

JOINT SUBMISSIONS ON QUEENSLAND'S ROAD SAFETY STRATEGY DIRECTIONS PAPER

MAURICE BLACKBURN

Maurice Blackburn has a strong record of fighting for fair outcomes for people injured in road accidents, industrial accidents and people who have suffered loss and injury in a range of other circumstances.

This submission is made with a focus on issues that were highlighted in the *Inquiry into Cycling Issues*, which was presented by the Department of Transport and Main Roads in June 2013.

SAFE CYCLING AUSTRALIA

Safe Cycling Australia was established four years ago to encourage minimum safe passing distance rules for cyclists throughout Australia. They have been the preeminent lobbyist on this issue and have a wealth of support throughout the cycling community.

Executive Summary

The current parliamentary inquiry into cycling issues has prompted Maurice Blackburn to work with Safe Cycling Australia to provide a submission based on experience with advocating for clients that have been injured whilst cycling. Maurice Blackburn's long involvement with the victims of road trauma and their families provides a valuable insight into the risks faced by cyclists and other vulnerable road users.

The main thrust of these submissions is that change will come from a multifaceted and collaborative approach, spearheaded by the government and supported by the community and cycling bodies.

A Snapshot of Cycling Safety in Queensland

South-East Queensland, with its massive population base and growth is at the forefront of transport challenges in Queensland. With its pristine landscape and beautiful weather, cycling is a popular recreational pleasure and sport. There are a myriad of benefits for individuals that engage in cycling that include improvements in health and wellbeing. Similarly, there are benefits for the community which include a reduction in urban traffic congestion, environmental benefits and economic benefits relating to better health for its

constituents. Unfortunately, cyclists are a very vulnerable group of road users. The government has recognised these benefits and challenges to cycling with strategies launched at a State and Federal level. These strategies are: National Cycling Strategy 2011-2016 and the Queensland Cycle Strategy 2011-2021.

It is noted in the *Inquiry into Cycling Issues* document that more than 800,000 people ride a bike each week in Queensland. This is 17.9% of the Queensland population. In 2012, Queensland had the highest number of bicycle fatalities of any state or territory in Australia. Last year 11 cyclists were killed in Queensland, up from nine the year before. In 2006 it was estimated that the social cost of bicycle crashes in Queensland alone was \$35.4 million.¹

Maurice Blackburn Cases

Maurice Blackburn has acted for various cyclists and these examples are regular occurrences for vulnerable road users. The following case summaries protect our clients' confidentiality.

Cyclist 1:

The cyclist was riding his bicycle along a road that had been under repair. The cyclist's bicycle dropped 3 inches into a grooved surface of the road, effectively catapulting him off his bicycle. There was evidence that the Council had been negligent in preparing the surface, signing the area and maintaining the bike track adjacent to the road.

Cyclist 2:

The cyclist was riding through a T-intersection and a motorist made a right hand turn across his path. The cyclist had right of way. The driver told the police that he did not see him, even though it was broad daylight.

Cyclist 3:

The cyclist was riding along Kingsford-Smith Drive in the afternoon. He was cut off and run off the road by an unidentified vehicle. The cyclist suffered injuries to his right shoulder, hip and thoracic spine.

¹ Schramm, Amy J. and Rakotonirainy, Andry and Haworth, Narelle L. (2008) How much does disregard of road rules contribute to bicycle-vehicle collisions?. In *Proceedings High risk road users-motivating behaviour change: what works and what doesn't work? National Conference of the Australasian College of Road Safety and the Travelsafe Committee of the Queensland Parliament, Brisbane* 150.

Are the current laws related to cyclist safety appropriate?

Under the Queensland Road Rules bicycles are considered vehicles. Consequently, cyclists must obey all the general road rules. As legitimate road users, they have the same rights and responsibilities as other vehicle operators.² Most offences for bicycles in the Queensland Road Rules (QPR) have specific penalties. Bicycle offences are usually penalised at a lower rate than the equivalent penalty for motor vehicles. Additionally, cyclists are not penalised with demerit points. There are specific bicycle offences that exist which include offences such as a cyclist failing to wear a securely fitted bicycle helmet.

Maurice Blackburn and Safe Cycling Australia note the following comments from Bicycle Qld CEO, Ben Wilson. "Given the increasing number of bicycle riders on our roads and our disappointment with aspects of law enforcement regarding cycling safety, we believe this is the right time to review our laws," he stated. "Internationally, the best solution is to continually improve safety for bicycle riders - improving infrastructure: cycle paths, dedicated cycle lanes and improved road design."³

Among the most recent cycling fatalities was talented violinist Richard Pollett (aged 25). Richard was killed when a cement truck struck his bike while overtaking him in Brisbane's western suburbs.⁴ The truck driver involved in the accident was acquitted. This acquittal led to outrage and petitions from various peak cycling bodies. The court's decision appeared to rely on a law in *The Criminal Code*, which states that a vehicle, including a truck, can overtake a cyclist without allowing any particular margin providing the driver of the vehicle has a reasonable belief that it is safe to do so.

How could the safety of cyclists be further improved in Queensland?

Analysis of collisions shows that while causes are many, they are equally shared between motorists and cyclists.

1.5 Metre Rule

It was outrage over the Pollett case, which acted as a catalyst for the Member for Moggill Bruce Flegg to call for a mandatory one metre minimum passing distance for cars overtaking

² <http://www.tmr.qld.gov.au/Safety/Queensland-Road-Rules.aspx>.

³ <http://www.bq.org.au/news/parliamentary-committee-inquiry-on-cycling-issues-gets-underway/>.

⁴ <http://www.bq.org.au/news/bq-saddened-by-verdict/>

cyclists on Queensland roads in State Parliament last month. He was initially asked to sponsor a petition by Mr David Sharp from Safe Cycling Australia. Mr Flegg stated that he has always believed that legislation which prescribes a minimum distance when overtaking should be introduced to protect cyclists.⁵ Mr Flegg also tabled a report showing cyclists accounted for one third of all transport related injury cases arriving at Queensland hospital emergency departments.

Mr Wilson said advice to Bicycle Queensland was that it was difficult to enforce a one metre distance between cyclists and motorists. He said Queensland's Transport Operations (Road Use Management) Act contains a recommendation that motorists leave a metre between their vehicle and a cyclist. He believes however, that there is limited policing of this recommendation. Mr Wilson hoped the inquiry would find other alternatives to make roads safer for cyclists.

The Amy Gillett Foundation formed in memory of elite cyclist Amy Gillett has highlighted its support for the Queensland government's proposal for considering a one-metre rule. The foundation was established in 2005, after Amy Gillett was killed in Germany when a car crashed into the Australian women's cycling team during a training session.⁶ The foundation's aim is to create a safer cycling environment in Australia.

The reality is that until there is a change in motorists' attitudes, cyclists will always be at risk as a vulnerable road user.

In July 1999, Queensland Transport's SafeST research surveyed motorists' attitude towards cyclists. The survey found that one in five motorists did not consider cyclists as legitimate road users. Ten years later, market research by AAMI indicated that motorcyclists see cyclists as a nuisance and are not willing to share the road. Sixty-five percent of motorcyclists qualify cyclists as a "road hazard".

Changing these entrenched views can only occur with a number of positive steps. The first step would be the creation and enforcement of a required minimum safety distance for vulnerable users. Cyclists have long been the subject of regular accidents on our roads as a result of motorists travelling too close. The establishment of a minimum standard of 1.5 metres would support a protective barrier for miscalculations of distance by motorists.

⁵ <http://www.pollett.id.au/FleggSpeech23May.pdf>

⁶ www.amygillett.org.au

The risk of death or serious injury to cyclists when they come into contact with a vehicle is simply too great to place these lives in jeopardy. Suggestions of a one metre mandatory rule would not allow a sufficient margin for driver error.

The fact remains that Queensland, and for that matter Australia, remains one of the few first world countries that does not have mandatory minimum requirements for cyclists and motorists.

Germany, Spain, Netherlands, Portugal, New Zealand, Nova Scotia in Canada and numerous individual States in the United States of America already have existing mandatory minimum laws.

Irish authorities already recommend 1.5 metres and there is a strong safety push to make it law. South Africa and the United Kingdom are currently considering recommendations for 1.5 metres.

France has a one metre requirement for travelling on roads in towns where the speed is lower and 1.5 metres on other roads where the speed is higher.

Significant personalities Lance Armstrong and Cadel Evans have already made emphatic public comments supporting the implementation of the 1.5 metre proposal.

International studies have been undertaken in the Netherlands and the United Kingdom.⁷

These studies indicate that nearly half the cyclists surveyed indicated they felt unsafe with cars travelling at 20mph past them with a clearance of 0.95 metres.

Independent research tabled by TMR shows the impact that heavy vehicles and wind force can have on a cyclist's line (direction of travel) and clearly one metre will be insufficient to keep a cyclist safe.

A 1.5 metre distance (close to the height of a mounted cyclist) may be enough to keep a cyclist safe should they fall to the right in the event of an incident occurring.

⁷ http://www.ciltuk.org.uk/Portals/0/Documents/The%20Hub/Design%20Toolkit/A04_Design_portfolio_clear_s pace.pdf

Given that many fatalities occur not from the first vehicle overtaking, but from those vehicles travelling closely behind due to an impeded line of sight, a one metre distance will be insufficient to protect a cyclist in this circumstance.

Maurice Blackburn and Safe Cycling Australia support the implementation of a mandatory 1.5 metre rule requirement.

Bicycle Registration

There are two central arguments in support of registration of bicycles. The first is the premise that cyclists don't pay for their use of roads. The idea is that registration will allow for cyclists to be seen on equal level with car drivers. The second theory is that cyclists need to be publicly identifiable in order to provide easier enforcement processes, assisting with the recovery of stolen bikes and provide important data about riders.

In the alternative, detractors argue that the revenue from registration fees and fuel excise tax is not allocated to road expenditure. The argument is that road maintenance and advancement is funded from general revenue; thereby surmising that the roads are already paid by the cyclists. Additionally, there are concerns that this could discourage people from taking up riding or continuing to ride, thus losing the social and environmental benefits of riding.

Maurice Blackburn and Safe Cycling Australia do not support the registration of cyclists.

Infrastructure and Road Improvements

During construction, cycling invariably suffers for major projects. Also, the adherence to standards of road surfaces and maintenance of bike tracks needs to be prioritised by local councils to ensure the safety of riders. Recently, one of our clients was successful in their claim against the Brisbane City Council for exposing them to the hazard of an unsafe road surface. This resulted in our client being literally catapulted through the air and sustaining serious injuries. Interestingly, the adjacent bike track was overgrown and covered with debris and glass.

Bicycle Qld has several ongoing campaigns that focus on the improvement of infrastructure including but not limited to: cycle paths, dedicated cycle lanes and improved road design. Ongoing campaigns currently running are the Inner North Brisbane, M1 Bikeway and the Eastern Brisbane Busway Campaign. For tunnels where cycling is not allowed, then existing

roads adjacent to the tunnels need to be improved for cycling safety, as part of the traffic reduction on 'above-ground' roads that the tunnels offer. Tunnels afford a benefit to sustainable transport if this option is taken up.

Maurice Blackburn and Safe Cycling Australia strongly support any allocation towards greater investment of upgrades to infrastructure on our roads.

Us versus Them

Through various cases that Maurice Blackburn has been working on and the collective feedback that Safe Cycling Australia receive, it is evident that many drivers simply do not see cyclists. Regardless of the variations of factors involved (high/low visibility clothing, day or night, roundabout or intersection); there is the recurrent theme of drivers simply not seeing cyclists. This lack of awareness and lack of care can be hypothesised as being indicative of a culture of the "Us versus Them" mentality that exists between drivers and cyclists.

This "Us Versus Them" mentality is often fuelled by media pieces such as a piece featured in the Gold Coast Bulletin at the end of 2012 by Daniel Meers. This piece provided a "declaration of war" on cyclists and made alarming statements. An example of these statements is, "The two-wheeled, arrogant, lycra-clad people look at motorists as if they are invading their territory. It's plain wrong" and "Make some noise people, win the roads back before something really bad happens. And believe me, it will." It appears that this opinion piece skirts the line of inciting aggression towards cyclists.

This theme of drivers simply not seeing cyclists is not unique to cyclists, but is consistent with other vulnerable road users such as motorcyclists and pedestrians. Maurice Blackburn through its relationships with these vulnerable road users developed a campaign called "STOP SMIDSY" – "SMIDSY" being an acronym for "SORRY MATE I DIDN'T SEE YOU", words too often heard by motorcyclists and cyclists.

We believe that it is incumbent upon all road users to make much greater efforts to be conscious and careful of other road users when utilising our roads.

We believe that education comes from an effective marketing and advertising campaign lifting the awareness that all road users must make greater efforts to be aware and take a longer look to protect the more vulnerable road users on our roads.

Maurice Blackburn and Safe Cycling Australia strongly recommend the implementation of a strong and emphatic marketing campaign to reduce the Us versus Them mentality on our roads.

Education, training and awareness

Queensland's Department of Transport and Main Roads has various educational programs currently in existence. Among them is the "Share the Road: It takes two to Tango project." It also provides information on its website that provides drivers and cyclists with their rights and responsibilities. These programs are poorly funded and lack visibility, recognition and understanding by the general public. They also fail to appeal to any particular group of users and will always accordingly lack "buy in" by the general public.

Maurice Blackburn and Safe Cycling Australia strongly support a specific campaign asking for greater awareness of vulnerable road users.

Consultation

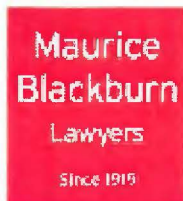
Peak cycling representative bodies have a wealth of knowledge and experience and a broad view of cycling issues. Similarly, local groups collect data regarding the local habits of cyclists and provide important data to their members. Maurice Blackburn and Safe Cycling Australia recommend that the government undertake a more collaborative approach to working with these existing organisations and to establish road safety groups which can identify, monitor and promote road safety issues relevant to cyclists.

Dated 25 July 2013



Andrew McKenzie | Principal

Maurice Blackburn Pty Limited
T (07) 5316 0918 F (07) 5495 6113



We fight for fair.



David Sharp | Director

Safe Cycling Australia
T 0406 425 423

SafeCyclingAustralia®

www.safecyclingaustralia.org

Be safe. Be seen. Be understood.

