reduce healthcare costs, reduce traffic congestion, reduce air pollution, reduce infrastructure costs, reduce resource usage, reduce noise pollution, reduce traffic accidents, address climate change, improve social equity and improve the livability of neighbourhoods by creating an environment that encourages cycling.

Not only is riding a bicycle (with or without a helmet) less harmful than many other legal activities, it is actually a profoundly healthy activity which helps to beat a range of illnesses and diseases associated with a sedentary lifestyle. With Australia weighing in as one of the fattest nations on earth, we need to do everything we can to promote healthy activity rather than creating obstacles to cycling participation.

The Australian National Cycling Strategy recognises the many benefits of cycling and has a national target to "double cycling participation between 2011 and 2016". However, while efforts have been made to encourage cycling in some areas, Australia continues to discourage cycling by issuing thousands of fines each year to people riding bicycles in a way that is legal in almost every other country of the world. This unnecessary discouragement of cycling has played a part in Australia's failure to meet the goal of doubling cycling participation, with current data showing a decrease in cycling participation over the past 7 years.

While some people argue that the requirement to wear a helmet is a small inconvenience that shouldn't affect cycling participation, there are a number of important sideeffects to bicycle helmet laws that create a significant barrier to cycling. If Australia is to meet targets for increasing cycling participation in the future, we must remove these barriers.

Side-effects for cycling participation

Australia's helmet laws were initially justified on the basis that they would result in fewer people being seriously injured or killed in bicycle accidents. After the laws were introduced, there was a significant drop in head injuries as expected, however, there was also a significant drop in injuries to parts of the body not protected by a bicycle helmet. This evidence suggests that, rather than decreasing the risk of head injury faced by people cycling, the mandatory helmet laws merely resulted in fewer people cycling.

Supporters of the helmet laws argue that the laws improve cycling safety and thereby reduce the perception that cycling is dangerous. This reasoning is deeply flawed. Firstly, while the primary safety concern for people on bicycles is the dangers presented by motor vehicles, wearing a helmet does nothing to improve this experience or prevent accidents with motor vehicles. Secondly, rather than reducing safety concerns, helmet promotion/enforcement exacerbates people's fear of cycling by inflating the dangers faced by people on bicycles.

Cycling therefore becomes an activity that is only undertaken by the fearless and strong or as a recreational activity in traffic-free environments. Evidence that risk-averse groups are less likely to cycle in Australia can be seen in the National Cycling Participation Survey 2015 which shows that:

- Men cycled significantly more than women in the past week (22% men, 13% women).
- Older Australians (50+ years) cycled significantly less than younger Australians.
- Transport cycling (30.2%) was significantly lower than recreational cycling (85.5%).

These behaviours are all very different in the Netherlands where the gender split is close to 50/50, older people cycle at much higher rates and transport cycling is ubiquitous. This has been achieved in the Netherlands by ensuring that cycling **is** safe and that cycling **feels** safe.

Sideeffects for the legal rights of people riding bicycles

Bicycle helmet laws punish those who should be protected by the legal system and protect those who should be punished. While a bicycle rider may be behaving in a careful and safe manner, they can be stopped and fined by police if they are not wearing a helmet. However, a driver who is distracted or negligent and hits a person on a bicycle will not be held accountable if the victim was not wearing a helmet. This process of "blaming the victim" does nothing to create a safer environment for cycling.

Lack of evidence that Mandatory Helmet Laws improve safety

One thing that has undeniably been achieved by Australia's mandatory helmet laws and subsequent enforcement is an increase in helmet wearing compliance. But despite the high rates of compliance, Australia is still one of the most dangerous and unfriendly places to cycle in the developed world, with a low mode share of trips being made by bicycle.

The fact that no other country has adopted the mandatory helmet laws pioneered by Australia and New Zealand shows that we are not world leaders, but world pariahs. The mandatory helmet laws in Australia are regularly referenced around the world as the example of what not to do if you want to create a healthy cycling culture.

See the following:

<http://ipa.org.au/publications/2019/australia%27shelmetlawdisaster>

<http://thehoopla.com.au/helmetsoffletsride/>

<http://ottawacitizen.com/news/national/theproblemwithbikehelmetlaws>

In contrast to Australia, the Netherlands has a very low rate of helmet use and enjoys cycling participation rates more than 10 times that of Australia. If the theory holds true that helmets are essential for safe cycling, then the lack of helmet use in the Netherlands coupled with the fact that 27% of their trips are made by bicycle would result in an enormous number of cycling injuries and fatalities. But in reality, people cycling in the Netherlands are much safer per kilometre than those cycling in Australia.

Not only does the Netherlands legally allow people to ride a bicycle without a helmet, they are reluctant to even promote the wearing of helmets because they do not want people to get the false impression that cycling is dangerous.

The Netherlands has demonstrated that the practical way to improve cycling safety is to build a "safe system" with low speed limits, protected infrastructure and a population that is taught to ride a bicycle from a young age. Their approach to cycling has resulted in a high level of population activity that brings huge benefits to society and should be the goal of Australian public policy.

Why the Mandatory Helmet Law is not equivalent to mandatory seat belt laws

Some people cite the requirement to wear a seat belt as an example of a (sensible) law that protects citizens from themselves and is no different to the requirement to wear a helmet when riding a bicycle. However, there are at least four reasons why the requirement to wear a seat belt in a motor vehicle is different to the requirement to wear a bicycle helmet when cycling.

Firstly, research has shown that seat belts are effective in improving safety on a population-wide basis. The same cannot be said for helmet use. While the Netherlands has one of the lowest rates of helmet use, it is one of the safest countries in the world to cycle.

Secondly, unrestrained motor vehicle occupants become projectiles in the case of a collision and pose a serious threat to other vehicle occupants. So allowing people not to wear a seat belt poses a safety hazard to others, thereby failing the requirements for personal freedom under the "harm principle". Allowing a person to ride a bicycle without a helmet poses no risks to other people and in fact may lead to a safer environment for others, as risk compensation causes the helmetless rider to take fewer risks than a rider who is wearing a helmet.

Thirdly, the requirement to wear seat belts in motor vehicles is not equivalent to the requirement to wear a helmet while riding a bicycle. A more accurate comparison is to consider a law that requires mandatory helmets for motor vehicle occupants. Motor vehicle occupants sustain more head injuries in Australia each year than those riding bicycles, so a greater potential benefit could be achieved by mandating helmet use in motor vehicles. However, the idea of mandating helmet use for all motor vehicle occupants is not taken seriously because it would look stupid, be inconvenient and be uncomfortable. The same reasoning should apply to bicycle helmets.

Fourthly, cycling should be encouraged due to the many associated societal benefits, while driving should be discouraged due to the many associated societal costs. Logically, the inconvenience of wearing a helmet should be applied to the activity we wish to discourage (driving) before it is ever considered for the activity we wish to encourage (cycling).

The future looks bright without mandatory helmet laws

If we remove the mandatory helmet law in Australia, not much will change in the first few years. Most people will continue to wear a helmet if they currently wear a helmet and most people who don't wear a helmet now will continue to not wear a helmet. However, the police will no longer penalise people who ride a bicycle without a helmet, road agencies will have to look beyond "helmet compliance" as the primary way of achieving safety and riding a bicycle will be just a little bit easier.

We might even have a chance of increasing cycling participation...

Regards,
Tony Arnold
Former Executive Officer of the Australian Bicycle Council