

**Submission
No 41**

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND
WORKERS IN NEW SOUTH WALES**

Organisation: Pedestrian Council of Australia Limited

Date Received: 22 January 2021



PEDESTRIAN COUNCIL OF AUSTRALIA

Safety - Amenity - Access - Health

The Walking Class

Patron: Dame Quentin Bryce AD CVO

The Hon Daniel Mookhey
Chair

Inquiry into the impact of technological and other change on the future of work and workers in New South Wales

Attention: Ms Sarina Wise

Copies to:

The Hon Mark Banasiak MLC	Shooters, Fishers and Famers Pty	<i>Deputy Chair</i>
Ms Abigail Boyd MLC *		The Greens
The Hon Greg Donnelly MLC**		Australian Labor Party
The Hon Wes Fang MLC***		The Nationals
The Hon Courtney Houssos MLC		Australian Labor Party
The Hon Natasha Maclaren-Jones MLC		Liberal Party
The Hon Shayne Mallard MLC		Liberal Party
The Hon Mark Pearson MLC		Animal Justice Party
The Hon Adam Searle MLC		Australian Labor Party
Mr David Shoebridge MLC		The Greens

Dear Sir

This is our submission regarding the abovementioned inquiry.

As the peak body in Australia representing pedestrians, we would first like to state that we are incredibly disappointed:

- 1 Because we were never contacted nor asked to provide a submission
- 2 It appears there's hardly a reference to pedestrians or their safety and amenity in your Terms of Reference.

Let me start by stating:

THE INALIENABLE RIGHTS OF PEDESTRIANS TO SAFE FOOTPATHS, PARKS, MALLS, PEDESTRIAN CROSSINGS AND PUBLIC PLACES GENERALLY AND A FRIENDLY NON-HOSTILE AMENITY WHEREVER WE WALK ARE FAR GREATER THAN THE COMMERCIAL WANTS OF MULTI-NATIONAL FOOD DELIVERY COMPANIES AND THEIR COURIERS.

In the immortal words of our future monarch:



PRINCE CHARLES – 60 MINUTES - (QUOTE):

"The whole of the 20th century has always put the car at the centre.

So by putting the pedestrian first, you create these liveable places I think, with more attraction and interest and character ... liveability."

<https://youtu.be/AV35EO3dmZA>

Yet almost overnight, these companies have turned our footpaths, parks, malls and crossings into a potentially lethal environment which threatens one of our most basic rights – the right to walk in an amenity which is safe and inviting – all for profit

Yet you appear to have completely ignored us – all of us – yourselves included.

This was the photo which appeared on the front page of the SMH on 15 April 2020. It also featured in my Opinion piece (copy attached) entitled "Delivery riders putting Sydney pedestrians at risk of catastrophic injury": SMH - April 16, 2020

The photo features two Food Deliver Couriers illegally riding on the footpath and one on the pedestrian crossing, in the middle of the CBD – under the heading "Tour de France on the streets of Sydney".

Did the entire Committee not see these articles?

Yet this behaviour has become the "norm" throughout the CBD and the suburbs of NSW.



Food delivery cyclists working during the coronavirus isolation lockdown in CBD.*CREDIT: JAMES BRICKWOOD*

The letter to the SMH of 18 April 2020 could not have summed it up better:

26 | News Review

War on two wheels

Tour de France on the streets of Sydney? You must be kidding: it's more like Mad Max ("They cross in front of the car': Surge in Sydney food couriers raises safety concerns", April 16).

With the increasing number of cyclists pedestrians are in a war not of their making. Battery-powered bicycles speed along footpaths. Riders ignore traffic signs and run red lights as well as talking, texting and watching movies on their mobile phones. All the while ignoring bike lanes nearby or virtually empty roads.

David Andrew, Paddington

So why on earth has your inquiry not focussed on Pedestrian Safety and Amenity first?

Why is it not at the very top of your Terms of Reference?

I wrote another Opinion piece for the Sunday Telegraph on 20 December 2020. It appears below and should be treated as a précis of our submission

Also below and attached is a great deal of information about Shared Paths and Electric Bicycles (pedelecs), along with an excellent letter from Mr Lauchie Macintosh, who is the Chairman of the Towards Zero Foundation and former President of the Australasian College of Road Safety. His comments about "chain of responsibility" legislation are incredibly relevant to this inquiry.

Until there is an enforceable and enforced default 10 km/h Speed Limit on Shared Paths, and strict adherence to the Austroads Guidelines, we don't wish to see any vehicles on our footpaths. That policy is supported by COTA, Victoria Walks and Vision Australia and road safety expert, Prof Raph Grzebieta (see his letter attached) which states:

For pedestrians, particularly older pedestrians, if they are struck by a cyclist in a frontal impact, they can fall backward, strike the back of their head and suffer serious brain injury. The details of how this can occur are detailed in a peer-reviewed journal paper I published some years ago. Short A., Grzebieta R.H. and Arndt N., Estimating bicyclist into pedestrian collision speed, International Journal of Crashworthiness, Vol. 12, No. 2, pp. 127–135, 2007.

This analysis was based on a case where a young lady suffered a serious head injury as a result of a cyclist impacting head on into the pedestrian on a shared pathway on Iron Cove Bridge as well as on other published data where older pedestrians were killed by a cyclist striking them in Germany. Our analysis showed that any cyclist-pedestrian impact speed above 10 km/h can result in serious head injury for younger adults and death for older adults.

And leading law firm Slater and Gordon

The civil proceedings commenced by Maria Guliano in the Supreme Court of NSW were settled for a substantial amount of money with the result that the Court did not have to determine whether any breach of duty of care arose in the circumstances. This civil claim nevertheless identified a number of deficiencies in the existing design guidelines and regulation of Shared Bicycle Paths and that roads

authorities may be liable in negligence to pedestrians injured by Bicyclists on Shared Bicycle Paths even though the existing requirements are satisfied.

I am therefore of the opinion that local government road authorities may be found to be in breach of duty of care for failing to impose safe speed limits for bicyclists on Shared Bicycle Paths

although

any such finding of breach of duty of care must necessarily depend upon the particular facts of the case before the Court. Allegations of breach of duty of care based upon the design or configuration of Shared Bicycle Paths may also be successful even though those paths apparently conform to existing design guidelines in circumstances where they offend general transport engineering principles in relation to acceptable sign distances for users and other engineering requirements.

Please acknowledge receipt of our Submission.

I sincerely hope you will invite me or one of our directors to appear before your Inquiry, hopefully as soon as possible.

PS: When you read our Opinion pieces in both the SMH attached and the Sunday Telegraph below, and my references to the 1996, High Court decision in Hollis v Vabu which found Vabu (Crisis Couriers) were vicariously liable for the act of an employee (actually a sub-contractor) - a bicycle courier – you may then realise why companies like Uber have no markings on their uniforms or bags which enable witnesses to identify the company in the event that the rider injures another road-user (and as in the case of Crisis Couriers) and rides off.

Regards

Harold Scruby
Chairman/CEO



Pedestrian Council of Australia Limited

The Walking Class

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*Walking is the first thing an infant wants to do and the last thing an old person wants to give up.
Walking is the exercise that does not need a gym.
It is the prescription without medicine, the weight control without diet, and the cosmetic that can't
be found in a chemist.
It is the tranquilliser without a pill, the therapy without a psychoanalyst, and the holiday that does
not cost a penny.
What's more, it does not pollute, consumes few natural resources and is highly efficient.
Walking is convenient, it needs no special equipment, is self-regulating and inherently safe.
Walking is as natural as breathing.*

John Butcher - Founder Walk21

THE Sunday Telegraph

The government needs the votes of the Greens in the Upper House who believe cyclists should be declared a protected species

Who ordered the reckless endangerment

Harold Scruby

In July, an elderly man was killed in Kirribilli by a cyclist who ran a red light on an electric bike. It didn't even rate a mention anywhere in the media. All of the recent media has been about the food delivery couriers.

These people are literally out of control and break every rule in the book. Most riders are on temporary visas, often without any form of identification. They are remunerated per delivery, so there's an incentive to speed and cut corners.

It's at epidemic levels throughout Australia, while the authorities close their collective blind eyes. Absurdly, only police, not rangers, can enforce bicycle laws.

In 1996, the High Court decision in *Hollis v Vabu* found Vabu (Crisis Couriers) to be vicariously liable for the act of an employee — a bicycle courier — who was ultimately never personally identified, but wore the distinctive clothing of Crisis Couriers.

But its eyes were wired shut at the head offices of these multinational fast food delivery companies, which charge restaurants up to 30 per cent of the menu price of the food.

Pedelecs (electric bicycles) by law have a maximum of 250 watts and are pedal assisted, where the motor must cut out at 25km/h. It's obvious that many have been "souped up" to enable faster deliveries, putting them in the category of a motor scooter/bike, which require registration and CTP insurance.

The penalties for riding an illegal pedelec in a public place are around \$2000 and \$344, plus three demerit points for riding on a footpath.

And the rider must have a motorcycle licence — penalty \$581 plus seven demerit points — and wear an approved motorcycle crash helmet — penalty \$344 and three demerit points (six during double demerit pe-

But should the rider cause a catastrophic injury to another road user, he or she could be sued for millions and go to jail. And Menulog, Uber Eats, Deliveroo etc could be vicariously liable. Although these companies spend millions on advertising, it's almost impossible to recognise the companies from their mostly grey or dark apparel. How strange! And there's no fluoro as is legally required for most other workers.

It gets worse. Governments throughout Australia love sharing their infrastructure.

Share the road. Share the zone. Share the path. Share the love.

In October, the NSW Government announced an 80km "shared path" from the Opera House to Par-

ramatta. In reality it's a potentially lethal way out of spending money on building separated, dedicated bike paths.

So what's the speed limit on these Shared Paths? This is not a joke: it's the same as the adjacent road. For example, the Shared Path on the south-western approach to the Harbour Bridge is one of the busiest in Sydney. Scores of primary school children

use it each day when walking to Street Primary School.

The speed limit on this footpath is 70km/h.

Pedestrians have absolute priority on a Shared Path, at least in practice. There's little if any enforcement to the Austroads Code of Practice, and there's no enforcement. Speeding (over the limit) is a \$114.

The Pyrmont Shared Path is the only Shared Path in NSW with enforceable speed limits. A limit of 10km/h was introduced in 2014, though it was later removed from the Harbour Bridge Shared Path (SHF



OPINION OURS & YOURS

SERIOUS SAFETY

Harold Scruby's article "Who ordered the side of reckless engagement" (ST, 20/12) on the failure of shared safety responsibilities between pedestrians and others on mobility devices cries out for a solution before too many more are injured. Sharing road (and footpath) safety appears to be such a worthwhile goal. At holiday time especially politicians, road owners, police, ambulances, doctors all call for drivers, riders, walkers, any road (path) users to share the limited and inadequate spaces to stop crashes between the users causing so much unnecessary trauma. Blame of course is easy. Always the other road users, never the equipment, never the regulator or enforcement agency, never the poor infrastructure and/or inadequate resources to deal with a raft of new devices or new services apparently "entitled" to share a road space already overcrowded and often dangerous. There is legislation covering the Chain of Responsibility for road freight to ensure that major corporations cannot demand unrealistic and hence unsafe delivery times for trucking operators. It is time for that Chain of Responsibility legislation to be across all transport modes. As we are all pedestrians, we need protection from the new corporations imposing and encouraging new and often dangerous devices and practices; and also, users already "sharing" our walkways and roadways. How many injuries will be too many?

LAUCLAN MCINTOSH
CHAIRMAN, TOWARDS ZERO
FOUNDATION



Cyclists ride on wild side

JORDAN BAKER

The Sunday Telegraph - December 16, 2012

"CYCLISTS are clocking speeds of up to 47km/h on paths shared with pedestrians, and walkers are terrified. ... Most were travelling between 30km/h and 40km/h, but more than a dozen clocked more than 40km/h and the fastest flew past at 47km/h."

Imagine your child having to walk to school in this environment on a footpath where the speed limit is 70 km/h on one of the busiest Shared Paths in Sydney

This is the busiest Shared Path in NSW, connecting North and South Sydney across the Harbour Bridge. Children are forced to walk here to School where the speed limit on the footpath is ...



This video shows the potential for harm:

<https://www.youtube.com/watch?v=oltvTip-TLY>

This was September 2013 and since then the only things that have changed are the number of cyclists and the date.

This is a very high usage commuter Shared Path on the Spit Bridge connecting Mosman and Manly in Sydney.

Attached is the expert advice (Jan 2012) from Professor Raphael Grzebieta (Raph), Chair of Road Safety, Transport and Road Safety (TARS) Research – University of NSW - B.E. (Hons1), M.Eng.Sci., PhD (Monash), FIEAust, CPEng., (etc..)

The minimum width at the squeeze points is 1.2 metres



And these are the Austroads Guidelines for minimum widths:

GUIDE TO ROAD DESIGN PART 6A: PEDESTRIAN AND CYCLIST PATHS

7.5.3 Shared Paths

Table 7.4 shows desirable widths and acceptable ranges of width for shared use paths. As for bicycle paths, the upper limit of the acceptable range in the table should not discourage designers from providing a greater width where it is needed (e.g. very high demand that may also result in overtaking in both directions).

Table 7.4: Shared path widths

	Path width (m)		
	Local access path	Commuter path	Recreational path
Desirable minimum width	2.5	3.0	3.5
Minimum width – typical maximum	2.5 ¹ – 3.0 ²	2.5 ¹ – 4.0 ²	3.0 ¹ – 4.0 ²

1. A lesser width should only be adopted where cyclist volumes and operational speeds will remain low.

2. A greater width may be required where the numbers of cyclists and pedestrians are very high or there is a high probability of conflict between users (e.g. people walking dogs, roller bladders and skaters etc.).

(EXCERPTS): *The narrowness of the pathway poses a risk of serious injury to both pedestrians and cyclists. For pedestrians, particularly older pedestrians, if they are struck by a cyclist in a frontal impact, they can fall backward, strike the back of their head and suffer serious brain injury. The details of how this can occur are detailed in a peer-reviewed journal paper I published some years ago. Short A., Grzebieta R.H. and Arndt N., Estimating bicyclist into pedestrian collision speed, International Journal of Crashworthiness, Vol. 12, No. 2, pp. 127–135, 2007.*

This analysis was based on a case where a young lady suffered a serious head injury as a result of a cyclist impacting head on into the pedestrian on a shared pathway on Iron Cove Bridge as well as on other published data where older pedestrians were killed by a cyclist striking them in Germany. Our analysis showed that any cyclist-pedestrian impact speed above 10 km/h can result in serious head injury for younger adults and death for older adults. For older pedestrians the risk of being killed is sufficient to warrant that cyclists need to dismount when approaching any elder pedestrian that happen to be walking along the bridge. ...

I have also having worked as an expert witness in a number of road safety cases. I am surprised that the council and road authority have allowed the footpath to be shared in a manner where the Austroads Guidelines have been clearly breached in terms of an inadequate width. Allowing cyclists and pedestrians to share the same narrow footpath, and either not requiring cyclists to dismount or not develop an alternative pathway for the cyclists, exposes both the council and the regulator to significant legal liability. However, it should be noted that the guide states:

'This Guide is produced by Austroads as a general guide. Its application is discretionary. Road authorities may vary their practice according to local circumstances and policies.'

It is thus obvious that the council and road authority have used their discretion in this situation and decided not to impose a lower risk solution that overcomes the evident above highlighted breach of the Austroads guidelines and the injury risks I have highlighted. From my expert viewpoint, it would be difficult to justify their position under cross-examination if a pedestrian or cyclists was injured or killed, particularly from a Safe System perspective.

And there's NO CTP insurance and unless you can identify the rider and risk very expensive legal fees – and the offender has any money ...

Read the Slater and Gordon advice:

<http://www.walk.com.au/pedestriancouncil/page.asp?PageID=3125&SiteID=1>

(EXCERPTS): The lack of regulation for Shared Bicycle Paths will necessitate recourse to general transport engineering principles by Courts in assessing whether a roads authority is in breach of duty of care in relation to the planning, design and construction of Shared Bicycle Paths.

This was evident from a civil claim brought by Maria Guliano against Leichhardt Municipal Council and the RTA as a result of being struck by a bicyclist in a Shared Bicycle Path on Iron Cove Bridge on 7 March 2002. Maria had been walking with her husband, John Zalugna, on the "Bay Run" Shared Bicycle Path from Five Dock and had climbed the pedestrian stairway below the eastern end of the Iron Cover Bridge in order to join the Shared Bicycle Path on the northern side of the bridge.

The civil proceedings commenced by Maria Guliano in the Supreme Court of NSW were settled for a substantial amount of money with the result that the Court did not have to determine whether any breach of duty of care arose in the circumstances. This civil claim nevertheless identified a number of deficiencies in the existing design guidelines and regulation of Shared Bicycle Paths and that roads authorities may be liable in negligence to pedestrians injured by Bicyclists on Shared Bicycle Paths even though the existing requirements are satisfied.

I am therefore of the opinion that local government road authorities may be found to be in breach of duty of care for failing to impose safe speed limits for bicyclists on Shared Bicycle Paths

... Allegations of breach of duty of care based upon the design or configuration of Shared Bicycle Paths may also be successful even though those paths apparently conform to existing design guidelines in circumstances where they offend general transport engineering principles in relation to acceptable sign distances for users and other engineering requirements.



Woman hit by cyclist on footpath left with medical bills and crippling debt

https://9now.nine.com.au/a-current-affair/woman-hit-on-footpath-by-cyclist-who-rode-off-left-with-medical-bills-and-crippling-debt/1a232f9e-96ec-4bd3-ac6d-e5fa612f16f5?fbclid=IwAR3nR2VqIbYgzYosX4vNHCLkcfOW2kk2_S7Cz_n0inITgNhWwVMY49Ce2CA

By **Mimi Becker** - 22 September 2020



PLAY VIDEO:

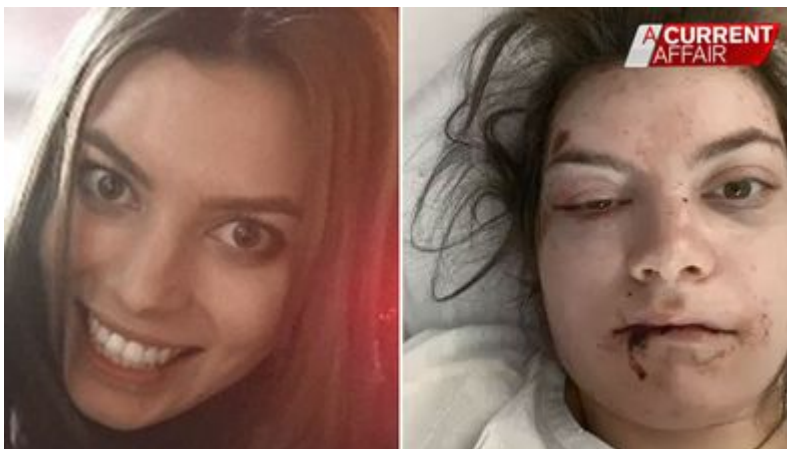
<https://9now.nine.com.au/ce174eaf-62e1-4f45-a312-5fc0b5e7fc54>

CYCLE CARNAGE

A young woman says she is facing crippling debt and mounting medical bills after being hit by a cyclist on a footpath.

Danae Lomen, 24, was out for her one hour of exercise with her mum in Melbourne when she said she was struck from behind by a cyclist on a shared pathway.

"I hit the concrete face first and it was a lot of blood. I'd lost consciousness, it was quite traumatic," Ms Lomen told *A Current Affair*.



Danae Lomen, 24, was out for her one hour of exercise with her mum in Melbourne when she said she was struck from behind by a cyclist on a shared pathway. (A Current Affair)

"I have a fractured palate and other fractures in my jaw, I have four missing teeth and a chipped tooth. I have a fractured right arm and various lacerations."

The legal assistant is now off work and faces tens of thousands of dollars in medical bills. The dental work is expected to cost at least \$25,000.

"I'm off work and then I have this massive bill to pay in order to repair something that was done to me," she said.



Legal assistant Danae Lomen, is now off work and faces tens of thousands of dollars in medical bills. The dental work is expected to cost at least \$25,000. (A Current Affair)



Danae Lomen said she has a fractured palate and other jaw fractures, four missing teeth, a chipped tooth, a fractured right arm and various lacerations. (A Current Affair)

Ms Lomen is not eligible for compensation under Victoria's Traffic Accident Commission because accidents between bikes and pedestrians are not covered.

"I can't believe there's nothing. There is no system in place. There's no insurance fees, there's no registration for cyclists to prevent this from happening to someone in the future," Ms Lomen's sister, Jessica Arias said.



Danae Lomen's sister Jessica Arias said If her sister "had been hit by a car or had been hit by a motorcycle everything would be covered." (A Current Affair)

"If she had been hit by a car or had been hit by a motorcycle everything would be covered. Her medical expenses, everything would be covered but now she's going to either end up in massive amounts of debt or just have to live with no front teeth."

A spokesperson from the Transport Accident Commission (TAC) told A Current Affair in a statement "Under the Transport Accident Act 1986, a person is entitled to receive compensation if they sustained an injury or died as a result of a transport accident."

"A 'transport accident' is defined as 'an incident directly caused by the driving of a motor car or motor vehicle, a railway train or a tram.'"

Harold Scruby
Chairman/CEO



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