

## INQUIRY INTO VULNERABLE ROAD USERS

**Organisation:** Private Citizen  
**Name:** Mrs Sue Abbott  
**Date Received:** 6/08/2010

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## **NSW PARLIAMENT'S STAYSAFE COMMITTEE – INQUIRY INTO VULNERABLE ROAD USERS**

### **Submission:**

#### **Mandatory Helmet Laws for bicycles are dangerous for our health**

### **Recommendation:**

#### **Repeal of Regulation 256, Road Rules NSW**

### **Preamble:**

Catastrophic climate change has expanded the question of survival, the notion of climate justice, and our global responsibilities.

Climate justice can no longer be ignored. We must change the fundamental manner in which we inhabit this planet.

This is why I cycle, and why many more of us ought to be encouraged to do so too.

Inter alia, our diminishing coastlines, dust storms and dying rivers demand that I cycle whenever and wherever I can in a bid to curtail carbon emissions and to relieve the environment of the destructive elements of my car.

There are no alternatives for me in my transport options. '*Shank's Pony*' is not a viable or even possible alternative given that I live some 8km to the west of Scone and routinely transport groceries, luggage & other stuff, all of which would be impossible on foot...and public transport from my place to Scone is non-existent.

The current global zeitgeist clearly demonstrates that not only is utility cycling an achievable start to tackling this issue but it comes with unexpected benefits in terms of health, traffic de-congestion, and tourism.

#### **a) patterns of bicycle usage in New South Wales;**

- The large increase in bicycle helmet-wearing rates since Mandatory Helmet Laws (MHLs) were enacted (circa early 1990s) has not resulted in reduced head injury rates - in fact [head injury rates have increased relative to the amount of cycling.](#)
- No randomized controlled trials have been done on the subject of bicycle helmet safety.
- Current data comes from two main types of observational study; "time trend analyses" and "case control studies".
- Most of the literature that mentions bicycle helmets and bicycle helmet promotion refers back to a small number of these studies, rather than actually providing primary evidence.
- Peer-review of bicycle research to date has led some scientists, traffic engineers and medical practitioners to conclude that helmets are actually dangerous for your health (W Curnow, '[Bicycle Helmets: a Scientific Evaluation](#)' in Anton de Smet (ed), *Transportation Accident Analysis and Prevention* (2008) 139)
- This finding is analogous to findings investigated by "Catalyst" ABC TV that football helmets 'designed to prevent head injury had allowed another kind of

head impact to become part of normal play'  
(<http://www.abc.net.au/catalyst/stories/2873539.htm>).

**b) short and long term trends in bicycle injuries and fatalities across a range of settings, including on-road and off-road uses;**

- In 2008, Civil Liberties Australia published an assessment of MHLs in Australia, and concluded that MHLs were not justified. Colin Clarke's detailed "[Assessment of Australia's Bicycle Helmet Laws](#)" outlines the negative impact MHLs had not only on cycling activity but on our health and the environment, in addition to the extra burden of resources for law enforcement (<http://freedomcyclist.blogspot.com/2010/03/criminal-conviction-quashed.html>).
- Given that there are only about 2 'cyclist' deaths per year per million population compared with about 2,000 plus 'circulatory' deaths, the question remains to be answered whether the current helmet legislation is the best option for the health and safety of our nation. Prima facie, cycling ought not to be a criminal issue but a health issue.

Malcolm Wardlaw's journal article in the British Medical Journal, "[Three lessons for a better cycling future](#)" reflects that:

- cyclists do better when they act and are treated as drivers of vehicles
- deaths of cyclists have increased since the introduction of helmets
- attendant safety campaigns destroyed cycling participation, compromised public health, increased risks on the roads, and decreased road skills for all concerned.

**c) underlying factors in bicycle injuries and fatalities;**

- Mandating the use of bicycle helmets was a commercial reality to pass the cost of cycling safety onto the consumer in terms of helmets rather than expensive cycling infrastructure and education of motorists.
- Bicycle helmets should never have been granted 'first & last word' status on cycling safety.
- 'First & last word' status dictates today's grim reality of Australian cycling and congested cities.

**d) current measures and future strategies to address bicycle safety, including education, training and assessment programs;**

- The new Melbourne Bike-share cycling initiative is destined to fail before it hardly gets off the 'drawing board' -  
<http://www.abc.net.au/news/stories/2010/07/24/2963183.htm>
- The survival of the internationally acclaimed bike share programs in Melbourne and destined for Brisbane this year, are under threat because of MHLs
- <http://www.abc.net.au/rn/nationalinterest/stories/2010/2875160.htm>
- <http://www.theage.com.au/victoria/helmet-law-makes-nonsense-of-bike-hire-scheme-20100722-10my2.html?comments=210#comments>
- <http://freedomcyclist.blogspot.com/2010/07/mike-rubbo-coup-de-bixi.html>
- Mandatory helmet laws will literally kill "[spur-of-the-moment decisions to use a bike](#)".
- Notwithstanding relevant state transport ministers continue with unachievable instructions that:  
\* *regular users should bring their own helmets*

- \* *helmet buying options will be provided*
- \* *helmet hiring options will be provided*
- \* *cycling authorities remain silent on the issues of nits, contagious scalp disease et al, or previously incurred damage to helmets*

- Bike share programs work in other cities for one very simple reason - they do not have to contend MHLs  
(<http://freedomcyclist.blogspot.com/2010/04/unfortunately-for-australia-success-of.html>).

**e) the integration of bicyclists in the planning and management of the road system in NSW;**

- Australia is the fattest nation in the world
- Obesity is now causing more illness and premature deaths than smoking.
- Given that cycling rates have diminished significantly over the past 19 years there even appears to be a correlation to the obesity epidemic if not an actual contribution to the causation.
- Hoped-for community benefits emanating from MHLs have been considerably outweighed by the actual losses incurred by the community.
- Politicians stubbornly cling to anecdotal notions that helmets save lives and protect cyclists.
- Our cities are car-congested and fast becoming unmanageable in terms of transport

**f) bicycle safety issues and strategies in other jurisdictions; and**

- Wardlaw's position is reinforced by literature from the European Cyclist Federation, "[Ask me why I cycle without a helmet](#)", which clinically outlines the perils of portraying cycling as far more dangerous than it is, and the notion that bicycle helmets offer far more protection than they actually do, advising that governments ought *'to refrain from promoting or enforcing helmet wearing without sound evidence that this would be beneficial and cost effective compared to other safety initiatives.'*

**g) any other related matters.**

- Mandatory helmet laws (MHLs) are an abuse of our civil liberties
- Cycling is not dangerous
  - *driving is*
  - *obesity is*
  - *smoking is*
  - *but cycling is **NOT***
- Statutory helmet promotion has single-handedly passed the cost of cycling safety to consumers, permitting government to ignore previous recommendations for genuine cycling infrastructure & motorists' education
- MHLs have drastically reduced cycling rates by 40%
- Actual head injuries have remained the same, pointing to an increase in head injuries
- Data is inconclusive on how much protection bicycle helmets actually give
- Laboratory tests on bicycle helmets indicate a possible increased risk of 'DIFFUSE AXONAL INJURY', the most severe of brain injury

- Bicycle helmets are currently not recommended for certain 'headforms', namely Headform AA (4 year olds and under)
- There is a correlation between MHLs and Australia's "Fattest Nation in World" status
- Exorbitant cost of law enforcement
- Unnecessary criminalisation of citizens

Notwithstanding all the conflicting evidence pertaining to helmets and mandatory helmet laws, policy makers refuse to absorb it just as they refused to absorb previous evidence against smoking and 'front & side sleeping positions' for babies (see Dr Ruth Gilbert – "[How wrong was baby sleeping advice](#)"). Similarly in these health catastrophes, we just don't want to face the 'public health music' yet!

I respectfully submit, given that the law is fragmented, uncertain and inconsistent, the law ought to be repealed.

by Sue Abbott

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# IN THE DISTRICT COURT OF NEW SOUTH WALES, EAST MAITLAND, NSW

Between Susan Elizabeth Abbott  
(Appellant)

And DPP (Respondent)

Appearing for the Appellant: Susan Abbott

**MAY IT PLEASE YOUR HONOUR:**

## **SUMMARY OF ARGUMENT FOR THE APPELLANT**

### (A) Summary of the Facts

1. On 7 March 2009 at 1930 hrs I was stopped by the police for not wearing a helmet whilst riding a bicycle in Liverpool Street, Scone, NSW, and was issued an infringement notice under regulation 256 of the *Road Rules 2008*, in accordance with section 72A and schedule 1 of the *Road Transport (Safety and Traffic Management) Act 1999*<sup>1</sup>.
2. I am a 50 year old woman who has cycled extensively since I was 4 years old throughout Europe, the UK, the US, the Mediterranean and Australia. I have resided in Scone for the past 26 years with my husband, a rural proceduralist doctor, and our four children. Currently our two younger children are studying geo-politics and medical science at the University of Sydney, our eldest child is ‘ski-instructing’ in Whistler, Canada, and our elder daughter is involved with water sustainability with the Arab Organisation of Youth and Environment in Egypt whilst she improves her Arabic before commencing a graduate law degree in 2011.
3. I, myself, completed a graduate law degree at the University of Newcastle in November 2009, and was admitted as a lawyer of the Supreme Court of New South Wales on Friday 19<sup>th</sup> February 2010. I also coordinate “un-sponsored” Continuing Medical Education (CME) conferences for rural proceduralists and emergency specialists in a bid to provide independent, unbiased information free from any commercial constraints or conflicts of interest.
4. My children were born in the years 1985, 1987, 1989 and 1990, and I cycled with all four of my children as babies, moving the older ones onto their own bicycles as each new baby arrived – today they continue to cycle, and not one of them owns a car. I became aware of the potential danger of bicycle helmets when my first child was born in 1985. Medical opinion at the time (my husband included) warned that infants under 12 months should not wear one because of the extreme modifications that helmets

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<sup>1</sup> *Road Transport (Safety and Traffic Management) Act 1999* (NSW)

created for their unformed heads. The nature of helmet modification was believed to significantly increase the risk of brain damage to the young and fragile brain.

5. Twenty five years on, relevant bodies in Australia are quiet on the issue of helmets for infant heads. The Australian Bicycle Council, the national body that manages and coordinates implementation of the Australian National Cycling Strategy 2005-2010, is completely silent whilst the Cycling Resource Centre refers inquiries to a 'parent-run' information site in Seattle, USA. Several conversations with the Roads & Traffic Authority revealed no actual written policy but a referral to their Bicycle Riders Handbook<sup>2</sup> where readers are invited to 'please consider the stage of development of your child before placing a helmet on the child's head for long periods.' Conversations with Standards Australia and the Australian Competition and Consumer Commission (ACCC) have revealed there are no enforceable standards for 'headform AA,' a head-sizing terminology which encompasses children under 4 years.<sup>3</sup> It would appear that helmets may still be considered to be 'unsafe' for a wider group of 'small child heads.'<sup>4</sup>
6. In conversation with the police on the evening on the 7<sup>th</sup> March, I was asked why I was not wearing a helmet.<sup>5</sup> I replied I believed that I was at greater risk of incurring serious head injury or death if I wore one. I informed the police that there was significant evidentiary material, extensive research and authoritative data in the public domain which I had read that clearly questions the efficacy of helmets.<sup>6</sup>
7. I mentioned to them that notwithstanding the fact that the government rationale for mandatory helmet laws was intended to prevent death or severe brain injury, material published by Curnow<sup>7</sup> and many others has indicated that not only do mandatory helmet laws have no effect in preventing such grave consequences but that they can have the opposite effect and increase the severity of them.<sup>8</sup>

I was convicted of 'riding a bicycle without a helmet' in the Scone Local Court, and I now appeal to this District Court of New South Wales against my conviction

I am representing myself, and I appeal the decision of the Local Court on two grounds:

**FIRST:** his Honour, Magistrate Jackson's consideration, as to the requirements of the tests for necessity were erroneous, specifically his Honour's actual consideration as to necessary belief and the requisite standard as to proportionality of response

And

**SECONDLY:** I will be submitting that there was sufficient evidence on which, if it had been properly considered, might have found necessity as a defence.

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<sup>2</sup>The Roads & Traffic Authority, *Bicycle Riders Handbook* (2009) Roads & Traffic Authority [http://www.rta.nsw.gov.au/usingroads/downloads/bicycle\\_riders\\_handbook.pdf](http://www.rta.nsw.gov.au/usingroads/downloads/bicycle_riders_handbook.pdf) at 3 March 2010, p11.

<sup>3</sup> Australian Safety Transport Bureau, Australian Government, *Safe Transport - Road Safety Research Report CR220: Assessing the Level of Safety Provided by the Snell B95 Standard for Bicycle Helmets* (2004) pp, 39, 43 [http://www.infrastructure.gov.au/roads/safety/publications/2004/pdf/Bic\\_Crash\\_6.pdf](http://www.infrastructure.gov.au/roads/safety/publications/2004/pdf/Bic_Crash_6.pdf)

<sup>4</sup> *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001* (Cth), reg 5.

<sup>5</sup> Court exhibit 2: In-Car DVD.

<sup>6</sup> Court exhibit 3: papers A, B, D, F, H & K, admitted into evidence at Scone Local Court, 28<sup>th</sup> September 2009, as reputable scientific publications by W.J. Curnow, retired scientist from the policy and science division of CSIRO and Australian Public Service.

<sup>7</sup> Ibid.

<sup>8</sup> W.J. Curnow, 'Bicycle helmets & public health in Australia' (2008) 19 *Health Promotion Journal of Australia*, 11 – paper A, exhibit 3.

My argument is based on the following submissions:

1. His Honour's approach to procedural fairness
2. Belief and Conduct of the appellant
3. Proportionality of Response

(B) Appellant's Submissions

1. PROCEDURAL FAIRNESS: The defence of necessity was misapplied with respect to the charge. His Honour failed to consider that the Prosecution had not established either (a) that I did not honestly believe on reasonable grounds that the act done by me was necessarily to preserve me from a serious danger to my life or my physical or mental health (not being merely the normal dangers of cycling) which riding with a helmet would entail or (b) that I did not honestly believe on reasonable grounds that the act done by me was in the circumstances proportionate to the need to preserve me from a serious danger to my life or my physical or mental health (not being the normal dangers of cycling) which the continuance of cycling with a helmet would entail.<sup>9</sup>
2. ACTUAL BELIEF OF THE APPELLANT: My circumstances, and the extensive review of peer-reviewed articles conducted by me over the past few years, have led me to the reality of the belief that I would be in danger if I rode a bicycle with a helmet, and would continue to be in danger unless I carried out my conduct of riding a bicycle without a helmet. I hold this belief as a question of necessity and survival.
3. PROPORTIONALITY OF RESPONSE: The defence of necessity is available if, in the circumstances, the danger of cycling without a helmet is not out of proportion with the danger intended to be averted by me, the appellant.

**THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS:**

Submission 1: Procedural Fairness

Your Honour, I submit that:

- 1.1 For the defence of necessity to be available, the circumstances must create a situation of necessity whereby a person commits a crime in order to avoid serious consequences that could arise from the situation. An accused must honestly believe that serious consequences would ensue if they did not commit the crime, and they must hold this belief on reasonable grounds. In addition, the conduct of an accused must be proportional to the consequences sought to be avoided. The defence of necessity has been affirmed in the common law jurisdictions in *R v Davidson*<sup>10</sup> and *R v Wald*.<sup>11</sup>

If I may refer your Honour to Menhennit J's ruling in *Davidson*<sup>12</sup> where his Honour cited the principle of necessity, as stated by Stephen in his Digest of the Criminal Law in the following terms:

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<sup>9</sup> *R v Davidson* [1969] VR 667, at 672.

<sup>10</sup> *R v Davidson* [1969] VR 667

<sup>11</sup> *R v Wald* (1971) 3 NSWDCR 25

<sup>12</sup> *R v Davidson* [1969] VR 667, at 670.

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided. The extent of this principle is unascertained.

If I may also refer your Honour to Simpson J's ruling in *R v Sood (Ruling No3)*<sup>13</sup> where her Honour distinguished the two limbs of the tests set down in *Davidson*<sup>14</sup> and *R v Wald*,<sup>15</sup> the first being an honest belief on reasonable grounds that the crime (operation) was necessary to preserve the women from serious danger to life or physical or mental health, and the second which was encapsulated as a test of proportionality. Simpson J noted that whilst Menhennit J<sup>16</sup> envisaged subjective tests in both, a discrepancy appeared in *Wald*<sup>17</sup> in that the test for proportionality was framed as an objective one.

Levine J in *Wald*<sup>18</sup> additionally expanded the Menhennit ruling to any 'economic, social or medical ground or reason which an accused could honestly and reasonably believe there would result a serious danger to her physical or mental health.'

- 1.2 I respectfully submit that necessity was the appropriate principle to have applied to determine the lawfulness of my un-helmeted behaviour, and that his Honour failed to consider that the Prosecution had not established that I did not possess elements of necessity (a) necessary belief and (b) the requisite standard as to proportionality of response.<sup>19</sup>
- 1.3 I respectfully submit that at no point during the local court proceedings did I raise the defence of 'mistaken belief' or any of the attendant elements and issues that go with such a defence.<sup>20</sup> Notwithstanding, the prosecution successfully objected to my evidence of 'necessary belief', arguing irrelevantly that my defence was not a "*Proudman v Dayman*" defence, whilst simultaneously surmising that it was not one of necessity either.<sup>21</sup>
- 1.4 I respectfully submit that Curnow's evidence was important in assisting the court to assess my evidence as a 'genuine belief' and not a misconceived notion, given Curnow's specialised knowledge based on his training, study and experience.<sup>22</sup> As Giles JA has stated, the scope of specialised knowledge is not restrictive, and is informed by the available bases of training, study and experience.<sup>23</sup> Curnow's evidence contains the two required elements of knowledge as distinct from belief, and his knowledge is specialised rather than generally held in the community. His six peer reviewed papers admitted into evidence establish that he has a reliable body of

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<sup>13</sup> *R v Sood (Ruling No3)* [2006] NSWSC 762, para 32.

<sup>14</sup> *R v Davidson* [1969] VR 667

<sup>15</sup> *R v Wald* (1971) 3 DCNSW 25

<sup>16</sup> *R v Wald* (1971) 3 DCNSW 25

<sup>17</sup> *R v Wald* (1971) 3 DCNSW 25

<sup>18</sup> *R v Wald* (1971) 3 DCNSW 25, at 29.

<sup>19</sup> *R v Davidson* [1969] VR 667, 672.

<sup>20</sup> *Proudman v Dayman* (1941) 67 CLR 536

<sup>21</sup> Local Court Transcript, *R v Susan Elizabeth Abbott* (2009), 4, para 25, 30, 35

<sup>22</sup> *Evidence Act 1995* (NSW), s79(1).

<sup>23</sup> *Adler v Australian Securities and Investments Commission* [2003] NSWCA 131 at [629]

knowledge and experience. Notwithstanding his Honour denied the Court the opportunity of hearing Curnow's evidence in full.<sup>24</sup>

- 1.5 I respectfully submit that his Honour's interpretation of expert opinion in his 'moon is made of green cheese'<sup>25</sup> hypothetical was erroneous and misleading, and did not establish that Curnow was not an expert witness under section 79(1) of the *Evidence Act*.<sup>26</sup>
- 1.6 ...and if I might respectfully correct a couple of the inaccuracies mentioned in the Local Court transcript. On page 11, at paragraph 25,<sup>27</sup> the Victorian case of *R v Loughnan*<sup>28</sup> (not Lochmond) was a joint judgment from Young CJ and King J,(not Gleeson CJ, who also delivered a judgment on the defence of necessity in *R v Rogers*<sup>29</sup>)

### Submission 2: Actual belief of the Appellant

If I may move on to my second submission:

- 2.1 I raise the defence of necessity on therapeutic grounds. I believe that the act of me riding a bicycle without a helmet is a question of survival and a question of necessity. The circumstances created a situation of necessity and this involved committing the crime in order to avoid other detrimental and serious consequences that could flow from the situation. I honestly believed that the risk of serious brain injury or death would be increased if I wore a helmet, and I held this belief on reasonable grounds

In *R v Davidson*,<sup>30</sup> Menhennit J ruled that abortion was lawful if necessary to protect the physical or mental health of the woman, provided that the danger involved in the abortion did not outweigh the danger which the abortion was designed to prevent. As noted in submission 1.1, the Menhennit ruling was expanded in *Wald* to any 'economic, social or medical ground or reason which an accused could honestly and reasonably believe there would result a serious danger to her physical or mental health.'<sup>31</sup>

This is relevant to me. I believe we must change the fundamental manner in which we inhabit this planet, and that climate justice can no longer be ignored. Catastrophic climate change dictates global responsibilities. This is why I cycle. I cycle in a bid to reduce my carbon emissions and to relieve the environment of the destructive elements of my car.

There are no alternatives for me in my transport options because of my commitment to the planet. 'Shank's Pony'<sup>32</sup> is not a viable or even possible alternative given that I live some 8km to the west of Scone. Five years of a studying for a law degree, getting up at 4:30am and leaving my home at 5:00am to cycle to the station for the one and only 'Scone-to-Newcastle-train', then sometimes not arriving home till after 10:00pm depending on the status of track-work on any given day, would not have been possible

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<sup>24</sup> Local Court Transcript, *R v Susan Elizabeth Abbott* (2009), 10, para 35, & page 11, para 20 & para 40

<sup>25</sup> Local Court Transcript, *R v Susan Elizabeth Abbott* (2009), 12, para 10, 15, 20.

<sup>26</sup> *Evidence Act 1995* (NSW)

<sup>27</sup> Local Court Transcript, *R v Susan Elizabeth Abbott* (2009), 11, para 25, 30.

<sup>28</sup> *R v Loughnan* [1981] VR 443

<sup>29</sup> *R v Rogers* (1996) 86 A Crim R 542

<sup>30</sup> *R v Davidson* [1969] VR 667

<sup>31</sup> *R v Wald* (1971) 3 DCNSW 25, at 29.

<sup>32</sup> Local Court Transcript, *R v Susan Elizabeth Abbott* (2009), 14, para 20, 25, 45.

on foot, and my commitment to reducing my carbon footprint only allows occasional car usage. In addition to ‘transporting’ university books over the years, I routinely transported groceries, all of which would have been impossible on foot.

I believe that my conduct is a question of my survival; that I need to cycle in order to reduce carbon emissions and unnecessary car-dependency tendencies, and that to do so with a helmet would put me at grave risk. Therefore I believe it is necessary for me not to wear a helmet when cycling, in order to minimise the risk of severe brain injury or death.

My belief is supported from my reading of many peer reviewed articles, including the 6 articles admitted into evidence as Exhibit 3 by W.J. Curnow. I understand from my reading that standard tests do not include capacity to reduce angular acceleration, and in some circumstances, wearing a helmet can increase the angular acceleration which an oblique impulse imparts to the head, increasing the risk of damage to the brain, especially diffuse axonal injury'.<sup>33</sup> This position is somewhat confirmed by a memo, obtained through freedom of information,<sup>34</sup> where it is admitted on page 2, line 6 that ‘there is the possibility that some helmets, in combination with particular size head forms, may have a small disbenefit with regards to rotational acceleration.’

Given such department ambiguity in parallel with conflicting internationally peer-reviewed evidence, it would appear that helmets are still very much an ongoing experiment. Under PART III, Article 7 of *the International Covenant of Civil and Political Rights*, (ICCPR)<sup>35</sup> states that “... no one shall be subjected without his free consent to medical or scientific experimentation”. In view of Article 7 of the ICCPR,<sup>36</sup> I do not wish to be part of the bicycle helmet 'medical or scientific experiment'. Therefore, I respectfully request that my right to ride my bicycle without a helmet, a right which I exercise with my free refusal (the counter to free consent), is honoured.

Curnow questions the Cochrane review’s conclusion that its five included studies established scientific evidence that standard bicycle helmets of all types protect against injury to the brain. He claims that it is not supportable because none of the studies possessed the requisite scientific rigour.<sup>37</sup>

Further evidence from Curnow cites a report from the National Health and Medical Research Council, warning that ‘the wearing of helmets may result in greater rotational forces and increased diffuse brain injury.’<sup>38</sup> Curnow reiterates that the Cochrane ‘review’s conclusion is not in accord with scientific theory of brain injury which is supported by experimental evidence and that it is a result of misinterpreting data.’<sup>39</sup> In fact, Curnow recommends that ‘in view of the influence of a Cochrane

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<sup>33</sup> W.J. Curnow, ‘Bicycle Helmets: a Scientific Evaluation’ in Anton de Smet (ed), *Transportation Accident Analysis and Prevention* (2008), 139, 155 – paper K, exhibit 3.

<sup>34</sup> Letter from A/Senior Research & Policy Analyst, Safer People Branch to 1) A/Senior Policy Manager (Vulnerable Road Users), Safer People Branch; and 2) A/General Manager, Safer People Branch; and 3) A/Director, NSW Centre for Road Safety, 20<sup>th</sup> June 2008 (File no. 7M2609)

<sup>35</sup> *International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1963), 999 UNTS 171, reprinted in 6 ILM 368 (1967).

<sup>36</sup> *International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1963), 999 UNTS 171, reprinted in 6 ILM 368 (1967).

<sup>37</sup> W.J. Curnow, ‘The Cochrane Collaboration and bicycle helmets’ (2005) 37 *Accident Analysis and Prevention* 573 – paper B, exhibit 3.

<sup>38</sup> W.J. Curnow, ‘The efficacy of bicycle helmets against brain injury’ (2002) 35 *Accident Analysis and Prevention* 289 – paper D, exhibit 3.

<sup>39</sup> W.J. Curnow, ‘Bicycle helmets: Lack of efficacy against brain injury’ (2006) 38 *Accident Analysis and Prevention* 833 – paper F, exhibit 3.

review of bicycle helmets on policies for wearing’ the current review on bicycle helmets should be removed from the Cochrane Library.<sup>40</sup>

Your Honour, it is interesting to note that the Cochrane Collaboration is currently under scrutiny for a review concerning the effectiveness of tamiflu against swine flu. In December 2009, they proffered a ‘media mea-culpa’<sup>41</sup> when Professor Chris Del Mar, the coordinating editor of the Cochrane Collaboration's acute respiratory infections review group, revealed that data collected in a review by the Swiss Professor Laurent Kaiser, summarising ten different trials, upon further analysis could not be found to draw the same conclusions. When questioned about this discrepancy, Professor Kaiser admitted that the trials had been conducted by Roche Pharmaceuticals, and referred the subsequent reviewers to the company for the information they were seeking.

I genuinely and honestly believe that in the face of Curnow’s evidence, it would be irrational for me to wear a helmet of current design.

My membership of the Cyclists’ Rights Action Group (CRAG) further illustrates my commitment to my beliefs. CRAG is a reputable organisation, committed to advocacy and lobbying for open, honest and conclusive studies conducted on the basis on evidence. As a member of the Cyclists’ Rights Action Group, my commitment to my beliefs has been expressed through dedicated advocacy for open, honest and conclusive evidence. I have written to the Prime Minister of Australia<sup>42</sup> concerning the mandatory requirement to wear a helmet, as well as all the state premiers and chief ministers, the Lord Mayor of Sydney and representatives of all three levels of government in the Upper Hunter. I have received varying communications in reply, with some recommendations to keep various government departments informed of my progress.

I respectfully submit that it is not reasonable that I should be constrained by law to put my health and my life at risk when the safer alternative of riding a bicycle without a helmet, currently defined as an offence,<sup>43</sup> would actually provide more protection against that risk.

I respectfully submit that I should not be compelled by any state to do an act which puts my health and life in greater danger than if I declined to do the act.

### Submission 3: Proportionality of response

It is my respectful submission that the circumstances in this case are sufficient to conclude that the defence of necessity should be available to me with regard to proportionality of my response.

3.1 In *Sood*, Simpson J stated that the ‘second limb concerns the proportionality of what is done to the danger involved.’<sup>44</sup> Her Honour went on to discuss that ‘if the issue in the second concerns the belief of the accused rather than the

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<sup>40</sup> W.J. Curnow, ‘Bicycle helmets and brain injury’ (2006) 39 *Accident Analysis and Prevention* 435 – paper H, exhibit 3: the review “should have the utmost reliability – all evidence should be obtained from experiment or randomised controlled trial based on relevant scientific knowledge.”

<sup>41</sup> Annie Guest, *Doubt over Tamiflu’s effectiveness against swine flu* (2009) ABC Radio National <http://www.abc.net.au/worldtoday/content/2009/s2767483.htm> at 2 March 2010.

<sup>42</sup> Letter from Sue Abbott to the Prime Minister of Australia, 4<sup>th</sup> November 2009.

<sup>43</sup> *Road Rules 2008* (NSW), reg 256

<sup>44</sup> *R v Sood (Ruling No3)* [2006] NSWSC 762, para 40.

objective reality of the proportionality, nothing is added to the first test – that is, if an accused person honestly believes on reasonable grounds that it is necessary to do what is done, that necessarily incorporates a belief in the proportionality of that conduct – the second is entirely subsumed in the first – that is not so if an objective test is applied to the second limb.<sup>45</sup>

- 3.2 Notwithstanding the discrepancies in *Davidson*'s<sup>46</sup> subjective test and *Wald*'s<sup>47</sup> objective test of proportionality, I believe my conduct meets the elements of both, and is proportional to the consequences I sought to avoid. It was necessary to protect me from the risk of serious danger to my life or my physical or mental health, and in the circumstances it was not out of proportion to the danger to be averted, in this instance, severe brain injury or death.
- 3.3 I believe that my defence of necessity is one on therapeutic grounds, and that my conduct is a question of my survival. My beliefs are reasonably held as I perceive them and as a reasonable person would perceive them. In Australia, the large increases in population helmet wearing rates have not resulted in reduced head injury rates - in fact head injury rates have increased relative to the amount of cycling.<sup>48</sup>
- 3.4 I respectfully submit that catastrophic climate change has expanded the question of survival, the notion of climate justice, and our global responsibilities.<sup>49</sup> Considering our diminishing coastlines, dust storms and dying rivers, it is now a question of survival to cycle whenever and wherever I can in a bid to curtail carbon emissions. The current global zeitgeist clearly demonstrates that not only is utility cycling an achievable start to tackling this issue but it comes with unexpected benefits in terms of health, traffic de-congestion, and tourism.
- 3.5 I respectfully submit that the law is fragmented, uncertain and inconsistent. In the state of South Australia the regulations single out people of the Sikh religion, providing them with an exemption.<sup>50</sup> Regulation 26 appears to favour people who hold certain beliefs as opposed to others who hold different beliefs or no beliefs at all. Whilst there is limited provision in the New South Wales jurisdiction for exemptions, a recent 'bicycle helmet matter,' reported in the Illawarra Mercury last year, provided further evidence that the regulations are inconsistent and discriminatory.<sup>51</sup>
- 3.6 I respectfully submit that regulation 256 in New South Wales also contributes to a notion of legislative contradiction. Regulation 256 (2) provides that:

a passenger on a bicycle that is moving, or is stationary  
but not parked, must wear an approved bicycle helmet

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<sup>45</sup> *R v Sood (Ruling No3)* [2006] NSWSC 762, para 41.

<sup>46</sup> *R v Davidson* [1969] VR 667, at 672.

<sup>47</sup> *R v Wald* (1971) 3 DCNSW 25

<sup>48</sup> W.J. Curnow , 'Bicycle helmets and public health in Australia' (2008) 19 *Health Promotion Journal of Australia* 14 – paper A, exhibit 3

<sup>49</sup> *R v Wald* (1971) 3 DCNSW 25, at 29.

<sup>50</sup> *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999* (SA), reg 26

<sup>51</sup> Michele Tydd, *Sikh in court for not wearing bike helmet* (2009) The Illawarra Mercury

<http://www.illawarramercury.com.au/news/local/news/general/sikh-in-court-for-not-wearing-bike-helmet/1570163.aspx> at 2 March 2010.



securely fitted and fastened on the passenger's head, unless the passenger is:  
(a) a paying passenger on a three or four-wheeled bicycle, or  
(b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

Your Honour, I respectfully submit this particular section raises many questions:

- (1) Why is it safer to be a paying passenger rather than a non-paying passenger?
- (2) Why is it safer to be a paying passenger rather than a rider of a bicycle whether of the two-wheeled, three-wheeled or four-wheeled variety?
- (3) Why is it more dangerous to be a non-paying passenger rather than a paying passenger?
- (4) Why is it more dangerous to be a rider of a bicycle whether of the two-wheeled, three-wheeled or four-wheeled variety rather than a paying passenger?

#### CONCLUSION:

Your Honour, I respectfully submit that for the first time in my life I am a convicted criminal (and will be for the term of my natural life unless my appeal is successful in the District Court). I honestly believe on reasonable grounds that the act of riding a bicycle without a helmet was:

- (a) necessary to preserve me from a serious danger to my life or my physical or mental health (not being the normal dangers of cycling) which the continuance of riding with a helmet would entail – *and*;
- (b) in the circumstances not out of proportion to the danger averted.<sup>52</sup>

I believe that the regulation forces me to surrender my 'own-person' responsibility and my natural inclination to keep myself safe, to the dangers of a commercial reality and a questionable 'medical device' arguably not fit for purpose. I believe that my beliefs are reasonably held as I perceive them and also as a reasonable person would perceive that I would hold them. My conduct is a question of necessity and a question of my survival. I conclude that it was and still is necessary for me to cycle and to cycle without a helmet in order to prevent the risk of severe injury to myself.

On the basis of the above submissions, I respectfully request that my conviction of 'rider not wear helmet' be quashed and a 'not guilty' verdict returned.

May it please the court, unless I can be of further assistance, these are my submissions.

**DATED: Friday 5<sup>th</sup> March 2010**

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Susan Elizabeth Abbott

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<sup>52</sup> *R v Davidson* [1969] VR 667, at 672.

## **LEGISLATION & REGULATIONS**

### ***Evidence Act 1995 (NSW)***

#### **Section 79 Exception: opinions based on specialised knowledge**

(1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

(2) To avoid doubt, and without limiting subsection (1):

(a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their development and behaviour during and following the abuse), and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of the kind referred to in paragraph (a), a reference to an opinion relating to either or both of the following:

- (i) the development and behaviour of children generally,
- (ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

### ***Road Transport (Safety and Traffic Management) Act 1999 (NSW)***

#### **72A Rules**

(1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter for or with respect to which the Governor may make regulations under this Act.

(2) The rules may repeal or amend the regulations and the regulations may repeal or amend the rules.

(3) A reference in this or any other Act or law to a matter prescribed by the regulations under this Act (however expressed) includes a reference to a matter prescribed by the rules.

(4) The same legal rules and principles apply to the resolution of an inconsistency between a rule and a regulation as apply to the resolution of an inconsistency between regulations.

### ***Road Rules 2008 (NSW)***

#### **Reg 256 Bicycle helmets**

(1) The rider of a bicycle must wear an approved bicycle helmet securely fitted and fastened on the rider's head, unless the rider is exempt from wearing a bicycle helmet under another law of this jurisdiction.

Maximum penalty: 20 penalty units.

**Note:** "Approved bicycle helmet" is defined in the Dictionary.

(2) A passenger on a bicycle that is moving, or is stationary but not parked, must wear an approved bicycle helmet securely fitted and fastened on the passenger's head, unless the passenger is:

- (a) a paying passenger on a three or four-wheeled bicycle, or
- (b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

Maximum penalty: 20 penalty units.

(3) The rider of a bicycle must not ride with a passenger on the bicycle unless the passenger complies with subrule (2).

Maximum penalty: 20 penalty units.

***Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999 (SA)***

**Reg 26 Sikhs exempt from wearing bicycle helmets**

For the purposes of rule 256(1) and (2) (Bicycle helmets), a person of the Sikh religion who is wearing a turban is exempt from wearing a bicycle helmet

***Australian Road Rules (SA)***

**Reg 256 Bicycle helmets**

(1) The rider of a bicycle must wear an approved bicycle helmet securely fitted and fastened on the rider's head, unless the rider is exempt from wearing a bicycle helmet under another law of this jurisdiction. **Note** — "Approved bicycle helmet" is defined in the dictionary.

(2) A passenger on a bicycle that is moving, or is stationary but not parked, must wear an approved bicycle helmet securely fitted and fastened on the passenger's head, unless the passenger is:

- (a) a paying passenger on a three or four-wheeled bicycle; or
- (b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

(3) The rider of a bicycle must not ride with a passenger on the bicycle unless the passenger complies with subrule (2).

**Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001 (Cth) - Reg 5**

**Application**

- (1) These Regulations apply to protective helmets for pedal cyclists.
- (2) However, these Regulations do not apply to the following helmets:
  - (a) protective helmets of a size too small to be reasonably fitted to:
    - (i) Headform AA defined in Australian/New Zealand Standard AS/NZS 2512.1:1998, published by the Standards Association of Australia on 5 September 1998; or
    - (ii) Headform AA defined in Australian/New Zealand Standard AS/NZS 2512.1:2009, published by Standards Australia on 7 April 2009;
  - (b) helmets for use as toys which cannot be reasonably mistaken for protective helmets for pedal cyclists;
  - (c) helmets for use as toys which may be reasonably mistaken for protective helmets for pedal cyclists, if the words *Warning: toy helmet only -- do not use as safety headgear* are marked clearly and legibly in a conspicuous position on:

- (i) the helmet or on a label attached to the helmet at the time of supply to the consumer; and
- (ii) the principal outer display face of any packaging in which the helmet is supplied to the consumer;

with the word *Warning* in capital letters not less than 5 mm high, and the remaining words in letters not less than 2.5 mm high;

- (d) helmets (except BMX helmets) designed and constructed principally for use by cyclists engaged in competitive racing, if the words *Warning: racing headgear only -- inadequate impact protection for normal road use* are marked clearly and legibly in a conspicuous position on:

- (i) the helmet or on a label attached to the helmet at the time of supply to the consumer; and
- (ii) the principal outer display face of any packaging in which the helmet is supplied to the consumer;

with the word *Warning* in capital letters not less than 5 mm high, and the remaining words in letters not less than 2.5 mm high.

## INQUIRY INTO VULNERABLE ROAD USERS

**Organisation:** Private Citizen  
**Name:** Mrs Sue Abbott  
**Date Received:** 6/08/2010

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# **SUBMISSION TO THE ROADS & TRAFFIC AUTHORITY FOR EXEMPTION TO WEAR HELMET ON A BICYCLE (DESPATCHED VIA REGISTERED POST)**

Between

**Susan Elizabeth Abbott  
(Rider under the Regulations)**

And

**Roads & Traffic Authority  
(Authority under the Regulations)**  
Head Office, Level 9, 101 Miller Street,  
NORTH SYDNEY NSW 2060  
Postal Address:  
LOCKED BAG 928, NORTH  
SYDNEY NSW 2059

To Mr Michael Bushby (CEO of the RTA)<sup>1</sup>

## **‘EXEMPTION REQUEST’ FOR RIDER OF BICYCLE UNDER THE REGULATIONS**

Pursuant to section 72 of the *Road Transport (Safety and Traffic Management) Act 1999* (NSW)<sup>2</sup> and under the *Road Rules 2008* (NSW) regulation 256<sup>3</sup>, I seek an exemption from wearing a bicycle helmet on **(1) Therapeutic Grounds** and **(2) Grounds of Civil Liberties**.

### **(1) Therapeutic Grounds**

W.J. Curnow<sup>4</sup> claims, in his peer reviewed article "Bicycle Helmets: a Scientific Evaluation"<sup>5</sup>, that wearing a bicycle helmet can increase the angular acceleration which an oblique impulse imparts to the head, increasing the risk of damage to the brain, especially diffuse axonal injury'.

This position is somewhat confirmed by a Roads & Traffic Authority (RTA) memo, obtained through "Freedom Of Information"...

### **TO:**

- 1) A/Senior Policy Manager (Vulnerable Road Users), Safer People Branch
- 2) A/General Manager, Safer People Branch
- 3) A/Director, NSW Centre for Road Safety

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<sup>1</sup> This application for exemption should have been addressed to the Manager of the Bicycle Unit. However procurement of his name was denied me under 'quoted provisions' of the "Privacy Act (?)" by an RTA representative – (a) did the RTA representative, in conversation with me on Tuesday 16<sup>th</sup> March 2010, mean the *Privacy and Personal Information Protection Act 1998* (NSW) and (b) was she confused over the issue of whose privacy and personal information the New South Wales Government is intending to protect with their legislation?

<sup>2</sup> *Road Transport (Safety and Traffic Management) Act 1999* (NSW)

<sup>3</sup> *Road Rules 2008* (NSW), reg 256

<sup>4</sup> *Evidence Act 1995* (NSW) – section 79(1) establishes that W.J. Curnow is an 'expert' under statutory provisions.

<sup>5</sup> W.J. Curnow, 'Bicycle Helmets: a Scientific Evaluation' in Anton de Smet (ed), *Transportation Accident Analysis and Prevention* (2008), 139, 155.

**From:**

A/Senior Research & Policy Analyst, Safer People Branch

**On:**

20th June 2008 (File no. 7M2609)

...where it is admitted on page 2, line 6 that ‘there is the possibility that some helmets, in combination with particular size headforms, may have a small disbenefit with regards to rotational acceleration.’

Given such department ambiguity in parallel with conflicting internationally peer-reviewed evidence, it would appear that helmets are still very much an ongoing experiment, and in view of section 44 of the *Fair Trading Act 1987* (NSW)<sup>6</sup>, the RTA shall not, in connection with the promotion by any means of the supply or use of bicycle helmets, represent that bicycle helmets have performance characteristics, uses or benefits they do not have.

**(2) Grounds of Civil Liberties**

I understand that the Australian Government takes seriously its international obligations and responsibilities. Accordingly, I understand that the Australian Government retreats from any potential breach of international law. Under PART III, Article 7 of the International Covenant of Civil and Political Rights, (ICCPR)<sup>7</sup>, states that: "...no one shall be subjected without his free consent to medical or scientific experimentation."

In view of Article 7 of the ICCPR, I do not wish to be part of the bicycle helmet 'medical or scientific experiment'. Therefore I respectfully request that you please respect my right to ride my bicycle without a helmet – a right which I exercise with my free refusal, the counter to free consent.

I genuinely and honestly believe that in the face of this evidence, it would be irrational for me to wear a bicycle helmet, and that my grounds for exemption are reasonable, proportionate and justified.

(ORIGINALLY DATED, SIGNED, & DESPATCHED VIA REGISTERED POST on Wednesday 10<sup>th</sup> March 2010; subsequently signed for and collected on 16<sup>th</sup> March 2010 by “D CAMILLERI”, though ‘document whereabouts’ unascertained during telephone call between myself and RTA representative at 14:30 hours)

**DATED & SIGNED: Wednesday 17<sup>th</sup> March 2010**

-----  
Susan Elizabeth Abbott  
“Ardmore”  
Moobi Road  
SCONE NSW 2337  
+61 418 237 021

Copied to: Prime Minister Rudd, PO Box 6022, House of Representatives, Parliament House, CANBERRA ACT 2600; Premier Kristina Kenneally, GPO Box 5341, SYDNEY NSW 2001; Lord Mayor of Sydney, Clover Moore, MP, Office of the Lord Mayor, GPO Box 1591, Sydney NSW 2001; The Hon. George Souris, MP, 20 Bridge Street, MUSWELLBROOK NSW 2333; The Hon. Joel Fitzgibbons, MP, PO Box 6022, House of Representatives, Parliament House, CANBERRA ACT 2600; Mayor Cr Lee Watts, 130 Liverpool Street, PO Box 208, SCONE NSW 2337; Matthew Moore, the Urban Affairs Editor, Sydney Morning Herald, PO Box 3771, SYDNEY NSW 2001; Chris Gillham, Scribeworks, 12 Hopetoun Terrace, Shenton Park, PERTH WA 6008; Mike Pritchard, ABC Radio, Brook Street, MUSWELLBROOK NSW 2333; Carol Duncan, ABC Radio, 24 Wood St, NEWCASTLE WEST 2302 NSW.

<sup>6</sup> *Fair Trading Act 1987* (NSW)

<sup>7</sup> *International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1963), 999 UNTS 171, reprinted in 6 ILM 368 (1967).



## **SUPPORTING LEGISLATION & REGULATIONS**

### ***Evidence Act 1995 (NSW)***

#### **Section 79 Exception: opinions based on specialised knowledge**

(1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

### ***Road Transport (Safety and Traffic Management) Act 1999 (NSW)***

#### **Section 72 Regulations may exclude vehicles, persons and animals from this Act and the regulations**

(cf Cth Act, s10)

(1) The regulations may:

- (a) exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the regulations from the operation of this Act or the regulations (or specified provisions of this Act or the regulations), or
- (b) authorise the Authority to exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the regulations from the operation of this Act or the regulations (or specified provisions of this Act or the regulations).

(2) An exemption granted by or under a regulation referred to in subsection (1) may be given unconditionally or on specified conditions.

(3) The regulations may provide for the Authority:

- (a) to suspend the operation of any regulation referred to in subsection (1) in such manner and in such circumstances as may be specified by the regulations, or
- (b) to suspend the operation of an exemption given by it to any vehicle, person or animal in such manner and in such circumstances as may be specified by the regulations, or both.

### ***Road Rules 2008 (NSW)***

#### ***Reg 256 Bicycle helmets***

(1) The rider of a bicycle must wear an approved bicycle helmet securely fitted and fastened on the rider's head, unless the rider is exempt from wearing a bicycle helmet under another law of this jurisdiction.

Maximum penalty: 20 penalty units.

**Note:** "Approved bicycle helmet" is defined in the Dictionary.

(2) A passenger on a bicycle that is moving, or is stationary but not parked, must wear an approved bicycle helmet securely fitted and fastened on the passenger's head, unless the passenger is:

- (a) a paying passenger on a three or four-wheeled bicycle, or
- (b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

Maximum penalty: 20 penalty units.

(3) The rider of a bicycle must not ride with a passenger on the bicycle unless the passenger complies with subrule (2).

Maximum penalty: 20 penalty units.

#### ***Road Rules 2008 (NSW) - Schedule 99 Dictionary (Rule 4) "approved bicycle helmet"***

means a protective helmet for bicycle riders of a type approved by the Authority.

Note: "Authority" is defined in the Act.

Note: This definition is not uniform with the corresponding definition in the Dictionary of the Australian Road Rules. However, the Australian Road Rules allow another law of this

jurisdiction to make provision for who may approve such helmets. Different definitions may apply in other Australian jurisdictions.

***Road Transport (Safety and Traffic Management) Act 1999 (NSW) - Dictionary (Section 4)***

1 Definitions "Authority" means the Roads and Traffic Authority.

***Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999 (SA)***

**Reg 26 Sikhs exempt from wearing bicycle helmets**

For the purposes of rule 256(1) and (2) (Bicycle helmets), a person of the Sikh religion who is wearing a turban is exempt from wearing a bicycle helmet

***Australian Road Rules (SA)***

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(1) The rider of a bicycle must wear an approved bicycle helmet securely fitted and fastened on the rider's head, unless the rider is exempt from wearing a bicycle helmet under another law of this jurisdiction. Note — "Approved bicycle helmet" is defined in the dictionary.

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- (a) a paying passenger on a three or four-wheeled bicycle; or
- (b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

(3) The rider of a bicycle must not ride with a passenger on the bicycle unless the passenger complies with subrule (2).

***Fair Trading Act 1987 (NSW)***

**Section 44 False representations**

(TPA s 53)

A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use,
- (b) falsely represent that services are of a particular standard, quality, value or grade,
- (c) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have,
- (d) represent that the person has a sponsorship, approval or affiliation the person does not have,
- (e) make a false or misleading representation concerning the need for any goods or services,

***International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1963), 999 UNTS 171, reprinted in 6 ILM 368 (1967)***

**PART III, Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.