

# Submission to **Vulnerable Road Users Inquiry**

WORKCOVER  
ROAD ACCIDENT INJURIES  
MEDICAL NEGLIGENCE  
ASBESTOS DISEASES  
SUPERANNUATION &  
INSURANCE CLAIMS  
PUBLIC LIABILITY  
FAULTY PRODUCTS  
WILL DISPUTES  
EMPLOYMENT &  
INDUSTRIAL LAW  
CLASS ACTIONS

**Maurice Blackburn Lawyers  
Response to the ACT Government**

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Maurice Blackburn has a strong history of fighting for fair outcomes for people who have suffered loss and injury on the roads in workplace accidents and in a range of other circumstances.

On 9 May 2013, the ACT Legislative Assembly referred to the Standing Committee on Planning, Environment and Territory and Municipal Services an inquiry and report by the last sitting day in April 2014, the issue of vulnerable road users, including:

- a) An examination of national and international best practice approaches to protecting and encouraging vulnerable road users, including through regulation, infrastructure, design, education and funding arrangements;
- b) Gathering evidence from the community and experts about issues faced by the vulnerable road users and potential improvements;
- c) Recommending changes to be made in the ACT to better protect and encourage vulnerable road users; and
- d) Any other relevant matter.

## Executive Summary

The current inquiry into vulnerable road users has prompted Maurice Blackburn to provide a submission based on our experience with advocating for clients that have been injured on the roads. Maurice Blackburn's long involvement with the victims of road trauma and their families provides a valuable insight into the risks faced by vulnerable road users.

Our firm has observed that human error alone is not the cause of the majority of injuries in vulnerable road users. Accidents are not 'accidents' but are preventable and avoidable: a combination of factors are involved – many of which can be managed by good public policy, these include improved infrastructure management, improved behaviour and law reform.

Our role is not only to ensure that road trauma victims are adequately compensated for the injuries sustained, but also to advocate for improved road safety. Maurice Blackburn through its relationships with motorcyclists has developed a campaign called 'Stop SMIDSY' – 'SMIDSY' being an acronym for 'Sorry Mate I Didn't See You', words too often heard by motorcyclists and cyclists. We are also strong advocates for the rights of vulnerable road users and many of our staff actively choose walking, cycling, or motorcycles as transport.

It is on this basis that we make **eight recommendations** to protect vulnerable road users.

It is our view that change will come from a multifaceted and collaborative approach, spearheaded by the government and supported by the community.

## **A snapshot of vulnerable road users in the Australian Capital Territory**

Although all road users are at risk of being injured or killed in a road traffic crash, there are significant differences in injury and fatality rates between different road user groups. In particular; pedestrians (especially children and the elderly); cyclists; and motorcyclists (both motorcycle and scooter riders) are at greater risk than vehicle occupants and usually exposed to more significant injury.

Other governments have conducted enquiries into vulnerable road users, for example, Parliament of New South Wales Joint Standing Committee on Road Safety Vulnerable Road Users Inquiry into Motor Cycle and Bicycle Safety<sup>1</sup>

## **A snapshot of safety in the ACT**

The Australian Capital Territory (ACT) with its significant population base and growth is at the forefront of some transport challenges. Cycling and motorcycling are popular and growing modes of transport and also provides recreational pleasure and sport. There are benefits for the community as a result of increased cycling and motorcycling including reduction in urban traffic and parking congestion, environmental benefits and some economic benefits relating to better health. In some jurisdictions the number of registered motorcycles constitutes only about 50% of all motorcycles sold due to unsuitability for registration or use solely for off road riding, so care must be taken when referring only to registered motorcycles as indicative as a motorcycling number as a whole<sup>2</sup>.

Children pedestrians and cyclists are particularly vulnerable as they are often reliant upon walking or cycling to school and on other occasions when not being passengers in motor vehicles and the elderly can be equally vulnerable.

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<sup>1</sup> Report Number 5/54 – December 2010

<sup>2</sup> Ibid

## **Maurice Blackburn Cases**

Maurice Blackburn has acted for a number of vulnerable road users and these examples below illuminate typical occurrences. These case summaries protect our client's confidentiality.

### ***Pedestrian***

Erica was 12 years old when she was struck by a bus while attempting to cross a busy road on her way to school. Erica sustained serious injuries including a skull fracture; a fracture of her right collar bone; a right lung contusion and severe traumatic brain injury. Erica was in intensive care for almost two weeks before being transferred to Westmead Children's Hospital where she received intensive rehabilitation and had to learn how to walk again. Although Erica has made a good recovery from her physical injuries, she is left with an ongoing intellectual impairment which affects her ability to care for herself and to obtain employment.

### ***Cyclist***

Karen was on an evening training ride with a group of friends and entered a roundabout, when a car on her left then entered the roundabout and failed to give way. The vehicle collided with Karen and she sustained a fractured left wrist, general bruising and abrasions. At the time of the accident, Karen was not aware of the significance of her injuries and did not obtain the registration details of the vehicle at fault. A claim was made to the Nominal Defendant and she received compensation for her pain and suffering, treatment expenses and wage loss for her full time and casual jobs.

### ***Motorcyclist***

Arnie was riding his motorcycle at night when a car came out from a side street against a 'Give Way' sign, Arnie collided with the front passenger side of the car. Arnie was wearing protective clothing and despite the accident occurring at a relatively low speed, he was

thrown from his motorcycle. Arnie's foot caught on his motor cycle and he sustained a fracture of his left femur and a de-gloving injury to his left foot. Arnie was hospitalised for two weeks for management of his leg fracture and de-gloving injury. As a consequence, he has required a number of skin grafts and ongoing treatment.

### **Are current laws relating to road safety appropriate?**

Under the ACT Road Rules bicycles are considered vehicles<sup>3</sup>. Consequently, cyclists must obey all general road rules. As legitimate road users they have the same rights and responsibilities as other vehicle operators. Cyclist offences are usually penalised at a lower rate than the equivalent penalty for motor vehicles. Additionally, cyclists are not penalised with demerit points. There are specific cycling offences that exist which include offences such as a cyclist failing to wear a securely fitted bicycle helmet and not riding across a road on a crossing<sup>4</sup>.

Pedestrians also have their own road rules that relate to crossing a road or crossing at pedestrian lights<sup>5</sup>.

Motorcyclists must also obey all road rules that relate to specific motorcyclist offences such as a motorcyclist failing to wear a securely fitted motorcycle helmet<sup>6</sup>.

### **How could the safety of vulnerable road users be further improved in the ACT?**

#### ***Pedestrians***

Traditional transport planning and road design has tended to focus upon providing for motor vehicles and has overlooked pedestrians and their safety. Road traffic injuries alone are the leading global cause of death among 15-19 year olds and the second leading cause among 5-14 year olds.<sup>7</sup>

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<sup>3</sup> Road Transport (Safety and Traffic Management) Australian road Rules Incorporation 2013 (No.1) Rule 15

<sup>4</sup> Ibid Rule 248 and Rule 256

<sup>5</sup> Ibid Rule 230 and 231

<sup>6</sup> Ibid Rule 270

<sup>7</sup> Who World Report on Child Injury Prevention 2004 <http://www.who.int/violence-injury-prevention/child/injury/world-report/final-date-3.pdf> assessed 21 August 2013

The behaviour of pedestrians is not often straightforward travel from one place to another. When people are walking they are more likely to choose the shortest route. Pedestrians are more likely to obey rules when they believe rules sensible and necessary. Taking the shortest route can mean that pedestrians may not use pedestrian crossings or obey traffic lights. Children's behaviour can be unpredictable and for older people their walking speed and reaction time are often compromised.

Ordinarily pedestrians are not a danger to themselves or others but the conflict potential for collision between vehicles and pedestrians makes pedestrians vulnerable.

Dangerous situations can develop when motor vehicles overtake in unsafe circumstances or pedestrians do not properly judge the speed of vehicles when choosing a time to cross the road and there can also be lack of attention from both pedestrians and drivers.

Within the ACT there are not always footpaths particularly in suburban areas. This results in pedestrians having to walk along the roadway, or on grass verges, creating extra risk for them.

## **Recommendation 1 – road infrastructure and education**

Maurice Blackburn recommends investment in footpaths on all urban roads and safe and efficient pedestrian crossing facilities where appropriate.

Roads in Canberra tend to be wider and there are large roundabouts and these create particular problems for pedestrians. Pedestrian refuges are particularly important in areas near schools and retirement homes where there are more child and elderly pedestrians.

Pedestrians should not have to cross more than two lanes of traffic at one time without a central refuge which would allow pedestrians to cross such roads in two stages.

Maurice Blackburn also recommends education and publicity programs to improve understanding and awareness of correct behaviour by both pedestrians and other road users.

### ***Cyclists***

Cyclists have a difficult position in traffic. On occasions they must follow rules for motorists but on other occasions their needs are similar to those of pedestrians. They have similar needs to pedestrians in tending to take shortest routes, and requiring smooth surfacing. These factors are not always taken into account in traffic. Younger cyclists are not always able to cope with important traffic signs and rules that apply to them. For young cyclists there can also be risk-taking behaviour but adult cyclists may also be on occasion reckless and particularly at intersections with traffic lights they may be more inclined to act upon their own perception of traffic flows rather than wait for the appropriate signal.

Cyclists can also on occasion cycle on footpaths and can then potentially create conflicts with pedestrians.

There is a relationship between vehicle speed and safety. The probability of a road accident taking place may increase with speed and the outcome of the collision strongly depends on the collision speed. Anecdotally, most severe and fatal accidents involving cyclists occur either at road junctions or at crossings between a street and cycle path. Also anecdotally accidents appear to be more severe when a cyclist is struck by a turning vehicle. Poor braking systems, skidding accidents and hidden obstacles such as curbs and pot holes can also be harmful to cyclists.

Road environment conflict areas need to be addressed in a realistic and pragmatic manner to ensure safe manoeuvring of cyclists and other road users.

Segregation measures either by a physical barrier or by visual road markings separating cyclists from motorised vehicles can make safer environments for cyclists.

An environment conflict area concerns the new cycle paths in Canberra City. Along Marcus Clark Street the path alternates between being a lane divided by the roadway by a curb and on other occasions on the footpath. Pedestrians crossing Marcus Clark Street can inadvertently step on the cycle path when the pedestrian is crossing the road and is distracted and this may lead to collisions and a tripping hazard for pedestrians.

## **Recommendation 2 – on-road cycle paths**

Maurice Blackburn recommends that there be a review of on-road cycle paths to ensure their appropriateness and safe design and the creation of cycle paths where appropriate.

Enforcement of traffic rules covering all road users is essential for safety. Cyclists have a responsibility to acknowledge and obey traffic laws and traffic signals and maintain lane discipline. Apart from enforcement, behaviour and compliance can be improved by education.

## **Recommendation 3 – mandatory pass distances 1.5m**

The risk of death or serious injury to cyclists occurs when they come into contact with a vehicle. The cost to the community of these injuries is too great to ignore.

A cyclist riding on a road that is not a multi-lane road alongside another cyclist, or in a marked lane, alongside another cyclist in the marked lane, must not ride more than 1.5 metres from the other cyclist<sup>8</sup>. However, there is no mandatory minimum passing distance for cars or other motor vehicles overtaking cyclists on ACT roads.

Maurice Blackburn recommends a minimum passing distance of 1.5m.

Changing entrenched views can only occur with a number of positive steps. The first step would be the creation and enforcement of a required minimum safety distance for cyclists. Cyclists have long been the subject of accidents on our roads as a result of cars travelling

too close. The establishment of a minimum standard of 1.5 metre rule would support a protective barrier for miscalculations of distance by drivers.

There may be issues of enforcement of a 1.5 metre passing rule between cyclists and motorists, however it may assist in changing motorists' attitudes to cyclists as otherwise cyclists will remain as vulnerable road users. The 1.5 metre rule can also be read with other recommendations such as strict liability below.

Alternative suggestions of a 1 metre rule would not allow a sufficient margin for driver error.

### ***International experience***

The ACT and indeed Australia generally remains one of the few first world countries that does not have a mandatory minimum passing assistance of other motor vehicles and cyclists.

Germany, Spain, Netherlands, Portugal, New Zealand, Nova Scotia in Canada and most individual states in the United States of America already have existing mandatory minimum laws.

France has a 1.5 metre rule on rural roads and a 1 metre requirement for travelling on urban roads where the speed is generally lower.

Given that a number of serious injuries and fatalities occur not from the first vehicle overtaking, but from those vehicles travelling behind, a 1 metre distance would be insufficient to protect the cyclist.

Additionally, a 1.5 metre distance (approximately close to the height of a mounted cyclist) may be sufficient distance to keep a cyclist safe should they fall to their right in the event of an accident occurring. A fallen cyclist is at risk of being struck either by a motor vehicle involved in an accident or other motor vehicles on the road.

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<sup>8</sup> Australian Road Rules 151(4)

## **Motorcyclists**

Due to their comparative low cost, motorcycles are often the first affordable motor vehicle that are purchased by a young person. As reported above, a significant proportion of motorcycles are not registered.

Another inquiry identified the shifting age profile of riders. It found that the majority of riders in the 26 to 30 year age category is now being replaced by riders aged 40 years and over. There has also been the observation that the average age of riders is now 43 years and that the average age of newly licenced riders is 33 as opposed to 18 years for drivers.<sup>9</sup> These older riders are generally very safety conscious.

Riders may use their motorcycles occasionally during the week and more so on weekends as recreation. Weekend motorcyclists may also be more likely to ride within the warmer months than during winter. The increasing number of riders has been attributed to a number of factors including a response to traffic congestion and fashion trends.<sup>10</sup>

According to the NSW Road Traffic Authority while accounting for approximately 0.5% of all motor vehicle travel, motorcycles are involved in approximately 15% of fatal road crashes and the Authority estimates that motorcycle riders and passengers are around 20 times more likely to be killed than car occupants.<sup>11</sup>

Maurice Blackburn believes that there are a number of recommendations that may lessen the risk of injury or death.

## **Recommendation 4 – road design**

Roadside barriers must have the best design so as to minimise injury to both motorcyclists and other road users.

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<sup>9</sup> Report No.5/54 – December 2010, pages 3 and 4

<sup>10</sup> Report No. 5/54 – December 2010, page 4

<sup>11</sup> Report No. 5/54 – December 2010, page 4

There is some unnecessary signage along the ACT's roads which in the event of an accident, presents a hazard to motorcyclists and also reduces the amount of crash avoidance space.

Maurice Blackburn recommends that Wire Road Barriers be installed in line with best practice and be 'motorcycle friendly'. W-Beam Barriers must have under-run rails as standard and be retrofitted to existing barriers as part of general maintenance program.

Signage including poles and posts must be frangible and self-healing. There should be no poles or signs within 1.5 m of road edge and existing poles or signs within 1.5 m be relocated as part of maintenance. Unnecessary signage should be removed to reduce hazards and distractions.

### ***Road markings***

Road markings should be in line with best practice and have maximum grip, particularly when wet or iced.

### ***Forward stop boxes and lane filtering***

Forward stop boxes incorporated in overseas road design allow motorcyclists and cyclists to filter and move to the front of the traffic queues. Traffic filtering is the act of riding between, or to one side of queued/queuing slow moving lanes of traffic. It is practiced by riders all over the world, notably in UK and California, and both the 'Hurt Report'<sup>12</sup> and MAIDS<sup>13</sup> studies show safety advantages in the practice.

The most likely collision a rider faces in heavy traffic is from the rear. The potential for a rider to be hit from behind (and consequently injured) is not trivial.

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<sup>12</sup> Hurt, HH. Et al, Motorcycle Accident Cause Factors and Identification of Countermeasures ('The Hurt Report') (1981)

<sup>13</sup> Association of European Motorcycle Manufacturers (ACEM), MAIDS: Motorcycle Accident In-Depth Study (2009)

Figures from the Queensland Annual Road Traffic Crash Reports<sup>14</sup> show that rear end collisions are relatively prevalent. Another risk faced by motorcyclists comes from being merged into by a lane changing vehicle. Many drivers looking for a lane change opportunity make only a quick head check or only use their side mirror before commencing a lane change and thus merge directly into the space occupied by the rider. A collision is imminent unless evasive action is taken or the merge is aborted by the driver.

By riding between the queues of traffic, the rider significantly reduces risk of being rear-ended and substantially reduces the risk of being merged into as a solid lane of traffic presents far fewer spontaneous lane changing opportunities.

This has the dual benefit of putting motorcyclists in a safer position amongst traffic and assisting traffic flow.

There is a broader potential benefit flowing on from the public education campaign accompanying legalised traffic filtering, namely improved rider safety from an increased driver awareness of motorcycles.

Improved driver awareness would reduce the prevalence of driver blindness and consequently reduce the occurrence of what is now commonly known as the SMIDSY accident type ('Sorry Mate, I Didn't See You'). Drivers being more likely to see a motorcycle are therefore more likely to respond appropriately to them.

The direct safety benefits of filtering are therefore three fold, avoided rear-end and side-swipe collisions and a general reduction in SMIDSY incidents.

In addition to this however, legitimised lane filtering would be expected to encourage a great uptake in commuting riding. Based on overseas studies such as those conducted by

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<sup>14</sup> Queensland, Department of Transport, Road Traffic Crashed in Queensland: A Report on the Road Toll, Available online <http://www.tmr.qld.gov.au/Safety/Transport-and-road-statistics/Road-safety-statistic.aspx>

FEBIAC from Belgium,<sup>15</sup> the community benefits would be significant. For as little as a 10% shift towards powered two wheelers, the road system could experience a 40% reduction in congestion, leading to consequent environmental and economic benefits, but importantly, fewer stressed and frustrated drivers making poor safety decisions at peak times, potentially improving road safety for all.

Forward stop boxes and lane filtering proposal has clear merit and deserves genuine consideration.

## **Recommendation 5 – lane filtering**

Maurice Blackburn recommends that forward stop boxes be introduced at road junctions and that road rules be changed to allow lane filtering. The latter may have to be in consultation with other states and territories.

### ***Better road surfaces***

ACT road surfaces are generally of reasonable standard, however there are regular hazards such as gravel and potholes. Interim road repairs such as spraying of tar and spreading of gravel can create additional hazards. Road shoulders are often uneven and have loose surfaces thereby creating hazards particularly making more hazardous crash avoidance space.

## **Recommendation 6 – road inspections**

Maurice Blackburn recommends that there be a review of ACT road inspections so that inspections are regular and proactive rather than reactive to complaints. Where there are responses to road hazards, response times should be prompt and comprehensive to eradicate the hazard.

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<sup>15</sup> Federation Belge des Industries de L'Automobile et du Cycle `reunies' (Febiac vzw), Commuting by Motorcycle: Impact Analysis (Transport & Mobility Leuven), Report No.10.69, (2011).

When road markings are changed they are sometimes covered with a layer of black tar rather than the removal of the redundant road marking. This can add to the slippery nature of the surface and on other occasions particularly at night or in wet weather, may be confusing to road users.

## **Recommendation 7 – public education**

Education is a key initiative both for vulnerable road users themselves and for all road users.

There has been initiatives in relation to cycling with 'Ride to Work Days' and for motorcyclists during Motorcycle Awareness Week.

We are aware that Motorcycle Riders Association ACT (MRA ACT) during Motorcycle Awareness Week organise for riders to wear specially marked vests and the riders are described as 'Joe Rider'. MRA ACT request Canberra drivers identify Joe and to let them know where and when they saw Joe. It has proven a very simple yet very effective campaign to make other road users aware of motorcyclists and to remind them to drive accordingly.

Maurice Blackburn believes that education and awareness comes from an effective marketing and advertising campaign which would include implementation of a strong and emphatic social marketing campaign to reduce the 'us vs them' mentality on our roads in relation to cars, motorcyclists and cyclists.

## **Recommendation 8 – strict liability**

This is based upon a system of stricter legal liability so that vulnerable road users who are involved in road traffic accidents are compensated fairly and quickly. Stricter liability would establish a tiered liability approach to identify responsibility following a road traffic accident and bring greater certainty to the legal process.

Our current system expects those injured or the families of those killed to go through an often protracted process to obtain treatment, care or compensation.

The Netherlands and other European countries now have a law of 'strict liability' to protect vulnerable road users from more powerful road users. Under new law, the onus would shift to the more powerful road user and there would be a presumption that the vulnerable road user was not at fault.

Maurice Blackburn recommends the ACT Government conduct a feasibility study into the impact of introducing a strict liability on vulnerable road users. Apart from easing some of the burden described above upon vulnerable road users and their families, we believe it would also help facilitate a change in attitude amongst road users to one based upon mutual respect and understanding.

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