

TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL 2023

Submission No: 5
Submitted by: Brisbane CBD Bug
Publication:
Attachments: No attachment
Submitter Comments:



Brisbane Central Business District Bicycle User Group

CBD BUG

GPO Box 2104, Brisbane 4001

brisbanecbdbug@gmail.com

www.facebook.com/cbdbug/

Mr Shane King MP
Chair, Transport and Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Via email: trc@parliament.qld.gov.au

Dear Mr King

Submission on Transport and Other Legislation Amendment Bill 2023

Please find attached a submission from the Brisbane Central Business District Bicycle User Group (CBD BUG) on the Transport and Other Legislation Amendment Bill 2023.

This submission focuses on the following new section to be inserted in the Transport Operations (Road Use Management) Act 1995 via this bill that was introduced into the Queensland Parliament on 12 October 2023 by the Honourable Mark Bailey, Minister for Transport and Main Roads and Minister for Digital Services.

84AA Driving particular vehicles without due care and attention on road-related areas

A person who drives a bicycle or personal mobility device on a road-related area without due care and attention or without reasonable consideration for another person using the road-related area is guilty of an offence.

Maximum penalty - 40 penalty units.

This new penalty of up to \$6,192 is a draconian over-reaction that is unnecessary, disproportionate, can be applied capriciously and will have negative unintended consequences.

We call for the Transport and Resources Committee to reject the insertion of this new element in the Transport Operations (Road Use Management) Act 1995.

If the Queensland Government is determined to add a new “careless riding” penalty regardless of the evidence – to remove the unpredictability of this penalty’s application it should at least be amended so it is not so completely vague, by limiting it to riders who have been involved in a crash with another path user.

This onerous penalty should not apply to children.

Furthermore, crash statistics and a wealth of research clearly point to the very small risk people riding bikes pose to other vulnerable road users. This gives the lie to the need to have fines for bicycle riders equivalent to those applicable to motorists. Accordingly, it would be much more appropriate for this penalty to be a maximum of five (5) penalty units, which is in itself still a large fine.

We thank the Transport and Resources Committee members for their due consideration of these issues.

Yours faithfully



Paul French
Co-convenor
Brisbane CBD BUG
1 November 2023

Cc: Bicycle Queensland
Space for Cycling Brisbane
Mr Steve Minnikin MP, Shadow Minister for Transport and Main Roads

**Brisbane CBD BUG submission on
Transport and Other Legislation Amendment Bill 2023**

Section 1: Introduction

1. As background to this submission, the Brisbane CBD BUG is a grassroots volunteer organisation of more than 800 members, formed in 2005 to represent the interests of people riding bicycles to, from and within the Brisbane city centre. We are highly active in seeking policy decisions at all levels of government supporting people who want to cycle, and in particular relating to improved infrastructure, end-of-trip facilities, integration of cycling needs with other transport modes and a regulatory environment friendly towards people riding bikes. CBD BUG members meet monthly to exchange information and ideas, discuss issues of relevance and determine the direction of policies to benefit CBD cyclists.
2. While the CBD BUG focuses on issues affecting people riding bikes for transport, we also strongly support initiatives enabling people to leave their cars at home and instead: 1) walk, 2) utilise new mobility devices and/or 3) travel via public transport.
3. The Queensland Parliament's Transport, Housing and Local Government Committee conducted its *Inquiry into Cycling Issues* and reported its recommendations in November 2013. The Brisbane CBD BUG's submission to that inquiry was cited in that report more than the RACQ or any other cycling advocacy group.
documents.parliament.qld.gov.au/tp/2013/5413T4163.pdf
4. The Campbell Newman Queensland Government's cherry-picking of the recommendations in that report are still having repercussions today. This is evidenced through Queensland roads still being scary and dangerous for people riding bikes – meaning most will only ride on a path they must share with pedestrians and personal mobility device (PMD) riders.

Section 2: Lack of consultation

5. The Queensland Government's the lack of consultation on this new "careless riding" penalty, which hands police a regulatory instrument that can be used to effectively wipe out bicycle riding, has blindsided bicycle rider advocacy groups.
6. There is regular, formal consultative processes with the Minister for Transport and Main Roads. Through this the CBD BUG and other bicycle rider advocacy groups were made aware the Queensland Government was planning to introduce new penalties for PMD riders, subsequent to publication of the *Personal Mobility Device Safety Action Plan*
<https://www.tmr.qld.gov.au/safety/road-safety/road-safety-strategy-and-action-plans/personal-mobility-device-safety-action-plan>).
7. However, discussions about this plan never even hinted that bicycle riders were to also be a target of this draconian new penalty regime.

8. As recently as late-September 2023 the Minister responded to the CBD BUG on the broad range of amendments the CBD BUG had proposed to remove the Queensland road rules' plethora of cyclist-hostile provisions. While the Minister summarily dismissed almost all these proposals in his reply (just two were instead referred to a national committee with a long history of sidelining issues as a bulwark against reform), he failed to mention he was about to introduce yet more hostile and onerous provisions negatively impacting people riding bicycles.
9. In his reply the Minister used same old line heard many times before as an excuse for not implementing improvements - that there needs to be consistency between the Australian Road Rules (ARR) and the Queensland road rules. However, this need for consistency has not been a barrier to introducing this new "careless riding" rule, which does not feature in the ARR.
10. The lack of consultation extends to within TMR, as we understand there was no consultation between the TMR area that developed/proposed this new penalty and TMR's Cycling Program staff.
11. We have also inquired with the Department of Justice and Attorney-General to ascertain if that agency was consulted by TMR on the introduction of this new penalty, but at the time of writing have yet to receive a response.

Section 3: Unintended consequences

12. Local mainstream media continues to conduct a moral panic campaign against PMDs that has been a factor in this government over-reaction. Bicycle riders are now concerned that they are being caught up in a situation caused by the Queensland Government, which is now trying to address its prior mismanagement and incompetence in relation to PMDs.
13. One of the very few road rule concessions for local bicycle riders is that in contrast to most other states and territories – in Queensland people are allowed to cycle on the footpath. Many motorists like this because it gets bicycle riders out of their way. But a likely outcome of this ill-considered rule change is it may force riders back onto Queensland's dangerous roads.
14. A New Zealand Government report on the cost benefit analysis of allowing cyclists on the footpath indicated that the "problem of casualties due to collisions between cyclists and pedestrians on footpaths was very small such that it need not be considered in the formulation of policy". It also stated that "the integration of cyclists and pedestrians on shared paths would largely protect cyclists from vehicle impact injuries without unreasonably enhancing the risk to pedestrians". (<https://www.nzta.govt.nz/assets/consultation/accessible-streets/Cost-benefit-analysis-for-cyclists-on-the-footpath.pdf>)
15. The introduction of this draconian new penalty means riders are now discussing if riding is worth it. A person may as well instead go buy a cheap car for \$6,192 and avoid all the potential trouble.

16. TMR maintains it has a robust approach to road safety and prioritises “the need to minimise crash severity outcomes through the Safe System approach”.
(<https://www.tmr.qld.gov.au/safety/road-safety/road-safety-policy>)
17. But the reality is that it’s a rare event when TMR applies its Safe System approach to make bicycle riding safer, with this harsh new penalty being its typical approach of only being concerned about safety when it can be applied negatively impact on bicycle riding.
18. A recent example of TMR’s double standards is the new safety requirements for trucks that commenced from 1 October 2023. Under these new requirements new trucks need to have additional safety equipment fitted so drivers can see what’s on the road immediately in front of their vehicles, Blind spots on older trucks can be so large that pedestrians, bicycle riders, PMD riders, motorbike riders or even drivers of smaller cars can’t be seen by drivers. However, the new safety requirements do not apply to old trucks already on the road, even though it only costs about \$200 to retrofit a vehicle.
19. The clear inference that can be drawn from this failure to apply the Safe System approach is that in Queensland the life of a bicycle rider or other vulnerable road user is worth less than \$200.

Section 4: Unnecessary and disproportionate new penalty

20. While the Minister has tried to disguise his oppressive new penalty regime as making riders “equally culpable in the same way that every other road user is” - this totally misrepresents the vastly different circumstances and risks faced by bicycle riders compared to motorists.
21. Bicycle riders have a strong aversion to crashing into a pedestrian – as riders are also likely to be hurt in a crash. This situation contrasts markedly with that of motorists - who if they hit a pedestrian are very safe in their one to two ton-plus steel boxes.
22. This aversion to crashing by riders is borne out by Queensland University of Technology (QUT) research conducted in the Brisbane CBD that found only a tiny minority of bicycle riders are involved in conflicts with pedestrians (and motor vehicles). Notably, in the course of performing their study the QUT researchers did not observe any crashes.
(https://eprints.qut.edu.au/79101/15/JACRS_bike_obs_paper.pdf)
23. These QUT findings align with earlier Australian research that found “the risk of a pedestrian being struck down by a bicyclist and killed is currently less than the risk of being struck by lightning (0.1 chances of fatality per million person years), 23 times less likely than tripping on a footpath or roadway (1.15 chances of fatality per million person years), 200 times less likely being involved in an airline crash (10 chances of fatality per million person years), and 700 times less likely than being struck and killed by a motor vehicle (35 chances of fatality per million person years)”.
(<https://archive.acrs.org.au/files/papers/7%20Grzebieta%20Pedestrian%20Cyclist%20Collisions%20Issues%20and%20Risk.pdf>)

24. Committee comment 4.8.6.1 in the previously report from the *Inquiry into Cycling Issues* was “The Committee has noted that the right of cyclists to share footpaths with pedestrians including mobility impaired people has raised some concern from pedestrian groups in Queensland. However, an examination of injury and crash statistics shows there is very little evidence to suggest that cyclists pose a safety risk to any other path users. The Committee is of the view that the interaction between cyclists and other path users is best addressed through adequate provision of path infrastructure that meets design standards and provides sufficient space for all users of the path (refer to the infrastructure discussion in section 8 of this Report).”
25. The lack of risk to pedestrians from bicycle riders is evident from analysis of Queensland police-recorded crash location data spanning 2001 to June 2022. In searching this data for fatal crashes involving a bicycle rider and a pedestrian (and no other road user involvement) only the following three crashes were identified -
- July 2006: Bicycle hit pedestrian on corner of George and Elizabeth Streets.
 - August 2008: Bicycle hit pedestrian on Camp Flat Road, Bli Bli.
 - June 2020: Bicycle hit pedestrian on Bruce Highway Eastern Service Road, Burpengary.
26. Only one of these crashes (July 2020) occurred on a footpath. The addition of the October 2023 pedestrian fatality on the Bicentennial Bikeway increases the fatalities to four in Queensland during a twenty-year period - of which only two were on a path/footpath.
27. The dataset also reveals 37 bicycle riders have been killed by heavy vehicles in Queensland over the same period. (<https://www.data.qld.gov.au/dataset/crash-data-from-queensland-roads>)
28. When it is considered that during the 2022 calendar year alone there were 29 pedestrian fatalities in Queensland (10% of that year’s total state road toll) (<https://www.publications.qld.gov.au/dataset/road-safety-statistics/resource/fd068b25-6336-4bac-ae50-27f0086a1bb5>) this highlights the deceptive and misleading nature of the Minister’s statement in the media about needing to hold all road users equally to account for causing crashes.
29. Back in December 2022 the Minister also lauded his *e-Mobility Parking Plan* - that was supposed to declutter Queensland’s footpaths by improving the parking of PMDs. If this had happened it would be an improvement, but we are yet to see the benefits as shared PMDs continue to be left in random locations - blocking paths and negatively impacting safety and amenity issues for other path users. (<https://statements.qld.gov.au/statements/96802>)
30. Many people who do not ride a bicycle also mistakenly view cyclists as scofflaws who have no respect for road rules. This is a common myth the mainstream media also likes to perpetuate. However, a QUT study on the role of traffic violations in cyclist crashes examined 6,774 police-recorded cyclist crashes in Queensland between January 2000 and December 2008. This study found police determined the motorist to be at fault for the majority of the 6,328

crashes involving bicycles and motor vehicles. Significantly, traffic violations by motorists were recorded in 85.4% of these crashes. (<https://eprints.qut.edu.au/34208/>)

31. Such views of bicycle riders by non-riders conveniently ignore the reality that “nearly everyone has jaywalked, rolled through a stop sign, or driven a few miles per hour over the speed limit”. Importantly, because of Queensland’s overtly cyclist-hostile road designs and road rules, people riding bicycles may break the rules to avoid being killed. (<https://www.itlu.org/index.php/jtlu/article/view/871>). This contrasts with motorist road rule breaking that occurs to save time.
32. Another popular myth for people who do not cycle is that bicycle riders supposedly do not know the road rules – which makes them dangerous. TMR licencing statistics indicate up to 92.0% of Queensland’s estimated population aged 16 years or more hold a learners or drivers licence (<https://www.tmr.qld.gov.au/safety/transport-and-road-statistics/licensing-statistics>). However, TMR research on people who do and don’t cycle found there are three “typologies” of Queenslanders who currently cycle. Across these three groups drivers licence holding levels varied between 90% to 98%, with the overall average being 94%. (<https://www.tmr.qld.gov.au/ /media/travelandtransport/cycling/participation-and-encouragement/bicycle-riding-typologies-qld.pdf>)
33. People should ride to the conditions and riding recklessly around other path users is unacceptable. However, Queensland makes very little effort on educating road users to change the widespread belief that unsafe behaviour is ok. The fact that over 30% of motorists self-reported via TMR’s 2022 Prevalence and Determinants of Speeding Survey their non-compliance with speed limits when behind the wheel should be ringing alarms in TMR. (<https://www.tmr.qld.gov.au/safety/road-safety/road-safety-strategy-and-action-plans/road-safety-research-reports#road>)

Section 5: New provision is open to capricious use/misuse by police

34. Unlike speeding offences that police must measure via regularly calibrated equipment, the application of this new penalty is entirely open to the subjective judgement of police - and could be imposed for trivial reasons.
35. We are also very concerned about this legislation – because a person riding a bicycle doesn’t even need to have been involved in a crash to receive a “careless riding” breach.
36. Police generally only penalise motorists for “careless driving” when they have crashed. Examples include a minor nose-to-tail crash that police may chance upon; or when a motorist has crashed into a bus shelter, fence, light pole etc., after being called to attend by a bystander/witness if police cannot detect another driving offence e.g. mobile phone use while driving, driving while alcohol or drug effected etc.
37. Evidence of police taking unnecessary action targeting bicycle riders occurred as recently as this year’s World Car Free Day on 22 September 2023 – when they were handing out \$464

finer to riders for travelling at just 26km/h across the Kurilpa Bridge. This was despite this bridge carrying little traffic (because it is poorly linked to the rest of the cycleways network) with not a single crash being recorded on it in police data.

38. It is easy to envisage police standing on the few bicycle routes into the city e.g. Goodwill Bridge during the peak travel period targeting riders with this offence for riding behaviour that has long been every day, legal and safe, such as:
- a) drinking from their water bottle while riding
 - b) talking with another rider traveling beside them
 - d) looking at their watch, the ground, or over their shoulder to check what's behind them,
 - d) riding on the "wrong" side of a path to overtake a pedestrian
 - e) not riding on the "wrong" side of a path to overtake a pedestrian
 - e) overtaking a pedestrian and not frightening or annoying them with bell ringing, and
 - f) overtaking a pedestrian but frightening or annoying them with bell ringing.
39. Unlike driving under the influence and speeding offences, which can be definitively quantified via measuring instruments, the vagueness of this new rule means that other than in the obvious case of crashing with another path user - riders can't be certain when they will or won't be riding legally.
40. The underlying cause issues may occur between different path user groups is that cyclists, PMD riders and pedestrians are all jammed together into the same narrow and inadequate paths because the road is too dangerous for many people riding bikes, while PMD riders must in most circumstances ride on the footpath.
41. The potential application of this excessive penalty to children should also cause concern. Only a minority of school children now walk or cycle to/from compared to previous generations. Parents would be even more reluctant to allow their children to ride a bicycle to/from school with the possibility of a massive penalty should a school student make a mistake while riding on the footpath.
42. In the Brisbane CBD there is approximately 20km of roads (depending on where an arbitrary boundary is drawn). Since the 2018 introduction of e-scooters in Queensland more than eight million trips have been made on these devices (<https://business.uq.edu.au/files/104406/micromobility-in-brisbane-report.pdf>) – but the only new CBD separated path installed has been the measly 1.7km Citylink Cycleway. Even some of that path is currently closed for Brisbane City Council's Metro project works.
43. Future exacerbations of this problem will be due to the Cross River Rail project team's insistence on installing a new shared path along Albert St, while Council's planned Adelaide St and Mary St refurbishments will also provide zero space for people riding bicycles (and PMDs). All these projects are prioritising additional space for footpath dining over enabling people walking and riding to have their own safe space separated from motor vehicles.

44. While the Minister has claimed this new penalty will improve safety for vulnerable road users – this new penalty is more likely to have the opposite effect by placing riders in greater danger. It is in fact a victim-blaming diversion from the urgent need to build more separated paths. It is new separated paths that genuinely help people cycle safely in a city that is increasingly afflicted by traffic congestion and inadequate / expensive / unreliable public transport. Instead of positive action - bicycle riders are under attack by the Queensland Government via this massive and vaguely worded new penalty.

Section 6: Disproportionate with other jurisdictions

45. Only one other Australian jurisdiction has targeted bicycle riders with such oppressive legislation. This was New South Wales (NSW) in March 2016 thanks to the then Minister for Roads, Maritime and Freight, Duncan Gay, who in displaying his lack of understanding of the personal and community-wide benefits of bicycle riding once described himself as “the biggest bike-lane sceptic in the government”.

<https://www.theguardian.com/cities/2015/aug/25/sydney-australia-bike-lane-skeptic-cycling-duncan-gay-cycleways>)

46. S245-1 of the NSW *Road Rules 2014* states:

(1) The rider of a bicycle must not ride the bicycle—

(a) negligently, or

(b) furiously, or

(c) recklessly.

<https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2014-0758>)

47. The maximum penalty under this rule is 20 penalty units, meaning that with the current value of a NSW penalty unit being \$110 this fine only equates to \$2,220.

48. Queensland's new maximum penalty for “careless riding” of \$6,192 is almost three times the penalty for a similar infringement in NSW - clearly showing this new penalty's grossly disproportionate nature.

Section 7: Concluding comments

49. CBD BUG members are strongly opposed to this new rule - as it is unnecessary, disproportionate and completely open to unpredictable misuse/abuse by the members of the Queensland Police who have a zero tolerance for people riding bicycles.

50. To at least remove this new provision's worst aspect - its strong potential to be applied randomly for trivial (non)issues - as a minimum it should be restricted to when a bicycle rider has been in a crash with another path user. This would align with the alleged intention of this new penalty outlined by the Minister when he stated in parliament that this bill would “manage safe interactions between vehicles and other vulnerable users”.

51. However, we would point out that limiting this penalty's application to riders who have crashed would still have the potential for riders to receive a breach inappropriately / unfairly – as the

shocking state of neglect of bike paths / footpaths across Queensland is a common cause for a bicycle rider crashing.

52. While the penalty is shockingly excessive and should be decreased to a more reasonable level commensurate with the risk cyclists pose to other path users e.g. five (5) penalty units, its application to children in particular should be excluded, as they should be encouraged to cycle on the footpath and not dissuaded from riding by this excessive penalty.
53. We note from the Committee Chair's maiden speech in the Queensland Parliament that you are a person who would put your hand up when "things are wrong, not fair and not just". This unreasonable attack on people riding bicycles, who just want to safely come home to their families every day, is exactly such an instance.
54. Brisbane CBD BUG members discussed this new penalty for bicycle riders during our monthly General Meeting held on 25 October 2023, with this submission also circulated for their review and feedback prior to its lodgement.