

Mandatory Helmet Law

Complaint to the Regulation Review Committee

by Clinton Trass

Introduction

I write to the Regulations Review Committee to make a formal complaint about the mandatory cycle helmet legislation (Land Transport (Road User) Rule 2004, Clause 11.8 'Safety helmets for cyclists'). My complaint seeks to address the following sections of Standing Order 315:

- (2)(b) trespasses unduly on personal rights and liberties; and
- (2)(h) was not made in compliance with particular notice and consultation procedures prescribed by the statute

My name is Clinton Trass, and my contact details are:

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I wish to appear before the committee to speak about my complaint.

Cycling Health New Zealand is in support of a review of the existing legislation (Cycling Health New Zealand).

Cycling Advocated Network's policy statement is:

"There is evidence that mandatory cycle helmet wearing legislation is not working as intended and should be reviewed. Priority needs to be given to other safety issues such as motorist behaviour and roading improvements." (Cycling Advocates Network)

Standing Order: 315(2)(b) trespasses unduly on personal rights and liberties

A Question of Ethics

Following the recent findings of the New Zealand Medical Association (The New Zealand Medical Association, 2012), whereby mandatory helmet laws negatively affect the overall New Zealand public, it is unethical for a government to impose such a restriction on its citizens.

This independent study has highlighted that the MHL has had a minimal impact on reducing cycling fatalities and serious head injuries. Importantly, introduction of the MHL has significantly contributed to the decline in ridership levels since 1994. In particular, commuter and recreational cyclists have largely given up cycling in New Zealand. As a result, the remaining cycling population enjoys less of the 'safety in numbers' effect experienced overseas.

It can be shown that the legislation is unethical when viewed from different ethical standards, including civil libertarianism and totalitarianism.

Civil Libertarianism

Provided an individual is not negatively affecting anyone else, he or she should be free to carry out his or her otherwise law-abiding and peaceful activities without government interference. Utility cycling is a peaceful, relatively low-risk activity. Where accidents do occur, the general public is at no greater risk where an individual has chosen not to wear a cycle helmet. Enacting legislation that is designed to protect individuals from their own choices, and where there is no demonstrable overall benefit to the wider population (see next section on totalitarianism), is unethical.

The New Zealand Bill of Rights Act 1990, Section 18 **Freedom of movement** (1) states “*Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand*”.

Furthermore, section 5 **Justified limitations** states “*Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*”

Impinging on individuals fundamental right to movement by requiring that special equipment be mandated under law for cycling should only ever be enacted reluctantly, and only when clear evidence demonstrates the overall public good.

Totalitarianism

A totalitarian perspective, whereby a set of rules may be deemed ethical if it can be shown that the overall population will benefit, often challenges the civil libertarian perspective. This is not the case with the MHL, however, as the benefits of cycling have been shown to outweigh life years lost in accidents by a factor of 20:1 (The New Zealand Medical Association, 2012). The MHL provides an unreasonable barrier for the general public to participate in this peaceful and healthy activity. With utility cyclist ridership levels now as low as 1% of the New Zealand population (The New Zealand Medical Association, 2012), we observe a population with escalating health issues (such as obesity and diabetes) and traffic management problems. Utility cycling enables much more of the general public to incorporate a general fitness regime into their everyday activities (commuting to work, visiting friends in the neighbourhood, running errands etc.). Through the MHL, utility cycling becomes less appealing as it makes the activity appear more dangerous than it really is, and also makes it less convenient/accessible to the general public. Other major cities, including congested hubs such as London, have experienced exponential increases in utility ridership levels. These hubs have not required their citizens to wear helmets, but have invested in education, infrastructure and bike sharing

schemes. To date, bike share schemes that have been attempted in Brisbane, Melbourne and Auckland have failed. A major contributor to this failure is the requirement to wear a cycle helmet. An entire business model is unable to succeed under current conditions, and the New Zealand public is not benefiting from this convenient and healthy mode of transportation.

Risk Profile

It is unhelpful to group all cyclists in the same risk category. Certainly, those who race bicycles for sport or participate in mountain biking are at a greater risk of accident. These individuals often invest large amounts of resource into their sport and are largely unaffected by helmet legislation (as the vast majority would choose to wear a helmet regardless of legislation). Utility cyclists do not travel at such great speeds or on treacherous terrain, and as a result the risk profile is much lower. In fact, in New Zealand, many more pedestrians are killed each year than cyclists (New Zealand Transport Agency, 2013). Though pedestrian deaths outweigh cycling deaths by a factor of approximately 4:1, we do not mandate that pedestrians wear any special equipment (such as helmets) when walking or running. It is unethical to single out a minority group, such as cyclists, and impose special rules and regulations without conclusive evidence showing real benefit.

Science

There is no conclusive scientific evidence that cycle helmets reduce death or injury rates in significant accidents. Previous claims that cycle helmets reduce head injury by 85% have been revoked by both the National Highway Traffic Safety Administration (NHTSA) and the Centers for Disease Control (CDC) in America (Bicycle Helmet Research Foundation). New Zealand based their assumptions on many of these original claims when creating the new law. As the accuracy of these claims has been brought into question, it would be responsible to review the current cycle helmet law.

By forcing the New Zealand public to wear a helmet when cycling, without conclusive evidence that the helmet will provide adequate protection in the event of an accident, the government is at risk of providing the general public with a false sense of security. To date, data collected about cycling head injury rates have shown no real benefit since legislation was enacted (Bicycle Helmet Research Foundation). Until independent scientific research can demonstrate significant benefit in promoting or mandating cycle helmet use, it is unethical for the government to continue to impose this rule on the general public. Though the debate is ongoing, there is no shortage of evidence showing cycle helmets are at best ineffective, and at worst lead to an increase in serious head injury rates (Fietsersbond, 2011).

Standing Order: 315(2)(h) was not made in compliance with particular notice and consultation procedures prescribed by statute

Section 161(2)(c) of the Land Transport Act 1998 states that “Before making an ordinary rule, the Minister must consult with such persons, representative groups within the land transport system or elsewhere, government departments, and Crown entities as the Minister in each case considers appropriate” (Parliamentary Counsel Office).

Following a campaign by Rebecca Oaten, the Transport Minister introduced mandatory cycle helmet legislation without allowing debate in Parliament or a select committee hearing. There has never been an opportunity to take an objective look at the proposed benefits of making cycle helmets mandatory compared with the potential negative social implications. Given the inconclusive science behind cycle helmet effectiveness, and the potential for far-reaching negative social consequences, the Minister had a duty to allow for wider consultation and robust expert debate before enacting the mandatory helmet law.

Recommendation

There is no conclusive scientific evidence to support government assertions that the mandatory helmet regulation significantly reduces rates of serious injury and death. There is, however, evidence that the MHL produces a barrier to utility cycling, and that the overall health and social cost of reduced ridership levels vastly outweighs any reported reduction in injury. The MHL is not working as it was originally intended. Now that we have had this law in place for twenty years, and have observed no tangible benefits, it is time for a review. Indeed, it should never be that a law is passed and then simply assumed to be working correctly.

With this in mind, it is my recommendation that the existing regulation be subject to expert review and a revocation of the current requirement to wear a cycle helmet be considered.

References

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