

A typology of laws in Australia affecting the safety of bicycle users

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Abstract

Cycling is becoming increasingly popular across Australia, both as a means of recreation and commuting (Australian Bicycle Council, 2013). Cycling interest groups as well as government agencies, such as the Western Australia Department of Transport, promote the use of bicycles as a healthy and more environmentally friendly alternative to motor vehicles (Western Australia Department of Transport, 2015). However, survey-based research suggests that safety concerns remain a major deterrent for adults choosing to cycle (Rissel & Campbell et al, 2002). Unfortunately, those concerns are justified. A 2014 study shows that the incidence of high threat to life crashes involving cyclists has increased by almost 150% since 1999 (Harrison, 2014). During that same time period the incidence of high threat to life crashes involving road users in protected vehicles has remained relatively constant. In NSW, from 2012 to 2014 motorist fatalities reached record lows, whilst contemporaneously cyclist fatalities doubled (NSW Centre for Road Safety, 2014). Despite this disparity, comparatively few public resources are dedicated to improving the safety of Australia's road environment for vulnerable road users, such as cyclists.

The law's role in improving cyclist safety

The role of legislation in improving cyclist safety is three-fold. Firstly, legislation can coerce road users to conduct themselves in furtherance of cyclist safety. For example, requiring cyclists to use lights and reflectors when riding at night might reduce the likelihood of collisions with motorists, who may otherwise not have seen the cyclist (Wood & Lacherez et al, 2009). Secondly, the creation of liability (civil and criminal) for potentially dangerous behaviour, such as speeding, can have a deterrent effect, which can increase the safety of road environments. Thirdly, legislative schemes can be used as tools to legitimise the co-sharing of road infrastructure by all vehicle types. The legitimising power of legislation is particularly important for bicycle users as Rissel et al (2007) suggest that popular negative perceptions of cyclists may contribute to aggressive and dangerous motorist behaviour. However, for road laws to have those desired effects, they must be carefully designed and sympathetic to the needs of all road users.

Aims

While legislative strategies are often seen as primary methods by which to promote the safety of vulnerable road users, there is little attention given to the way in which legislative schemes interact with each other, or even if the schemes are designed with vulnerable road users in mind. A first step towards removing that gap in the literature is to develop a typology of legislative schemes affecting bicycle riders in Australia. This paper develops such a typology, highlighting overlaps and inconsistencies between and within Australian jurisdictions.

The paper will thus provide a clear understanding of the extent to which legislative schemes need re-alignment before they can be validly seen as the legitimate foundation underlying road safety infrastructure and education for bicycle riders.

Methodology

Legislation pertaining to the use of roads and road-related areas in all Australian states and territories were catalogued. Inquiry was then narrowed to those legislative instruments that could materially affect cyclist safety. To ensure the validity of this analysis, only those legislative instruments that were patently immaterial to cyclist safety were not studied (e.g. *Road Transport (Vehicle Registration) Act 1999* (ACT)). A systematic review of relevant legislation was carried out to create a database of laws affecting cyclist safety, which included details of inter-jurisdictional similarities and differences.

The completed database was then interrogated in order to identify categories, which could be used to group the laws by type. Based on those groupings, a brief review of academic literature was conducted to contextualise some of the observed discrepancies between the legislative schemes in different states and territories. That review is presented at the end of this paper as an introduction for further research, which may use this typology as a foundation for suggesting potential reform.

Results

In each Australian jurisdiction, the laws that affect bicycle riders are sourced from numerous legislative instruments. Most jurisdictions have an overarching piece of transport legislation which governs some serious driving offences and authorises the creation of traffic regulations (e.g. *Road Traffic Act 1974* (WA)). State and territory regulations exist in various forms, though all have either wholly, or in part, adopted the model road rules set out in the *Australian Road Rules*. The *Australian Road Rules* were developed by the now National Transportation Commission (NTC) in 1999. The goal of the NTC was to create nationally consistent rules that could be easily understood and adhered to by road users, so as to create safer and more efficient road environments. Detailed analysis of each jurisdiction's road regulations evidenced that the NTC's objectives have been frustrated in some key areas, where reform has not been achieved universally (e.g. provisions for mandatory minimum distances for overtaking bicycles are yet to be introduced outside of Queensland). A relatively uniform approach was found across Australia regarding legislation that deals with compulsory third party insurance, tortious negligence, and criminal liability.

Four categories were identified to group the laws affecting cyclist safety – laws governing:

1. Motorist and cyclist equipment,
2. Road sharing interactions,
3. Bicycle specific infrastructure and other special road/road-related features, and
4. Other criminal and civil liabilities of road users.

Category 1 largely consisted of practical measures, such as requiring bicycles to have at least one working brake (e.g. *Road Rules 2014* (NSW) reg 258). Those provisions had the greatest uniformity across all states and territories. The different jurisdictions' approaches to category 4 laws were also relatively consistent. For example, negligence was generally governed by a codification of subsisting common law tests (e.g. *Civil Liability Act 2002* (NSW) s 5B largely codified *Wyong Shire Council v Shirt* (1980) 146 CLR 40).

By contrast, categories 2 and 3 saw some notable distinctions between jurisdictions. Road sharing interactions was the most voluminous category as it concerned laws that relate to how and where all vehicles (including cyclists) can move on the road. Category 3 laws also varied considerably, particularly in relation to the rights of bicycle riders to use footpaths and other

pedestrian infrastructure. Secondary sources suggest that policy decisions regarding category 3 laws are often heavily influenced by popular community opinion, rather than any scientific justification based on safety considerations (Phillips, 2014).

The full paper contains a series of comprehensive tables summarising the typology analysis, and an accompanying discussion.

Conclusion

Improving road safety requires more than legislative intervention alone. Road laws will be ineffectual if the public is not adequately educated on their rights and responsibilities, or if suitable infrastructure to facilitate compliance does not exist. However, legislation creates a legitimising foundation for initiatives aimed at improving vulnerable road users' safety, and is therefore a vital piece of the road safety puzzle.

There seems yet to be a legislative panacea for improving cyclist safety. This paper suggests that laws impacting bicycle users' safety can be grouped into four categories. Empirical analysis showed that there is scope to develop laws in each of those categories, as has been progressively done by individual states and territories. By auditing current practices, research can be undertaken to evaluate the efficacy of legislative schemes to iteratively improve the legal framework governing road users' conduct.

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