

## **Regulatory Impact Statement**

RIS title: Cycling on footpaths and minimum overtaking distance

Prepared by: Department of Planning, Transport and Infrastructure

Date: 11 September 2015

## **Executive Summary**

### **Problem:**

The second Citizens' Jury considered the topic 'Motorists and cyclists will always be using our roads. What things could we trial to ensure they share the roads safely?'

### **Objective:**

The Jury's brief was to consider measures to minimise risks to road safety in general. The Jury's deliberations were based on the following principles:

- To promote safer road use for all people
- That being visible keeps people safer
- The roads belong to everyone, of all ages, capabilities and needs
- The recommendations should apply to everyone in South Australia, whatever their mode of transport and wherever they live
- Behaviours and attitudes are central to this change and any recommendations should support a positive shift in the way people who use the roads relate to each other
- Government (at all levels), industry and interested parties need to better combine their efforts and resources to get the best outcomes from the recommendations

This impact statement focuses on the objective of minimising risks to cyclists.

### **Proposed options: Cycling on footpath:**

There are four proposed options:

- no change: to continue to allow children under 12 to ride on footpaths, as well as adults (18+) accompanying them
- to allow riders of any age to ride on footpaths when there is no safer alternative
- to allow riders of any age to ride on footpaths without restriction
- to educate cyclists and pedestrians about the possibility of cycling on the footpath (for those under 12 and over 18 for those accompanying them)

### **Proposed options: Overtaking distance:**

There are four proposed options:

- no change: to require motorists to overtake a cyclist at a sufficient distance to avoid a collision
- to allow motorists to drive to the right of the centre of the road and cross dividing lines etc without defining a minimum lateral overtaking distance
- to define the lateral overtaking distance between a vehicle and a cyclist as a minimum of one metre, and to allow motorists to drive to the right of the centre of the road and cross dividing lines etc
- to educate motorists about the requirement to give cyclists sufficient room when overtaking

### **Preferred option: Cycling on footpaths:**

To allow riders of any age to ride on footpaths without restriction.

### **Preferred option: Overtaking distance:**

To define the lateral overtaking distance between a vehicle and a cyclist as a minimum of one metre, and to allow motorists to drive to the right of the centre of the road and cross dividing lines etc to allow for that distance when safe to do so.

The two preferred options were approved by Cabinet on 8 December 2014 (DPC14/096CS) and announced by the Premier on 22 January 2015).

### **Consultation:**

The two preferred options have been the subject of three rounds of consultation:

- The Citizens' Jury process which delivered the original recommendations to the Premier.
- Development of the Government response, which was the outcome of extensive stakeholder consultation and negotiation across government and non-government agencies, including Bike SA, the RAA, the LGA SA and Adelaide City Council.
- Further public consultation on the detail of the regulatory amendments that are required.

The Department of Planning, Transport and Infrastructure (DPTI) undertook public consultation on the legislative detail for the two proposals. The consultation process, which ran from 4 – 20 March 2015, generated 1,584 submissions from the general public and stakeholder organisations. Not all respondents commented on both proposals.

Both proposals were supported by a clear majority of respondents (over 70%), though many submissions indicated qualified support, or support but with specific concerns.

### **Implementation, monitoring and review plan:**

Cabinet's approval is now sought to make, as drafted, the Road Traffic (Ancillary and Miscellaneous Provisions) Variation Regulations 2015 to allow for all-age cycling on footpaths,

and to provide for an offence of a motorist failing to overtake a cyclist by a prescribed minimum lateral distance.

Many submissions to the DPTI consultation mentioned that road user education will be vital to achieve awareness, to enable compliance and to address a range of issues and concerns about both proposals. DPTI has worked with the Motor Accident Commission (MAC) to fund, design and deliver a comprehensive communication campaign. The significant issues and concerns raised in submissions and the recommended responses to those issues are addressed in the body of this submission.

The advertising program will be similar to the *Drive 25 emergency services speed limit* campaign which achieved 80% awareness levels. The campaign will be evaluated afterwards to determine awareness levels.

## Element 1 - Problem:

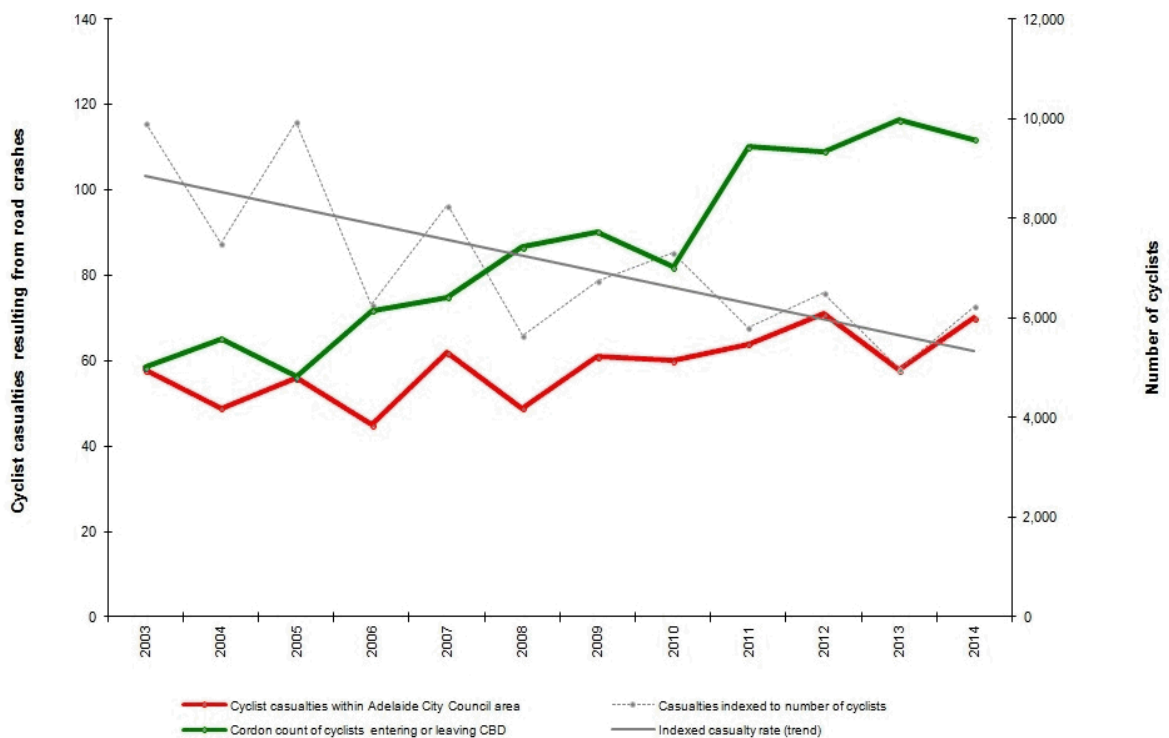
### Road safety outcomes and crash risk

Providing safer cycling environments is an important prerequisite for increasing participation. In turn, increasing numbers of people riding bikes leads to safer roads: this is the safety in numbers phenomenon. Continuing to improve cycling safety will help to achieve the targets in Towards Zero Together: South Australia's Road Safety Strategy 2020.

The number of minor injuries caused by cycle-related crashes has increased in the past 10 years and the number of serious casualties has varied from year to year. However, data indexing the number of casualties to the number of trips by bike in the city shows that the likelihood of being involved in a cycling crash has actually decreased. Given the increase in bicycle traffic over the same time period, the crash rate is less than would be expected (the Safety in Numbers effect).

The graph below illustrates a decline in the rate of cyclists killed or seriously injured within the Adelaide City Council area since 2003. The decline corresponds with a significant increase in the number of cyclists riding within the Adelaide city area over this period with a negligible increase in the incidence of casualties.

#### ***Indexed cyclist casualty rate within Adelaide City Council (2003 – 2014)***



## Costs of road trauma

Forty-five cyclists were killed on Australian roads in the 12 months to January 2015. Crashes involving pedal cyclists in South Australia have steadily increased over the past decade.<sup>1</sup> In 2001 pedal cycle crashes constituted around 12% of all traffic crashes resulting in hospital admission. This figure increased to 17.4% in 2010 (SA Health and SA Police unpublished data sources). There have been several suggestions why the increase has occurred including a renewed interest in cycling and an increased awareness of the health and environmental benefits.

A study of crashes involving hospital-admitted cyclists' incurring severe brain injuries published in the Medical Journal of Australia found that each new case costs Australia \$4.5 million.<sup>2</sup> Some 70% of such patients end up on a ventilator in intensive care units; many patients with severe head injuries are left with permanent brain damage.

The most serious injuries incurred by cyclists are fractures, followed by those who sustain internal organ injuries. Close to a third of cyclists experience a loss of consciousness following the crash. More than half of the cyclists involved in CASRs surveyed crashes had an injury severity score (ISS) of five or less; however, five per cent of the crashes resulted in the cyclists sustaining injuries where the ISS was 21 or more. Those cyclists who struck the side of a vehicle are generally found to sustain more serious injuries when compared with other crash types and resulted in hospitalisation for longer periods.

## Cycling on footpaths

The current SA law allows children less than 12 years, and adults accompanying them, to ride on the footpath. While the Citizen's Jury was charged to explore how the roads can be 'shared', they heard and learnt that there were times when sharing of the road was a dangerous option. It was the Jury's observation that there was good reason to ensure cyclists have a safe option *immediately* available to them.

All-age cycling on footpaths has been allowed in Queensland since 1993. A 2011 survey of more than 2,500 adult cyclists found that a third of respondents reported riding on the footpath and, of those, about two thirds did so reluctantly.<sup>3</sup> Riding on the footpath was more common for utilitarian trips and for new riders, although the average distance ridden on footpaths was greater for experienced riders. About 5% of distance ridden and a similar percentage of self-reported crashes occurred on footpaths. The paper concludes that footpaths are important facilities for both inexperienced and experienced riders and for utilitarian riding, especially in locations riders consider do not provide a safe system for cycling.

---

1 Centre for Automotive Safety Research, [Injured cyclist profile: an in-depth study of a sample of cyclists injured in road crashes in South Australia](#)

2 May 2013, vol. 198, pp. 415-417

3 Haworth & Schramm, [Adults cycling on the footpath: what do the data show?](#) Centre for Accident Research and Road Safety, Queensland

### Minimum overtaking distance

The Citizens' Jury found that there are problems with the current law as it lacks a clear definition of the room required to overtake a cyclist.

The current law regarding motor vehicles overtaking cyclists states that the vehicle should allow "sufficient distance". The problem is that "sufficient" is an ambiguous term and thus likely to result in an unsafe environment for road users as it creates room for error through misjudgement. However, as Mr Parnell MLC noted when introducing a private member's Bill on this subject in 2013:

The phrase 'sufficient distance' is only defined in terms of the outcome. In relation to cyclists, if as a motorist you did not actually collide with a cyclist or obstruct his or her progress, then the distance must have been sufficient. Clearly that is not good enough. A motorist does not have to actually hit a cyclist to force them off the road or, worse still, under the wheels. A rule that effectively says you can get as close as you like provided you do not collide is clearly inadequate.

Despite the many benefits of cycling, cyclists are physically vulnerable road users, especially when they share the road with motorised vehicles. Concurrent with the increase in cycling participation in Australia is an increase in cyclist serious injury crashes. The majority of cyclist crashes occur in the urban road environment and crashes involving motor vehicles lead to the most serious outcomes for cyclists. The risk of a death for cyclists is 4.5 times greater than car occupants and a cyclist's risk of serious injury is 3.6 times greater in a collision with a vehicle compared with all other non-vehicle cyclist crash types. In Australia, a motor vehicle is involved in the majority of cyclist deaths (86%) and serious injury (75%) crashes. These crashes cost the Australian community an estimated \$A1 billion each year (calculated using 2006 values).<sup>4</sup>

The most common type of crash in which cyclists are fatally injured is the cyclist being hit from behind by a motor vehicle travelling in the same lane in the same direction.<sup>5</sup>

Collisions between a vehicle and a cyclist travelling in the same direction were the third most common movements leading to crashes in the CASR study.<sup>6</sup> In half of these cases the crash occurred as a result of the vehicle driver turning left into a side street immediately ahead of the cyclist, accounting for 10% of all crashes. A side-swipe collision between the right side of the cyclist and the passenger side of the vehicle were also common.

### Health and society

Providing safer cycling environments is necessary to increase the number of people participating in cycling. The economic and community benefits of increased bike riding are significant; the greatest being reducing future public health costs. Health spending makes up 31.5 percent of the State Budget. At current growth rates, health spending will approach half of

---

4 Stevenson et al, [Safer cycling in the urban road environment: study approach and protocols guiding an Australian study](#), May 2014

5 Australian Transport Safety Bureau, [Deaths of cyclists due to road crashes](#), July 2006

6 op cit, fn 5

the State Budget within the next fifteen years<sup>7</sup>. Increasing car dependency, inactivity and sedentary lifestyles correlate with high levels of obesity, cardiovascular disease, type 2 diabetes and other chronic health conditions. The net health benefit for every kilometre cycled accounts for about 80 per cent of the net economic benefits of cycling<sup>8</sup>.

Active transport, such as cycling, makes finding time for exercise much easier - time that would already be spent on travel can be spent on exercising.

The social cohesion that cycling can bring through recreational opportunities also promotes wellbeing. There are social equity considerations: improved cycling facilities can assist those who do not have a car to have access to a wider range of opportunities. A diverse range of people choose to cycle, including primary school-aged children, regular commuters, weekend recreational cyclists and sporting cyclists. Recognising the differences in cycling skills and abilities, and providing for and supporting all types of cycling is critical to increasing the number of people who cycle.

From a public health perspective, allowing people of all ages to ride on the footpath will act to encourage cycling (particularly among new cyclists and women) because it is perceived to be less dangerous than riding on the road.

#### The environment

Cycling has a key role to play in the creation of an environmentally sustainable future. Cycling does not emit greenhouse gas, cause air or water pollution or rely on fossil fuels. It is a critical element in a sustainable transport future. Cycling can contribute to a reduction in congestion that improves the quality of life for residents and makes it attractive to investors. Cycling is also an efficient and reliable mode of transport and can be quick too. As congestion in some parts of the metropolitan area slows traffic, the attractiveness of cycling increases.

#### The economy

Active transport has been shown to attract people to activity centres and hence provide economic and cultural development opportunities. There are increasing amounts of research on walking and cycling and economic activity: from increased retail turnover, increased retail vitality and retail and private property values. A number of case studies have illustrated the positive financial benefits that are clearly gained from improvements that create supportive walking and cycling environments<sup>9</sup>.

Tourism is a key driver in South Australia's economy, and cycle tourism across the state is a potential high yield niche market. The estimated total expenditure of cycle tourism in Australia is approximately \$2.4 billion (including domestic overnight, daytrip and international overnight

---

7 [http://transforminghealth.sa.gov.au/wp/wp-content/uploads/2014/12/14096.9-A4-Discussion-Paper\\_WEB-Secure.pdf](http://transforminghealth.sa.gov.au/wp/wp-content/uploads/2014/12/14096.9-A4-Discussion-Paper_WEB-Secure.pdf)

8 Commonwealth Department of Infrastructure and Transport, 2013: [Walking, Riding and Access to Public Transport: Supporting Active Travel in Australian Communities](#), Department of Infrastructure and Transport, Canberra

9 Heart Foundation, [Good for Business: The benefits of making streets more walking and cycling friendly](#), November 2011



visitors that participated in cycling as an activity)<sup>10</sup>. By increasing South Australia's reputation as the cycling friendly State, it can be well positioned to earn a substantial slice of this spend. For example, the 2015 Santos Tour Down Under achieved an economic impact of almost \$50 million. A record crowd of 786,000 attending the event included more than 37,000 visiting from interstate or overseas. The Tour generated the equivalent of 614 full time jobs and the media coverage, providing exposure for our State, was estimated to be worth \$194 million.<sup>11</sup>

## **Element 2 - Objectives:**

Cycling safety and participation rates are inextricably linked.<sup>12</sup>

The Citizens' Jury perceived that a change in the law would be an opportunity to improve safety, provide clarity to all parties and encourage further participation in cycling. Market research shows that many people choose not to cycle because they perceive cycling to be unsafe – so the challenge lies in improving not only safety for the existing cyclists but the perception of safety for those not currently cycling. Whether cycling for recreation or transport, safety is a barrier to getting more people to take up cycling.<sup>13</sup>

In both Australian and international contexts the greater the level of community cycling the lower the cycling crash rates become. It is not only important to improve safety for cyclists by improving infrastructure and road user behaviours, but also to encourage more people to cycle more often – further reducing the risk of crashes.

## **Element 3 – Statement of options:**

### **Base case: Cycling on footpaths:**

Children less than 12 years and adults (18+) accompanying are currently allowed to ride on footpaths. The base case is that no amendment is made to the law to allow all-age cycling on footpaths.

---

10 *International Visitor Survey, Tourism Research Australia, Canberra* (This data identifies visitors that 'go cycling' as an activity on a trip, year ending December 2010)

11 <http://tourdownunder.com.au/news/2015/mar/19/2015-santos-tour-down-under-delivers-record-windfall>

12 Petro, J. & Ganson, L., [Vision Zero: How Safer Streets in New York City Can Save More Than 100 Lives a Year](#), Drum Major Institute for Public Policy, Transportation Alternative (2011); Jacobsen P., Safety in numbers: more walkers and bicyclists, safer walking and bicycling, Injury Prevention (2003); and Portland Bureau of Transportation. Portland Bicycle Count Report 2009, Portland.

13 SA Department of Planning, Transport and Infrastructure, [Safety in Numbers: A Cycling Strategy for South Australia 2006 - 2010](#)



## **Other options: Cycling on footpaths:**

### **Scenario 1:**

Option 1 is to adopt the Citizen's Jury recommendation that changes in legislation be made to allow cycling on footpaths when there is no safer alternative.

### **Scenario 2:**

Option 2, and that supported by the Government, is to adopt the Citizens' Jury recommendation to allow all-age cycling on footpaths but without the requirement that there be no safer alternative; that is, to allow it without restriction.

This is the model that has been adopted in Queensland, Tasmania, the ACT and the Northern Territory. There is no evidence of increased road safety risk from these other jurisdictions.

### **Scenario 3:**

Option 3 is a non-regulatory option involving a comprehensive education campaign to address the problem of road safety for cyclists and to encourage all users to share roads and road-related areas – ie, to educate cyclists and pedestrians about the possibility of cycling on the footpath (for those under 12 and 18+ for those accompanying them). This is not a cost-effective solution because it would only assist people to feel safe cycling if they are able to legally cycle on the footpath anyway. It is unlikely that this option would significantly increase the overall use of footpaths by cyclists of other ages. The aims of the regulatory proposals are to increase the actual amount of road-related areas that can legally be used by all cyclists.

## **Base case: Overtaking distance:**

Motorists are currently required to overtake cyclists at a sufficient distance to avoid a collision or to avoid obstructing their path. The base case is to retain the status quo of the current requirement in ARR 144 which requires motorists to keep a sufficient, albeit unspecified, distance when overtaking cyclists in order to avoid a collision.

## **Other options: Overtaking distance:**

### **Scenario 1:**

Option 1 is to allow motorists to drive to the right of the road and cross dividing line etc in order to keep a sufficient distance, without actually specifying what that distance should be. This is the model that has been adopted in Tasmania.

### **Scenario 2:**

Option 2, and that supported by the Government, is the Citizen's Jury recommendation that current legislation be changed to define the overtaking space between a vehicle and a cyclist as a minimum of one metre. This assumes that all overtaking must occur only when the driver has a clear view of the road ahead and it is safe to do so.

This is the model that has been adopted in Queensland and the ACT, and is being considered for introduction in Victoria and Western Australia. There is no evidence of increased road safety risk from these other jurisdictions.

### **Scenario 3:**

Option 3 is a non-regulatory option involving a comprehensive education campaign to address the problem of road safety for cyclists and to encourage motorists to share the roads with cyclists. Proponents espouse the educational aspect of legislating for a specified minimum overtaking distance. It is unlikely that an educational campaign about an unspecified minimum (ie, sufficient) distance would have the same road safety impact.

### **Element 4 – Analysis of costs and benefits:**

#### **Time frame:**

The proposal would be for permanent change to the law to allow for all-age cycling on footpaths and to prescribe a minimum overtaking distance.

#### **Scope of assessment:**

The proposal would apply to road users across the whole of South Australia.

The experience of other jurisdictions is instructive since they have already allowed all-age cycling on footpaths and provided for the minimum overtaking distance. In particular, Queensland's experience has been relied upon in the preparation of this Statement.

### **Element 4 - Base case for cycling on footpaths**

#### **Impacts:**

There are no additional costs or benefits for the base case.

#### Current risk mitigation – offences and penalties

There are already suitable offences to police the behaviour of cyclists using footpaths. They must keep to the left and to give way to any pedestrian on the footpath (ARR 250). Bicycles must be fitted with a working bell, horn, or similar warning device (ARR 258). Cyclists are required to use these to warn pedestrians if it is necessary to avert danger (*Road Traffic Act 1961* section 99A). Cyclists can be prohibited from riding on footpaths in the first place (ARR 252).

Expiation fees for offences committed by cyclists (or any vehicle without a motor) are limited to \$114 (including the Victims of Crime Levy) under the Road Traffic (Miscellaneous) Regulations 2014.

For the likes of cycling offences, anyone 16 years or older can be issued with a traffic infringement notice. If the person is under 16 a formal or informal caution may be issued under the *Young Offenders Act 1993*, and escalated to the Youth Court if necessary.

Importantly, South Australia is currently the only Australian jurisdiction where cyclists can accrue demerit points for offences that a motorist may commit. Demerit points impact the

ability to hold or retain a current driver's licence, or if no licence is held, they can prevent the person from obtaining a driver's licence. Demerit points, unlike expiation fees, are considered an equitable form of punishment as they apply to cyclists and motorists equally. Also, demerit points affect different socio-economic groups equally as they are not a fiscal measure. A bicycle can provide cheap mobility for people who currently find private motor vehicle ownership unaffordable.

#### Compliance and enforcement

The expiation fee for riding on a footpath in contravention of ARR 250(1) (Riding if another law prohibits) is \$106 (including the Victims of Crime Levy). In 2014 SAPOL issued 140 expiation notices and 84 cautions for this offence. The revenue from those expiations was therefore in the order of \$14,700.

The expiation fee for failure to keep left on a footpath or give way in contravention of ARR 250(2) is \$114 (including the Victims of Crime Levy). In 2014 SAPOL issued 1 expiation notice and 1 caution for this offence.

The expiation fee for riding on a footpath in contravention of ARR 252 (Riding where 'no bicycles' sign or road marking applies) is \$114 (including the Victims of Crime Levy). In the five years between 2010 and 2015, SAPOL issued 24 expiation notices and 19 cautions for this offence. The revenue from those expiations was therefore in the order of \$2,600.

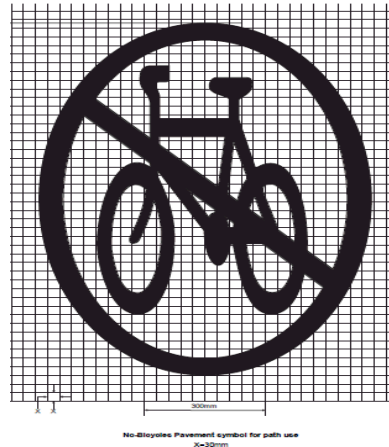
Local council officers do not have enforcement powers with respect to ARR 250(2) (Failure to keep left or give way on a footpath) or ARR 252. This is left to SAPOL, and is in accordance with the accepted principle that councils are responsible for enforcing stopping and parking matters only, because they do not have powers to stop and question road users as police officers do under Part 2 of the *Road Traffic Act 1961*.

#### Current risk mitigation – signage and road markings

Councils (which are mostly responsible for footpaths) may erect 'no bicycles' signs or make road markings. This is currently applied on an ad hoc, or as required basis and the new legislation does not change councils' ability to designate a road unsuitable for bike riding (for example on busy pedestrian streets, where there is roadside café-dining, narrow streets or obstacles such as sandwich boards). A *no bicycles road marking* means "a road marking consisting of a bicycle symbol with a diagonal line across it, or the words "no bicycles", or both the symbol and the words" (ARR dictionary).



Sign



Road marking

The current number of 'no bicycles' signs or road markings is likely quite low. The LGA submission did not fully address the matter of signage. Anecdotal information from the Adelaide City Council, which has the greatest propensity for cyclist/pedestrian interaction, is that there are no signs or road markings in the council area. However, there are likely fewer under-12s riding bikes in the city than in other council areas. Norwood, Payneham and St Peters Council, Unley Council and the City of Holdfast Bay all advise that there are very few signs or markings employed in each area, and probably less than five each.

#### Other jurisdictions

All-age cycling on footpaths is currently allowed in Queensland, Tasmania, the ACT and the Northern Territory. All have done so since before the introduction of the national model Australian Road Rules in December 1999.

### **Element 4 - Scenario 1 for cycling on footpaths**

#### Costs

The risk of a fatality resulting to a pedestrian from a cyclist-pedestrian collision is presently a very rare event for the whole of Australia. None have been recorded for a cyclist.<sup>14</sup>

With respect to hospitalisation injuries, there appear to be on average around 33 pedestrians admitted to hospital every year in NSW, where all-age cycling is not allowed. The number of hospitalisation injuries Australia-wide is most likely in excess of 100 people per annum. However the injuries vary from non-serious to serious injuries. Hospitalisation cases represent a certain level of severity and hence would be expected to capture the majority of the burden/cost of such injuries. The risk of a pedestrian being injured as a result of an impact with

14 Taken from [Pedestrian-Cyclist Collisions: Issues and Risk](#), paper presented to the 2011 Australasian College of Road Safety Conference "A Safe System: Making it Happen!"

a cyclist is a low risk event and of the order equivalent to being killed in an airline crash.

### Benefits

Benefits are difficult to qualify, let alone quantify. A best-case scenario is to qualify/quantify costs that would not be incurred.

The percentage of most serious crashes reported in the CARRS-Q survey that occurred on the footpath was similar to the percentage of total distance ridden on the footpath, suggesting that riding on the footpath did not increase crash risk. Footpath crashes were less likely to require medical treatment than crashes on roadways which is consistent with the principles of separating vulnerable road users from motorised vehicle traffic. Almost 10% of footpath crashes did involve pedestrians, however the survey did not collect information about their injuries. The percentage of crashes involving pedestrians on bike paths was double that on footpaths, suggesting that shared paths may be a greater challenge for cyclist-pedestrian interactions than footpaths. The reluctance of cyclists to travel on the footpath may provide a clue. The survey tentatively concluded that cyclists are more careful of pedestrians and travel more slowly on footpaths than on shared paths.

In preparing its submission, the Adelaide City Council contacted the capital city councils where all-age cycling on footpaths is allowed. All four advised that they had no concerns, with few to no incidents recorded.

The Transport, Housing and Local Government Committee of the Queensland Parliament undertook a comprehensive inquiry into cycling issues in 2013.<sup>15</sup> It noted that the right of cyclists to share footpaths with pedestrians including mobility-impaired people (who use 'gophers') has raised some concern from pedestrian groups in Queensland. An examination of injury and crash statistics however showed there was very little evidence to suggest that cyclists pose a safety risk to any other path users. The Committee was of the view that the interaction between cyclists and other path users is best addressed through adequate provision of path infrastructure that meets design standards and provides sufficient space for all users of the path.

### Other jurisdictions' experience

All jurisdictions contacted stressed that all-age cycling on footpaths does not present a regulatory, compliance or enforcement problem. Their transport Ministers receive the occasional letter when a pedestrian has been 'buzzed' by a cyclist on the footpath. They also receive letters in support from cycling groups. Anecdotal evidence suggests that cultural acceptance of cyclists on footpaths is widespread and unproblematic in those jurisdictions where it is allowed.

Officers in jurisdictions where all-age cycling is allowed on footpaths have advised that 'no bicycles' signs and road markings are not widely used because they are not widely needed.

Queensland advises that it has "few places" where bicycles are prohibited: they are mostly the high-volume pedestrian traffic areas of shopping malls and restaurant strips such as the Queen St mall and the Southbank precinct.

---

15 Transport, Housing and Local Government Committee, [A new direction for cycling in Queensland](#), Report No. 39 - Inquiry into Cycling Issues

Tasmania advises that it “doesn’t have many signs” and, like Queensland, they are erected in high-volume pedestrian traffic areas. Interestingly, they are also erected around schools and nursing homes at the request of the institution.

The Northern Territory advises that “very few” bicycle signs or road markings have been installed, and they are mainly within the Darwin CBD in high-volume pedestrian traffic areas.

In all of these jurisdictions, all-age cycling on footpaths is generally prohibited in areas of high-volume pedestrian traffic rather than where the footpath condition is unsuitable and/or poor. The decision to prohibit it is largely made on an *ad hoc* basis, although footpath usage survey programs are conducted.

#### Summary of impacts: Scenario 1 for cycling on footpaths

##### **Benefits**

Footpaths provide a safer and more attractive cycling environment, especially for those most vulnerable (the elderly and inexperienced riders).

Cyclists can ride on the footpath when there is no safer alternative.

Any cycling shift to the footpath will reduce the conflict between cyclists and motorists.

Evidence from other jurisdictions indicates footpath cycling will have no adverse safety impacts, as no significant shift by the majority of bicycle riders to the footpath after regulatory change.

It is difficult to enforce a ban on adult footpath cycling; and the breach cannot compete with other law enforcement priorities.

Will address the current confusion experienced by adult cyclists as to where they may legally ride.

Will potentially expand cycling to other groups of the community.

##### **Disadvantages**

Potential increased conflict between cyclists and pedestrians.

Enforcement authority would have to prove beyond reasonable doubt that using the road was as safe as the footpath in the given situation.

Only SAPOL can enforce cyclists’ speed and safe behaviour on footpaths.

May be conflict in some mixed-use areas e.g. café strips.

Minor costs for signage for areas where cycling on footpaths is not deemed acceptable.

### Risk mitigation – offences and penalties

Submissions from SAPOL, the RAA and South Australian Freight Council suggested that financial penalties for cyclists be reviewed and increased or brought in line with motoring offences in conjunction with the introduction of new cycling laws. When the minimum overtaking rules were introduced in Queensland, fines for cyclists who break the road rules were increased so that cyclists pay the same fines as motorists.

SAPOL expressed the view that the expiation fee for offences committed by cyclists on footpaths, which is restricted by regulation to \$54, does not reflect the obligation cyclists have to share the footpaths with pedestrians and other cyclists.

However, in South Australia a tiered structure of penalties is employed to reflect the relative risks to safety associated with the particular driving/riding behaviour; in other words, the greater the risk to safety, the greater the penalty. Offences committed on a bicycle attract a lower fine than those applicable to drivers of motor vehicles as the capacity for harm or damage is less; the risk to road safety is lower given the differences in kinetic energy generated by a bicycle when compared to a motor vehicle, which is faster, heavier and less agile.

The availability of demerit points as a penalty (and therefore a deterrent) is considered in the Base case.

Given the demerit point system in place and the capacity for a cyclist to cause less harm than a motor vehicle, it is not recommended to increase expiation fees for cyclists committing a traffic offence to the same level as applies to motorists.

### Compliance and enforcement

A major drawback in Scenario 1 is the difficulty in objectively determining when there is 'no safer alternative' to riding on the footpath. The decision is almost entirely subjective to the cyclist and is made in a split-second. Under Scenario 1 an offence would have to be made out by proving beyond reasonable doubt that using the road was as safe as the footpath in the given situation. Enforcement outside of the expiation notice system would require, at the very least, photographic evidence of both the road and footpath conditions and traffic volumes. Statements may also be required about other road users' behaviour that necessitated the 'usage alternative'.

In 2014 SAPOL issued 84 cautions and 140 expiation notices for riding on the footpath contrary to ARR 250. The revenue from those expiations was in the order of \$14,700. Some of that revenue may be foregone if Scenario 1 is adopted; just how much is difficult to determine given that enforcement difficulties.

In the five years between 2010 and 2015, SAPOL issued 24 expiation notices and 19 cautions for riding where a 'no bicycles' sign applies. The revenue from those expiations was in the order of \$2,600 (an average of \$520 per year).

### Risk mitigation – signage

The current risk mitigation via signage will continue to apply: cyclists can be prohibited from using footpaths in the first place under ARR 252. Councils (which are mostly responsible for footpaths) may erect 'no bicycles' signs or make pavement markings. They cannot enforce the



offence however.

The estimated cost of erecting a sign on an existing post is \$80; a new post and sign would cost \$130-150; a thermoplastic footpath graphic would cost \$160-180; while pavement markings using a stencil would cost less than \$20.

The ACC advised that it may consider exclusion zones in Rundle Mall, Rundle St, Hindley St, Gouger St, Hutt St, Melbourne St and O'Connell St. Other councils may undertake scoping studies when the change is made.

#### **Element 4 - Scenario 2 for cycling on footpaths**

Costs and benefits are as described for Scenario 1. Benefits are difficult to qualify, let alone quantify. A best-case scenario is to qualify/quantify costs that would not be incurred.

Other jurisdictions' experience are as described for Scenario 1

#### Summary of impacts: Scenario 2 for cycling on footpaths

##### **Benefits**

Footpaths provide a safer and more attractive cycling environment especially for those most vulnerable (the elderly and inexperienced riders).

Any cycling shift to the footpath will reduce the conflict between cyclists and motorists.

Evidence from other jurisdictions where it is legal indicates footpath cycling will have no adverse safety impacts, as there is not a significant shift by the majority of bicycle riders to the footpath after regulatory change.

It is difficult to enforce a ban on adult footpath cycling; and the breach cannot compete with other law enforcement priorities.

Will address the current confusion experienced by adult cyclists as to where they may legally ride.

Will potentially expand cycling to other

##### **Disadvantages**

Potential increased conflict between cyclists and pedestrians.

Only SAPOL can enforce cyclists' speed and safe behaviour on footpaths.

May be conflict in some mixed-use areas e.g. café strips.

Minor costs for signage for areas where cycling on footpaths is not deemed acceptable.

groups of the community.

### Compliance and enforcement

Scenario 2 removes the requirement in Scenario 1 that cycling on footpaths is only allowed *when there is no safer alternative*. This avoids the need for objective proof that it was just as safe for the cyclist to use the road as it was to use the footpath. The Citizens' Jury observed that there is good reason to ensure that cyclists have a safe option *immediately available to them*. Rather than the cyclist having to constantly assess the safety of the option of the road versus that of the footpath, and enforcement officers having to do the same, the preferable scenario is that the use of the footpath be always available.

There will be significant cost savings in not having to prove beyond reasonable doubt that riding on the road is just as safe as riding on the footpath.

In 2014 SAPOL issued 84 cautions and 140 expiation notices for riding on the footpath contrary to ARR 250. The revenue from those expiations was in the order of \$14,700. Some of that revenue will be foregone if Scenario 2 is adopted.

## **Element 4 - Base case for overtaking distance**

### **Impacts:**

#### Current risk mitigation – offences and penalties

There is already an offence in ARR 144 requiring a motorist to overtake a cyclist at a sufficient distance to avoid a collision:

#### **144—Keeping a safe distance when overtaking**

A driver overtaking a vehicle—

- (a) must pass the vehicle at a sufficient distance to avoid a collision with the vehicle or obstructing the path of the vehicle; and
- (b) must not return to the marked lane or line of traffic where the vehicle is travelling until the driver is a sufficient distance past the vehicle to avoid a collision with the vehicle or obstructing the path of the vehicle.

The expiation fee for this offence is \$347 (including the Victims of Crime Levy) and a driver incurs 2 demerit points. Other offences incurring a similar penalty are: failure to keep left; overtaking when not safe to do so; failure to give way to pedestrian in shared zone; using a mobile phone while driving.

#### Compliance and enforcement

The current offence in ARR 144 is difficult to prove as it could be construed that any miss is sufficient. This may lead to undesirable overtaking behaviours. In 2014 SAPOL issued 34 expiation notices for this offence. Anecdotal advice from SAPOL suggests that very few, if any, of the infringements would have been against cyclists; rather, they would have been for motor vehicles being overtaken by other drivers. In fact, SAPOL reports that there are very

few infringements against cyclists recorded for road traffic offences in general. An offence prescribing a specific overtaking distance may increase police awareness of cyclist vulnerability.

#### Other jurisdictions

In Australia, the minimum overtaking distance is required in Queensland and it is being considered for introduction in the ACT, Victoria and Western Australia. In the USA, 21 states have passed a three-foot law. Netherlands, France and Nova Scotia in Canada also have one-metre minimum overtaking distances.

### **Element 4 - Scenario 1 for overtaking distance**

#### **Impacts:**

##### Other jurisdictions' experiences

Tasmania is the only Australian jurisdiction to allow a motorist to drive to the right of the centre of the road and cross dividing lines etc in order to pass a cyclist at a sufficient distance (as opposed to a prescribed distance).

It is allowed in Tasmania because of their narrow roads; prescribing a 1m overtaking distance could result in the overtaking driver ending up in the culvert on the opposite side of the road. This scenario is unlikely to occur in SA where the roads are wider.

##### Summary of impacts: Scenario 1 for overtaking distance

#### **Benefits**

Reduction in fatalities and serious injuries.

Increased perception that cycling is safe, thereby encouraging road users to ride instead of drive.

Discouraging motorists from driving too close to the left-hand side of the road.

#### **Disadvantages**

Current enforcement difficulties will remain.

May normalise driving on the wrong side of the road.

Possibility that it will contribute to cyclist/motorist animosity.

##### Compliance and enforcement

The Tasmanian model of allowing a motorist to drive to the right of the centre of the road and cross dividing lines etc is encapsulated in a single additional ARR (139A), which effectively provides that:

A driver on a two-way road ... may drive to the right of the centre of the road or the dividing strip to overtake or pass the rider of a bicycle that is travelling in the

same direction as the driver if –

(a) the driver has a clear view of any approaching traffic; and

(b) it is necessary and reasonable, in all the circumstances, for the driver to drive to the right of the centre of the road or the dividing strip to overtake or pass the rider; and

(c) the driver can do so safely.

The rule does not prescribe a minimum lateral distance that must be afforded to a cyclist. It therefore provides for an exemption from other ARR (132, 137, 138, 146 and 147) in less than exact circumstances. High risk manoeuvres such as driving toward oncoming traffic should only be allowed under the strictest criteria, otherwise the behaviour is normalised.

Adopting the Tasmanian model of allowing a motorist to drive to the right of the centre of the road and cross dividing lines etc will be no more or less difficult to prove than the status quo under the Base case.

#### **Element 4 - Scenario 2 for overtaking distance**

##### **Impacts:**

##### Benefits

One of the strongest arguments for requiring motorists to give more room to cyclists is to allow them to feel safe. This should translate into higher participation rates. It should do that in part by discouraging the minority of motorists who drive too close. But most of the value should come from the confidence it will give cyclists that there are rules designed to protect them. Fear of being hit from behind by a motorist is a key reason people don't cycle.<sup>16</sup>

Advocates of the minimum distance law find it to be a valuable tool for increasing bicycle safety and educating drivers on sharing the road. While being hit by a motorist from behind is far from the top cause of bicycle accidents, it is one of the top fears of non-cyclists. Therefore, one of the primary benefits of the minimum distance law is to make non-cyclists feel more comfortable getting on a bike. This in itself yields safety benefits, as the best way to decrease risk is to increase the number of people bicycling. Greater numbers of cyclists makes motorists more likely to expect their presence and become accustomed to sharing the road.

While it is acknowledged that the minimum distance law is difficult to enforce, it is viewed by most advocates primarily as an educational tool. Many motorists are simply not aware of the dangers posed by passing a cyclist too closely. For example, a cyclist could be pulled into traffic by the drag off a passing vehicle or startled to a point that causes them to lose control of their bicycle. The strongest US policies mandate that the law become integrated into the state driver manual and license exam. This makes understanding how to share the road a

---

16 Brown et al, [\*The 3ft. Law: Lessons Learned from a National Analysis of State Policy and Expert Interviews\*](#), New Jersey Bicycle and Pedestrian Resource Center

required part of being a licensed driver. While many bicycle advocacy organisations already do significant bicycle safety education at the grassroots level, having the official backing of law can add strength to their efforts.

Though enforcement is rare, it is not impossible. US drivers guilty of violation are given a warning and informational materials on safely interacting with bicycles on the roadway.

The extreme ends of the spectrum of road users will probably always remain problems: there will continue to be drivers who are aggressive toward cyclists as well as cyclists who ride in an aggressive and unsafe manner. However, most people fall in the middle and want to be safe and use best practices but may not know how to properly pass a cyclist. This is where campaigns such as the minimum distance law can have a great impact by educating drivers on how to safely share the road with cyclists, and permitting drivers by law to practise safer behaviours.

### Costs

This type of law may create more of a tension between motorists and cyclists. Frequent violation of traffic laws by cyclists is a frustration for drivers, and imposing an extra restriction on drivers could further increase this animosity toward cyclists.

Others note that there is an inherent disconnect between the increasing strictness of road laws and the increasing sizes of roads to make them more forgiving. The idea of the minimum distance law runs counter to concepts such as road narrowing and shared space, because it encourages roads to be wider to allow motorists to easily give the required distance to cyclists, rather than relying on better road user behaviours. These laws may encourage engineers to widen roads more in response, encouraging higher speeds and an overall decrease in quality for cyclists and pedestrians.

### Other jurisdictions' experiences

Queensland introduced a two-year trial of a rule similar to that proposed for SA in April 2014. Evaluation results will not be available until December 2015, but the Queensland Department of Transport and Main Roads has furnished the following information:

In the first year of the trial (ie, up to 31 March 2015), the Queensland Police Service (QPS) issued 44 traffic infringement notices to motorists for not observing the minimum prescribed distance rule. During 'blitzes' on enforcing the rule, however, QPS has issued over three times more infringement notices to cyclists for offences such as failure to keep left, etc.

Queensland does not report any discernible movement in relevant crash rates since the introduction of the prescribed overtaking distance rule. Crash and injury data will be analysed as part of the evaluation of the trial of the minimum passing distance and associated road rule changes.

QPS has reported strong anecdotal evidence of an increase in the observable distance afforded to cyclists by motorists. Cyclists themselves have reported perceiving an increase in the distance which has contributed to them feeling safer on the roads. Enforcement issues and public perceptions are also being considered as part of the evaluation. The evaluation report is expected to be released early-mid 2016.

Cyclists who have been 'buzzed' by motorists do not follow through on assisting police in prosecutions, despite an increase in the quantity and quality of evidence available (especially video evidence).

### Summary of impacts: Scenario 2 for overtaking distance

#### Benefits

Reduction in fatalities and serious injuries.

Increased perception that cycling is safe, thereby encouraging road users to ride instead of drive.

Discouraging motorists from driving too close to the left-hand side of the road.

Increase in observable distance between cyclists and motorists.

Increase in police awareness of cyclist vulnerability.

#### Disadvantages

Enforcement difficulties. Proof beyond reasonable doubt requires (estimation of) a measurement of distance.

Possibility that it will contribute to cyclist/motorist animosity.

### Risk mitigation – offences and penalties

There is already an offence in ARR 144 requiring a motorist to overtake a cyclist "at a sufficient distance to avoid a collision". It is reproduced in the Base case above. However, as Mr Parnell MLC noted when introducing a private member's Bill on this subject in 2013:

The phrase 'sufficient distance' is only defined in terms of the outcome. In relation to cyclists, if as a motorist you did not actually collide with a cyclist or obstruct his or her progress, then the distance must have been sufficient. Clearly that is not good enough. A motorist does not have to actually hit a cyclist to force them off the road or, worse still, under the wheels. A rule that effectively says you can get as close as you like provided you do not collide is clearly inadequate.

Prescribing a distance that may be difficult to estimate would not set a precedent in the ARR. Minimum and maximum distances are prescribed in the ARR for other purposes such as cyclists and motorbike riders riding two abreast (1.5m); following motor vehicles (2m); vehicles being towed (4m); pedestrians crossing roads near crossings (20m); driving in a bike lane or bus lane (50m/100m); dipping headlights (200m), etc.

### Compliance and enforcement

The Queensland/ACT model is an improvement on the Tasmanian model because a minimum lateral overtaking distance is prescribed. It replaces the Tasmanian requirement

that the manoeuvre be necessary and reasonable in the circumstances. If the 1m/1.5m distance cannot be achieved, then the motorist must be patient. This will have the added benefit of reducing motorists' speeds, allowing for longer reaction times and less overall risk to road safety.

Adopting the Queensland model of requiring a minimum lateral overtaking distance will be no more or less difficult to prove than the status quo under the Base case or the Tasmanian model under Scenario 1.

## **Element 5 - Consultation**

The second Citizens' Jury was conducted during September and October 2014. Thirty-seven randomly selected citizens deliberated on the topic *Motorists and Cyclists will always be using our roads. What things could we trial to ensure they share the roads safely?* The Jury heard from 14 expert presenters, received 38 public submissions and its recommendations were agreed through consensus.

Its recommendations were presented to the Premier on 6 November 2014. Two of the Jury's recommendations were to develop legislation to define the overtaking space between a vehicle and a cyclist as a minimum of 1 metre, and to make changes to legislation to allow cycling for all ages on the footpaths

On 22 January 2015 the Premier announced that the Government would implement these recommendations. The legislation was to be presented to Parliament at the earliest opportunity.

In line with the Government's response DPTI undertook further consultation on the legislative detail for the two proposals. The consultation process, which ran from 4 – 20 March 2015, generated 1,584 submissions from the general public and stakeholder organisations. Not all respondents commented on both proposals.

Both proposals were supported by a clear majority of respondents, though many submissions indicated qualified support, or support but with specific concerns.

- Cycling on footpaths: 71% of respondents supported and 27% did not support allowing all-age cycling on footpaths.
- Minimum overtaking distance: 73% of respondents supported and 18% of respondents did not support the proposal to define a minimum overtaking space between a vehicle and a cyclist which included the ability for motorists to cross dividing lines, straddle lane lines, etc.

Submissions indicated a perception of increased risk for pedestrians (cycling on footpaths) and for motorists' head-on crashes (minimum overtaking distance). Feedback indicated a lack of knowledge about cyclists' current duties when riding on footpaths: that they must keep to the left, give way to pedestrians, and warn of their approach if necessary. Feedback also indicated a lack of understanding about the overtaking amendment, which will permit motorists to cross or straddle dividing lines provided it is safe to do so.

This feedback received from the community reinforces the need to ensure widespread awareness of the details of the amendments and to remind motorists, cyclists and



pedestrians about the need for due care and other specific obligations.

The Department of State Development advises that any compliance costs as a result of local government managing their perceived risk of a public good is the responsibility of the relevant council and not an impact to business. There may be an impact to business if the relevant council were to pass on the compliance costs through increased rates or other charges, but given the relatively minor costs it would be unlikely.

The Department for Communities and Social Inclusion agrees with the impact of the proposal on families and society that are identified throughout the document.

The Department of Environment, Water and Natural Resources advises that there are no environmental impacts.

SAPOL preferred an educative approach rather than additional legislation. The need for both motorists and cyclists as vulnerable road users to maintain awareness and a safe distance from each other is fully supported.

#### Cycling on footpaths

The Centre for Automotive Safety Research at the University of Adelaide is supportive of the proposal. It has not identified any evidence to suggest that it should not be adopted.

The Local Government Association made a submission to the public consultation process. Feedback was sought from councils via a circular published by the LGA. A total of six officers replied. The following is taken from the LGA's submission:

It is recognised that, on some occasions, cycling on roads can be difficult and/or potentially dangerous, and allowing people to cycle on footpaths may improve rideability and access. Responding councils indicated their support for people cycling on footpaths and noted it should be controlled for the safety of all footpath users.

It is likely that the Adelaide City Council area would see the greatest need for excluding cyclists from footpaths, and hence the need for signage. The following is taken from the submission from the ACC:

Council Administration can see the merit in this recommendation and recognises that there are locations where the footpath is the safest place for a cyclist to ride given the lack of safe on-road facilities, and that this would often not impact significantly on pedestrian amenity or safety given the low number of pedestrians and/or the width of the footpath.

Council Administration also acknowledges that similar legislation exists within other jurisdictions which may support the case for introducing legislation in South Australia, as well as guiding the wording, exemptions, implementation, enforcement etc.

Council Administration has contacted a number of capital city councils where cycling is already permitted on footpaths in the CBD, and no concerns were raised with few to no incidents recorded. Many of the councils contacted in

Queensland, Hobart, Canberra and Northern Territory indicate that most cyclists use a courteous and common sense approach when using the footpath.

## **Element 6 – Recommended options**

### Cycling on footpaths

The recommended option is Scenario 2: Allow all-age cycling on footpaths without restriction.

### Minimum overtaking distance

The recommended option is Scenario 2: Motorists to overtake cyclists at a prescribed minimum lateral distance of 1m when the speed limit is 60km/h or less, and 1.5m when the speed limit is over 60km/h.

## **Element 7 – Implementation, monitoring and review**

### Enabling compliance

The Driver's Handbook has been amended to take into account the new laws, and now will include a section on Road Rules for Cyclists. This Including the metre, metre and a half clearance and cycling on footpaths. The Driver's Handbook is an important reference for all learner drivers.

Many submissions mentioned that road user education will be vital to achieve awareness, to enable compliance and to address a range of issues and concerns about both proposals. MAC is assuming the lead role in developing and coordinating the mass-media campaign. DPTI and the Minister's office are stakeholders in the delivery of this campaign. It will run for two weeks prior to, and one week after, commencement.

MAC has negotiated the use of the Queensland creative for the change regarding the minimum overtaking distance. There is no existing creative for the change regarding cycling on footpaths and therefore specific creative will be developed. MAC has briefed its advertising agency (KWP!) to create this. The combined campaign will:

- be based on existing Queensland material for the minimum overtaking distance, and its experience introducing the new laws;
- explain to motorists, cyclists and pedestrians their obligations; and
- involve a range of media, taking into account different market segments.

The campaign will be evaluated afterwards to determine awareness levels. The media plan will involve Facebook targeted paid advertising, digital advertising via cycling websites, Adshels (bus shelter ads) in the metropolitan area, and metropolitan and regional radio.

It is expected that education and awareness about the new rules, targeting specific

obligations of motorists, cyclists and pedestrians, including highlighting new and existing penalties, will assist with compliance.

#### Implementation – infrastructure

Minimum passing distance requires no specific infrastructure to implement the legislation.

Infrastructure changes for cycling on footpaths are minor and relate to councils' ability to designate no cycling paths by applying markings or signage as set out in the section Current risk mitigation – signage and road markings. Designating no cycling paths can be done on an as required basis and the costs are likely to be low. The State Government will not override or interfere with Councils' ability in this regard. However, if warranted, DPTI can assist the LGA to facilitate the provision of information to councils. This may meet the LGA's need for further consultation to understand the impacts and infrastructure obligations placed on councils.

#### Evaluation – minimum passing distance

As yet, no evaluations of effectiveness have been completed in Australia and there are limited studies from elsewhere. CASR is also not aware of any research that makes a strong link between the nominated variables (combination of passing distance and speed limited) and crashes. It is possible that in many circumstances where a crash occurs, these variables were not the most important factor associated with crash outcomes.

CASR stated in their submission of 19 March 2015, that the primary reason for opposition to a minimum passing distance appears to be the view that it is unenforceable (this view is held by SA Police). CASR research of application of minimum passing distance shows where the law/trial has been introduced it has been done so to change attitudes or raise awareness, not as an enforcement practice. This highlights the important role of education, and indicates that successful implementation has to be considered in terms of extent of voluntary compliance. For example, a recent bicycle safety operation by Queensland Police saw no drivers fined for failing to leave a safe passing distance. This is not a reflection of enforcement practices but rather that drivers were found to be doing the right thing (voluntary compliance). It is therefore important that evaluation focus on the level of awareness and compliance achieved rather than enforcement or causal link with crashes. As stated in the section above, MAC will look at awareness levels achieved through the evaluation of its campaign.

#### Evaluation – cycling on footpaths

In addition to MAC's assessment of awareness levels, further research could be undertaken to evaluate impacts of the cycling on footpaths law. Existing research for riding on footpaths indicates several possible methods of study:

- interviews or surveys of adult cyclists about footpath use, perceptions, level of confidence and comfort
- conduct observations of pedestrian-cyclists interactions on footpaths
- examine injuries and relative injury severity of cyclists and pedestrians arising from cycling on footpaths through deaths and hospital admissions over time

Many submissions mentioned that road user education will be vital to achieve awareness,

to enable compliance and to address a range of issues and concerns about both proposals.

SAPOL's concern about the specified minimum overtaking distance is that enforcement will be difficult, rather than the proposed provision being unenforceable.

The Local Government Association has requested further consultation on footpath cycling for councils to gain a greater understanding of the impacts and liability issues involved. No further consultation is planned because councils are best placed to determine where cycling on footpaths will be prohibited.

## **Appendix – supporting information**

### Current cycling participation rates

As a result of governments around the world becoming more aware of the extensive benefits of cycling, they are setting targets to inform their efforts to facilitate and promote cycling as a desirable form of transport. In 2006 the South Australian Government set a target to double cycling trips by 2015. South Australia, along with other Australian states and territories, is starting from a very low base with a significantly lower cycling participation rate compared with most overseas countries. The 2011 Census indicates that the SA state-wide level of utility cycling was only 2%. There are a number of reasons given by people for why they do not cycle. In a 2011 survey respondents provided the following main reasons for not cycling:<sup>17</sup>

- unsafe road conditions – 67.1%
- speed/volume of traffic – 52.5%
- lack of bicycle lanes/trails – 48.1%
- weather conditions – 44.3%
- destinations too far away – 36.7%
- no place to park/store a bicycle – 26%
- don't feel safe riding – 25.3%
- too hilly – 23.4%
- don't like wearing a helmet – 16.5%

### Participation rates for cycling on footpaths

---

17 National Heart Foundation and Cycling Promotion Fund, [Riding a Bike for Transport:2011 Survey Findings](#)

The CARRS-Q survey of Queensland riders, where all-age cycling on footpaths is allowed, found that a third of the respondents reported riding on the footpath, with about two-thirds of them doing so reluctantly.<sup>18</sup> New riders and utilitarian riders rode more on the footpath. The frequency, and particularly distance ridden, on the footpath was less than for urban roads and bicycle paths, suggesting that the footpath was used in locations where the urban road was considered unsafe or inconvenient (e.g. one-way streets), rather than being used for the entire trip. New riders spent a larger proportion of their riding on footpaths than more experienced riders, but the mean distance ridden on footpaths per week was greater for experienced riders. This shows that, like bicycle paths, footpaths are an important facility for riders of all levels of experience.

A number of the factors reported to affect participation rates can be addressed by improved infrastructure, amendments to the Australian Road Rules (ARR) and education and awareness campaigns. It can also be understood from Heart Foundation's survey results that in order to maximise the benefits of cycling and increase participation rates it is necessary not only to make cycling safer but also to improve people's perception of safety.

#### Liability of road authorities

Since at least 1 April 2004, local councils have benefitted from a statutory immunity from negligence for the maintenance etc of footpaths under section 42 of the *Civil Liability Act 1936*. The legislation provides that a road authority (including a council) is not liable in negligence for a failure to maintain repair or renew a road. The definition of "road" in the legislation includes a footpath as well as alleys, laneways, or walkways. The immunity is only from failures to act or omissions and not damage actively caused by an act of council. However, the vast majority of claims for problems with footpaths arise out of the omission to maintain or repair the damaged pavement rather than any direct act of council that damages it. Road authorities are no longer liable for failing to carry out (or even to consider carrying out) roadworks (defined very broadly), unless they have 'actual knowledge' of the particular risk whose materialisation harmed the plaintiff.

#### Research in general

Research into the impacts and outcomes of cycling on footpaths (not shared paths) is limited. Below are the pertinent comments and findings of relevant national and international research on this subject.

*Discussion Paper on Cycling on Footpaths by All Ages in Western Australia* (Office of Road Safety, WA, September 2004). This paper summarises the potential impacts of allowing all cyclists to ride on the footpath and contained the following conclusions and recommendations:

An examination of the available data seems to suggest that legalising cycling on footpaths by all ages will not adversely impact on the safety and amenity of footpaths. Those jurisdictions which allow all-age cycling on footpaths (Queensland, Tasmania, ACT and Northern Territory) report that the perception surrounding the level of bicycle/pedestrian conflicts on paths is greater than the actual reality of incidents.

---

18 op cit, fn #

It is apparent, however, that there is considerable community concern about the use of bicycles on footpaths, especially from seniors, people with disabilities and parents of young children. Anecdotally, some people do feel threatened by the presence of bicycles on the footpath. This community concern was instrumental in jurisdictional decisions to adopt the minimum ARR requirement of allowing only children under the age of 12 years to cycle on footpaths.

It was recommended, therefore, that consideration be given to extending the current regulations governing the use of footpaths by cyclists from children under the age of 12 years to all ages. This recommendation is based on:

- footpaths can provide a safer cycling environment, especially for those most vulnerable e.g. children, the elderly and inexperienced riders;
- it is very difficult to enforce a ban on adult footpath cycling, as is evident now; and
- legalising footpath usage by cyclists of all ages will address the current confusion experienced by adult cyclists as to where they may legally ride as well as enhance the potential enforcement of regulations governing the use of paths.

As part of this amendment, it is considered a low-key public education program will be needed to facilitate its introduction. Heightened public awareness would achieve the desired effect of modifying behaviour and understanding of all footpath users.

*Adults cycling on the footpath: What do the data show?* (Harworth N. and Schramm A., Centre for Accident Research and Road Safety, Queensland). This paper examined what is known about the safety of footpath cycling in Australian and internationally. Comments and findings are as follows:

- In 2009 a survey was conducted of cyclists in Queensland where cycling on footpaths is legal. A total of 2,543 responses were received.
- The survey excluded riders aged less than 18 years.
- For the purpose of the study riders were rated as:
  - Utilitarian rider - if riding for shopping, traveling as a student, commuting or traveling to public transport.
  - Fitness rider - if riding for health/fitness and training, or organised racing.
  - Social rider - if riding for social/recreation purposes.
- Utilitarian riders were most likely to ride on the footpath followed by social riders and then fitness riders.
- About two-thirds of all riders who rode on the footpath reported doing so reluctantly.
- The frequency and distance ridden on the footpath was less for urban roads and bicycle paths suggesting that the footpath was used in locations where the urban road was considered unsafe or inconvenient.
- New riders spent a larger proportion of riding on footpaths than experienced riders.



- Analysis of the percentage of serious crashes on footpaths and the percentage of total distance ridden on footpaths suggests that riding on the footpath did not increase crash risk.

The paper concluded: “The available evidence suggests that riding on the footpath is associated with less serious injuries to cyclists than riding on the road and does not appear to cause many serious injuries to pedestrians. Footpaths are important facilities for both inexperienced and experienced riders and for utilitarian riding, especially in locations riders consider do not provide a safe system for cycling”.

*Deaths of cyclists due to road crashes* (Australian Transport Safety Bureau, July 2006). This paper provided an overview of the circumstances of road crashes in which cyclists died in the period 1991 to 2005 and in more detail from 1996 to 2004. Comments and findings are as follows:

- The most frequent major factor in fatal road crashes involving cyclists from 1996 to 2004 was the failure of cyclists and other road users to observe each other on the road.
- Visibility of cyclists remains a key safety issue.
- The most common type of crash in which cyclists were fatally injured was the cyclist being hit from behind by a motor vehicle travelling in the same direction.
- Cyclists riding on rural roads are particularly at risk of being run over from behind.
- The next most common crash type was the cyclist riding from the footway into an intersection or onto a road and being hit by an oncoming motor vehicle.

*Pedestrian-Cyclist Collisions: Issues and Risk* (Grzebieta R.H., McIntosh A.M. and Chong S., September 2011). This paper also provided an overview of the issues concerning shared cycling-pedestrian pathways. Comments and findings are as follows:

- A study by the NSW Roads and Traffic Authority in 2009 concluded the perception of danger is much greater than the actual risks of cyclists and pedestrians on shared paths.
- Drummond A.E. (1989) *Pedestrian Casualties Resulting from Collisions with Cyclists on Footpaths* (Monash University Accident Research Centre, Melbourne) concluded that the problem of casualties due to collisions between cyclists and pedestrians on footpaths was of very small proportions such that it need not be considered in the formulation of policy.
- Trevelyan P. and Morgan J.M (1993) *Cycling in Pedestrian Areas* (Report PR15, Transport Research Laboratory, Crowthorne, UK) found:
  - The integration of cyclists and pedestrians on shared user paths would largely protect cyclists from vehicle impact injuries without unreasonably enhancing the risk to pedestrians.
  - There were no major reasons to justify the exclusion of cyclists from pedestrian areas.



- Pedestrians do not alter their behaviour in the presence of cyclists but cyclists do adjust appropriately to pedestrian density.
- An OECD review paper *Safety of Vulnerable Users* concluded that (cyclist/pedestrian) conflicts were generated mainly by narrow footpaths, narrow cycle-tracks, relatively high speeds of cyclists, poor visibility, or considerable age difference between cyclists and pedestrians. Nevertheless, it stated that few conflicts were dangerous but the danger increased when several of the factors mentioned were combined.
- The risk of a fatality resulting to a pedestrian from a cyclist/pedestrian collision is presently a very rare event for the whole of Australia.

*Pedestrian-Cyclist Conflict Minimisation on Shared Paths and Footpaths* (Austroads Research Report, AP-R287/06). This research investigated actual and potential conflicts between cyclists and pedestrians. Comments and findings are as follows:

- A study by the NSW Roads and Traffic Authority in 2009 concluded the perception of danger is much greater than the actual risks of cyclists and pedestrians on shared paths.
- In some states (Queensland, Tasmania, ACT and NT) cyclists of all ages are permitted to ride on footpaths. This has caused considerable safety problems for the very young and senior pedestrians in some quarters (Legislative Assembly of Queensland, 1993). However, the above States/Territories also report that the perception of the level of bicycle/pedestrian conflicts on footpaths is greater than the reality of incidents (Discussion paper on cycling on footpaths by all ages, Office of Road Safety, WA).
- An examination of available data suggests that legalising cycling on footpaths by all ages may not adversely impact on the safety and amenity of footpaths. This is because the amount of footpath cycling is not expected to change from the current level (Discussion paper on cycling on footpaths by all ages in Western Australia, Office of Road Safety, WA).