

Motorcycle Safety Inquiry Submission to the Victorian Parliament

INTRODUCTION

Maurice Blackburn Lawyers have a proud record of having assisted people with claims for compensation for injuries sustained in road accidents, industrial accidents and the like, for more than 90 years.

Through that time we have acted and continue to act for thousands of motorcyclists as well as other road users. Our long history has given us a unique understanding of the issues and concerns motorcyclists face everyday when they are on the roads.

In preparing this submission we have consulted with a number of individual motorcyclists and also organisations that represent motorcyclists

We see the work of this Committee as having a great potential for achieving a number of successful outcomes for the State of Victoria. In particular we see a great opportunity for the committee to draw together road safety policy, transport and infrastructure policy and improve the perceptions of motorcyclists and experiences of all road users.

A coordinated approach to bring these key elements together is highly desirable to improve the safety of motorcyclists on our roads and reduce the impact of road trauma on our society and its associated financial costs.

EXECUTIVE SUMMARY

Our submission brings together several topics for discussion under four broad themes.

These are:

1. Education: Introducing mandatory or voluntary refresher courses for all existing full licence holders and more stringent education training for P Plate drivers. Major improvements are also needed for motorcyclists learning to ride with a need for testing in real road environments with infrastructure including traffic lights, level crossings and other scenario training.
2. Awareness: The number of motorcyclists is increasing every year on Victorian roads. At the same time private vehicles are being filled with distractions including GPS and entertainment systems. Motorists need to be aware that motorcyclists are legitimate road users and that their numbers are rising as existing road space becomes increasingly congested.

3. **Prejudice and Perceptions:** Many motorcyclists believe they are demonised and suffer bias because they are labelled “risk takers”. These negative perceptions are sometimes fuelled by mainstream media and other bodies including law enforcement and road safety agencies. There are far more dangerous activities such as bungy jumping or even flying which are deemed socially acceptable and reasonable compared to motorcycling.
4. **Legislative change and infrastructure:** Many motorcyclists believe they are not consulted and their views are ignored by authorities when infrastructure or law changes are made which directly impact upon them. These issues range from the construction of wire barriers, to lane filtering and the motorcycle levy.

EDUCATION

General driver training

The rapid growth of motorcycle registration is a significant change to patterns of road usage and awareness of motorcycles is not a significant component of the current motor car licence testing arrangement.

As at January 2011, there were 160,635 motorcycles registered in Victoria, a 40 per cent increase since 2006. Victoria represents 25.6 per cent of all motorcycle registrations in Australia.

This trend is set to continue with Australia having an estimated one million plus motorcycle registrations by 2016.

It is essential that education and training reflects the rise in motorcycles on Victoria's roads.

The graduated driver programs introduced in recent years have proved very successful. It makes sense to add an additional component to the test to cover the need for greater awareness of motorcyclists.

When a Victorian driver graduates from a red P Plate to a green P Plate additional training should be factored in to ensure the driver has a greater awareness of all road users and specifically how to safely interact with motorcyclists.

This component would again be refreshed upon graduation to a full Victorian drivers licence. The introduction of these additional components will address new drivers but will not deal with current licensed drivers

We believe that all current Victorians with a full drivers licence should be retrained in the awareness of motorcyclists. This could be done as a voluntary program or mandated re-testing.

Voluntary: This option involves establishing a training module directed at motorcycle safety. Those that voluntarily participate could be eligible for a percentage reduction

in their TAC insurance premium. It would be hoped that this would encourage people to participate.

Mandatory: This option involves the holder of a motor vehicle licence undertaking further training and re-testing on the renewal of their licence or alternatively every five years. This would ensure that current drivers are trained and tested with emphasis on awareness of motorcyclists and modifying driver behaviour to take account of motorcyclists.

It is possible that other components could be included in the program to ensure that driver skills and knowledge is appropriate. The training course would of course need to be developed.

With the increasing number of motorcyclists and the troubling injury rates we consider that there is no option but to seriously investigate these proposals.

Motorcyclist rider training

Many experienced motorcyclists are strongly of the view that the current system for licensing is inadequate. There is no realistic training for learner riders prior to getting out onto our roads.

They comment that there are no cars driving around Honda Australia Rider Training Centre.

It is well recognised that inexperienced riders are at a far larger risk of serious injury or death from other road users.

Motorcycle communities are also concerned for the safety of people they describe as “weekend warriors”, whose bike might sit in the shed for months at a time, giving the rider no experience.

It is plausible that a person in these circumstances on their motorbike for the first time in a long time is unlikely to be able to deal as well with an emergency situation as if they rode more regularly.

There is concern in the motorcycling communities in relation to the training at the learner training facilities. For example, tram tracks and train tracks do not occupy any of the ground at the riding schools but are a significant hazard on the road.

AWARENESS

Motorists are distracted

A common acronym in motorcycling circles is SMIDSY – Sorry Mate I Didn’t See You, said by dopey drivers after having knocked a motorcyclist off his bike.

It's a term which we at Maurice Blackburn have heard time and time again and it will only become more prevalent as motorcycle use continues to grow.

The Victorian public transport network is under pressure and the state's population is looking for cheaper more efficient alternatives. Motorcycles are clearly a legitimate option and a very popular one at that.

Motorcyclists are not only legitimate users of our roads but they are a rapidly increasing proportion of road users and account for a proportion of deaths on our roads.

The Department of Infrastructure and Transport of the Federal Government released its statistical report, Road Deaths Australia, 2010 Statistical Summary.

In the period from 1982 to 2010 there has been a reduction of motorcycle deaths from 482 to 224, a reduction of 46%.

As motorcycle use increases, it is heartening to see the number of fatalities decrease, but one death is one too many and motorists are now more distracted on our roads than ever before.

The evolution of passenger motor vehicles shows an increased number of accessories and gadgets from sophisticated climate control to digital multi-media and comfortable seating.

All these accessories seem to lead to the inevitable result that the motorist is less likely to be aware of what is happening around them and in fact almost oblivious to other road users.

The latest advertisement for a Mazda CX9 SUV seems to highlight this. Awareness of other road users, in particular, motorcyclists does not enter the equation. The focus and emphasis is on providing a comfortable cocoon for the motorist and no regard for other road users. It encourages a disregard for other legitimate road users such as motorcycle riders.

The fair hair is cut low-maintenance short, telling the world she had greater priorities than her own vanity. But her shoes are off, she rubs her feet together. She activates the central locking and closes her eyes. She is in her own world. She turns up the music, the words of the song tell her she is in heaven. Her children want to enter but she feigns no understanding as she sings along. Eventually they all load up, and she is driving, with all of the satellite navigation and cup holders she could ever need, still in her own world. She shows no awareness of anything outside the car. Mazda CX9 SUV television commercial. <http://www.youtube.com/watch?v=2u3REc81dvo>

If a collision occurs on her journey with a motorcycle she is likely to say she didn't see the motorcyclist. There will be assumption about the risk taking behaviour of the

motorcyclist. There is unlikely to be any proper analysis of the behaviour of the motorist in their climate controlled distraction filled motor vehicle.

It doesn't take much to imagine that the motorcyclist is knocked out and his amnesia prevents any memory of the accident. The police might take pity on him, and will resist fining him because he has suffered enough. On some occasions though, the police might charge the motorcyclists. And it is all based on an absence of evidence, where the unaware driver did not see the motorcyclist.

The offending driver of the SUV ought to have seen him. Perhaps her driving was the sole cause of the accident, whilst she was singing along and controlling her rowdy children. However the assumption is all too often that the motorcyclist has caused or contributed to his own injuries. The reality is often very different. The lack of awareness by driver or other road users may be to blame.

At Maurice Blackburn we have supported hundreds of motorcyclists who have been seriously injured, many with life changing injuries because of the failure of other road users to adequately pay attention when driving.

PREJUDICE AND PERCEPTIONS

Risk

There is a widely held assumption that motorcyclists are risk takers.

Most motorcyclists would vigorously disagree. They see themselves as identifying risk and taking appropriate steps to manage and mitigate that risk. Motorcyclists would say car drivers take risks by not being aware of their surrounds. The difference is that the victims of that unawareness are other road users.

"People often think if you fly planes you must be some kind of dare devil or danger junkie, which is the farthest thing from the truth. When you fly you make yourself responsible for your safety. Every effort is made to mitigate and avoid risk, not indulge in it. I am a very careful person" – Harrison Ford

Most motorcyclists would readily identify with this statement from Harrison Ford and see it as accurately describing their approach to riding.

It should be broadly recognised that motorcyclists should not be viewed as risk takers but as risk managers. Without question they are more aware of their surroundings and of their fellow citizens on the roadway.

Motorcyclists are required to deal with an immediate exposure to nature's elements, an immediate exposure to the road surfaces and traffic conditions.

They choose to enjoy riding their motorcycles rather than being cocooned in the more remote isolation of a motorcar. This is a choice they make.

And road safety messages do little to debunk this popular view with one campaign's tag line: "Motorcyclists it's up to you."

There is a frightening inconsistency regarding the assertion that being a "risk taker" in the case of motorcyclists is an unacceptable behaviour compared with others in our community.

Society is dependant upon having some risk takers, such as fire-fighters, police and army. Indeed if people were not prepared to take the risk of joining these services then those services would not exist.

Our society has benefited from people who have taken the risk to immigrate to a new country and try to set up a new life. Our business community requires and celebrates risk takers.

Our society benefits from creative artists, some of whom give up their "real jobs" in order to take the risk to concentrate their lives on their passion. This is all considered acceptable and desirable. However, by contrast, the motorcyclists are portrayed as people who take voluntary and stupid and unnecessary risks.

We submit that society encourages exposure to risk in many other activities. So do many other accepted activities: Skiing. Flying. Crossing the road. Bungy jumping.

It is only the motorcyclist who is told that they are presumed to be taking unreasonable risks.

This all seems to be based on a fallacy that everyone should always behave in a way that ensures the lowest risk. In our submission, society would not progress unless there were successful risk takers and the implied assertion that we should all behave in a fashion that ensures the lowest risk at every occasion would result in an absence of progress.

Dealing with the TAC

Our current experience with the Victorian Transport Accident Commission is that virtually every injured motorcyclist will be assumed to have been speeding and failed to wear appropriate protective clothing or helmet.

The television ads for road safety put on by the Transport Accident Commission display motorcyclists being hit by a campervan, reinforcing the prejudice. Society has struggled to recognise that riding a motorcycle might involve some additional exposure to the stupidity of others, and in that sense might constitute a risk.

At one orthopaedic ward in a Victorian hospital motorcyclists are repeatedly told “it’s your own fault, you were riding a motorcycle”. By comparison skiers in the same ward are told “oh, you poor thing”.

Our repeated experience, through the experience of our hundreds of clients, is that our own authorities display ongoing repeated prejudices regarding motorcyclists in their own state.

The Committee will no doubt understand that the types of injuries sustained by motorcyclists are more severe to the rider, cause greater pain and suffering to the riders and their families, and come at a higher cost in medical expenses, rehabilitation and to the Transport Accident Commission (and accordingly to its sole shareholder the State of Victoria).

We have spoken to motorcycling groups who are disappointed at the attitude of the Transport Accident Commission in relation to the decrease of motorcycling injuries on the road relative to other road users.

They have further been surprised by the response of the Transport Accident Commission who told them “we don’t deal in good news”.

LEGISLATIVE CHANGE AND INFRASTRUCTURE

Lack of consultation with motorcyclist community

There is a widely held view among motorcyclists that there is a bias on the part of state instrumentalities towards cars in preference to motorcycles. This is evidenced in many ways including:

- Imposition of a levy on motorcycles;
- Appropriate warnings to the nature of road surfaces, especially when under repair;
- Road Rules such as forbidding a motorcycle overtaking a slow moving or stationary queue of cars (“filtering”); and
- Claims handling by the Transport Accident Commission.

Furthermore many motorcyclists perceive bias, prejudice and discrimination in the current policy settings and regulations. Some examples are:

- Absence of appropriate consultation with motorcyclists in relation to traffic plans.
- Further that Inquiry noted, at page vii, that there was a difficulty obtaining adequate data.

Regrettably the area of motorcycling safety remains one in which reliable data is all too often unavailable and “anecdotal data” is spread and widely accepted without foundation.

Unfortunately this leads to articles in newspapers such as *The Age* newspaper on 1 November 2010 wherein an Inspector of Victoria Police asserts that motorcyclist error caused about 70% of trauma crashes.

There does not seem to be any evidence for this statistic. The danger is that if these kinds of numbers are repeated often enough then they become accepted. This is another example of the biases and prejudices encountered by the motorcycling community.

Developing appropriate road infrastructure

Unfortunately it appears that many decisions about road infrastructure are made without taking into account the likely impact on motorcycles. An example of this is the wire rope barriers being installed on the Tullamarine Freeway. These are apparently installed to stop motorists parking there waiting to collect passengers from incoming flights. This decision fails to take account of motorcyclists' safety.

There has been substantial debate in relation to the considerations in installing wire rope barriers across Victoria's road network.

In developing our submission, motorcyclists have told us that the installation of wire rope barriers eliminates the potential run off area for motorcyclists.

This has resulted in substantial injury and even death for motorcyclists in circumstances where the motorcycling community have good reason to strongly believe that the interests of motorcyclists were not considered in any part whatsoever prior to the placement of the fencing.

Some motorcyclists have said the fencing along Lakeside Road in Albert Park has not been adequately tested. Is it so hard to think about the placement of the posts and the fencing to ensure that risks to motorcyclists are minimal or eliminated.

It is as if nothing has been learnt from the Parliament of Victoria's Road Safety Committee's inquiry into crashes involving roadside objects, March 2005. We would urge that all such infrastructure decisions should be required to consider the impact on motorcyclists as legitimate road users. If it results in greater risk of serious injury it should not happen.

The levy

Motorcyclists are concerned at the levy being imposed solely upon motorcyclists in circumstances where the levy seems to be the only source of funds aimed at motorcyclists.

There is debate amongst the motorcycling community about the use of the levy such as the multiple beneficiaries along the Great Ocean Road.

The beneficiaries of the use of the levy include other road users such as car drivers and truck drivers and pedal cyclists; it includes local communities; it includes local businesses associated with tourism and the like.

By comparison, whilst tens of millions of dollars are focused on cycling paths, it looks as if the only money spent in the name of motorcyclists is levy money which the motorcyclists themselves have provided.

If the levy is to remain then motorcyclists ought to have direct input into its expenditure so that their safety can be directly improved.

Loud pipes

Many motorcyclists are of the view that a bit of sound can save lives because if they can not be seen, they can be heard. There is unquestionably an ongoing problem of car drivers failing to see motorcyclists being a cause of many accidents.

Independent research needs to be conducted to identify whether noise from motorcycles is a factor which could be used to improve safety of riders and increase the awareness of other road users to their presence.

Front number plates

Any proposal to reintroduce front number plates on motorcycles needs a wide consultative process with motorcycle organisations as there are wide and differing views about this issue.

Lane filtering

Various European countries, including the Netherlands have recognised the convenience and advantage to the community in permitting motorcycles to overtake slow moving or stationary queues of cars.

Motorcycling community leaders have described a set of protocols which would add clarity with a view to assisting in keeping traffic flowing. There are suggestions including restricting the overtaking speed to no greater than 10kmh more than that of the car queue. It is recognised that there will be times and places where overtaking of this kind is inappropriate.

However with some courtesy and co-operation the movement of motorcycles can progress in a timely, efficient and responsible manner assisting the flow of traffic.

Legislation needs to be amended to make a clear distinction for riders between lane filtering and lane splitting which occurs when a motorcyclist changes lanes between other vehicles in fast moving traffic.

Lane splitting is not supported in our submission.

CONCLUSION

Since the late 19th century when the first experiments in steam and combustion propulsion on two wheels brought about the first motorcycle, these machines have become a reliable and legitimate mode of transport for millions of people.

Victoria is experiencing a boom in motorcycle use and attitudes to motorcyclists from the general motoring public and agencies needs to change.

Motorcyclists pay their registration fees and their taxes and need to have stronger input into the policy and safety decisions which directly affect them.

Other road users need to accept that motorcyclists are entitled to share the existing road space in a safe manner. These are people who are not risk takers, these are Victorians who understand risk and take steps to mitigate it.

All road users need to be aware of those around them from the pedestrian to the bus driver to the mother of four taking her children home from school.

The best way to increase awareness is through education. This needs to start when young people apply for the learners permit and should continue right through a motorists driving life.

At Maurice Blackburn we have seen the devastating impact that the lack of awareness to a motorcyclist's presence can have on a rider's life and that of their family.

And it is these substantial personal and financial costs which could be reduced through greater education, awareness and more consultation with the motorcycling community.

We thank the committee for the opportunity to make a submission to this inquiry.