



Brisbane Central Business District Bicycle User Group

CBD BUG

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The Honourable Mark Bailey MP

Minister for Main Roads, Road Safety and Ports and Minister for Energy and Water Supply

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BRISBANE QLD 4001

Dear Minister Bailey

This letter concerns the minimum distance passing law trial in Queensland (s144A(1) of the Queensland Road Rules).

The Brisbane CBD Bicycle User Group is a grassroots volunteer organization of more than 700 members, representing the interests of the very large number of people riding bicycles to, from and within the Brisbane city centre. It is active in seeking policy decisions at all levels of government supporting people who want to cycle. Our particular focuses are improved infrastructure, end-of-trip facilities, integration of cycling needs with other transport modes and a regulatory environment friendly towards people riding bikes. CBD BUG members meet monthly to exchange information and ideas, discuss issues of relevance and determine the direction of policies to benefit people riding bikes in the CBD.

We initially wrote to Transport Minister Jo-Ann Miller on 17 February concerning lack of enforcement of the passing distance law by members of the Queensland Police Service.¹ The reply² suggested we contact Acting Inspector Wayne Hutchings of Road Policing Command. A/I Hutchings was replaced in his role by A/I Ian Carroll. In a telephone conversation on 28 April, Inspector Carroll said that he was not the right person to speak to concerning the systemic lack of enforcement of the minimum passing distance law. He stated that any issues relating to lack of enforcement had to be raised with the officer in charge at a police station, or Policelink, or the Crime and Corruption Commission. A person who experiences an unequivocal breach of s144A(1) may have taken some time to bring physical video footage of the incident to a police station. If their concerns are subsequently summarily dismissed or they are pressured to drop their complaint, they are likely to lose faith in the objectivity of the Police Service concerning these issues and unlikely to proceed with this course of action.

A/I Hutchings suggested contacting you concerning the trial. At Ride to Work Day on 30 April, Acting Chief Superintendent Dale Pointon acknowledged that some of the issues around lack of enforcement are related to the autonomy individual officers have to prosecute or not. Other members have experience that police are willing to prosecute where clear breaches of other Queensland Road Rules have occurred.

The law may be functioning in an educative sense. However, BUG members are concerned that there is a systemic lack of enforcement of this law by the Queensland Police Service. The reply from Minister Miller

¹ <http://www.cbdbug.org.au/wp-content/uploads/1970/01/0/CBD-BUG-letter-to-Trans-Minister-20150218.pdf>

² <http://www.cbdbug.org.au/wp-content/uploads/1970/01/0/CBD-BUG-Letter-fr-Police-Minister-1m-passing-20150324.pdf>

mentioned admissibility of video evidence. The RACQ "Road Ahead" magazine of April 2015 quoted Assistant Commissioner Mike Keating that some victims of close passes are not willing to appear in court to back up their evidence. Neither of these have been an issue for our members. The magazine also mentioned that a "Bicycle Road Safety Group" was looking at new mechanisms for reporting incidents. We are unaware of any such mechanisms.

At the Q&A session with you in Brisbane during Bike Week on 30 April 2015, several related questions were asked of you. One questioner stated that he'd "like police take seriously requests to register or investigate complaints against drivers" and cited a case where police weren't interested in an attempted report of a driver turning directly in front of a group. He stated that the almost universal response from other riders is "I've given up trying to report [drivers]".

Your answer was "I've certainly had feedback from a range of people that they don't believe the existing reporting mechanisms are adequate, and I think there's probably a bit of need for continuing change there about what is the best way for me as a cyclist if I've been deliberately run off the road and I've got a number plate. It may not be by just ringing the police station. This morning at [Ride to Work] I used to fantasise about wouldn't it be great to have policemen on bicycles ... and of course they're there, which is great. But we need bicycle advocates within the Police Service, I think and I don't think that's quite strong enough is the feedback I get from people at the moment. And maybe that is something I personally would like to do some work around to make sure that those complaints against errant road users against cyclists are taken as seriously as anybody else. In a lot of ways it's involving vulnerable road users, it should be taken extremely seriously." The BUG would welcome any opportunity to assist you with these issues.

You also mentioned that CARRS-Q is evaluating the rule "in terms of its practical implementation, effect on road users' attitudes and perception and its road safety benefit". However, any objective road safety benefit will be very difficult to ascertain without baseline measures and we are not aware of any such measures.

The BUG considers that the Queensland Parliamentary Inquiry into Cycling of 2013 made excellent recommendations, not all of which were implemented. It requires the participation of all government agencies to enhance cyclist safety and encourage potential cyclists to ride, knowing that the authorities take their safety seriously. The campaign cannot be effective without police cooperation. This cooperation appears to be currently lacking from the Queensland Police Service with respect to s144A(1).

We would like to know what the police policy for enforcement of the rule is and how this is being implemented.

The BUG seeks your views on what police and bike advocates could do to make the rule work best, and the co-convenors would welcome the opportunity to make this case in person to you.

Example incidents and social media issues concerning police are given in the Appendix to this letter.

Regards

Dr Richard Bean
18 May 2015
Co-convenor
Brisbane CBD BUG

Cc: Hon Jo-Ann Miller, Minister for Police
Cc: Professor Narelle Haworth, CARRS-Q

Appendix

In March 2014 Police Minister Jack Dempsey was quoted in Brisbane media as saying that “*any video evidence produced by cyclists would be considered carefully by police*”.³ Section 144A(1) came into effect on 7 April 2014. The CBD BUG and many other groups and individuals argued strongly for the introduction of this law before the Parliamentary Cycling Inquiry in 2013.

In November 2014 Commissioner Ian Stewart was quoted as saying that “[QPS] *acts where evidence exists*.”⁴

In marked contrast to these statements, since April 2014, the CBD BUG has noted a widespread reluctance in the QPS to take any action concerning unequivocal breaches of this section when video evidence is produced.

Although many other videos and stories are available, this letter focuses on three breaches involving heavy vehicles, as these vehicles present the most danger to people using bicycles.

The Cycling Inquiry which led to the introduction of this law was begun largely due to the unsatisfactory outcome concerning the prosecution of a truck driver involved in the death of Richard Pollett in 2011. According to the court case, Richard Pollett had between 60 and 90 cm of operating space between the truck and the kerb when he was struck by the truck from behind while riding his bicycle on Moggill Road.⁵

The vast majority of people killed riding bicycles in Queensland since 2012 have died in incidents involving trucks (viz Franco Leo, Les Karayan, Myles Sparling, Michelle Smeaton, Sue Bell, Martin Pearson, Mardi Bartlett, and Rebekka Meyer).

Paul French of CBD BUG noted at the parliamentary inquiry in August 2013, commenting on the death of Les Karayan, killed by a truck on Annerley Road near where Rebekka Meyer died: “The latest federal government statistics on fatal crashes and deaths involving trucks suggest Queensland’s industry is a runaway, and this crash is yet another pointer to the inadequate management of this state’s road transport system as a whole and the trucking industry in particular, which, with respect to cyclists, represents wheels of mass destruction.”

In December 2014 the Queensland Coroner released Findings of Inquest into the death of Malcolm Kamp at Kholo in 2011. Mr Kamp was killed while riding his bicycle and being hit from behind by a semi-trailer. The Coroner found that “Mr Kamp’s own riding conduct did not in any way contribute to his death” and “the most substantial single cause of Mr Kamp’s death was the failure, by the semi-trailer driver, to brake sufficiently, or to leave sufficient room between the truck and the bicycle, to pass safely.”⁶ More pertinently the Coroner wrote that

It is a fundamental responsibility of every road user to drive their vehicle in a safe manner. Every road user has a duty to consider the safety of other road users, in their driving conduct. This responsibility particularly pertains to a vehicle which is approaching another vehicle from the rear, in order to pass it.

³ <http://www.couriermail.com.au/news/queensland/bike-riders-told-to-buy-cameras-to-help-enforce-new-laws-and-protect-themselves-on-the-road/story-fnihsrf2-1226858814899>

⁴ <https://twitter.com/auscycle/status/529245158701690881>

⁵ http://www.parliament.qld.gov.au/documents/committees/THLGC/2013/INQ-CYC/submissions/096_Pollett.pdf

⁶ http://www.courts.qld.gov.au/_data/assets/pdf_file/0007/333655/cif-kamp-md-20141203.pdf

This duty of care to drive safely must be at its highest when a semi-trailer or motor vehicle approaches a bicycle from behind. The driver of a semi-trailer must, as a simple matter of logic, be aware of the very great differential in speed between the vehicles, and the very great differential in mass. The semi-trailer driver must be aware that there is no such thing as a “minor” collision between a semi-trailer and a bicycle. Every time a semi-trailer passes a bicycle, the cyclist is effectively entrusting his or her life to the semi-trailer driver.

Given this context the CBD BUG has been greatly disturbed by the lack of action taken by QPS concerning the recent incidents.

Incident 1

This incident occurred on Old Cleveland Road westbound near Vienna Road at approximately 6:45 am on 11 June 2014.⁷ A “MAN” truck from Gaby Cool Transport (license plate 529 LDP) was involved. The screenshot below from the video clearly indicates that no attempt was made by the truck driver even to change to the adjacent lane. This is the kind of action that led directly to the death of Malcolm Kamp in 2011. The speed limit in the area was 70 km/h and hence the required lateral passing distance was 1.5 metres. This location is marked as part of the Department of Transport and Main Roads’ “Future Principal Cycle Network” for South East Queensland, as was the location where Richard Pollett was killed in 2011.

The width of the vehicle is 2.5 metres plus mirrors and the lane width at this point is 3.5 metres. Hence even if the video left any room for doubt, a simple calculation leaves no question concerning the breach.

⁷ <http://www.youtube.com/watch?v=3IH-o9YVyyqo>



The video footage was submitted to the QPS Hoon Online website on 11th June 2014 and after no action, the complainant visited Capalaba police station on 26th August 2014 in person and submitted the video by USB. The complainant was advised by phone in late October that no action would be taken against the truck driver. The police officer also remarked that the complainant should have taken an alternative route, that the camera was not a calibrated device, and that the driver clearly moved over to give him room. Thus instead of enforcing the law, the investigating officer in this case resorted to a “victim blaming” approach.

Incident 2

This incident concerns a Hino bus on Sandgate Road at Albion, license plate 830 SBT, on 17 September 2014.⁸ The school bus overtaking the person riding the bicycle again made no attempt to change lanes and demonstrating a breach would thus be a simple task.

⁸ <https://www.youtube.com/watch?v=kjim4KeXtQg>



The complaint was made on 10 October 2014 and no response from QPS has been received to date.

Incident 3

This incident concerns a 2007 Volvo Tip Truck, license plate 902 TWK.⁹ A tip truck towing a trailer was also involved in the 2014 death of Rebekka Meyer, the 22 year old Danish international student mentioned above. The truck driver began using his horn at 07:15:13 (video time) and completed the passing manoeuvre at 07:15:18.¹⁰ Again no attempt was made by the truck driver to change lanes. The complainant noted that the FM Cab Truck involved in the incident was 2,480 mm wide with side mirrors of 250 mm, and that the lane width in the area was 3.5 m. Thus “to meet the minimum safe passing distance the rightmost side of the cyclists would have to be further left than 500mm past the left hand side of the traffic lane.” The breach was again unequivocal.

⁹ <https://www.youtube.com/watch?v=-jl7-uju47A>

¹⁰ The publication “Your Keys To Driving in Queensland” contains the sentence “do not sound your horn at cyclists - it may startle them and make them fall”. This point has not been highlighted in media appearances by QPS representatives e.g. by Inspector Ray Roeder at <http://blogs.abc.net.au/queensland/2013/02/cycling-know-the-road-rules.html>. Similarly another QPS representative did not appear to be aware of recent legislative changes enabling cyclists to ride across signalized crossings: <http://blogs.abc.net.au/queensland/2014/07/are-fines-for-cyclists-the-same-as-for-motorists.html>



At 07:15:19 the shoulder ended as can be seen in the video and in a Queensland Globe image shown here. Thus the truck driver's actions were especially dangerous and could have resulted in a fatality, keeping in mind the Coroner's statement that "there is no such thing as a 'minor' collision between a semi-trailer and a bicycle".

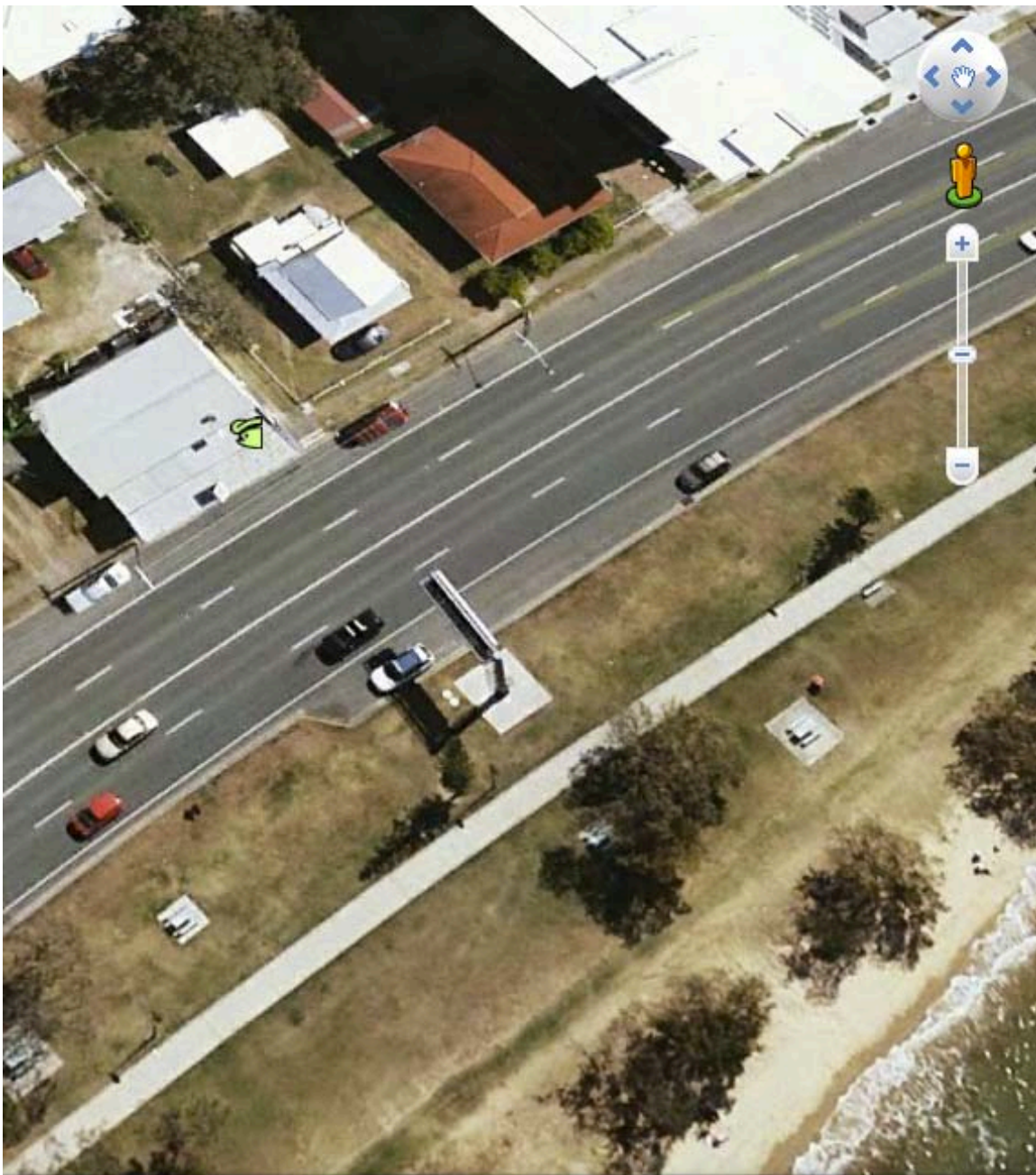


The initial QPS response to the complaint by email on 13 October from the Redcliffe police station was from a sergeant who appeared to have no knowledge of s144A(1) at all. The email stated that since there was a vehicle in the right hand lane, it was “impossible for the truck to merge into the right lane” and the “rider ... was making no attempt to move further to his left”. The first complainant asked for an escalation whereupon he was contacted by phone on 20 October. The officer said that “he was a cyclist himself” and suggested dropping the complaint or all the cyclists would be booked for section 159 (not riding as far left as practicable) and section 253 (moving in and out of the lane). Section 159 does not apply on multi-lane roads and the shoulder was ending within metres; and section 253 also did not apply in this situation.

Rather than enforcing the law with clear-cut video evidence, some police preferred to push the "everybody's at fault so let's just forget it" routine.

On 24 November 2014, the Acting Assistant Commissioner of Road Policing Command advised Stephen Mitchell of cycle.org.au that the investigation was reviewed by “the District Officer at Moreton District” and that “at this time no action will be taken against any party.” Unfortunately, this response shows that the inaction and unwillingness to enforce the law is currently occurring even at high levels within the police service.

In addition to this, the complainant had to visit Redcliffe Police Station on several occasions and was advised that if the complaint had merit the procedure would have to begin again at the Cleveland Police Station where the driver lived. This would have resulted in a preposterous and unworkable situation if the driver or cyclists lived some distance away from the incident.



A legal advisor from the Department of Transport and Main Roads involved in drafting Section 144A(1) expressed the view to the investigating police and complainants that the kind of pass in Incident 3 was precisely the kind of situation which should result in charges.

Media and social media issues

These incidents have been linked in social, online and print media to comments made by some members of the Queensland Police Service.

In November 2014, Constable Kyron Wolfe of the QPS wrote on the Cycle.org.au Facebook wall that cyclists were “cockroaches on wheels. Should have to pay rego, insurance and adhere to road rules and single file only!”¹¹ Five police officers posted comments criticizing cyclists. Although the officers are entitled to their private views, we are concerned that in subsequent media coverage and online, QPS has not officially dissociated itself from the views expressed. This kind of statement only fuels the existing perception that complaints made to police by people who ride bicycles are not taken seriously.

¹¹ <https://twitter.com/auscycle/status/529245158701690881>

The Cycle.org.au group noted the statement demonstrated “underlying contempt for cyclists among some police officers” and compared to the comments to “racial or religious vilification”¹². The BUG concurs with these remarks.

In contrast, recently retired Chief Commissioner of the Victoria Police, Ken Lay¹³ produced a video entitled “Share the Road Safely” where he “[came out] in emphatic support of cyclists’ right to be on the road stating that it is the responsibility of all motorists to be vigilant about bike riders’ safety.” We note that a similar video has been made featuring Queensland Acting Assistant Commissioner Ian Stewart in April 2015.¹⁴

In one successful prosecution reported in the media for a breach of s144A(1)¹⁵ the truck driver, Warwick Fribance, remarked about the “[cyclist] sipping his latte and laughing at me.” The BUG could not imagine a stereotypical remark about an ethnic minority being made by an offender and a mainstream journalist reporting the remark. The comments section under the article was (as is the case in much commercial media) poorly moderated and full of threats and stereotypes. Only one other prosecution has been reported in the media.¹⁶

Society needs a strong counterpoint to these kinds of views and the CBD BUG very much hopes that the QPS can be part of this counterpoint. For example, the BUG was very pleased to see photos during the G20 of phalanxes of bike police.¹⁷ The BUG considers that an initiative which required all police officers to spend some time patrolling by bicycle would benefit society in many ways, such as breaking down the kind of stereotyping that exists.

Concerning social media, the BUG considers that it is important to avoid posts which might inflame “tribal” loyalties.¹⁸

Blitzes and enforcement ideas

The BUG has also been noted that “blitzes” on cyclists have been occurring¹⁹ since the April 2014 introduction of the passing law and “equalization” of cyclist and motorist fines. Many fines have been issued for cyclists not having bells, although no legislative requirement exists to use one. In Brisbane, fines have been issued to cyclists for rolling through stop signs at well-known locations

¹² <http://www.couriermail.com.au/news/queensland/cop-calling-cyclists-cockroaches-is-like-racial-vilification/story-fnihsrf2-1227113403531>
<https://www.facebook.com/video.php?v=717082145051095>
<http://www.brisbanetimes.com.au/queensland/police-liken-cyclists-to-cockroaches-online-20141104-11gwmb.html>

¹³ <https://www.youtube.com/watch?v=lq0XwIkNiFQ&feature=youtu.be>
<http://www.theage.com.au/victoria/ken-lay-supports-cyclists-right-to-be-on-road-20140226-33itx.html>

¹⁴ <http://mypolice.qld.gov.au/blog/2015/04/30/police-ask-road-users-to-share-the-road-and-chill/>

¹⁵ <http://www.couriermail.com.au/news/queensland/truck-driver-who-drove-too-close-says-cyclist-had-camera-on-his-helmet-chip-on-shoulder/story-fnihsrf2-1227106427850>
<http://www.sunshinecoastdaily.com.au/news/fine-line-revealed-in-bike-safety-laws/2437894/>

¹⁶ <http://www.brisbanetimes.com.au/queensland/driver-fined-told-to-apologise-to-his-mum-20150414-1mkre6.html>

¹⁷ <http://www.abc.net.au/news/2014-11-13/g20-police-bicycle-squad/5889434>

¹⁸ A classic and unfortunate example was produced by the Department of Transport and Main Roads in April 2014: <https://www.facebook.com/TMRQld/posts/701188449924041>

¹⁹ <http://www.couriermail.com.au/questnews/south/bike-group-cycle-says-cyclists-have-been-blitzed-more-than-motorists-since-the-1m-rule-was-introduced/story-fni9r1nj-1226976690486>

such as Fagan Street and Butterfield Road and Ivory Lane, and exceeding the 50 km/h speed limit on Mount Coot-tha, though no crashes involving cyclists have occurred in any of these locations.

If the police wanted to enforce rules with motorists in the same fashion as with cyclists, Stradbroke Island with its 100 km/h zones requiring a 1.5 metre passing distance and narrow bridges in the South East Queensland area would be obvious locations to begin. These kinds of passes really are a safety issue and a threat to the lives of others as opposed to the fines being issued in “cyclist blitzes”.

A report entitled “Innovative Treatment for Pinch Points” was produced in October 2013 by Hanford Cheung of ARRB Group (formerly Australian Road Research Board)²⁰ for the Department of Transport and Main Roads. The report contained extensive measurements of lateral overtaking distances of cyclists on bridges. On the Eudlo Creek Bridge on David Low Way in Maroochydore, every test group of cyclists was overtaken with a lateral passing distance of less than one metre.

We note that a new dedicated cyclist and pedestrian bridge is being planned at this point and that the kind of issues (drivers breaching passing distance rule and cyclists rolling through stop signs) raised throughout this letter would be remedied with dedicated infrastructure for cyclists. If the QPS is experiencing difficulty conducting “blitzes” they may wish to contact ARRB Group for advice.

Table 3.2: Summary of results on Eudlo Creek Bridge

Number of cyclists	Average lateral overtaking distance (cm)	Minimum lateral overtaking distance (cm)	Maximum lateral overtaking distance (cm)
One	190	47	254
Group of four	50	40	77
Overall	134	40	254

The BUG is not aware of the number of successful prosecutions in Queensland for violations of the passing law but notes that police in Austin, Texas, have issued 104 citations for violation of a “3-foot” passing law.²¹

²⁰ <http://bicyclecouncil.com.au/files/research/InnovativeTreatmentForPinchPoints.pdf>

²¹ <http://streetsblog.net/2014/01/16/austin-demonstrates-how-to-do-safe-passing-laws-right/>