

# Chapter 1

## Referral and conduct of the inquiry

1.1 On 25 June 2015, the Senate referred an inquiry into personal choice and community impacts to the Senate Economics References Committee (committee) for inquiry and report by 13 June 2016.<sup>1</sup>

1.2 The committee's terms of reference require it to report on:

The economic and social impact of legislation, policies or Commonwealth guidelines, with particular reference to:

- a. the sale and use of tobacco, tobacco products, nicotine products, and e-cigarettes, including any impact on the health, enjoyment and finances of users and non-users;
- b. the sale and service of alcohol, including any impact on crime and the health, enjoyment and finances of drinkers and non-drinkers;
- c. the sale and use of marijuana and associated products, including any impact on the health, enjoyment and finances of users and non-users;
- d. bicycle helmet laws, including any impact on the health, enjoyment and finances of cyclists and non-cyclists;
- e. the classification of publications, films and computer games; and
- f. any other measures introduced to restrict personal choice 'for the individual's own good'.

1.3 In accordance with usual process, the committee advertised the inquiry on its website and wrote to relevant persons and organisations inviting submissions to the inquiry.

1.4 To date, the committee has received 485 public submissions and two confidential submissions. The public submissions can be found on the committee webpage.

1.5 The committee has held seven public hearings. At its first public hearing, on 11 September 2015 in Canberra, the committee heard evidence on decision making generally. At its second public hearing, on 3 November 2015, in Parramatta, the committee heard evidence on proposed restrictions on the activities of fans of the Western Sydney Wanderers Football Club. At its third public hearing, on 16 November 2015, in Melbourne, the committee heard evidence on mandatory bicycle helmet laws, and at its fourth public hearing, on 20 November 2015, in Sydney, the committee heard evidence relating to the sale and service of alcohol, with particular reference to NSW's 'lockout' laws. A fifth public hearing in Sydney on 9 March 2016 focused on the sale and use of tobacco and nicotine and e-cigarettes. The committee's sixth public hearing considered the sale and use of marijuana on 11 March 2016 in

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<sup>1</sup> *Journals of the Senate* No. 102, 25 June 2015, p. 2832.

Sydney. At its seventh public hearing on 22 April 2016, in Canberra, the committee heard evidence regarding the classification of publications, films and computer games.

1.6 This report focuses on the evidence in relation to the third public hearing and respective term of reference (d) concerning bicycle helmet laws. The witnesses who appeared at the bicycle helmet public hearing on 16 November 2015 are listed at Appendix 1. Additional information in relation to term of reference (d) including questions taken on notice is at Appendix 2.

1.7 The committee thanks all those who have participated in the inquiry so far.

### **Bicycle helmets and the 'nanny' state**

1.8 Mandatory bicycle helmet laws (MHL) were viewed by a considerable number of submitters to the inquiry as a primary example of hard paternalism.<sup>2</sup> They argued that, while the individual should be able to manage the risks involved in a bike ride, the personal choice of the individual to make such judgements is constrained because their assessment of such risk is overridden by the state.<sup>3</sup> These views were expressed by submitters such as Mr Ben Triefus who questioned why Australia can't 'trust its citizens to assess their circumstances and make that choice for themselves'.<sup>4</sup> Similarly, the view was expressed that:

If we need the law to protect us from ourselves, then what does that say about ourselves? The helmet law is an insult to our civil liberty.<sup>5</sup>

1.9 It was also suggested that the state can only justify interference in the conduct of individual citizens when it is clear that doing so will prevent a greater harm to others.<sup>6</sup> That is, the loss of individual freedom is justified on the grounds of improved outcomes for society generally.<sup>7</sup> The argument was made that MHL breach a fundamental liberty to ride a bicycle without prosecution because an 'individual's head poses no plausible threat to the safety and wellbeing of others'.<sup>8</sup>

1.10 For these reasons, MHL were recognised as an example of overregulation in the name of safety at the cost of personal freedom.<sup>9</sup> Indeed, it was suggested to the committee that MHL are a 'text book example of where the State overreaches itself in

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2 According to the Institute of Public Affairs, hard paternalism 'actively constrains choices, by regulating the circumstance in which a choice may be made, the availability of those choices, and the legality of the choices'. Institute of Public Affairs, *Submission 160*, p. 3.

3 Mr Marcos Pougy, *Submission 9*; Dr Jim Lemon, *Submission 84*, p. 8; Luke Turner, 'Australia's helmet law disaster', *IPA Review*, Volume 64, p. 29.

4 Mr Ben Triefus, *Submission 8*.

5 Freestyle Cyclists Inc., *Supplementary Submission 95*, p. 74. This submission was made in the form of a transcript of comments made by signatories to an on-line petition.

6 Mr Peter Twigg, *Submission 125*, p. 5.

7 Australian Cyclists Party, *Submission 222*, p. [1].

8 Mr Chris Gillham, *Submission 60*, p. 7. See also Mr Marcos Pougy, *Submission 9*.

9 Dr Andreas Schwander, *Submission 18*, p. 1; Mr James Ramsey, *Submission 21*.

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imposing norms of behaviour (in this case a dress code) where the matter should be left to the individual'.<sup>10</sup>

1.11 These views were reflected in many submissions to the inquiry. For example, the Bicycle Transport Alliance argued that:

Compulsory helmet laws have not improved the safety of cyclists. They are simply a continuation of the trend by Australian governments, to get involved in the minutiae of citizens lives, progressively eroding any sense of individual responsibility.

It is time to repeal the legislation and return the decision to wear a helmet back to the person most affected, the cyclist.<sup>11</sup>

1.12 Other related arguments included the view that the individual and societal benefits of cycling (and cycling more often) outweigh the risks of not wearing a helmet and, therefore, the health and social costs.<sup>12</sup> In this regard, the view was put that mandatory helmet laws have had a negative impact on cycling participation rates in Australia as they deter people from cycling.<sup>13</sup> Furthermore, the evidence that MHL has achieved any meaningful reduction in the rate of brain or head injury was questioned.<sup>14</sup> To this end, a considerable number of submitters to the inquiry questioned the efficacy of bicycle helmets, arguing that they serve as a restraint on personal choice and generate no tangible community benefit. These views were encapsulated by Mr Chris Gillham who said:

The helmet laws are an acknowledged failure for personal freedom and also a total failure for public health and from road safety after 25 years.<sup>15</sup>

1.13 However, in opposition, submitters in favour of MHL argued that the advantages associated with helmets completely outweighed any disadvantages. These views were expressed by Mr David Healy, Co Vice-President of the Australasian College of Road Safety who considered MHL a population-based intervention:

Essentially that means that for a particular population, for a minor inconvenience to many, you really save lives and reduce serious injuries for a significant minority. It is for these reasons that we have shown such progress. Random breath testing and compulsory seatbelt wearing are

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10 Freestyle Cyclists Inc., *Submission 95*, p. [4].

11 Bicycle Transport Alliance, *Submission 82*, pp [2–3].

12 It was argued that this not only includes the net benefit to health and wellbeing, but also to congestion, pollution, carbon emissions, fossil fuel depletion and road safety. Australian Cyclists Party, *Submission 222*, p. [1].

13 Professor Chris Rissel, *Submission 133*, p. 1; Mr Chris Gillham, *Submission 60*, p. 1; Freestyle Cyclists In, *Submission 95*, p. [1].

14 Professor Chris Rissel, *Submission 133*, p. 2.

15 Mr Chris Gillham, Private capacity, *Committee Hansard*, 16 November 2015, p. 3.

examples, and, of course, mandatory wearing of bicycle helmets by cyclists is an excellent example.<sup>16</sup>

1.14 The following chapters consider the arguments for and against MHL.

### Legislative framework

1.15 In 1985, the House of Representatives Standing Committee on Road Safety expressed the belief that bicycle helmets would 'considerably reduce the occurrence and severity of head injuries to cyclists'.<sup>17</sup> It noted that the mandatory use of helmets was the objective of several state and territory governments.<sup>18</sup> In its final report, the committee recommended that the cooperation of the states and territories be sought to 'review the benefits of bicycle helmet wearing' and, unless there were persuasive arguments to the contrary, 'introduce compulsory wearing of helmets by cyclists on roads and other public places'.<sup>19</sup>

1.16 In 1989, compulsory helmet wearing was introduced as federal policy. A mandatory standard was introduced under the *Trade Practices Act 1974* that defined the helmets to be worn. Victoria was the first state in Australia and first jurisdiction in the world to introduce bicycle helmet laws on 1 July 1990.<sup>20</sup> The purpose of the legislation was the reduction of both the number and severity of head injuries through the increased use of bicycle helmets by all age groups.<sup>21</sup>

1.17 New South Wales (NSW) introduced legislation on 1 January 1991 for cyclists 16 years and over and for all cyclists on 1 July 1991.<sup>22</sup> The NSW legislation had three primary aims: to increase helmet wearing; to decrease bicyclist fatality and

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16 Mr David Healy, Australasian College of Road Safety, *Committee Hansard*, 16 November 2015, p. 29.

17 House of Representatives Standing Committee on Transport Safety, *Bicycle Helmet Safety: Final Report on the Motorcycle and Bicycle Helmet Safety Inquiry*, November 1985, p. 48.

18 House of Representatives Standing Committee on Transport Safety, *Bicycle Helmet Safety: Final Report on the Motorcycle and Bicycle Helmet Safety Inquiry*, November 1985, p. 49.

19 House of Representatives Standing Committee on Transport Safety, *Bicycle Helmet Safety: Final Report on the Motorcycle and Bicycle Helmet Safety Inquiry*, November 1985, p. 50.

20 Australian Transport Safety Bureau, *Road Safety in Australia: A Publication Commemorating World Health Day 2004*, 2004, p. 29, [https://infrastructure.gov.au/roads/safety/publications/2004/pdf/Safety\\_Aust.pdf](https://infrastructure.gov.au/roads/safety/publications/2004/pdf/Safety_Aust.pdf) (accessed 27 October 2015).

21 Monash University Accident Research Centre, *Evaluation of the bicycle helmet wearing law in Victoria during its first four years*, August 1995, p. vii, <http://monash.edu.au/miri/research/reports/muarc076.pdf> (accessed 19 October 2015).

22 Meredyth-Ann Williams, Research Note 17/94, *Evaluation of the NSW Introduction of Compulsory Bicycle Helmet Legislation*, Road Safety Bureau, Roads and Traffic Authority, May 1995, p. i, [www.rms.nsw.gov.au/documents/roads/using-roads/bicycles-law-compliance-helmet-use-nsw-1994.pdf](http://www.rms.nsw.gov.au/documents/roads/using-roads/bicycles-law-compliance-helmet-use-nsw-1994.pdf) (accessed 16 October 2015).

serious injury; and to decrease head trauma.<sup>23</sup> Helmet laws in South Australia and Tasmania came into effect the same year.<sup>24</sup> By 1992, when Western Australia, Northern Territory (NT)<sup>25</sup> and the Australian Capital Territory (ACT) introduced equivalent legislation, bicycle helmets had become compulsory nationwide.<sup>26</sup>

1.18 A number of submitters noted that the states and territories introduced MHL in order to comply with a Commonwealth 10 point road safety program which included bicycle helmets, and thereby secure Commonwealth funding under the black spot road program.<sup>27</sup> Legislation to make bicycle helmets compulsory in the ACT was recognised as an 'essential part of the Prime Minister's 10 point package of road safety initiatives to be implemented in return for funding to eradicate accident black spots'.<sup>28</sup>

1.19 The requirement for use of bicycle helmets is included in the Australian Road Rules (ARR), a national model legislation which is adopted (with variations) by the individual states and territories. The ARR's are developed and maintained cooperatively by the states and territories as a means of encouraging nationally consistent traffic regulation. The maintenance process is managed by the National Transport Commission. While they form the basis of the road rules in each jurisdiction, amendments to the ARR's and their adoption as law continue to be dependent on state and territory decisions.<sup>29</sup>

1.20 Australia became the first country to enact mandatory bicycle helmets with New Zealand and the United Arab Emirates the only other countries to enforce adult helmet use.<sup>30</sup> A number of countries enforce a helmet requirement for children.<sup>31</sup>

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23 Meredyth-Ann Williams, Research Note 17/94, *Evaluation of the NSW Introduction of Compulsory Bicycle Helmet Legislation*, Road Safety Bureau, Roads and Traffic Authority, May 1995, p. iii, [www.rms.nsw.gov.au/documents/roads/using-roads/bicycles-law-compliance-helmet-use-nsw-1994.pdf](http://www.rms.nsw.gov.au/documents/roads/using-roads/bicycles-law-compliance-helmet-use-nsw-1994.pdf) (accessed 16 October 2015).

24 Mr Colin Clarke, *Submission 4*, Attachment 1, p. 5.

25 In 1994, the NT amended the law to permit cyclists over the age of 17 years to ride without a helmet along footpaths or on cycle paths. Mr Chris Gillham, *Submission 60*, p. 7.

26 Cyclists' Rights Action Group, *Submission 159*, p. 1. Mr Colin Clarke, *Submission 4*, Attachment 1, p. 5.

27 See as an example, Mr Chris Gillham, *Submission 60*, p. 7; Freestyle Cyclists Inc., *Submission 95*, p. [1].

28 Minister for Urban Services, Mr Terrence Connolly MLA, *ACT Legislative Assembly Hansard*, 9 April 1992, pp 144–145, <http://crag.asn.au/compulsory-helmets-debate-in-the-act-legislative-assembly/> (accessed 27 October 2015).

29 Department of Infrastructure and Regional Development, *Submission 394*, p. 5.

30 New Zealand Transport Agency, 'Cycles. Road rules and equipment'. Factsheet 1, February 2014, [www.footballaustralia.com.au/article/wanderers-ceos-statement-on-active-support/h4r9a62ro4dk178evugbu1eup](http://www.footballaustralia.com.au/article/wanderers-ceos-statement-on-active-support/h4r9a62ro4dk178evugbu1eup) (accessed 21 October 2015); Professor Chris Rissel, *Submission 133*, p. 6.

## Recent reviews and recommendations

1.21 In November 2013, the Queensland Parliament Transport, Housing and Local Government Committee tabled its inquiry report on cycling in Queensland. The committee recommended (Recommendation 15) that the Queensland Minister for Transport and Main Roads:

- introduce a 24 month trial which exempts cyclists aged 16 years and over from the mandatory helmet road rule when riding in parks, on footpaths and shared/cycle paths and on roads with a speed limit of 60 km/hr or less; and
- develop an evaluation strategy for the trial which includes baseline measurements and data collection (for example through the CityCycle Scheme) so that an assessment can be made which measures the effect and proves any benefits.<sup>32</sup>

1.22 The Queensland Government did not support the recommendation, noting that the 'weight of evidence confirms the importance of wearing a bicycle helmet while riding'.<sup>33</sup>

1.23 The Queensland Parliamentary Committee had also recommended the enforcement of a minimum overtaking distance as a means of improving the safety of cyclists on the road. Recommendation 8 specified that cars and trucks would have to keep at least a metre away from a cyclist when overtaking in a 60 km/hour zone and 1.5 metres in higher-speed zones. The Queensland Government adopted the recommendation and introduced a two-year trial to take effect from 7 April 2014.<sup>34</sup>

1.24 In 2010, the NSW Parliament's Joint Standing Committee on Road Safety conducted an inquiry into motorcycle and bicycle safety. In its report, the committee

- 31 In 2011, the Israeli Parliament amended the country's bike helmet legislation to exempt adults in urban areas while mandatory cycle helmet laws (introduced in 2009) were repealed in Mexico City. Bicycle Helmet Research Foundation, 'Helmet laws repealed or reduced in scope', [www.cyclehelmets.org/1214.html](http://www.cyclehelmets.org/1214.html) (accessed 27 October 2015). Helmets are compulsory for children under 15 years of age in countries such as Sweden, Slovenia and the Czech Republic. European Commission, *Mobility and Transport. Road Safety. Traffic rules and regulations for cyclists and their vehicles*, March 2015, [ec.europa.eu/transport/road\\_safety/specialist/knowledge/pedestrians/special\\_regulations\\_for\\_pedestrians\\_and\\_cyclists/traffic\\_rules\\_and\\_regulations\\_for\\_cyclists\\_and\\_their\\_vehicles\\_en.htm](http://ec.europa.eu/transport/road_safety/specialist/knowledge/pedestrians/special_regulations_for_pedestrians_and_cyclists/traffic_rules_and_regulations_for_cyclists_and_their_vehicles_en.htm) (accessed 27 October 2015).
- 32 Transport, Housing and Local Government Committee, *A new direction for cycling in Queensland*, Report No. 39 – Inquiry into Cycling Issues, Recommendation 15, p. 47, [www.parliament.qld.gov.au/documents/committees/thlgc/2013/inq-cyc/rp-39-29nov13.pdf](http://www.parliament.qld.gov.au/documents/committees/thlgc/2013/inq-cyc/rp-39-29nov13.pdf) (accessed 16 October 2015).
- 33 Queensland Government, Response to the Transport, Housing and Local Government Committee's Report No. 39 – *Inquiry into Cycling Issues: A new Direction for Cycling in Queensland*, p. 11, [www.parliament.qld.gov.au/documents/committees/THLGC/2014/INQ-CYC/gr-28May2014.pdf](http://www.parliament.qld.gov.au/documents/committees/THLGC/2014/INQ-CYC/gr-28May2014.pdf) (accessed 19 October 2015).
- 34 Department of Transport and Main Roads, *New cycling rules*, Queensland Government, 20 August 2015, [www.qld.gov.au/transport/safety/rules/other/cyclists/](http://www.qld.gov.au/transport/safety/rules/other/cyclists/) (accessed 19 October 2015).

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acknowledged the contention regarding MHL as it had had taken evidence from witnesses with strong views on both sides of the argument. While recognising the divergent positions on the issue, the committee noted that the 'majority of submissions and the bulk of evidence received' by it 'support the current mandatory use of helmets for bicycle riders'.<sup>35</sup>

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35 Joint Standing Committee on Road Safety, *Vulnerable Road Users: Inquiry into motorcycle and bicycle safety*, Parliament of NSW, Report No. 5/54, December 2010, p. 41, [https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/9e5130abdfd436a3ca2577ed0002ded3/\\$FILE/Chair's%20Final%20VRU%20Report%20\(Colour\).pdf](https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/9e5130abdfd436a3ca2577ed0002ded3/$FILE/Chair's%20Final%20VRU%20Report%20(Colour).pdf) (accessed 27 October 2015).

