

Government Response to the Final Report of the Select Committee on Personal Choice and Community Safety

Community Safety: for the greater good, but at what cost?

RECOMMENDATION	OVERVIEW OF GOVERNMENT RESPONSE
<p>Recommendation 1 (page 31)</p> <p>The Government investigate the potential for a trial exemption from mandatory bicycle helmet laws in low risk, segregated areas, for example, Rottnest Island.</p>	<p>Recommendation 1: Not Supported</p> <p>The Government strongly encourages healthy lifestyle activities such as cycling, while also protecting the community with appropriate safety measures.</p> <p>The Government does not support a trial exemption from mandatory bicycle helmet laws due to the following reasons:</p> <ul style="list-style-type: none"> • mandatory bicycle helmet laws make a significant contribution to bicycle rider safety and reduce risk and injury to riders; • the findings in the report agree that mandatory bicycle helmet laws do not cause a significant reduction in uptake of recreational cycling; • increased bicycle infrastructure is a preferred and safe solution to increasing the uptake of recreational cycling; and • a trial exemption from mandatory bicycle helmet laws does not align with the Government's Safe System approach to road safety and where risk to vulnerable road users is minimised through various controls, should a rider make a mistake, or an accident happen. <p>The Government agrees with the finding in the report that WA must be very clear about its intention in mandating helmet use in WA, and this should be conveyed to the community in clear terms. Allowing a trial exemption from mandatory bicycle helmet laws will undermine the clear and consistent message regarding the importance of bicycle rider safety.</p> <p>If a trial exemption was undertaken (e.g. on Rottnest Island), the findings would not be applicable to the rest of WA, as such locations are uncharacteristically bicycle/pedestrian-friendly and have an extremely unique mode-share with very few other road users. It is unlikely that any such trial would produce usable data to inform legislative decisions, which would be relevant to other locations in WA.</p> <p>Furthermore, the limited medical facilities on Rottnest Island mean that any serious head injury incurred there would require costly aeromedical retrieval for treatment in Perth.</p>

<p>Recommendation 2 (page 31)</p> <p>The Government investigate undertaking a cost-benefit analysis on the effectiveness of mandatory bicycle helmet laws in Western Australia</p>	<p>Recommendation 2: Not Supported</p> <p>Road trauma has cost the WA community \$20 billion over the past decade. Nationally, road trauma costs the Australian economy a staggering \$27 billion annually.</p> <p>The Government is of the view that bicycle helmets are an effective safety measure to protect against serious head and brain injuries. Western Australian data from 2017 showed that helmet use significantly reduced the risk of head injuries, including fatal head injuries.</p> <p>Bicycle riders are one of the most vulnerable road users and are likely to be severely impacted in a crash given the lack of safety features on bicycles compared to safety features available to the drivers of cars and trucks. Head and brain injuries are among the most serious and costly injuries to treat. When head injuries are sustained, they often result in fatalities or serious long-term injuries which completely alter the course of a person’s life and their families. In the case of catastrophic injury, such individuals are likely to require lifetime care.</p> <p>The Government supports an investigation into the cost-benefit of increased active transport, but as per Findings 1 and 2 of the report, mandatory bicycle helmet laws is not considered to be the primary deterrent to this behavior.</p> <p>Researching the cost/benefit of a single variable, noting that the report itself recognises this is ‘not the main reason why people choose not to ride a bicycle’, would redirect time and resources away from other variables that have been proven to have a significant impact on travel choices. For example (as per Finding 2) ‘Measures such as improved road infrastructure, lower speed limits and greater driver awareness and education.’</p> <p>Helmet use protects against the consequences of serious head injury, without precluding the health benefits of cycling. The Government supports the existing legislation.</p>
<p>Recommendation 3 (page 68)</p> <p>The <i>Tobacco Products Control Act 2006</i> be amended to lift the prohibition on the sale of e-cigarette devices and provide for regulation proportionate to the risk; for example, banning the sale of e-cigarette devices to children.</p>	<p>Recommendation 3: Not Supported</p> <p>The Hon Greg Hunt MP, Federal Minister for Health, intends to amend the <i>Customs (Prohibited Import) Regulations 1956</i> to prohibit the importation of e-cigarettes containing vaporizer nicotine, and nicotine-containing refills unless on prescription from a doctor. This amendment was planned for 1 July 2020, but will now occur from 1 January 2021. https://www.tga.gov.au/behind-news/prohibition-importing-e-cigarettes-containing-vaporisernicotine</p> <p>Concerns include:</p> <ul style="list-style-type: none"> • the US experience, namely a 78% increase in the number of high school children vaping and evidence suggesting the use of e-cigarettes by non-smoking students predicts future uptake of smoking; • the Victorian Poisons Information Centre report almost double the cases of liquid nicotine poisonings, comparing 2018 and 2019;

	<ul style="list-style-type: none"> the increased risk of accidental nicotine ingestion as in the July 2018 case where a Victorian toddler died from e-cigarette liquid nicotine consumption; and the potential for e-cigarette devices to be used to heat and inhale liquids containing THC - as is popular in the US (of 2,022 hospitalised for e-cigarette or vaping, product use associated lung injury, 33% reported exclusive use of THC-containing products). <p>https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#whatwe-know</p> <p>The WA Government, through the Department of Health (DOH) continues to monitor evidence about e-cigarettes as it emerges. DOH will consider the latest evidence about the safety and efficacy of e-cigarettes and the appropriateness of State laws to protect and promote public health within the scope of the next review of the <i>Tobacco Products Control Act 2006</i>, due to be open for public consultation later in 2020.</p>
<p>Recommendation 4 (page 68)</p> <p>The Government formally request the Therapeutic Goods Administration to review the scheduling of liquid nicotine.</p>	<p>Recommendation 4: Not Supported</p> <p>The Government is committed to the national scheduling process and has agreed to adopt the schedules of the national Poisons Standard by reference. At the Federal level, appropriate infrastructure and a regulatory framework currently exist to carry out a range of assessment and monitoring activities to ensure that goods which make therapeutic claims are of an acceptable standard and that their use is well-supported by sound scientific evidence.</p> <p>A request to the Therapeutic Goods Administration (TGA) to review the scheduling of nicotine gives the impression the Government supports greater access to nicotine for use of e-cigarettes, despite WA laws that prohibit the sale of e-cigarettes. Finding 19 of the Report states that, ‘while vaping is often considered to be less harmful than combustible cigarettes, evidence of the harm is still emerging, and the long-term effects are still unknown.’</p> <p>The WA Government will continue to monitor closely the determinations of Federal agencies.</p>
<p>Recommendation 5 (page 68)</p> <p>The Government investigate the safety and harm-reduction benefits of increasing awareness about the legal requirement to obtain a medical prescription before importing e-liquid or e-cigarettes containing nicotine under the Personal Importation Scheme.</p>	<p>Recommendation 5: Not Supported</p> <p>The Personal Importation Scheme is overseen by the Australian Therapeutic Goods Administration (TGA) and the Australian Border Force (ABF). At the Federal level, appropriate infrastructure and a regulatory framework currently exist to carry out a range of assessment and monitoring activities to ensure that goods which make therapeutic claims are of an acceptable standard and that their use is well-supported by sound scientific evidence.</p> <p>Awareness of the legal requirements of the Personal Importation Scheme, including the requirement to obtain a medical prescription, are matters for applicants, the TGA and the ABF. Individuals that choose to use the Personal Importation Scheme to obtain e-liquids or e-cigarettes should make themselves fully aware of the legal requirements and bear personal responsibility for doing so.</p>

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<p>Recommendation 6 (page 68)</p> <p>The relevant Acts be reviewed to examine the regulation of e-liquids, particularly those containing nicotine, including the imposition of child-safe packaging and labelling requirements.</p>	<p>Recommendation 6: Not Supported</p> <p>At the Federal level appropriate infrastructure and a regulatory framework currently exist to carry out a range of assessment and monitoring activities to ensure that goods which make therapeutic claims are of an acceptable standard and that their use is well-supported by sound scientific evidence. The Government adopts the packaging and labelling requirements of the national Poisons Standard by reference. The Australian Government is well-positioned to regulate nicotine and e-liquids, including the most appropriate child-safety and labelling requirements.</p> <p>The WA Government will continue to monitor closely the determinations of Federal agencies.</p>
<p>Recommendation 7 (page 79)</p> <p>The Government legislate a right of review to the State Administrative Tribunal for decisions made pursuant to regulation 235 of the <i>Road Traffic (Vehicles) Regulations 2014</i></p>	<p>Recommendation 7: Not Supported</p> <p>The matter of determining vehicle modifications, including significant modifications, potentially can create risks and impacts on public safety. Additionally there would likely be a significant volume of modifications that may seek reviews due to the high level of technical matter and expertise in engineering detail required. In one case, DoT was involved in a SAT hearing that was drawn out over many weeks, and which was upheld for DoT, at great expense to the public. The resource component alone would require DoT's engineers to present engineering evidence on numerous cases which would further cause delays in the processing of incoming modification applications.</p>
<p>Recommendation 8 (page 79)</p> <p>The Government updates the Department of Transport's publicly available information regarding the standards applied by the Department when assessing vehicle modification applications.</p>	<p>Recommendation 8: Supported</p> <p>DoT will update its website information regarding the application of VSB14 under regulation 235 of the <i>Road Traffic (Vehicles) Regulations 2014</i>. DoT will increase awareness over legal requirements for customers as modification approval decisions made under regulation 235 are not 'reviewable decisions' for the purposes of the Regulations.</p> <p>Presently, there is no regulatory requirement for DoT to advise customers of their right to have the decision reviewed by another DoT officer who is independent of the decision, or by SAT. There is an opportunity to clarify the power to weight ratio mentioned in the Report which concerns the lack of awareness for vehicle owners for gaining pre-approval before modifying their vehicle's power to weight ratio at considerable cost i.e. for higher powered vehicles.</p> <p>Publicly available information enables the community to make informed decisions prior to submitting an application to modify a vehicle, and gives them a greater understanding of the assessment criteria applied and improves transparency. From a vehicle safety perspective, there is a risk that vehicle modifications such as 'bull bars' compromise the safety rating of a vehicle and the injury severity of road users in the event of a road crash.</p>

	This includes the injury severity risks to both vehicle occupants and vulnerable road users including pedestrians, cyclists and motorcycle riders.
<p>Recommendation 9 (page 79)</p> <p>The Government ensure that the Department of Transport's decision records and correspondence sent to applicants for vehicle modifications in Western Australia provide clear information about:</p> <ol style="list-style-type: none"> the role of the Parliamentary Commissioner for Administrative Investigations (Ombudsman) applicants' right of review under the <i>Parliamentary Commissioner Act 1971</i>. 	<p>Recommendation 9: Supported</p> <p>The Government supports the recommendation that decision records and correspondence sent to applicants for vehicle modifications in WA provide clear information regarding the applicant's rights of review or appeal under the <i>Parliamentary Commissioner Act 1971</i>, or via the Ombudsman. This would improve transparency and understanding for procedural fairness when an adverse decision has been made.</p> <p>DoT published 'Guidelines for Communicating CEO Decision to Not Approve Vehicle Modifications' internally on 8 May 2020, that addresses this recommendation. The guidelines describe how decisions are made to ensure they are fair, consider all relevant information and that the reasons are clearly communicated to customers. The guidelines also provide clear advice about how to access information on the role of the Ombudsman WA and the applicants right of review under the <i>Parliamentary Commissioner Act 1971</i>.</p>
<p>Recommendation 10 (page 85)</p> <p>The requirements for carrying and wearing lifejackets in the <i>Navigable Waters Regulations 1958</i> should be changed only if there is compelling evidence provided by the Recreational Vessel Safety Equipment Review to do so.</p>	<p>Recommendation 10: Supported</p> <p>DoT continues to educate boaters to make informed choices through its Behaviour Change and Education Strategy, which highlights the importance of having the correct safety equipment and survival gear on board their vessel, for the area and conditions in which they intend to operate. This includes raising awareness of circumstances that boaters should consider wearing lifejacket through the Make a Difference – Maintain and Wear Your lifejacket campaign. This strategy is complementary to the current mandated safety equipment requirements.</p>
<p>Recommendation 11 (page 91)</p> <p>The Government:</p> <ol style="list-style-type: none"> always consider the merits of publishing Decision Regulatory Impact Statements publish Decision Regulatory Impact Statements where appropriate. 	<p>Recommendation 11: Supported</p> <p>It is standard practice for Decision Regulatory Impact Statements (DRIS) to be published as they are intended to be public documents. The March 2020 Better Regulation Program: Information paper for agencies states: "Once the regulatory proposal is approved, the relevant Consultation Regulatory Impact Statement (CRIS) and DRIS should be published on the agency's website. They can also be provided to the Better Regulation Unit, which can include the documents in the publicly available CRIS and DRIS archive."</p>
<p>Recommendation 12 (page 99)</p>	<p>Recommendation 12: Noted</p> <p>Government agencies as a matter of course apply principles of proportionality in developing policies and regulation as they relate to public health.</p>

<p>Government agencies have regard to the Nuffield Council on Bioethics' intervention ladder when developing policies and regulation.</p>	
<p>Recommendation 13 (page 99)</p> <p>The Government develop regulatory principles which:</p> <ul style="list-style-type: none"> a. are based on international best practice b. require the consideration of the potential adverse impact of regulation on personal choice and responsibility. 	<p>Recommendation 13: Supported</p> <p>When scrutinising legislation, fundamental legislative principles are always applied to ensure consideration is given to the potential adverse impact of the regulation on personal choice, whilst also balancing an agency's responsibility for community safety.</p>
<p>Recommendation 14 (page 103)</p> <p>The Standing Committee on Procedure and Privileges inquire into amending the Standing Orders of the Legislative Council to include fundamental legislative principles in the terms of reference for the Standing Committee on Legislation, the Standing Committee on Uniform Legislation and Statutes Review and, where appropriate, the Joint Standing Committee on Delegated Legislation.</p>	<p>Recommendation 14: Noted</p> <p>This is a matter for consideration of the Standing Committee on Procedure and Privileges.</p>