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13<sup>th</sup> September 2011

Prime Minister Gillard  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister Gillard,

A small group of us intend to cycle to Parliament House on Wednesday 21<sup>st</sup> September 2011 in order to highlight the current vexatious mandatory bicycle helmet laws that continue to impede any viable sustainable transport strategies currently being considered by the Australian people.

We do hope that you will be able to meet us and hear our concerns.

Additionally I will be bringing a copy of my letter (to give to you in person) addressed to Mr Rod Simms, Chairman of the Australian Competition & Consumer Commission (ACCC) pertaining to the conduct of helmet promotion, in trade or commerce, which leads, or is likely to lead, into error the Australian people at whom it is directed.

By way of explanation, a proportion of content in this letter has already been included in a prior letter sent to the former leader of the Australian Labour Party (ALP) on 4<sup>th</sup> November 2009. To this day I have never received any acknowledgment of correspondence therefore I am completely ignorant of either his or the ALP's position on the very important issue of Australia's mandatory bicycle helmet law. Furthermore I should add that a proportion of content in this letter has also been used in submissions for my court appearance as the appellant before Judge Ellis in the Maitland District Court of New South Wales in March 2010.<sup>1</sup>

Thus to continue with my letter to you, I believe that the act of me riding my bicycle without a helmet is a question of necessity and therefore:

1. I may be excused if I can show that it is done only in order to avoid consequences of risk of severe brain injury or death which could not otherwise be avoided, and which, if they followed, would inflict inevitable and irreparable evil upon me; and
2. the act of me riding my bicycle without a helmet is no more than is reasonably necessary for the purpose, and that the evil inflicted by the crime of not wearing a helmet is not disproportionate to the evil avoided by consequences of risk of severe brain injury or death;<sup>2</sup>
3. circumstances of imminent catastrophic climate change create a situation of necessity which in turn necessitates the committing of bicycle helmet crime in order to avoid other detrimental and serious consequences that could flow from the situation. I

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<sup>1</sup> *Abbott v R* (2010) District Court of NSW

<sup>2</sup> *R v Davidson* [1969] VR 667

honestly believe that the risk of serious brain injury would be increased if I wore a helmet, and I hold this belief on reasonable grounds.

I understand from my review of the literature that bicycle helmet testing standards are simplistic. Simple drop tests subject a helmet to linear accelerating impact only. Standard tests do not include capacity to reduce angular acceleration, and in some circumstances, wearing a helmet can increase the angular acceleration which an oblique impact imparts to the head, increasing the risk of damage to the brain, especially diffuse axonal injury.<sup>3</sup> Obtained through freedom of information, this position is somewhat confirmed in a NSW Roads & Traffic Authority (RTA) memo addressed to...

- 1) A/Senior Policy Manager (Vulnerable Road Users), Safer People Branch; and
- 2) A/General Manager, Safer People Branch; and 3) A/Director, NSW Centre for Road Safety, from A/Senior Research & Policy Analyst, Safer People Branch on 20<sup>th</sup> June 2008 (File no. 7M2609)

...where it is admitted on page 2, line 6 that *'there is the possibility that some helmets, in combination with particular size headforms, may have a small disbenefit with regards to rotational acceleration.'*

Given such department ambiguity in parallel with conflicting internationally peer-reviewed evidence, it would appear that helmets are still very much an ongoing experiment. Under PART III, Article 7<sup>4</sup>... *"no-one shall be subjected without his free consent to medical or scientific experimentation"*...

In view of Article 7,<sup>5</sup> I do not wish to be part of the bicycle helmet *'medical or scientific experiment'*. Therefore I respectfully request that you please respect my right to ride my bicycle without a helmet – a right which I exercise with my free refusal, the counter to free consent.

I genuinely and honestly believe that in the face of this evidence, it would be irrational for me to wear a helmet of current design.

1. I submit that it is not reasonable that I should be constrained by law to put my health and my life at risk when the safer alternative of riding a bicycle without a helmet, currently defined as an offence under regulation 256<sup>6</sup> in accordance with schedule 71 (2),<sup>7</sup> would actually provide more protection against that risk.
2. I submit that I should not be compelled by any state to do an act which puts my health and life in greater danger than if I declined to do the act.

I believe that necessity can be a defence on therapeutic grounds, that my beliefs are reasonably held as I perceive them and that my conduct is a question of my survival and the planet's survival. I need to cycle in order to reduce carbon emissions and my unnecessary car-dependency tendencies, and therefore it is necessary for me 'not' to wear a helmet when cycling, in order to minimise the risk of severe brain injury or death.

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<sup>3</sup> William Curnow, 'Bicycle Helmets: a Scientific Evaluation' (2008) *Transportation Accident Analysis and Prevention*, 155

<sup>4</sup> *International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1963), 999 UNTS 171, reprinted in 6 ILM 368 (1967)

<sup>5</sup> *International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1963), 999 UNTS 171, reprinted in 6 ILM 368 (1967)

<sup>6</sup> *Road Rules 2008* (NSW)

<sup>7</sup> *Road Transport (Safety and Traffic Management) Act 1999* (NSW)

In *R v Davidson*,<sup>8</sup> Menhennit J ruled that abortion was lawful if necessary to protect the physical or mental health of the woman, provided that the danger involved in the abortion did not outweigh the danger which the abortion was designed to prevent. The “Menhennit ruling” was expanded in the case of *R v Wald*<sup>9</sup> to any ‘economic, social or medical ground or reason which an accused could honestly and reasonably believe there would result a serious danger to her physical or mental health.’

This is relevant to me as I believe that we must change the fundamental manner in which we inhabit this planet, and that climate justice can no longer be ignored. Catastrophic climate change dictates global responsibilities. It is common knowledge that ‘*greenhouse gas emissions increased by a record amount last year to the highest carbon output in history*’ and that ‘*according to unpublished estimates from the International Energy Agency, this means hopes of holding global warming to safe levels are now all but out of reach.*’<sup>10</sup>

Unquestionably catastrophic climate change has expanded the question of survival, the notion of climate justice, and our global responsibilities.<sup>11</sup> Reflecting upon the ever present diminishing coastlines, floods, dust storms and dying rivers, it is now a question of survival to cycle whenever and wherever I can in a bid to curtail carbon emissions. The current global zeitgeist clearly demonstrates that not only is utility cycling an achievable start to tackling this issue but it comes with unexpected benefits in terms of national health & traffic decongestion.

It is patently obvious that climate scientists and climate observers are concerned with the occurrence of more extreme weather events and their ever-growing intensity. The trends suggest long term change as greenhouse gases continue to build in the atmosphere. At last an Australian government (your government) has acted upon the abundant evidence that surrounds us all and delivered us the long awaited-for promise of climate change legislation. The immediacy of climate change danger is now a constant for us – our actions and behaviour have an impact on others as well as ourselves. I am well aware that my carbon footprint is experienced by many.

Hence I cycle in a bid to reduce my carbon emissions and to relieve the environment of the destructive elements of any car-travel that I may incur. To cycle with a helmet would put me at grave risk of potential brain injury in the unlikely event of an accident. There are no alternative transport options for me because of my commitment to the planet. In Scone, walking is not a viable or even possible alternative given that I live some 8km to the west of the town. I routinely transport groceries, which would be impossible on foot. Similarly in Sydney, I require my bicycle for city living and transportation purposes. By choosing to cycle and not take public transport, I free up a seat on a train or a bus for someone else who for whatever reason has chosen to take public transport rather than a car or a bicycle.

Catastrophic climate change presents immediate dangers which cannot be ignored. Bolivia has passed the world’s first laws granting nature equal rights to humans. The Law of Mother Earth is expected to bring radical new conservation and social measures to reduce pollution and control industry,<sup>12</sup> highlighting the growing global concern of catastrophic climate change for people around the world.

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<sup>8</sup> *R v Davidson* [1969] VR 667

<sup>9</sup> *R v Wald* (1971) 3 DCNSW 25

<sup>10</sup> Fiona Harvey, ‘*World climate now on the brink*’, The Guardian Weekly 3-9 June 2011.

<sup>11</sup> *R v Wald* (1971) 3 DCNSW 25

<sup>12</sup> John Vidal, ‘*Bolivia’s mother of all laws enshrines rights of nature*,’ The Guardian Weekly

<http://www.guardian.co.uk/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights> at 10/07/2011

We have the perfect climate for cycling and some beautiful cities for cycling in as well. Notwithstanding our helmet-law constraints, Melbourne and Brisbane have bravely embraced bike-share programmes, cobbled together with last minute poorly thought-out strategies for helmet-law compliance, such as helmet dispensing machines in Melbourne, and unbelievably, unmonitored helmets attached to bikes in Brisbane, unwisely exposing them to multiple elements (primarily weather & social).

Prima facie, the evidence pertaining to helmets is conflicting. Yet notwithstanding the prevalent fierce academic debate on the matter, we are still legally compelled to wear one in Australia.

Inter alia, most nation states across the globe openly acknowledge that mandatory helmet laws raise issues of civil liberties, and accordingly the decision 'to helmet or not' is left to their individual citizens. It is time such decision-making was relinquished to the realm of choice for Australians too.

I respectfully request that in the interest of social justice, the environment, and our children, you urge the state governments to repeal their mandatory helmet laws, especially when you recall that it was the Hawke government in December 1989 who insisted that the states enact bicycle helmet laws if they wished to receive additional road funding within the 'black spots' program initiated to reduce the national road toll and improve safety.

I respectfully submit that on the premise that the law is fragmented, uncertain and inconsistent; the law ought to be repealed.

I look forward to hearing from you, and meeting you next Wednesday 21<sup>st</sup> September.

Yours sincerely,

Sue Abbott  
(Freedom Cyclist)  
<http://www.freedomcyclist.blogspot.com>

Copied to:

The Hon. Bob Brown, Parliament House, Parliament Drive, Capital Hill, CANBERRA ACT 2600; Premier Barry O'Farrell, GPO Box 5341, SYDNEY NSW 2001; Premier Ted Baillieu, Office of the Premier, 1 Treasury Place, MELBOURNE VIC 3000; Premier Mike Rann, GPO Box 2343, ADELAIDE SA 5001; Premier Lara Giddings, GPO Box 123, HOBART 7001; Premier Colin Barnett, Department of the Premier and Cabinet, 197 St George's Terrace, PERTH WA 6000; Premier Anna Bligh, PO Box 15185, CITY EAST QUEENSLAND 4002; Chief Minister Paul Henderson, GPO Box 4396, DARWIN NT 0801; Chief Minister Katy Gallagher, ACT Legislative Assembly, GPO Box 1020, CANBERRA ACT 2601; The Hon. George Souris, MP, 20 Bridge Street, MUSWELLBROOK NSW 2333; The Hon. Joel Fitzgibbons, MP, PO Box 6022, House of Representatives, Parliament House, CANBERRA ACT 2600; Matthew Moore, Urban Affairs Editor, Sydney Morning Herald, PO Box 3771, SYDNEY NSW 2001.