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Perspective on Road Safety

It is time to consider a presumed liability law that protects cyclists and other vulnerable road users

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Key findings

- Cycling participation is falling and cyclist hospitalisations are on the rise.
- Motorists are more likely to be at fault in crashes with cyclists.
- A presumed liability law that places the burden of proof on motorists in crashes with cyclists is needed.
- The law would allow better compensation for cyclists and encourage motorists to exert extra care.
- Presumed liability along with other measures are likely to improve safety and cycling participation.

It is widely agreed that cycling is an effective way to promote physical health and mental well-being, reduce congestion on roads and improve the quality of the

environment. In recognition of the benefits of cycling, the National Cycling Strategy 2011-2016 set out the objective to double cycling participation by Australians between 2011

and 2016 (Australian Bicycle Council & Austroads, 2010). Unfortunately, the latest National Cycling Participation Survey, run every two years to measure progress, showed that Australia has not only failed to reach this objective but participation has in fact declined between 2011 and 2017 in five jurisdictions, including the two most populous states of NSW and Victoria (Austroads & Australian Bicycle Council, 2017).

Most people cite concerns about safety, particularly fears of sharing the road with motor vehicles and the lack of appropriate infrastructure, as the main barriers to cycling (Heart Foundation & Cycling Promotion Fund, 2012). Available statistics show that cyclists' safety fears are not unfounded. While cyclist deaths have decreased steadily over the last two decades (Boufous & Olivier, 2016), hospitalisations associated with cycling crashes are on the rise. Recent data from Victoria show that while there was no significant change in the incidence of hospitalised major trauma for motor vehicle occupants, motorcyclists or pedestrians, the incidence for pedal cyclists increased 8% per year between 2007–2015 (Beck et al., 2017). 2007–2015.

More efforts are needed to reverse this trend. As previous road safety lessons tell us, education campaigns and better infrastructure can only work in combination with strong legislation and enforcement. Legislation in the area of cycling safety is still inadequate and arguably puts an unfair burden on cyclists.

This is despite many reports, such as the one released by the RAA, South Australia's peak motoring body, earlier this year showing that cars are more likely to be at fault in the event of a crash with a cyclist (Royal Automobile Association, 2017). The findings confirm those of another South Australian study that examined police crash records and found four in every five crashes between cars and bicycles to be caused by the motorist (Lindsay, 2013); and another from Victoria that examined camera footage of similar incidents and found that the driver was responsible for the action that preceded the incident in 87% of cases (Johnson et al., 2010). All previous studies show that most of these crashes occur at intersections and generally involve a cyclist travelling straight on a single carriageway at the time of the collision with the motor vehicle.

In addition, in bicycle-motor vehicle collisions, cyclists are more likely to become injured than drivers because of mass and power disparity. However, currently if a car collides with either a bicycle or a pedestrian on Australian roads, the cyclist or pedestrian needs to make a case against the motorist to claim on the motorist's insurance. If the insurance company contests the claim, then the injured cyclist or pedestrian must take the case to a civil court.

Surely the burden of proof should shift onto the more powerful road user that is more likely to cause harm who also happens to be the party more likely at fault in the event of a crash. There is a need for a presumed liability law that protects vulnerable road users as it is the case in Canada and in many European countries, including Netherlands,

Germany, Netherlands, Denmark and France (Maker, 2015). While the level of implementation varies between countries and so does the name as it sometimes also referred to as the "reverse onus" or "strict liability law", the principle remains the same. Under the law, the onus is on drivers to prove that a collision with a cyclist or a pedestrian was not their fault (Scheppers et al., 2017). It places the burden of proof on the party more likely to cause injury or death.

The law only affects civil cases and is not about removing the presumption of innocence as it focuses on the principle of "liability" rather than "guilt" (Maker, 2015). In criminal law, drivers in collisions with vulnerable road users would remain innocent until proven guilty. It is not about blaming motorists either. So, if a cyclist runs a red light and causes a collision, then it's their fault and they will not be compensated.

The law would mean that cyclists are more likely to be fairly compensated for injury and any damage to their bicycle in the event of a crash than present. More importantly, it would encourage motorists to exert extra care when driving at the proximity of vulnerable road users. The underlying message is that motor vehicles are potentially "dangerous weapons" that requires extreme caution and diligence (Maker, 2015).

The laws are relevant to a country like Australia where cycling participation rates are relatively low and cycling infrastructure remains largely inadequate leaving cyclists with little choice but to share public roads with motor vehicles. Strict liability is already applied to other areas of law in Australia, including product safety, environmental protection as well as work health and safety laws (Australian Law Reform Commission, 2015).

It is difficult to isolate the impact of presumed liability laws on road safety as they are often implemented at the same time as other preventative measures. However, in European nations presumed liability, which was originally introduced to reduce traffic crashes, is widely believed to be a key component within a package of measures credited with encouraging safer cycling (Maker, 2015; Pucher & Buehler, 2008).

A key factor that is keeping Australians from taking up cycling is the perception that it is an unsafe activity. This is backed by available statistics. To improve participation rates and get the full health, environmental and social benefits of cycling, a presumed liability law is needed to protect vulnerable road users, including cyclists, on our roads. However, as experience from elsewhere indicates, the law alone is not sufficient. It needs to be complemented with improved education about better sharing the roads, traffic calming with an emphasis on reduced speed limits in residential areas; and better cycling infrastructure with appropriate intersection treatments.

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