

Bicycle Helmet Laws in New South Wales – The Religious Exemption

Briefing Paper for Transport for New South Wales, October 2013

The Issue: Introducing a religious exemption in the New South Wales bicycle helmet laws

On 23 April 2013 we wrote to the Honourable Gladys Berejiklian, MP, the New South Wales Minister for Transport seeking an amendment to bicycle helmet laws. Specifically, we urged the Transport Minister to bring New South Wales' helmet laws in line with other Australian States and Territories that have established an exemption for helmet use on the grounds of religion, noting such exemptions have been in place for over 20 years.

Our letter followed an announcement by the Queensland Minister of Transport, Scott Emerson to include such an exemption in Queensland's bicycle helmet laws. The Minister's announcement followed the campaign set in motion by Jasdeep Atwal, a member of the Sikh community in Queensland who appealed a fine issued to him when he did not wear a helmet whilst riding his bicycle due to his turban, an important article of the Sikh faith.

Our recommendation: New South Wales to harmonise its helmet laws with those of Western Australia, Victoria, South Australia and Queensland

To bring New South Wales' transport legislation in line with those of Western Australia, Victoria, South Australia and Queensland, with the inclusion of an exemption based on religious grounds, pursuant to Regulation 256 of the *Road Rules 2008*.

The importance of the turban in Sikhism

Sikhism is the fifth largest organised religion in the world with more than 30 million adherents. It is important to examine the issue in light of an understanding of the turban and the role that it plays in Sikhism. A turban for a Sikh is not merely a piece of cloth that covers the head, but it is an important symbol of the religion, which forms the integral part of the Sikh way of life.

The turban has an immense spiritual and temporal significance to a Sikh. There are many symbolisms of wearing a turban, being regarded as a symbol of sovereignty, dedication, self-respect, courage and piety. However, the fundamental reason for all practicing Sikhs wearing the turban is out of love and obedience of the wishes of the founders of their faith.

The turban is an article of faith prescribed to be worn by all Sikh men. Though, not required to wear a turban, many Sikh women also choose to wear a turban.

Sikhs in Australia

Sikhism is the fastest growing religion in Australia, having increased by 174% between 2006 and 2011. In Australia, Sikhism can trace its origins in the nation to 1830s. The Sikhs form one of the largest subgroups of Indian Australians with 72,000 adherents according to the 2011 census.

Sikhs have played an imperative role in the World Wars and in fight of Britain for freedom. Over 138,000 Indian troops fought in Belgium and France during World War I, many of them Sikhs. More than one quarter of these soldiers became casualties. In the last two World Wars, 83,005 turban wearing Sikh soldiers were killed and 109,045 were wounded. They all died or were wounded for the freedom of Britain and the world and during shell fire, with no other protection but the turban, the symbol of their faith.

Sir Winston Churchill was very well conversant with the bravery of the Sikhs, who had fought for Britain in the World Wars. Churchill while speaking in the British Parliament said:

"...British people are highly indebted and obliged to Sikhs for a long time. I know that within this century we needed their help twice and they did help us very well. As a result of their timely help, we are today able to live with honour, dignity, and independence. In the war, they fought and died for us, wearing the turbans. At that time we were not adamant that they should wear safety helmets because we knew that they are not going to wear them anyways and we would be deprived of their help. At that time due to our miserable and poor situation, we did not force it on them to wear safety helmets, why should we force it now? Rather, we should now respect their traditions and by granting this legitimate concession, win their applaud."

Sikhs take a great interest in sports and host the Australian Sikh Games on an annual basis. The first annual Australian Sikh Games commenced in 1988, with Sikhs from South Australia, Victoria and New South Wales arriving in Adelaide to compete in a field hockey competition to celebrate the opening of the first *Gurudwara* (a place of worship for Sikhs) in the city. From there the competition grew and in 1989 netball, soccer and kabaddi, tug of war, volleyball and cricket are also included, while track and field and golf event have been previously competed but are currently non-competition events. Non-sports cultural events such as *Bhangra* and *Giddha* (male and female folk dancing performances) are also held simultaneously in the host city.

The law as it currently stands

The anti-discrimination legislation in most Australian states and territories include religion or religious beliefs as an explicit ground for protection. This means that individuals will be protected from discrimination by any act or omission which may adversely affect their right to hold or express a religious belief.

In New South Wales, the *Anti-Discrimination Act 1977* (NSW) (the Act) contains no such protection and therefore discrimination of an individual on the basis of their religion is not unlawful. With this in mind, the mandatory helmet laws in New South Wales discriminate against turban wearing Sikhs, however these individuals are unable to seek redress since this not considered discrimination under the Act and therefore is legal. This appears to be an unusual situation considering of the mix of cultural backgrounds and religious faiths that form part of Australia's, and in particular the New South Wales', multicultural society.

Accordingly, we firmly believe the inclusion of a religious exemption to the mandatory helmet laws is of substantial importance, as doing so will achieve consistency throughout Australia in relation to the treatment of Sikhs (and many other religious faiths that require some form of head cover) and protect turban wearing Sikhs from expressing their religious beliefs without any adverse effect.

Bicycle helmet rules across Australia

Currently, mandatory helmet laws apply to bicycle riders across most Australian states and territories however exemptions exist in several jurisdictions, often on religious or medical grounds. In Western Australia, Victoria, South Australia and most recently, Queensland, the religious exemption has allowed turban wearing Sikhs to practice their religious beliefs freely, without discrimination or penalty.

In a recent statement, the Queensland Transport Minister, Scott Emerson welcomed the change to Queensland's transport legislation to include a religious exemption to mandatory helmet laws for bicycle riders by ensuring that a "*long standing religious belief*" can in fact be demonstrated. To bring New South Wales' transport legislation in conformity with those of Western Australia, Victoria, South Australia and Queensland, we strongly urge that you consider the inclusion of an exemption based on religious grounds, pursuant to Regulation 256 of the *Road Rules 2008*.

Safety concerns

We appreciate there may be some argument in relation to the safety concerns arising from the use of the helmet for protection of the head during cycling. Whilst we are not asserting that mandatory helmet laws have had no impact on bicycle safety, it is widely accepted that debate on the effectiveness of mandatory helmet laws weighed against their negative impact on bicycle use generally is not settled (McDermott F.T. 2011; Robinson D.L. 2007)

Numerous studies from around the world have shown a strong inverse relationship between the number of cyclists and the risk of cycling. Put simply, doubling the number of cyclists makes cycling 30-50% safer, as fewer people drive and those motorists adapt their behaviour to the increased number of cyclists. We note that Australia is one of a handful of jurisdictions around the world that mandate helmet use for all cyclists, regardless of age.

A turban-shaped helmet is probably not a viable option even if it were acceptable to Sikhs, because the traditional Sikh turban is meticulously wound, and it would be difficult for a turban wearer to remove their turban, ride in the helmet, and rewind the turban after the ride. Winding a turban over a helmet would eliminate ventilation and result in a very large headgear, while still requiring that the normal turban be taken off to ride.

Further, law enforcement for most helmet laws is sporadic at best, and if the law does not provide an exemption for turban-wearers it is likely that law enforcement officers will simply let them ride on without interference (which incidentally has been the empirical experience to date for several turbaned cyclists in New South Wales).

Our campaign

Following Mr Atwal's efforts in Queensland, Sikh Youth Australia has been lobbying for change in New South Wales, with a view to harmonise the bicycle helmet laws across Australia in respect of the inclusion of the religious exemption. Our campaign is rooted in values of equality, justice and respect.

As a national organisation, over the last 15 years Sikh Youth Australia has run programs and initiatives across Australia with a mission to empower Sikh youth, young adults and parents to understand and enjoy their identity and positively contribute to the social and economic development of Australia.

Through our campaign to include a religious exemption in bicycle helmet laws, Sikh Youth Australia will also launch awareness and educational campaigns allowing the wider Australian community to understand our faith and culture, including our articles of faith. This understanding will foster mutual respect and equality and provide the basis for including a religious exemption in the State's helmet laws. Alongside this, we will launch a fitness and health awareness campaigns within our community to increase bicycle usage, helping address important cultural health issues and one of the main reasons bicycle usage within our community is so limited.

Our progress to date

We have initiated our campaign by way of letter to the Honourable Gladys Berejiklian, MP, the New South Wales Minister for Transport. We had also contacted several State and Federal Ministers including having met with senior policy advisors for Senator Kate Lundy, the out-going Minister for Sport and Multicultural Affairs who has showed support for Sikh Youth Australia in our long-standing relationship. We understand the Minister's desire for promoting cultural and religious acceptance through sporting activities, which often unite individuals despite diversities.

There have been a number of petitions within our community seeking such harmonisation of the laws and we have had a significant groundswell of support in this undertaking, in the aftermath of the Queensland legislative amendment. We have volunteers in the remaining states (Tasmania and the Territories) looking to commence this harmonisation process in the near future.

Summary and Next Steps

In summary, we request the urgent attention of Transport for New South Wales to the following issues:

1. Raise the matter addressed above as a priority with the relevant stakeholders for discussion;
2. Introduce an exemption in New South Wales in bicycle helmet laws allowing Sikhs to ride bicycles with their turban; and
3. Seek harmonisation of New South Wales bicycle helmet laws with the bicycle helmet laws in Western Australia, Victoria, South Australia and Queensland.

We humbly request the assistance of Transport for New South Wales in facilitating this amendment to the New South Wales mandatory helmet laws and promote awareness of Sikhism and embrace exemptions that exist for helmet use by Sikhs across Australia and the rest of the world.

We appreciate that you may have further comments or concerns that you would like to discuss with Sikh Youth Australia in relation to the above and accordingly, we would be more than happy to arrange a follow up meeting or have a telephone discussion with you.